

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Second Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Monday 12th January 2004, 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 J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities
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 F R Picardo

The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

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 28th March 2003, 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 financial statements of the Gibraltar Regulatory Authority for the year ended 31st March 2003.

Ordered to lie.

The Hon the Minister for Health laid on the Table the Report of the Gibraltar Health Authority for the years ended 31st March 2001 and 31st March 2002.

Ordered to lie.

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

- (1) The Report and accounts of the Gibraltar Heritage Trust for the year ended 31st March 2003.
- (2) Consolidated Fund Reallocations – Statement No 13 of 2002/2003.
- (3) Supplementary Funding – Statement No 14 of 2002/2003.
- (4) The Accounts of the Government of Gibraltar for the year ended 31st March 2002 together with the Report of the Principal Auditor thereon.

Ordered to lie.

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

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

HON J J BOSSANO:

We were told that there was going to be a motion to suspend Standing Orders in order to take this before the questions because of their urgency but we have not heard anything about the urgency to justify why we need to take them before Question Time and I have to say, I am grateful that we were given an indication because otherwise we would have been concentrating

for today's meeting on the Questions rather than looking at these Bills most of which were published over the Christmas period some of which relate to things that were pending implementation many, many years ago and therefore we can understand that there is apparently one which had a deadline because there is a deadline reflected in the Bill which says it will come into effect on the 1st January 2004. I do not know whether that date is going to stay there or whether it will have to be amended in the course of the Committee Stage. The others as far as we can tell do not have a required implementation date like that one has and therefore in the time available to us we have found lots of things in these Bills that give us cause for concern and we would have wanted more time to deal with them so we need to be persuaded not necessarily about starting it now but certainly finishing it all today if that is the Government's intention.

HON CHIEF MINISTER:

No, it is not my intention to take the Committee Stage and Third Reading of the Bills today but rather later this week. Secondly, I asked the Clerk of the House to give the hon Members notice of this my motion precisely so that they would not be taken by surprise although I presume that the hon Members have not left preparation for the legislation to the very last minute and they have had more than the seven days usual notice required for this legislation. As to the reasons for the urgency and therefore my giving them notice of this motion, the reason is that these four pieces of legislation implement into our laws the consequences of the parts of the Schengen acquis to which Gibraltar has been signed up by the United Kingdom and that there is urgency in respect of that because the United Kingdom is about to be checked up by the Commission as to whether they have complied with all the Schengen implementation requirements and we have to have this legislation in place by the middle of January but certainly I want to take the First and Second Readings today and I would expect to reach the Committee Stage either at the end of this week or at the very

beginning of next but possibly on Friday. That is the reason why consideration of these Bills is being advanced by the two days that it might have otherwise have taken us to finish questions and we would then have got round to these Bills in the ordinary course of business. Although I accept that we are advancing by a couple of days, the consideration of First and Second Readings we have given more than two days notice of this intention and therefore the hon Members are no worse off and secondly the hon Members will have opportunity between now and the Committee Stage, indeed I shall be moving amendments of which I also hope to give them notice in advance rather than at the hearing itself of some amendments that I wish to bring and I think that doing it this way splitting up the consideration of the First and Second Reading on the one hand and the Committee Stage on the other does give the hon Members the opportunity to raise issues which the Government then have time to look into and come back more meaningfully at Committee Stage than we are able to do when we try and do urgent things all in one day. I hope that on that basis the hon Members will be able to support this motion.

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

THE MUTUAL LEGAL ASSISTANCE (SCHENGEN CONVENTION) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for compliance with articles 48 to 53 of the convention

of 19 June 1990 applying the Schengen Agreement of 14 June 1985, 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 House has heard this Bill which is designed to implement into our laws the requirements imposed upon us by articles 48 to 53 of the 1990 Schengen Convention, relates to the creation of a statutory regime for the provision of mutual legal assistance as between Schengen Member States. Hon Members know that Schengen is now part of the Community acquis. The Bill in effect implements in Gibraltar the 1959 Council of Europe Convention on mutual legal assistance in order to facilitate compliance with the article in the Schengen Convention itself which says that the purpose of these five articles in the Schengen Convention are to facilitate implementation of the 1959 Council of Europe Convention of Mutual Legal Assistance. At the time that that Schengen Convention requirement was adopted the other members of Schengen were already subject to the 1959 Council of Europe Convention on Mutual Legal Assistance. That Convention has never been extended to Gibraltar and indeed has still not been extended to Gibraltar but the Schengen Acquis requires indirectly Gibraltar to have those provisions in our legislation.

I will be moving one or two amendments to this Bill when it reaches the Committee Stage but they are not amendments of an enormously significant nature. As I say, Gibraltar has the duty to implement articles 48 to 53 of the Schengen Convention and thereby set in place a mechanism enabling Member States to co-operate bilaterally in the investigation and prosecution of

offences. In line with our obligations under article 50 of the Schengen Convention the scope of the Bill includes co-operation on offences relating to VAT, excise and common customs duty frauds. No obligation is placed on us by article 50 to co-operate more generally on tax matters and this particular Bill does not deal with co-operation on tax matters. Members will therefore note that the definition of “*offence*” in clause 2 of the Bill is fairly restrictive but that is actually one of the amendments that I will be introducing to the House at Committee Stage namely to make it clear that whilst the Bill does not extend to fiscal offences it does extend to excise duties, value added tax and common custom duties as required of us by the Schengen Convention.

Clause 3, sets out the parameters within which co-operation can occur. In general terms assistance can only be given in the context of criminal proceedings, in other words, criminal proceedings must be in hand and assistance required from us with the gathering of evidence, service of process et cetera. Assistance relating to some form of pre-investigation prior to process having been issued will therefore not qualify under this clause and that is the scope clause in the Bill which is set out .

Clause 4, appoints the Central Authority for the purposes of the Bill and this is significant because in article 53 of the Schengen Convention which is reflected in this Bill there is put in place a mechanism enabling assistance to be channelled through the Judicial Authorities instead of the usual diplomatic channels. The Central Authority which in our case will be the Attorney General is specified as being a legitimate Central Authority for the purpose of the Schengen Convention and that is how we shall do it here in Gibraltar.

Clause 5, deals with service of Schengen process in Gibraltar and enables authorities in Schengen states to serve process on persons in Gibraltar directly thus avoiding the need to transit through Governmental channels. Hon Members may be aware that under the existing regime if a court in one jurisdiction wishes to serve legal process on somebody in Gibraltar they

have to use the diplomatic channels rather than direct service. This now enables things to be sent directly to individuals but there are safeguards built into the clause, for example, a translation if it is in a different language for the benefit of the recipient, the clause also confers powers on the Central Authority to serve process or cause process to be served on the person concerned should the issuing State choose to follow that route instead of direct service.

Clauses 7 to 11, deal with the reverse scenario to that which I have just described, in other words, it deals with assistance required by Gibraltar from foreign authorities. Clauses 7 and 8 deal with service of process by a court outside Gibraltar. Under clauses 9 and 10 the court can request assistance from a Schengen Authority. Clause 11 makes provision for the use in a Gibraltar Court of evidence obtained in this way.

Clauses 12 to 14, deal with the manner in which Gibraltar Courts and the Central Authority are to execute request for assistance from a Schengen State. Clause 12 sets out a number of procedural prerequisites. Clause 13 empowers the Central Authority to make arrangements for the gathering of the required evidence and Clause 14 empowers the court to receive the evidence in accordance with the schedule.

Clause 15, grants the police the necessary search and seizure powers in support of a Schengen Warrant and clause 16 makes consequential provision. The renumbered clause 17 safeguards the principal of legal professional privilege. The renumbered clause 18 makes provision for the transfer of prisoners where there is a request by a Schengen State where assistance is refused the Central Authority must give reasons for it. Renumbered clause 19 will deal with the status of persons transiting to Gibraltar. This is relevant where the transiting person is being transferred from a requested state to a requesting state. Provision is made for the transiting to be made subject to the supervision of the RGP. In other words, where Gibraltar is being used as a territory of transit between two other states. Renumbered clause 20 allows affected

persons to seek certain undertakings from the requesting state prior to consenting to his transfer. Renumbered clause 21 imposes on the Supreme Court the obligation to communicate judicial records relating to any convicted person to the home Member State of the person and finally renumbered clause 22 makes provision for the Chief Justice to make appropriate rules of court.

Mr Speaker, I think that the Bill is pretty self-explanatory on its face as to the objectives that it is trying to achieve. I will be giving the hon Members written notice as I say of three or four amendments that I intend to bring. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, just on one particular principle which the Chief Minister has referred us to which is section 4 of the Ordinance as drafted where the hon Gentleman has said in terms that the new convention enables communication between Judicial Authorities that is in fact what is provided for in section 4 of the Bill where the word "*Judicial Authority*" is used and there is a reference to article 53 of the Schengen Agreement I believe that there should be a reference to the Schengen Convention, in fact article 53 of the Convention does not talk about exchange of information between Judicial Authorities it provides in terms a reference to exchange of information between Legal Authorities and under section 4 the Central Authority is referred to as a Judicial Authority as presently drafted and the Central Authority is defined as the Attorney General. I think that it would cause concern at the very least to the Attorney General to see himself referred to as a Judicial Authority probably for the first time and not as a Legal Authority. At this stage I do not think that there is anything else I can usefully add.

HON C A BRUZON:

Mr Speaker, I would like clarification on the definition of "*territory*" because on the initial part of the Bill there is a section which defines all the terminology but no definition of "*territory*" appears.

HON J J BOSSANO:

Mr Speaker, I noted the concern of the Chief Minister when I spoke in relation to the suspending of Standing Orders that we had not let the preparation for these Bills for the very last minute. Given that this Bill was published on the 19th December and that it is implementing something that is a decision of May 2000 and that the drafting of the Bill leaves a lot to be desired to the extent that the Government that published it on the 19th December obviously have been leaving it until the last minute to consider what they have drafted since the year 2000 because they are coming with three or four amendments, I think it is a bit much to question whether we have been doing a proper job of examining this Bill as Opposition but it is not surprising that we are starting kicking off the new House on the same footing that we left the last one.

The Opposition have got a different policy to that of the Government's in respect of Schengen. The government's position is that they wish to belong to Schengen on everything that the United Kingdom belongs, the UK's position is that they decide what we belong to or what we do not belong to whether we like it or we do not, and the Opposition's is that we should have the same choice that the United Kingdom have because there may be things that suits the UK to be in and not us and vice versa. Obviously this is a reflection of the policy of the Government in joining whatever the United Kingdom has joined and the reason why the Council decision is May 2000 as we were told at the time was because of the so-called post boxing arrangements agreed in April 2000 which we were told at the time was what was impeding the entry of the United Kingdom

into the areas of Schengen that they wanted to enter. So, we are seeing here that the supposed improved advantages of direct contact between authorities in different Member States in our case exceptionally throughout the European Union everything that is referred to here presumably has to go first through a post box in London before it can reach another Member State unless we are told something to the contrary, there is no indication on the face of this Bill that this is the case but we are assuming that this is the case in the absence of anything to the contrary given that the text of the agreement, the regime of April 2000 was that that would apply to all the agreements, conventions and so on including the agreement on the application of the Schengen agreement and that is in the text of the original published document of April 2000. So, we are seeing how in effect it is only the Authorities in Gibraltar that have to go through that process because presumably the Authorities in England, Scotland, Ireland and Wales will be able to communicate directly with counterparts in other parts of the European Union and on that basis we will not be supporting this Bill but we would be abstaining on it. However, we have got concerns about the drafting of this Bill which would not be explainable unless it had been left to the very last minute which would make us vote against instead of abstaining.

I do not know whether some of those drafting issues will be corrected by the amendments that we are going to be given by the Chief Minister at the Committee Stage and I am grateful to him for having told us that the Government will not be seeking to take all the stages in one day because we know that we will be able to do further work on the text that has been reported at the Committee Stage and it may be that some of the things that give us concern now will be clarified. In case the Chief Minister does not understand why it is that in the time available notwithstanding the fact that it says seven days notice in the Standing Orders and the Government are complying with that we are talking about legislation that is complex not simply because we are looking at what is written on the text of the green paper which as the Chief Minister has said by and large is self-evident but because we also think that in looking at this

since the explanatory memorandum is that this is implementing articles 48 to 53 of the Convention of 1990 applying the Schengen Agreement we look at articles 48 to 53 to see whether we agree that this is implementing it and the answer is that we do not but it takes more time to do that than simply looking at this and we do not automatically get provided with what is purported to be being implemented unless we actually go searching for it or after it. I know that this is available on the internet but it seems to me that to make the work of this House more efficient and to make the work of the Opposition more likely to be productive it would make more sense that the Legislation Unit that is producing this from the directive or in this case from the Convention of 1990 should have no problem in attaching for circulation to Members the clauses, articles, that it says is being reflected here. In looking at this as an example of the point that I am making and this is obviously a case of the principles of the Bill because if it describes the Bill as an Ordinance to make provision for compliance with article 48 it does not necessarily follow from that that it can do nothing other than comply but if it is doing more than complying then presumably there should be an explanation for it, that is to say, it is providing for things that we cannot find in the sections that it is purported to be the place where the requirement is.

There is a clause 5 here that describes the Schengen processes to which this applies which has got (a) to (g) as sub-clauses saying the different types of processes and then there is the fact that the Ordinance as a whole has as scope some things which are the same as in section 5 and some things which are different and some of the things there we do not find within articles 49 to 53 nor have we found that they are in the UK legislation except in one case, for example, where we have looked to comparable UK legislation we are not very sure whether in fact there are provisions in other laws. The ones where we have found some things that are also in the UK is the most recently passed UK Act which is the Crime International Co-operation Act 2003 and we would want to have confirmation whether that is the equivalent of the United Kingdom's legislation to give effect in the United Kingdom to the relevant

articles of the Convention. If indeed it is the case then it is quite obvious that they have almost left it as late as we have to give effect to something that has been around for a very long time. Since the Crime International Co-operation Act 2003, which is a very voluminous document, contains lots of other things besides this we have had some difficulty in the time available in identifying the bits that are here in there because there are obviously other things there which are also EU related, for example, there is a question of disqualification in one Member State if a driving licence is removed in another Member State and that is a very big chunk of the Crime International Co-operation Act 2003 but is not something that applies between Gibraltar and other Member States. For example, in the scope, 3(d) which says that the Ordinance applies to clemency proceedings we found that the United Kingdom legislation applies to clemency proceedings but we have not found a similar reference in the different elements in the actual Schengen Convention in the articles 48 to 53 that process relating to clemency proceedings in any other Member State is something that we are required to take action on here. It may be there but we have not identified it and after all it is not a very big document if there are only three pages to the Schengen Convention and we cannot find it there, in the case of Schengen it is in article 49 it says “*..mutual assistance shall also be provided...*” and then it lists different elements most of which are reflected here but as I say clemency is not mentioned as one of those in article 49 but it is in the United Kingdom, however, this is not applicable between us and the United Kingdom because in the definition it says “*...as State...*” and Schengen State means a state party to the Schengen Convention not being the United Kingdom so, we find it peculiar that we should be requiring in Gibraltar in the scope of this legislation that it should also apply in relation to proceedings dealing with clemency proceedings which is something that the United Kingdom is doing but something that apparently other Member States are not doing or at least that they are not required to do by articles 48 to 53 and therefore one would assume that if there are things in these and indeed in the other Bills before the House which are not strictly required by the text of the articles that are

quoted as being in the Schengen Convention which we are implementing at this point in time then those additional elements are matters of Government policy. The Government are free to do it but they require an explanation, it is not sufficient to say “because it says so in Schengen”, because it does not say so in Schengen. I think that on that basis what I am signalling is that at the moment depending on what we have to hear at the Committee Stage when we go through this thing in detail and when we then give detailed explanation of the different elements in each clause that give us concern our position will be determined one way or the other as to whether we will be abstaining or voting against.

HON CHIEF MINISTER:

Mr Speaker, if I could just deal with matters that do not arise from the Bill first. I am sorry that the Leader of the Opposition should have so grumpily said that he notes that the House is carrying on on the same ‘aggressive’ vane that it finished off. I do not recall questioning whether the hon Members were doing a proper job of looking at the Bill, in fact I recall doing the very opposite and that is giving them credit for the assumption that they had not left it until the last minute. So, if the Leader of the Opposition is right in his assessment that we are carrying on on the same footing as before the footing is not that I say unnecessarily aggressive things but his usual style of imputing to me having said “*...unnecessarily aggressive things...*” which I have not said and then lamenting the fact that I have said them which of course I had not. That is if any the same footing as we are carrying on in this House. I am sure that the Leader of the Opposition will understand that on each occasion that he attributes to me words and sentiments that I have not expressed that he will not regard it as “*unnecessarily aggressive*” on my part simply to point out what it was doing to him.

Can I just deal with some of the more general points that the Leader of the Opposition has raised and this may assist the Opposition in considering their position on this Bill. When the

Leader of the Opposition says that the Schengen Agreement is not very long, only three pages and that they cannot find this or that in it, Government are dealing here only with articles 48 to 53 the whole document is a bit more substantial but articles 48 to 53 which I suppose are the only pages that he has with him as the only ones that he needs for this purpose are the ones that deal with mutual legal assistance. The reason why there is much more in the Bill than he can spot in the text of articles 48 to 53 lie in the point that I made in my initial address but which he obviously may not have registered the significance of but as he has got the articles in front of him if I could invite him to focus on article 48 which reads, *"the provisions of this chapter are intended to supplement the European Convention of the 20th April 1959 on Mutual Assistance in Criminal Matters"* as well as in bits that do not need to concern him and then the last words, *".. and to facilitate the implementation of these arrangements..."* in other words much of what the Leader of the Opposition sees in the Bill relates to reflecting the 1959 Convention. So, if I could just paint a picture for the Leader of the Opposition, the source of material in the Mutual Legal Assistance body of jurisprudence starts with the 1959 Convention that is a council of Europe Convention. There is then the 2000 Convention of Mutual Legal Assistance which is a Schengen Convention. The 2000 one only applies as between Schengen States and there is a 2001 protocol to the 2000 Convention. So, the reason why the Bill has things in it that he cannot find in articles 48 to 53 is because article 48 incorporates by reference the 1959 Convention. Let me say to the Leader of the Opposition that there are different views between Gibraltar and London as to the question whether complying with article 48, I think it is in the hon Member's interest to hear this because it is quite a technical point, there are conflicting views as between London and Gibraltar as between compliance with article 48 which I have just read to him require or do not require the 1959 Convention to be extended to Gibraltar and reflected in our legislation for implementation. Do the words, *"...the provisions of this Chapter are intended to supplement the 1959 Convention and to facilitate the implementation of these arrangements..."* do those words amount to an obligation based on a presumption that the

1959 Convention already applies to us or does it leave open the possibility that we can pick out of the 59 Convention only those bits of it which are required in order to make sense of the Schengen five articles that we have in front of us. Our view is the second and in fact the first piece of legislation that we drafted reflected that. The United Kingdom and the other Member States of the Commission have taken the view that that is not a proper compliance with articles 48 to 53 because they say articles 48 to 53 presuppose that the 1959 Convention applies and if it does not then there is an implied obligation to reflect it in our laws. Then there is a sub-point to that and that is even if that is true, even if we are wrong and they are all right does it require the formal extension of the Convention or can we just simply mirror its provisions in our legislation as a matter of local legislation without it being accompanied by a formal extension of the treaty to Gibraltar? Again the view appears to be although I do not think the ultimate Court of Appeal has expressed its view on the matter yet that it may require a formal extension and not just mirroring the provisions of the 1959 Convention. So, this Bill mirrors the provision of the 1959 Convention on our view of things, the 1959 Convention has not yet been extended to Gibraltar in fact the 1959 Convention cannot be extended to Gibraltar because it is territorial scope clause allows it to be extended to Dependent and Overseas Territories only by bi-lateral agreement between the UK and other contracting states and does not have the possibility in it or by reference to the Vienna Convention on the interpretation and extension of international agreements that it be extended multilaterally to Overseas and Dependent Territories of State party signatories.

That is the explanation why the Leader of the Opposition cannot find things on the face of articles 48 to 53 which he is reading in this Bill. Secondly, the Leader of the Opposition asks that if things are not strictly required they are a matter of Government policy and that would be true. Our instructions to the drafts people were that they should draft on a minimalist basis, that is to say that there should be nothing that should exceed the requirements that we are seeking to honour so, I suppose by

that definition upon which we can both agree if there is something here in excess of then it is unnecessary and would be a matter of policy. I am not aware that there is any such thing.

Mr Speaker, as to why the Government cannot produce with Bills source material that would enable the hon Members to better discharge their parliamentary scrutiny obligations, it is not so much a question of why the Government cannot, Government have not been asked to. This Bill was published on the 19th December if the hon Members had asked for the source material these are publicly available documents, I accept that the Government have more resources to find and access those documents and if the hon Members would have said, “*..please can we have a copy of the Schengen Agreement or this or that so that we can.....*” there is no reason under the sun why Government should not produce source documents on request. More difficult is the expectation that Government might not publish, in any case it would not be published in the Gazette, I suppose the Leader of the Opposition means make available to the hon Members, would be the general rule that the Government make available source material because source material can be many. All I can say to the hon Member is if he wants source material on any particular piece of legislation then he should ask for it and I shall give it. I for the government's part will ask draftsmen when we are doing legislation that implements an obligation if there is a particular source document that is root to the Bill to point it out to me and we might establish an arrangement whether this is sent to the hon Members but I would like that initially until I see how well the system can respond to delivering that I would like this to be an informal arrangement rather than some formal expectation unless it can be done in a reliable way in which case it might become a formal arrangement and if we can just sort of start in an informal way and see how it develops.

Mr Speaker, the Leader of the Opposition enjoys enormously, it is as if he had forgotten how difficult it sometimes is to be in Government in a mere colony. I know that the Leader of the

Opposition takes an almost sadistic pleasure in holding the Government to account for events and obligations and things of that sort as if the Government was a sovereign independent state able and free to exercise choice and to make choice and to conduct international negotiations for itself and to sit shoulder to shoulder and side by side with the other Members of the European Community on an equal basis and when things happen that simply reflects the fact that that is at best wishful thinking on the hon Member's part but certainly unrealistic an assessment of the present situation he then derives a second layer of fun by seeking to blame the Gibraltar Government for not being able to do what it would be able to do if it was in the position which we are not, namely that of an independent country. So, when the hon Member says, for example, that it is the policy of the Gibraltar Government to wish to belong to everything that the UK belongs to and that this Bill reflects the policy of the Government of Gibraltar in joining those bits of the Schengen acquis either that the UK joined because we want to join everything that they join or worse still because we want to join particular bits, the Leader of the Opposition must surely know that that is an “Alice in Wonderland” view of life. He knows very well that the United Kingdom at best seeks the Gibraltar Government's view in what it calls a process of consultation not so that it then does what the Gibraltar Government wants or desists from doing what the Gibraltar Government do not want but usually so that it can tick off the box marked “*have we consulted them*” in case we are pressed in Parliament, these are not things that the Gibraltar Government get a choice on. In other words, which bits of the Schengen acquis the United Kingdom as a country wish to subscribe to and which it did not is not a matter in which the influence of the Gibraltar Government measured on any Richter scale has yet been invented. The idea that in deciding what parts of the Schengen acquis the United Kingdom would subscribe to, the Prime Minister would ring me and say, “*Look here Chief Minister of Gibraltar we the United Kingdom after many years of resisting the Schengen Acquis altogether are now going to join some bits of it and we are thinking of joining these bits what do you think?*” and if I had said, “*Well we do not*

like that bit or that bit," the whole of the United Kingdom would not have joined is not realistic. Not even in respect of the Schengen Acquis, there is a difference as the Leader of the Opposition knows from the original decision in relation to the UK's subscription to bits of the Schengen Acquis. The list that applies to Gibraltar is shorter than the list that applies to the United Kingdom. Of the bits that the United Kingdom subscribed to they excluded us from one or two things most notoriously because it was under Spanish pressure, the Schengen Information System because this involves a computer at a frontier and we all know what the Spaniards think of that. So, none of Gibraltar's Schengen obligations which we are legislating today are before the House because Gibraltar or its Government have a policy of doing them. They are international obligations that the United Kingdom in the context of the European Community contracts on our behalf and the suggestion in areas such as this that there is an element of choice on the part of Gibraltar I can tell the Leader of the Opposition does not accord with the realities of the situation. The hon Member asked whether I could tell him in what legislation the United Kingdom has implemented its Mutual Legal Assistance obligations. It is not part of the debate on our Bill in this House so he should not hold me to the accuracy entirely what I am saying but I understand that all aspects of the UK's Mutual Legal Assistance which includes the 1959 Convention, the 2000 Convention and the 2001 Protocol to the 2000 Convention is dealt with in Part I of the Crime International Co-operation Act but that then elements of it are dealt with at more administrative levels so that bits of it that are dealt with in primary legislation are dealt with in Part I of that Act.

The Leader of the Opposition is right in believing that the communications, the formal contact between Competent Authorities in this Bill being an EU measure is through the post box. We can have a debate if he likes about the relative merits and demerits of the post boxing arrangements of 2001 everytime we debate a piece of legislative measure in which there is a Competent Authority if he likes, I would have thought that that was quite futile having debated at length those

arrangements and indeed let me say if I can just remind the hon Member that at the time of all those arrangements whilst he was critical of the identity cards agreement I do not recall him being critical at all of the Competent Authority arrangements which were struck at the same time. The Leader of the Opposition may have developed a dislike for that arrangement since. He would be entirely entitled of that view, the Government remain of that view that it represented an excellent compromise of the problems that Gibraltar was facing and in no sense do we regret therefore that the Competent Authority in this particular piece of legislation should be subject to the Competent Arrangements as well.

Mr Speaker, the Leader of the Opposition said that we had waited a long time to give effect to something that had been around for a long time. There is not an enormous political point here but just for the record this is not an instance of Gibraltar doing things late. Government have had no obligation to implement the 1959 Convention. Government still have no obligation to implement any bits of the 2000 Convention except the bits covered by the Schengen Article which are only one or two elements of the 2000 Convention and the 2001 Protocol is not even yet effective as between the parties that have ratified it which certainly do not include Gibraltar. So, these arrangements only became binding on Gibraltar in the context of the Schengen subscription decision and the UK is itself at present but in the second half of last year the UK itself has been legislating the implementation of the Schengen Subscription Domestic Law obligations because that was the time scale and the UK had a preliminary assessment by Schengen of how it was doing in implementing its legislation and the next part I think is the next and final assessment comes at the end of January hence the desirability of us getting this legislation in place without which I am told the United Kingdom itself cannot be signed off as having done everything that it needs to do to comply with the Schengen Agreement. So, this is not a case of having waited a long time to give effect to something which has been around. It has been around, I suppose Gibraltar could have voluntarily asked to be extended the 1959 Convention. We

could have done it at any time since 1959 but it has not become an obligation and then in the context of the points that I have made to the hon Member, until it was roped in, the decision relating to the UK's subscription to parts but not others of the Schengen Acquis.

Mr Speaker, the point made by the Hon Charles Bruzon about there not being a definition of territory, I am not quite sure I know what the hon Member means. The territorial scope of legislation, to what countries or territories in that sense a piece of legislation might apply is usually and it is in this case defined in some way, in this piece of legislation it is achieved through the definition of State and Schengen State which was the last definition on the bottom of the second page. *"State and Schengen State means a state party to the Schengen Convention not being the United Kingdom."* The arrangements set out in this Bill apply as between Gibraltar and all the Schengen States that are party to the Schengen Agreement except the United Kingdom.

Finally, I think that the Hon Mr Picardo raised a question about whether the Attorney General might feel uncomfortable at being referred to as a Judicial Authority. Well, the point is really just one of nomenclature. Central Authority if it is not going to be the Judicial Authorities themselves are deemed to be Judicial Authorities. So if one chooses to have a Central Authority which is not a Judicial Authority in the strict sense of the word by which I understand he means judges and people who work within the court system as opposed to people who work with the court system, if one is going to have a Central Authority as we are entirely entitled to have which is not a Judicial Authority it is deemed to be a Judicial Authority for the purposes of the Schengen Convention and the 1959 Mutual Legal Assistance Convention. It will not be necessary to have that clause 4 in our Bill if our Central Authority was, for example, going to be the courts but it is not thought appropriate given the administrative burden that attaches to administering this legislation to saddle our courts with this, so they will be left to deal with the judicial aspects of it and the Attorney General will provide the channels

of communication parts of it. I do not think it has the effect of mixing up the roles of the Attorney General with the Judiciary although I accept that if one deems that somebody is deemed to be a Judicial Authority then one can have a semantic discussion if one likes but it does not make the Attorney General a Judge in the context of the local administration of justice in any sense.

HON J J BOSSANO:

Mr Speaker, the other point my Colleague made was that what we have in our Bill is that the Attorney General is a Judicial Authority for purposes connected with article 53 and article 53 actually says, *"..request for assistance may be made directly between Legal Authorities,"* and apart from the other point what we were asking was is Legal Authority in clause 4 intended to be the provision that is the implementation of the requirement of 53 (1) which is assistance made directly between Legal Authorities, are Judicial and Legal being used in our legislation as being interchangeable terms?

HON CHIEF MINISTER:

The first part of the Leader of the Opposition's intervention is the point that I had attempted to address. Article 53 says the assistance may be directly between Judicial Authorities.

HON J J BOSSANO:

It says Legal Authority.

HON CHIEF MINISTER:

It says, no, then the hon Members must have a different text, mine reads and this is the original published version, *"..requests*

for assistance may be made directly between Judicial Authorities and return via the same channels.”

HON J J BOSSANO:

This is from the Internet.

HON F R PICARDO:

It is actually from the Europa Database of the European Union that we obtained this version of the Convention which refers to Legal Authorities and hence why the point was taken, no other reason.

HON CHIEF MINISTER:

I will check the point, as I say, the draftsmen have certainly used the version because I have it here in my hand, a version of the Convention that says between Judicial Authorities and that is why the section says that the Central Authority is a Judicial Authority so that it would be a compliance with that language. If the authoritative text should be a different text what we now need to establish is which of the two texts is the Authority one. If the authoritative text is the one that uses the other word then we would certainly have to bring an amendment to this section at the Committee Stage. There is a formal version of the Schengen Agreement which we can get hold of I am grateful to the hon Members for his offer. I commend the Bill to the House.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana

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

Abstained:

The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE DATA PROTECTION ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and to

implement Schengen Convention Articles 126 to 130 in relation to data protection, 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. This Bill enacts into the law of Gibraltar the provisions of Directive 95/46 of the European Parliament and of the Council of the 24th October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data. It also ensures that Gibraltar complies with the data protection requirements contained in the Schengen Convention articles 126 to 130. If I could just point out to the hon Members that articles 126 to 130 of the Schengen Convention talks about data protection and in so far as implementing our Schengen obligations are concerned bits of this Bill deal with that but we are also taking the opportunity to transpose into the law of Gibraltar the bits of the data protection directive of 1995 which are not strictly required by the Schengen implementing obligations but we are taking this opportunity to bring our data protection legislation up-to-date with the rest of Europe.

The Schengen Convention requires that we achieve a level of protection of personal data equal to that provided for in the 1981 Council of Europe Convention on automatic processing of personal data. There is an 81 Council of Europe Convention which applies only to automatic processing of personal data, the directive is not limited to automatic, so that is one of the main differences of doing both that the Schengen Convention would only have required us to do things relating to automatic processing of data because that is all that the 81 Council of

Europe convention deals with and it is only the 81 Council of Europe Convention that the Schengen obligations actually refer to. The Directive 95/46 amplifies that Convention as I have said in particular by requiring data protection in respect of non-automatic data. The Bill thus covers automatic and non-automatic data both civil and criminal data and applies both to the processing of personal data in respect of Gibraltar establishments and to its transfer abroad. The Bill deals with how data is collected, kept and processed in Gibraltar and then deals with the circumstances in which that data can be exported from Gibraltar and how, to what safeguards, and to whom it can be exported from Gibraltar.

Part I of the Bill contains general provisions including definitions, subject matter and ambit of the Bill and provisions relating to service of notices and notifications. Importantly section 3 excludes from the ambit of the Bill personal data kept by individuals for purely personal purposes. I will be moving at the Committee Stage some amendments to this Bill of which I will give the hon Members not just written notice in the form of a letter but also I will be sending to them an annotated Bill so that they can see how the amendments fit in the language and that will make it much easier for the hon Members to assess the meaning and purport and extent of those amendments.

Part II of the Bill contains the central provisions as to data quality and data security. Section 6 sets out data principles with which data controls must comply and if one wanted to divide this Bill into its basic ingredients here is one of the most important parts of it because it deals with the principles relating to what are called in jargon the "*data principles*". This is the philosophy of how data must be. The quality that the data must have, the security with which the data must be held, the criteria for making data processing legitimate and the particular treatment that has to be given to sensitive personal data et cetera, et cetera. This is in a sense the heart of the Bill and when reading the Bill the hon Members should note the very wide definition of the phrase processing data. So, the hon Members must not read the Bill as if "*processing data*" meant somehow subjecting the data to

some sort of process so that unless one is actually crunching the data in some way this regime does not apply. That is not the case because if the hon Members look in the definition section “*processing of personal data*” means any operational set of operations which is performed on personal data whether or not by automatic means including collecting, storing, so the mere holding of personal data is sufficient. When we come to Committee Stage I will be adding, “*recording, organising, consulting*”, but it already includes, “*adaptation or alteration, retrieval, use,*” et cetera, et cetera, so it is a very, very, wide definition of the concept of processing which is really much wider than the word “*processing*” might conjure up in ones mind in its ordinary usage in the English language. The data protection principles summarised are basically these:-

1. “*fair processing – that the information should have been obtained and processed fairly and lawfully.*”
2. “*accuracy – that the data shall be accurate.*”
3. “*specified, explicit and legitimate purposes – that the data shall be collected only for specified, explicit and legitimate purposes, not be further processed in a manner incompatible with those purposes and be adequate, relevant and not excessive for those purposes and not kept for longer than necessary for those purposes.*”
4. “*security – namely that appropriate measures shall be taken to ensure the security of personal data, including the prevention of accidental or unauthorised destruction, accidental loss or alteration and unauthorised access to disclosure or destruction of personal data.*”

Therefore, those are the data principles, must be fairly processed, it must be accurate, it must be sufficient and only sufficient for the specified, explicit and legitimate purposes and it must be held securely.

Section 7, then sets out criteria which must be satisfied before data may be processed. Section (8) provides more detailed criteria which must be satisfied before sensitive data can be

processed and the difference between personal data and sensitive personal data, the latter of which requiring a higher level of criteria before it can be processed, the difference relates to the fact that sensitive data is said to be data concerning racial or ethnic origin, political opinions or criminal convictions of the “*data subject*”. The “*data subject*” being the person in respect of whom the data is held.

Sections 9 to 13 set out exceptions in relation to certain types of prohibition on processing. The information which must be provided to “*data subjects*” so, section 10 deals with the information that must be provided to the “*data subject*” because this is part of the principle of access to the information by the “*data subject*” about which the information is held. It also sets out security and confidentiality processing in sections 11 and 12 and special provisions in relation to journalism and artistic and literary expressions in section 13. So, the restrictions on processing personal data which is delivered by the regime contained in this Bill does not apply to personal data which is processed only for journalistic, artistic or literary purposes, that is exempt from compliance with any provisions of this Ordinance provided that the conditions set out in sub-section 2 are complied with and they are mainly that they are for that purpose and for no other purpose so that one cannot circumvent the regime by gathering the information, for example, for journalistic purposes and then providing it to somebody else to use it for some other purpose after the journalistic purpose or the artistic purpose, or the literary expression purpose has been finished.

Part III of the Bill focuses on the rights of the “*data subject*” that is the person about whom the data is held. These rights include:-

1. The right to enquire and be informed about data held concerning an individual (section 14);
2. The right to request that information concerning you be amended or erased (section 15);
3. The right to request that processing of certain types of data cease or not commence (section 16);

4. The right to object to use of personal data for direct marketing (section 17);
5. Limits on the decision that can be taken about a “*data subject*” solely on the basis of automatically processed data (section 18);

Section 18 subject to certain exemptions contained in it renders it objectionable under the Bill that anybody makes a decision affecting a person relying only on the basis of automatically processed data. In relation to all of these rights a “*data subject*” will be able to complain to a “*Data Commissioner*”. The “*Data Commissioner*” has got to be somebody that can do his work independently and in this Bill as the hon Members will see in a moment we appoint the Gibraltar Regulatory Authority as the “*Data Protection Commissioner*”. The hon Members may recall in the last session of the House that when we passed the Gibraltar Regulatory Authority Ordinance the Government explained that it would be structured at arm’s length and with independence built in to the functions and responsibilities of the Chief Executive and of the Authority because Government intended to use it as a hybrid authority whenever a number of European measures required an independent regulator. So far we have used it for the Telecoms liberalisation as the Telecom Authority and this is another example of the use to which it can be put rather than setting up at much greater cost a separate structure with duplicated secretarial support, duplicated office space, they may have to recruit expertise in the subject matter the same person cannot be an expert on regulating the telephone industry as in regulating data protection so, they may need to recruit different key personnel but much of the cost of the administrative function can be shared and that was the whole purpose of the Gibraltar Regulatory Authority Ordinance.

Anyone who feels that their rights under the Data Protection Ordinance have been breached can complain to the “*Data Protection Commissioner*”. The Bill contains specific provisions relating to particular types and uses of the data thus section 19 contains provisions as to criminal and tax matters and amongst other things limits the right of access to data kept for the

purposes of investigating an offence. There are some exclusions and exemptions from the regime both as to the prohibition of processing data by the “*Data Controller*” and also the right of access by the “*data subject*” is also curtailed in certain specified circumstances and conditions.

Section 14 (3) contains specific provisions relating to access to data held by public bodies and allows for limitations to the right of access on specified grounds.

Part IV establishes the Commissioner that I spoke of in section 21. The functions of the “*Data Protection Commissioner*” as I have said will be performed by the Gibraltar Regulatory Authority. The “*Data Protection Commissioner*” is required under section 2 to maintain a register of data processed and most controllers of data who process data electronically will be required to register the processes. It should be borne in mind that the regime created by the directive is not a register of data processors, it is a data of registration, it is a register of data processes, what is being registered is the particular data process and not a particular data processor called a “*data controller*”. For example, if a particular data controller operates more than one data process in different parts of his organisation there has to be a separate entry in respect of each process it is not just a question of registering himself as a data processor and then being allowed to do whatever he likes because what is sought to be controlled and monitored is the process and not the party doing it. Controllers of data who only process data manually will not be required to register the process although on request they too will be required to provide information to the public about the data which they control.

Section 23 sets up the process for applying for registration and there are amendments going to be produced in this area to make the Bill less onerous, fully compliant with the directive but less onerous on businesses. For example, unless certain types of processes have been specified by the Minister in regulation in respect of which a different regime applies, except in respect of those and none are intended at the moment, the normal

regime is that one sends in a notification or a registration application and can get straight on with it. One does not have to wait until a Commissioner looks at an application, considers it, decides it is okay, enters it into the register and issues the licence. One does not have to wait for any of that one simply notifies and proceeds. Then the Commissioner can come back and say, “..you are doing this wrong, you are doing that wrong, you have got to change this or that.” In respect of the other type where the Minister specifies that something is particularly sensitive that then is subject to a prior check by the Commissioner before one can get on with the act of processing itself.

Section 24 sets out who is obliged to register and provides that it will be an offence for those persons to process data unless they are entered on the register. In fact, that is wrong. That is the part that Government are going to amend in the way that Government are describing. It will not be an offence to process data unless they are entered in the register, it will be an offence to process data unless one has notified the processing to the Commissioner and therefore applied for an entry onto the register but the entry itself is not a pre-condition to the act of processing.

Part V of the Bill sets out the powers of the “*Data Protection Commissioner*” which include:-

1. The power to carry out investigations and identify contraventions whether or not a complaint has been made;
2. To mediate between parties;

If a “*data subject*” has a complaint about the way a “*data controller*” is holding, dealing or processing information about him the Commissioner can act as a mediator to see if a consensus agreement can be arrived at.

3. To issue enforcement notices requiring certain actions to be taken.

If having looked into the situation whether or not there is a complaint, the “*Data Commissioner*” finds that a “*data controller*” is in breach of the requirements of this Ordinance he issues an enforcement notice saying to the “*data controller*” “*you must stop doing that, you must alter the way you are doing this et cetera et cetera*”, and it is an offence not to comply with the terms of an enforcement notice. Then the “*Data Commissioner*” can issue information notices which require the “*data controller*” to provide information to the Commissioner and he can also carry out investigations to authorised offices and in an amendment which is not yet before the hon Members but which will be, the “*Data Commissioner*” may also make compensation orders subject to appeal to the court system but he will be able to make compensation order which if neither of the two parties wishes to appeal to the courts is a quick and cheaper way for the initial compensation to be assessed.

The “*Data Commissioner*” importantly also has a role in providing information and promoting good practice by persons, visitors and organisations who are “*data controllers*”. That is to say who control or process personal data. Can I just say to the hon Member that a “*data controller*” is a person on whose behalf the data is processed and held. A “*data processor*” is somebody who is contracted or sub-contracted a sort of outsourcing, a business may not do this internally it may farm out to some other organisation the processing of its data. The second is the “*data processor*” the first is the “*data controller*”, the regime applies mainly to “*data controllers*” because it is their responsibility to ensure that any “*data processor*” that they engage complies with the Ordinance. So, for example, a “*data processor*” does not have to register any process because the process has to be registered by the “*data controller*”. The hon Members will see in the Bill important provisions around section 28 dealing with the ability of trade organisations to get the Data Protection Commissioner to agree guidelines, for example, the Bankers Association may agree with the Data Protection Commissioner a guideline for how banks should process data. The effect of the Commissioner approving such a guideline is that the courts rather like in the Financial Services Ordinance,

the same regime applies, the courts can then take any such approved guidelines, those guidelines do not have the force of law, but the courts are required to take them into account if they have been approved by the Commissioner when considering whether anybody is in breach of the requirements of the Ordinance. They have an enormous evidential effect when it comes to intentions and projects and I hope that businesses in Gibraltar will take that route because it will significantly minimise the compliance costs of small businesses and although certainly both the Data Protection Commissioner and the Government will be issuing literature addressed to small businesses as to what impact this has on them, what the compliance requirements are, how they can comply, these things are quite burdensome on some businesses I hope that trade associations will in Gibraltar use the provisions for approved guidelines because it will have a considerable beneficial effect on the smaller businesses that belong to that organisation subsequently.

Part VI of the Bill concerns the transfer of data from Gibraltar to other states or territories and the general rule is – data may only be transferred to either an EEA State or a third state a state that is not in the EEA but which “*maintains adequate protection for the rights of data subjects in terms of their fundamental human rights in relation to personal data.*” In effect if one is an EEA State, for which purposes Government have included the UK so that there is no constraint on Financial Services Companies reporting to Head Office, one can transfer freely. If it is not an EEA State there needs to be an assessment of whether that non EEA State has measures which amount to adequate protection of the fundamental data protection human rights of the data subjects affected. The Commissioner may issue prohibition notices prohibiting the transfer of personal data from Gibraltar to other states or territories, that is in section 31.

Part VII provides for judicial remedies, liabilities and sanctions. Section 32 provides a right of appeal to the courts from decisions of the Commissioner. This is another area that Government are amending. In the Bill the appeal from the decision of the Commissioner is directly to the Supreme Court.

That is going to be changed by an amendment that Government are going to propose to the Magistrates' Court so that it should be easier, quicker and cheaper for data subjects with a right of appeal on a point of law to the Supreme Court. On reflection Government have formed a view that rights that can only be asserted in the Supreme Court disincentivise ordinary citizens from accessing the courts whereas access to the Magistrates' Court is thought to be much less of a big deal for ordinary individual citizens. The only judicial access which is going to be direct to the Supreme Court is when the Commissioner makes a Compensation Order. If the Commissioner makes a Compensation Order and either party are dissatisfied with that an appeal against a Compensation Order should go, and when the hon Members see the amendments, the amendments make them go directly to the Supreme Court, everything else will go to the Magistrates' Court with appeals on points of law to the Supreme Court. The courts may impose a maximum penalty for criminal offences under the Ordinance. Criminal offences are not to be confused with Compensation Orders, criminal offences are when somebody is prosecuted for the commission of a criminal offence established by the Ordinance to a fine not exceeding level 5. Amendments are being introduced so that that should be level 3 in the case of the Magistrates' Court and level 5 on indictment in the case of the Supreme Court. When the offence is committed by a company or a legal person then officers of that company may also be criminally liable.

Part VIII which is presently limited to public bodies and Government departments will actually apply to any data controller. That is the amendment that Government are going to introduce. Part VIII says that by regulation the Minister can authorise instead of registering the data processed with the Commissioner that the data controller has a dedicated data protection officer who independently within the corporation acts as a sort of compliance officer for data protection and if that happens then the Ordinance continues to apply the same regime of data protection continues to apply, the data subject has the same rights, the data controller has the same obligations but one just does not have to notify the process to

the Commissioner. That is the sole effect of that and whereas the Bill limits it to public bodies and Government departments the directive does not and when that has been spotted Government decided to bring the amendment to create that regime for everybody. Whether regulations will or will not be made is another question but this is how it is being done elsewhere in Europe.

HON J J BOSSANO:

If it was applied to everybody would it be that there would have to be a regulation made for specific people outside the Government?

HON CHIEF MINISTER:

The Leader of the Opposition should forget the Government, the regime will not say public bodies and Government departments indeed the directive does not say so either. The directive simply gives the Member State the power to provide by regulations that data controllers, not data controllers who are public bodies and Government departments, just data controllers so that is the private sector as well to appoint a data protection official and if that happens then they do not have to register. Everything else continues to apply, the obligations remain the same, the liabilities remain the same, the rights remain the same but they just do not have to register with the Data Commissioner.

Section 37 is a general regulation making power and also contains a provision for commencement and transitional provisions and the final element of the Bill at the very end is the Chief Justice gets the power to make rules of court necessary for any appeals or right of access to the court system. As I said from the very outset apart from delivering the Schengen requirements relating to data protection also brings Gibraltar right up-to-date with the rest of the European Community in

respect of this up-dated protection legislation. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, the Opposition certainly have no difficulty in supporting the right to privacy and the rights and freedoms of individuals in relation to the processing of personal data. The Opposition have some comments to make in relation as to the way Government have gone about it but certainly the principles are principles that we support. Indeed in the past we have already pointed out that there is legislation which has been brought before this House and passed which assumes that this framework of data protection already existed and was already in place. This is an EU obligation and as the Chief Minister has explained it deals with aspects of the Schengen Convention and to a directive which dates back to October 1995. In relation to the timing certainly the Chief Minister has not explained why it is that the 1995 directive which should have been in place, if I remember correctly by 1998, has taken so long to see the light of day in Gibraltar and also no indication has been given although I accept that it is not directly connected to this Bill it would be useful to hear whether Government have any plans in this field. No indication has been given as to whether areas like computer hacking and the misuse of computers which in UK legislation are covered by the Misuse of Computers Act will also be applied and legislated for in Gibraltar.

There are several areas of the Bill where Opposition Members would welcome some clarification from the Government. It has already been made quite clear that the Bill will be amended in certain respects, we know the amendments that the Chief Minister has mentioned this morning and certainly in relation to those amendments there are things that we have picked out and will point out to the Government and we would welcome

clarification but there are others which perhaps they might feel necessary to introduce amendments themselves if they are so convinced of the logic behind them.

Three of these relate to the definitions comparing the definitions given in the Bill to the definitions given in the actual directive and these are contained in section 2 of the Bill. In relation to section 2 it defines a “*data controller*” as being a natural or legal person, public authority, agency or any other body who or which alone or jointly with others controls the content and use of personal data. If one looks at article 2(d) of the directive which defines what a controller means in terms of a directive there is a difference in that the Bill describes a “*data controller*” as somebody who jointly with others controls the content and the use of personal data whereas the directive describes the “*data controller*” as someone who alone or jointly with others determines the purposes and the means of the processing of personal data. One speaks about controlling the content and controlling the use and the other one speaks about the purposes and the means of processing the personal data. We certainly welcome clarification from the Chief Minister in that respect.

The terminology used to define a “*data processor*” in the Bill is also slightly different to that used in the directive. The Bill defines a “*data processor*” as a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller but does not include an employee of a “*data controller*” who processes such data in the course of his employment. That particular clause, the last clause, from the word “*but*” to the word “*employment*” is additional to the directive and is not in the directive. I would also welcome clarification from the Chief Minister as to why Government felt that that should be different.

In relation to the definition of a “*filing system*” this is defined one way in the Bill and slightly differently again in the directive. The Bill defines it as meaning “any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or

geographical basis such that specific information relating to a particular person is readily available.” It would seem from a straight reading that the actual definition provided for in the Bill is narrower than the definition provided for in the directive.

The fourth area related to the definition of processing of personal data. The Chief Minister has already said that Government intend to amend this section to include consultation, organisation, and recording which have been left out of the definition in the Bill but which are very much a part of the directive which in one of the essential elements is that this should apply to recordings whether they are tape recordings, video recordings or whatever type of recordings there may be. That is an amendment that Opposition Members were going to point out and certainly welcome that the Government have already highlighted their intention to carry out that amendment.

There are several other areas where perhaps a wider clarification is required as to the wording that Government have used. One of those will be section 23(4) of the directive and if one looks at section 23 the Chief Minister has already indicated that there will be amendments to section 23 and to section 24 but I am not sure if this will be one of the amendments. My particular point was in relation to sub-section 4(a) (ii) as it reads now it says, “*...the Commissioner shall examine applications for registration or renewal of registration and shall accept any application made in the prescribed manner in respect of which any fee payable has been paid except where he is of the opinion that...*” then we go to 2, “*....the applicant for registration is likely to contravene any of the provisions of this Ordinance.*” It certainly seems to the Opposition Members that it is a very wide discretionary power which the Commissioner is being given by this Bill. There are no indications as to what the criteria should be and certainly no indication as to what the grounds should be other than the opinion of the Commissioner. Whereas if one looks at sub-section 4(a)(i) it is quite clear what the requirements are if somebody wants to be included in the register. Section A (ii) is actually rather wide and discretionary, it might be grounds for introducing an amendment to narrow that

down to introduce perhaps criteria or grounds and not simply rely on the opinion of the Commissioner.

Mr Speaker, moving to section 29 sub-section 2 (a) of the Bill reads as follows, “.....an authorised officer may, for the purpose of obtaining any information that is necessary or expedient for the performance by the Commissioner of his functions, on production of the officer’s authorisation, if so required, at all reasonable times enter premises that he reasonably believes to be occupied by a data controller or a data processor, inspect the premises and any data therein (other than data consisting of information which is privileged from disclosure in legal proceedings) and inspect, examine, operate and test any data equipment therein.” Once again Opposition Member’s have taken the position where the question of entering premises without a warrant or a court order or without making that subject to a Justice of the Peace has been a matter of concern to us and again this particular section of the Bill allows for somebody to waive his authorisation, knock on an office door at a reasonable time and enter and inspect, examine, operate and test data equipment therein. So, once again we feel that there is scope for an amendment in Committee Stage which should make that entry into premises subject to a Court Order, warrant or to a Justice of the Peace.

Moving on to section 30 of the Bill we welcome the fact that the Chief Minister has already announced the intention of the Government to introduce the compensation aspect that was something that we had picked up as being in the directive but missing from the actual Bill itself. It was included in the Bill in section 30 sub-section 7 but it was only subject to or in relation to the transfer of data to a third country whereas the directive does not restrict the compensation it relates to people’s rights and is much wider in the way it is drafted. We welcome that and certainly Opposition Members will be supporting it in the Committee Stage because it is something that directly reflects what is in the directive.

In section 34 of the Bill in sub-section 2 it says that proceedings for an offence under this Ordinance may be instituted within one year from the date of the offence. This is a time limit of a maximum of a year in which to institute proceedings for any breach of the Ordinance. It is the first time that I have seen in any Bill before the House at least for the time I have been here and I was wondering why it was that the Government have chosen to allow people within one year from the date of the offence to allow them to take them to court. Opposition Members would welcome some clarification from Government as to why that should be.

Mr Speaker, in Committee Stage there are quite a number of what I would call perhaps consequential amendments or relating to spelling or the way in which the Bill read. I will point out two of them. In section 4(3), for example, it refers to the Electronic Communications Ordinance, it may be that that is the Electronic Commerce Ordinance because that is all we have been able to find and also in relation to section 36 of the Bill into which the Government have already announced an intention to amend it speaks in sub-section (2) (c) and in sub-section 3 (b) (ii) there is a reference to section 20 (3) (a) (2) (e) in the Bill and as far as the Opposition has been able to establish section 20 of the Bill does not contain a (d) or an (e). There are a few amendments of that nature which we will be raising at Committee Stage and the Chief Minister may wish to incorporate them himself in their own amendments.

The other area which obviously concerns Opposition Members is that it should not be onerous on small business to implement the Bill. We realise that it is a European obligation but certainly any amendments which the Government may feel that they want to introduce which would help small businesses we welcome as we would welcome information on who was consulted, what business organisations the Chief Minister referred to. The Bankers Association, whether the Government have consulted the Chamber of Commerce, the Federation of Small Businesses and other representatives of business groups who may well

have a legitimate interest in this Bill before bringing it to the House. Thank you.

HON J J BOSSANO:

In addition to the points that the Hon Dr Garcia has made of detail in the general principles I want to raise a more general one which has to do with the nature of the implementation that is being carried out to the extent that the new provisions that we have got before us are what we would need to give effect to to transpose the directive of 1995 independent of the question of Schengen. As I read articles 126 to 130 of the not the Schengen Agreement per se but the Convention implementing Schengen the 1990 Convention that deals with transmission, that is what I read here because article 26 talks about the processing of personal data transmitted pursuant to this Convention and it talks about the transmission not being able to take place until we have implemented the necessary protection and that it must not take place unless the recipient country has implemented the level of protection. It also makes a reference here to the taking into account a decision of 1987 of the Council of Ministers of the Council of Europe which is article 129 and presumably that has been looked at in the drafting and we would like to have that available because it is something that we do not have to see what it is that is reflected in that decision of the Committee of Ministers of the Council of Europe of 1987 because it regulates the use of personal data specifically in the police sector. So perhaps when we come to the Committee Stage if the Chief Minister is not able to deal with that in his reply today they can identify where they are giving effect to the Schengen bit and where they are giving effect to the directive.

HON F R PICARDO:

Mr Speaker, just a short intervention at this stage in relation to this Bill. Can I just refer the Chief Minister to the definition of right to privacy included in the Bill which relates to article 8 of

the European Convention of Human Rights. From the Opposition's view it is a welcome development that we should be incorporating parts of that Convention into our law. I would ask the Chief Minister whether consideration can also be given to make a reference to section 7 of our Constitution which deals with the right to privacy also in relation to property, I am conscious of the fact that both are not identical. Can I also say that the definition of right to privacy refers only to the European Convention of Human Rights whilst in the Bill that we will be taking later there is a much more extensive definition of that Convention which is a much fuller definition and which enables identification of it to be more precisely provided for and to ask that perhaps consideration should be given to including that fuller definition of the Convention in this definition section.

HON CHIEF MINISTER:

Mr Speaker, I am glad that the hon Member welcomes the incorporation by reference of section 8 of the European Convention of Human Rights. He is however I think wrong in insinuating that our laws do not incorporate large chunks of the European Convention of Human Rights which as he knows is the basis of the Human Rights Chapters. The first part of what he said insinuates that this is the first time that the Human Rights Convention provisions are reflected or referred to in the laws of Gibraltar and to the extent that large chunks of our Human Rights Chapter in our Constitution are drawn from the Convention although I understand that they are not identical in every respect but to the extent that they are the same then Gibraltar law has contained domestic legislative provisions invoking the European Convention of Human Rights long before the United Kingdom who only achieved that in 1998 when they passed the European Human Rights Act and he knows that people in Gibraltar have been able to go to the Supreme Court of Gibraltar on large areas of our Constitutional provisions which reflect the Human Rights Convention and that in the UK people have only had the rights to complain about breaches of Human Rights Convention in their own national courts since as recently

as 1998. There is a reference to the Constitution in other parts of the Bill when an exemption is being carved out of a protection, for example, when the regime says that the following shall not be done except when exceptions are being carved out of rights and protections throughout the Bill the hon Member will see that there is a reference to the Constitution. To describe the right to privacy by reference to our Constitution for general purposes is difficult because this applies mainly in relation to the countries to which one can send the material and we do not want to have a higher standard than the rest of Europe and the general yardstick is the right to privacy as defined in the Human Rights Convention which is a multilateral instrument so we will all be deciding theoretically whether information can be sent to a third country by reference to the same definition of what is adequate protection of human rights. If this were for a domestic reason then the amendment that the hon Member proposes may not be necessary because in any event one cannot breach domestically a provision of the Constitution in domestic terms. I think that a fair balance has been struck and I will now give way to the hon Member if he still feels that he wants to clarify what he meant.

HON F R PICARDO:

Yes, because I believe that I have to take a leaf out of the Chief Minister's own book and say that I am not going to allow him to get away with imputing to me things which I have been alleged to have said which I have not said. I want to make the point that I was simply referring to the reference to article 8 of the European Convention being a welcome development but I was not for one moment suggesting that there have been or there is not a full reference of fundamental rights and freedoms because there is in fact a whole chapter of our Constitution that refers to fundamental rights and freedoms and it would not be right for me for one moment to suggest that that is not the case. As to everything else the Chief Minister has said about the failure to refer to section 7 of the Constitution I am quite happy with what he has suggested.

HON CHIEF MINISTER:

As to the full extent of the words that the hon Member has used he can always refer back to Hansard as to what he meant then I am happy to accept his clarification now but if the hon Member's recollection is that all that he said is that a reference to the Human Rights Convention is welcome then his recollection is poor because he will have to refer back to Hansard as to the exact words that he used which led me to believe that he was suggesting that this was the first time that it happened. We need not argue about it there is Hansard if the hon Member is interested in the point he can ask the Clerk to play him the tape back and he will see that he did not limit his observation to "*..I welcome the reference to the Human Rights Convention*" as he has just described. I would ask the hon Member to accept that not every minor point is worth dying in the ditch about the point is not that important we have agreed on the substance if the only disagreement between us is on the exact words that he used I am not willing to stand here arguing about the exact words that he used. I think that the hon Member has misrecalled the words that he used, he can listen to it in tape for his own satisfaction I think nothing important turns on it.

If I could just deal with the observations made by the Leader of the Opposition as I said in my own address on the second reading the Schengen requirement only relates to the 1981 Convention which is not just about transmission, I think he also acknowledged that it was about the system of processing, it was also about how data is held. The Schengen requirements in respect to data protection are limited to the 1981 Convention which is a Council of Europe Convention and when he sees the Convention he will see that the language actually is not dissimilar. It is clear that the directive has been based on the 1981 Convention except that the 1981 Convention was limited only to automatically processed data whereas the directive went further to manual data so, in a sense but not entirely, the Schengen provisions have been overtaken by the directive. Compliance with the directive will deliver compliance with the 1981 Convention and therefore with the bits of data protection

that we now need to be doing because of the Schengen implementing Acquis and not because of the directive's requirements. So, everything in the Bill that applies to non-automatically processed data is directive rather than Schengen, for example. The Bill clearly states that it is to transpose both the directive and Schengen and rather than give the Leader of the Opposition a line by line report of what part of the Bill is for which document in the recommendation of the 17th September 1987 I shall provide him with the information about that so that he can see how that has been incorporated into the Bill.

HON J J BOSSANO:

Is this Council of Europe Convention of the 28th January 1981 one that was extended to Gibraltar?

HON CHIEF MINISTER:

No. I was going to give the Leader of the Opposition an Internet reference where he could find the 1981 Convention but I will give him a copy directly. I am grateful for the helpful and constructive comments of the Hon Dr Garcia in relation to his desire that this Bill should be effective and unobtrusive as possible on small businesses. There is no getting away from it and in that point in his concern about the effects on small businesses lies the answer to his other question about why it has taken us so long to do it. As I have said before in this House the Government have done an awful amount of work over several years indeed from about 1988 onwards there has been some informal discussion with the Chairperson of the Federation of Small Businesses who offered to help the Government because the concerns that I was expressing to her about how this would impact on small businesses, she said had also bothered the Federation of Small Businesses in the UK and that they had expressed their views to the British Government. The problem is that the UK Government's legislation on data protection is copper bottomed, it goes beyond the requirements

of the directives. Our economy is made up almost entirely of small businesses almost every company in Gibraltar would be regarded as a small business in any other country in the European Community so we have to be especially careful about this legislation and not just be concerned about how it impacts on small businesses because the phrase "*...how it impacts on small businesses in Gibraltar...*" means how it impacts on the economy given that 99.9 per cent of our economy is comprised of companies that would fall in the definition of small businesses and it took us a long, long time, eventually we rejected it and started again to try and modify the UK copper bottomed version to try and soften it. At some point in time maybe a year ago we abandoned that process in favour of starting from scratch again ourselves so that we could be sure that we were minimising the impact. In other words complying with the Human Rights aspects of data protection fully as provided for in the directive but not imposing on business a burden any greater than was necessary to achieve that to comply with our international obligations in the area of data protection and it has been quite a long and laborious process for those very reasons. There are transitional provisions to come which are not yet reflected in the Bill. The Bill simply says that transitional provisions may be made by regulations et cetera. If the hon Member looks at the directive he will see that in respect of automatically processed information which is already being processed then one has got three years from the date of coming into force of the national provisions adopting the directive so even in respect of automatically processed information the directive recognises, this is not something that businesses can be expected to comply with overnight so there will be a three year transition period in respect of that and in respect of manually held information, data already held in manual filing systems it is about 12 years from that date. There is a slight contradiction which we are trying to clarify here and which we will clarify before we pass the regulations. On this 12 year point If the hon Member looks at recital 69 halfway through it says, "*...whereas Member States should be allowed a period of not more than three years from the entry into force of the national measures transposing this directive in which to apply such new*

national rules progressively to all processing operations already underway.....whereas in order to facilitate their cost effective implementation a further period expiring 12 years after the date on which this directive is adopted will be allowed to Member States to ensure conformity of existing manual filing systems."

There the reference is 12 years after the date on which this directive is adopted yet if he looks in article 33 of the directive it suggests it is 12 years from the date of the adoption of the national legislation because article 32 (2) about half-way down says, "...by way of derogation from the preceding paragraph Member States may provide that the processing of data already held in manual filing systems on the date of entry into force of the national provisions adopted in implementation of this directive shall be brought into conformity with article 6, 7, and 8 of this directive within 12 years of the date on which it is adopted." Given what it says in the recital the "it" there probably means the directive adopted and not the national legislation adopted. So in respect of the 12 year transition period applicable to manually held data it is probably going to be October 2007, 12 years after the directive was adopted and for the automatically processed data it will be three years from the date of the Bill which would be if one turned out to be shorter than the other it would be somewhat perverse we could end up with a shorter transition period for manual data when the intention had always been that for manual data one should get four times the amount of the transition provision so we would have to see how the dates span out when we are drafting the regulations.

As I think the hon Member knows this legislation does not deal with computer hacking and I suppose he was just taking the opportunity to ask a question on one of his favourite topics namely are the Government intending to bring legislation on computer hacking et cetera. I cannot tell the hon Member whether Government are or are not, there is no policy not to bring in the legislation but whether there is anybody somewhere in Government working on that I cannot say and Government can certainly look at that although it is not being looked at in connection with this data protection legislation. I am just being

reminded that in certain circumstances the security provisions in section 12 may impact on some aspects of what the hon Member might think of as computer hacking because there are restraints there about what people who gain access to the information in an unauthorised way what they in turn can or cannot do with it but it is not what the hon Member means by the principle legislation that he is describing.

I am grateful to the Hon Dr Garcia for pointing out the things in respect of the definitions, the one on data controller which is the first that he mentions is one of the amendments that we are bringing. I will have his second and third points looked into, the data processor and filing system. On data processor he said that the Bill contained additional words that were not found in the directive and in the filing system point he made the point that the Bill definition is narrower than in the directive. I will consider both of those points and the fourth is the one that I have already mentioned will be done, the processing of personal data definition. I take the hon Member's point subject to being briefed later on whether it is compulsory or voluntary I would tend to agree with him that the powers and discretions in sections 23 (4) and 29 (2) (a) seem to be very wide. A power of entry without warrant in an area where one is not really talking about urgent and serious breaches of the law but something which seems to me at first sight. To be particularly draconian particularly when this legislation will apply to banks and others involved in financial services who are entitled to have the comfort or some level of judicial scrutiny. I will also look into the question of the powers of the Commissioner not to register on the basis that the person is a sort of person that would breach before registering. Also on the question of the one year time limit for prosecution I can only guess but I would be guessing that the idea is that somehow that complaint that prosecutions should not arise, it is a sort of statutory limitation period, that people should not be overexposed to prosecution in respect of breaches that happened so far back in history but I will check to see if there is some other more specific point to that and I will report back to the House at the Committee Stage on that point. I am told there is an Electronics Communications Ordinance of

which I have some vague recollection of but others have a clearer recollection of and I will look at the other types or potential types that the hon Member has pointed out. I am grateful for the hon Members for their observations on this Bill and we will discuss those points further at the Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE EUROPEAN ARREST WARRANT ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to give effect to Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States and matters connected therewith, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. As I am sure that the hon Members will have realised from

their consideration of the Bill it replaces as European Community Members the existing extradition procedures with something called a European Arrest Warrant and if at the very outset I could make to the hon Members two observations which best describe the difference in concept between the system of extradition to which we have been accustomed on the one hand and the European Arrest Warrant the two principle ones are mainly that the two main novelties would be that this is much more Judicial Authority to Judicial Authority. Hon Members will recall that in the extradition principles there is a big role for the executive it is a political decision ultimately whether extradition proceedings are commenced and it is a political decision ultimately whether somebody is extradited or not extradited whatever the courts decide on their determination of the issue, this is different. This makes the role of the Competent Authority and Executive Branch of Government limited only to practical and administrative support and leaves the question of whether the extradition should take place entirely in the hands of the Judiciary. So there is no Executive, no political, no Governor's decision or in the UK Ministers, in Gibraltar it used to be done by the Governor, all that is swept away from Europe and it is now entirely in the hands of the judiciary who do no more, and this is the second novelty, than assess whether the criteria set out in this Bill are present and complied with or not. There is no longer to be any judicial assessment by our courts of whether somebody should or should not be extradited. There is no sort of hearing to see if there is a prima facie case or whether the evidence sustains the charge. There is now a complete reliance on the propriety, correctness, decision of the judicial process in the requesting state and the functions in the requested state are in effect mechanical to see whether the conditions have been complied with and also to police, in our case the Supreme Court of Gibraltar, whether there are any of the Human Rights exceptions any of the reasons for which surrender of the person, must be ordered, whether any of those reasons exist and there are some human rights related reasons and that would require an assessment by the court. Those are in two very big brushed strokes the real philosophical differences between the European Arrest Warrant and the more conventional extradition

proceedings that this House will be more familiar with. Therefore the Bill gives effect to this Council framework decision. The surrender arrangements for wanted persons are being introduced by the European Arrest Warrant has the effect that I have described of replacing the existing arrangements with effect from the 1st January 2004. The framework decision on the European Arrest Warrant is based on the concept of mutual recognition and respect for the judicial processors of the Member States of the EU. It seeks to simplify procedures for the surrender of wanted persons in particular by replacing interstate aspects of extradition with an inter-court system. A European Arrest Warrant is a court decision in one Member State addressed to a court in another Member State for the purposes of conducting a criminal prosecution or the execution of a custodial sentence in the issuing Member States. It applies to all offences having a penalty of at least 12 months imprisonment in the law of the issuing Member State or where a sentence has been handed down a sentence of at least four months has been imposed and that point accommodates the fact that extradition can be sought both before trial but also after trial when perhaps one has already been convicted and sentenced in absentia.

The dual criminality requirement and this is an important aspect of the whole principle that is to say that an offence for which somebody's surrender is sought should also be an offence in the country from which transfer is requested will not apply to a list of 32 offences listed in the framework decision and they are listed in Schedule 2 of the Bill. The general rule is that there has to be dual criminality but when the offence for which one is sought is one of the one's listed in the Schedule at the back of the Bill there is no need for dual criminality. It matters not that the offence is not an offence or that the offence is differently structured in the country from which the surrender is sought and therefore hon members will see that that list is limited to 32 of the most serious types of offences. In order for dual criminality for one of these things to be waived for one of these offences it has to be an offence in the requesting state which carries a penalty of at least three years imprisonment. So, although there

is no dual criminality it nevertheless has to be one punishable by at least three years imprisonment. As I have said, under this regime it is the Judicial Authority exclusively who determines whether surrender takes place having regard only to the safeguards contained in the framework decision and now in the Bill and the other aspect of the regime is that it shortens the deadlines for the whole process so now really the whole question of surrender can happen much more quickly than extradition would have been possible before. The Central Authority whose role is limited initially just to an administrative verification of the request will arrange to have the European Arrest Warrant executed.

Part III of the Bill provides safeguards for arrested persons so it contains safeguards such as ensuring that consideration is given to protection of a fundamental right to the wanted person and the Constitutional Rules relating to due process are addressed before he or she is surrendered. Others include the rights to have a lawyer, interpreter, bail and appeal process. The Bill reflects these provisions and includes grounds for refusal where there is the possibility of a death penalty or inhuman or degrading treatment resulting in the country to which one is surrendered. Other grounds for refusal are where a person has been pardoned for the offence in question, whether there has been undue delay, passage of time in bringing the European Arrest Warrant, where the person has already been tried for the offence elsewhere, where the person has been prosecuted in Gibraltar for the same offence, where the person has not reached the age of criminal responsibility and in certain cases where the offence in question is an extra territorial offence. Guarantees of every trial are to be sought if the person was tried initially in absentia. The framework decision retains the rule of speciality that is the rule that provides that a person may be proceeded against in the issuing state only in respect of the offences specified in the warrant but it sets out limitations to that. It provides that where consent is required for the waiving of speciality or for an agreement to onward surrender to another Member State such consensus should be sought from

the Judicial Authority in the original executing, that is to say the State that originally delivered up the person.

The Bill is in three parts with two Schedules. Part I deals with preliminary and general matters. Chapter I of Part II deals with the European Arrest Warrants received in Gibraltar and Chapter II deals with the issue of European Arrest Warrant by Gibraltar when Gibraltar wants the recovery of somebody that is in another Member State and Part III deals with prohibitions on surrender. The hon Members will see that in Part II starting on page 339 deals with European Arrest Warrants received in Gibraltar. Section 7 deals with the form of the warrant and section 8 deals with how the warrant has to be transmitted. So, the European Arrest Warrant shall be transmitted by or on behalf of the issuing Judicial Authority that is the courts in the other country, to the Central Authority in Gibraltar and then deals with such things as translations to be attached and things of that sort. The remainder of those sections deal with acting on facsimile copies et cetera, et cetera and administrative arrangements. Section 9 deals with what the Central Authority must do with the Warrant when it is received. Section 10 deals with how arrested persons need to be brought before the court and then in section 11 there is the principle of consent to be surrendered. If the person whose surrender is sought by a country consents to be surrendered then there is a procedure which requires that consent to be given in certain circumstances, for example, it requires the court to ensure that he has had legal advice before he consents and therefore the consent has to be given in certain sanitised circumstances rather than just obtained in circumstances which may call into question whether the person consenting understood the consequences of what he was doing and the implications of having given that consent. Section 12 deals with the procedures that have to be applied to a person who does not consent so therefore when a person does not consent to be surrendered there is a hearing in the court and the court has to decide if any of the things specified there in (a), (b), (c), and (d) and that in a sense is a snapshot of the extent to which Judicial consideration by the courts in the requesting state have really

been narrowed to some very mechanical things rather than a Judicial preliminary trial as used to be the case. So, now the court has to surrender if it is satisfied that the person before it is the person in respect of whom the warrant is issued and that is a way of making sure that one has the right person in front of oneself.

The European Arrest Warrant or a facsimile or true copy thereof has been executed in accordance with the provisions of the Ordinance. Such undertakings as are required under this Ordinance or facsimile or true copies are provided. That is undertakings about such things as when will it be subject to this or that penalty, if it has been tried in absentia that he will be retried before sentencing so, the surrender of the person is not prohibited by Part III. It is really (d) that gives the court most scope for saying “no” so (a), (b), and (c) are really mechanical things for the court to check (d) is the one that allows the court to rely on one of the reasons why one does not have to transfer and that is the area that gives the court of the requested state really scope for substantive considerations of human rights types issues as to whether they are strong enough to deny surrendering the person up.

Section 15 sets out conditions under which people are surrendered and not to be surrendered, the nature of offences and things of that sort it is really administration. I propose to move significant amendments to clauses 18 and 19 which on reflection and given that this system applies to tax offences as well as other types of offences I think is simply too wide. The idea that when going to arrest the person sought under the warrant one can search the whole of the premises in which the person is to be found or indeed any other person in the premises at the same time seems to me excessive and completely beyond the scope of what is required by the framework decision and so it is very likely that I will move an amendment that sections 18 and 19 are deleted in their entirety to be replaced with a power to make regulations providing making proper provision for that part of the framework decision. Which I do not know if hon Members have the framework

decision in front of them but the only decision of the framework provision relating to entry and search and seizure is to be found in article 29. So, a regime that properly complies with article 21 needs to be designed. I believe that this goes far, far too far and therefore we propose to delete it and give a power to make by regulations something that complies with article 29 and we will write into the amendment the requirement that those articles should be laid before the House any such regulations to give the House an opportunity to look at what the Government do which is going to be much softer than this but gives us a little bit more thinking time without delaying the Bill.

Article 20 deals with the detention of prisoners, basically once the European Arrest Warrant is received the prisoner is detained. The court has power either to remand in custody in a remand centre or to put out on bail. The court basically has the same powers as in the administration of domestic justice. Section 21 deals with transiting through Gibraltar. If somebody is passing through ones territory as part of an act of extradition between country A and country B and on route between country A and country B they pass physically through Gibraltar is the custody lawful? What right does the person have to have in custody in Gibraltar somebody in their custody simply because they are on their way to country B, country A having authorised the extradition. Section 21 basically makes provision for that and says that if anybody passes physically through Gibraltar pursuant to a surrender process between one state and another that custody shall be deemed to be lawful under the laws of Gibraltar.

Sections 22 and 23 deal with the situation where there is a conflict, for example, two EU States might be seeking the same person or one EU State and one non EU State might be seeking the same person, or an EU State or a third country may be seeking a person but the Authorities in Gibraltar want to prosecute that person domestically and these sections provide for how those situations are to be resolved basically it leaves the judgment to the court taking into account the relative factors and circumstances of each competing request set out there, for

example, at 22 sub-section (2) in the case where the conflict is between Member States. When the conflict is between a Member State and a third country that is dealt with in section 23 and again there are a series of criteria set out there for the court to take into consideration. The only tribunal that always gets priority for its request from any other request is in section 23 (3) sub-section 3 when one of the competing requestors is the International Criminal Court. When the International Criminal Court wants a person then they get priority but if the Central Authority receives a European Arrest Warrant in respect of a person and a request is received from the ICC for the arrest or surrender of this person the Central Authority shall where an order has not yet been made under section 12 or 13 in relation to that person so inform the Magistrates' Court and the Magistrates' Court shall not perform functions under this Ordinance in relation to the European Arrest Warrant et cetera, et cetera.

Chapter II then deals with the issue by Gibraltar of European Arrest Warrants when we want somebody brought back to us and makes corresponding provisions to the ones added because the law in the other Member States will be the same as the law in our Member State so they will have the same obligations towards us as we are incorporating in this Bill in relation towards them.

Part III deals with prohibitions on surrender and the hon Members will see there at sections 27, "*... a person shall not be surrendered under this Ordinance if his surrender will be incompatible with Gibraltar's obligations under the Human Rights Convention of 1950*" and the mentioned protocols thereto if his surrender would constitute a contravention of any provisions of our Constitution, if there are reasonable grounds for believing that the European Arrest Warrant was issued in respect of a person for purposes facilitating prosecution or punishment in the issuing State for reasons connected with his sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation et cetera, et cetera and there are all those lists of things which the court can invoke or which

presumably counsel acting for the person would invite the court to invoke to deny surrender and there are a few more grounds in section 28, in section 29 dealing the latter case with pardon and immunity, section 30 dealing with expiration of time, in section 31 where final judgment has already been given elsewhere, section 32 where the proceedings are current in Gibraltar, section 33 where prosecution is not possible in Gibraltar, in section 34 where offence has a nexus with Gibraltar, section 35 on procedural grounds, section 36 where there is immunity so, all those sections in this Part III of the Bill are the ones that give our local courts scope for all the grounds that I have just described there in list form to deny surrendering up notwithstanding the European Arrest Warrant request.

Therefore, it goes without saying that the provisions of this European Arrest Warrant will replace the only existing legislation that we have which is the Fugitive Offenders Ordinance in so far as it affects the Republic of Ireland which is the only non-UK EU Member State covered by our Fugitive Offenders Ordinance so there will be a clause to that effect introduced by way of amendment at the Committee Stage. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, can I start by thanking the Chief Minister for his reference to the new sections 18 and 19 that will be introduced. I will not say my piece on those because I think we were both going along the same lines. In this piece of legislation we see a Central Authority designated who is the Chief Secretary because in relation to all matters save those which relate to internal security or defence His Excellency the Governor who is designated under section 5 as a Central Authority will delegate all his powers to the Chief Secretary. The Chief Minister is right to say that the framework of this directive is to ensure that

extradition requests go from Judicial Authority to Judicial Authority and the framework decision in effect says that we can be free to appoint Central Authorities who can assist logistically Judicial Authorities, the Judicial Authority most concerned in this case being the Magistrates' Court, but the Opposition's view is that the Chief Secretary is not the appropriate delegatee or donee of the Governor's powers in relation to this matter and that an appropriate officer in those respects might have been more appropriately the Attorney General or the Commissioner of Police. I think that is a particularly important point because we are dealing here with in effect criminal matters and the whole point as the Chief Minister has referred earlier is to take the political out of the extradition and I am not for one moment suggesting that the Chief Secretary is a political officer of the Government but he is within the administrative political set-up of the Government whilst the position of the Attorney General and the position of the Commissioner of Police I believe are more inalienable. That is the first point, there are a lot of points which we will have to take at Committee Stage because the Bill as presently drafted as a result of grammatical errors et cetera seems to make little sense in some particular instances, for example, section 8 (11) makes a reference to an undertaking being a statement under section 9 (3) (b) when clearly it is not and as the Chief Minister has said in moving the Bill the types of undertakings provided are different and they are already provided for and it is a question of simply inserting the right cross reference but something like that can obviously make the Bill unintelligible.

In section 9(2) there is a reference to an individual who has been arrested under European Arrest Warrant to receive a copy of the warrant within 48 hours after his arrest and Opposition Members feel that that is too long a period and that whatever the framework decision provides in that respect we in Gibraltar are free to provide a European Arrest Warrant copy to the individual who has been arrested in Gibraltar earlier and we would urge the Government to consider including there a reference to 24 hours at least so that the person detained would have the warrant and the warrant in effect sets out all the

reasons why the extraditing or issuing state wishes to have the defendant sent back. Opposition Members would urge that the individual arrested should have that warrant earlier. In section 9 (3) there is provision for what a person arrested under the European Arrest Warrant shall upon his arrest be informed of and there is particular provision, a consent has been surrendered to obtain or be provided with professional legal advice and to obtain or be provided with where appropriate the services of an interpreter. Anybody arrested in Gibraltar as the Chief Minister well knows is entitled to be read his rights I need put it no higher or lower than that and we would urge that it be made clear even if only in this debate if necessary that those sections 9 (3) (a) to (c) are in addition to the rights that all other individuals arrested in Gibraltar by Gibraltar police officers are entitled to be made cognisant of.

Mr Speaker, there is a reference in section 10 (b) to a court fixing a date for the purposes of section 12 which is the section that deals with the refusal of consent to be surrendered so where an individual is actually contesting his extradition to hear the matter no later than 21 days from the first appearance. Again, I think it is important to flag up there that if the individual is to be remanded in custody the individual is entitled to be seen by the Magistrate every seven days never mind the fact that the Magistrate would be required to fix a date 21 days later.

In section 11 (3) at (b) there is a reference to a person under the age of 21 years of age being remanded in custody not in the prison but to a remand institution and I would also flag the point that we do not have remand institutions in Gibraltar and that either we are going to create such institutions or we have to make separate provision because the provisions of section 11 (3) are in imperative terms it says that the Magistrate "*shall*" in the event that the individual is less than 21 years old be remanded to a remand institution. So, we need to take care on how we deal with that. I want to jump if possible to the other points that I want to make in relation to sections 11, 12 and 13 to refer the House to section 14 and section 20. Section 14 says that the Central Authority may direct that the person

remanded in custody under this Ordinance or committed to a prison of remand institution under sections 11 or 12 be removed to any other place if the Central Authority considers that in the interest of the person he should be moved. Section 20 specifically provides that a person remanded in custody under this Ordinance may be detained in a prison or if he is not more than 21 years of age in such a place as the Central Authority may specify and I am concerned that there should be no conflict between what the Magistrate "*shall do*" and what "*he is*" required to do and what the Central Authority "*may do*" and there is provision here in this legislation as drafted for the Central Authority who is in all instances the Chief Secretary to overrule the decision of the Magistrate as to where he has placed the individual because those rights of the Central Authority to move the prisoner are not limited to instances where the prisoner may not yet have passed into the hands of the Judicial Authority which is the Magistrates' Court and I think that is an important point to flag up.

At 11 (6) (a) (i) I do not mean to take a Committee Stage point at this stage excuse me if I do because of my inexperience but I think that must be "*for*" otherwise it does not read "*for or in respect of*" and I proceed on the basis that it does and as I say I am not going to take all the typographical points at this stage but I am just trying to in particular understand what the section is meant to do and 11 (6) (b) (iii) again makes no sense with the reference to sub-section 4, that must be a reference to sub-section 5 which is the only provision which provides for release from custody which is what that section is principally dealing with. As drafted I would say that that sub-section 6 of section 11 makes little sense and that we may want to see there something much more similar to section 12 sub-section (7) which I think does what that section is intending to do but in different circumstances. At 12 (4) the right of appeal is limited to appeals to the Supreme Court on points of law and I do not know why the right of appeal should be limited to points of law when dealing with criminal matters such as this. The right of appeal should not be limited to points of law and we should delete those words.

At section 23 (1) there is a reference and there are subsequent references like that to things being done as soon as may be. I wonder whether the hon Gentleman could clarify whether that is also typographical error and whether we are looking at things being done as soon as may be practical or as soon as may be practicable which would be the common reference in our criminal legislation.

At section 23 (3) there is a reference to the International Criminal Court and I think that that reference should be further extended to make clear which is the International Criminal Court referred to and I think there should be extensive definition of the International Criminal Courts sitting at the Hague et cetera because there may be only one now but for all we know there may be another one in the next months, for example, to deal with matters arising out of the conflict in Iraq.

At section 27 and not labouring the point that I made earlier in relation to the European Convention of Human Rights but a totally separate point, I would say this, that in reference at 27 (1) (a) to the European convention of Human Rights is in different terms to the reference to that same convention in the legislation that we were dealing with a moment ago and I think that from the point of view of uniformity we should be referring to that particular convention in the same way throughout our body of law but just in particular the first sentence or the first line of that sub-section where the surrender of the prisoner will be incompatible with Gibraltar's obligations under the Convention for the Protection of Human Rights. With respect I do not think that that is sufficiently clear, who is Gibraltar there? Gibraltar is not a signatory to the European Convention of Human Rights, HMG is a signatory to that convention, yes, the convention is extended to Gibraltar but I do not think that it is sufficiently clear to simply say "*Gibraltar's obligations*". It is a different point to the one that I took earlier. The Chief Minister has referred us to this question of the duality which is also set out in the explanatory memorandum. The duality required for offences when there is to be an extradition. I think there is actually a

provision here which drives a coach and horses through that principle of duality and that is contained in section 28 (2). I agree that in all other cases duality is required unless we are dealing with the heinous type of offence set out in schedule 2 none of which any of us could have any objection to an individual being extradited over but in 28 (2) the surrender of a person to an issuing state under the Ordinance cannot be refused on the grounds that in relation to a revenue offence, and revenue offence is defined in the next sub-section which is sub-section 3, no tax or duty of the kind to which the offence relates is imposed in Gibraltar or the rules relating to taxes, duties, customs or exchange controls that apply in the issuing state differ in nature from the rules that apply in Gibraltar to taxes, duties, customs or exchange control. In fact that language is almost identical to the language reference to which is made as a fiscal offence in the mutual assistance directive that we have looked at already and I accept that it comes from the framework directive but I think it is important to highlight that the principle of duality does not apply to tax offences and therefore we could find Gibraltarians because we are not necessarily only dealing with fugitive offenders from another state, Gibraltarians or other nationals practising in Gibraltar or presently in Gibraltar extradited in relation to tax offences of the sort referred to in section 28 (2) and (3) that I think is something which would cause serious concern in the Finance Centre.

In section 29 (2) which the Chief Minister took us too, article 3 (1) of the framework decision actually seems to be setting up that section to say, "*...a person shall not be surrendered under this Ordinance where he has in accordance with the law of the executing State become immune.*" At present the reference is to the issuing State and I believe that what we are doing there is implementing the provisions of article 3 (1) then that should be a reference to the executing state.

Mr Speaker, we have been asked to suspend Standing Orders in order to transpose this decision. Section 1 (2) states that the Ordinance will come into operation on the 1st January 2001 and the Chief Minister when he has referred us to this particular part

of the Bill has read it as it was there and I have to ask him whether in fact Government do intend to make retrospective legislation. I think it is important that it should be in Hansard that the Government are intending to make this legislation retrospective because as the House is aware if this matter were to be raised, the fact that the House is making retrospective legislation one of the things to be looked at will be whether we actually intended to make retrospective legislation. Obviously it is an important Bill which provides very important matters. It looks like it may be overdue but that is no reason for bringing a Bill that at present and as I will show in Committee Stage whether it stands together as it is at the moment.

HON J J BOSSANO:

Mr Speaker, the considerations that I expressed in respect of the first Bill also apply to this one and Opposition Members are still of the view that there is a different policy approach between the Government and ourselves and it is nothing to do with Wonderland or Alice or any other fairy story the Chief Minister may wish to refer to. It has to do with the way that we approach the relationship between ourselves and the European Union and indeed the fact that we believe that we have got the same rights in the European Union as have the citizens of the United Kingdom. The right to decide, for example, if tomorrow the United Kingdom decided to join the Euro and hold a referendum we believe that we should have a referendum in Gibraltar. The Chief Minister will not argue at the time that that would be Alice in Wonderland and that we are asking the United Kingdom whether it wishes to join or not. Opposition Members believe that the United Kingdom where it has options should have the obligation to extend to us the same options as it has negotiated for itself on the basis that we may choose a different alternative.

HON CHIEF MINISTER:

I agree entirely.

HON J J BOSSANO:

We have to spend half our time either waiting for the Hansard or rewinding tapes that is quite obvious. In this particular case the Government appears to have taken a policy decision to do certain things which are not mandatory and one of them seems to be the creation of a Central Authority. In the actual framework directive where there is a provision for this possibility it says that each Member State may designate a Central Authority or where its legal system so provides more than one Central Authority to assist the competent Judicial Authorities. I know that the Chief Minister thinks that we are not a Member State so I do not know whether that means that the designation of His Excellency the Governor as a Central Authority has been done by the Member State the United Kingdom. The power in the decision is vested in the Member State to so designate. I do not know what is the complexity in Gibraltar's legal system not having the benefit of having studied law, that requires in a place as small as this and where the Competent Judicial Authority is going to be the Magistrates' Court, that Competent Judicial Authority carrying out its functions under this directive cannot do so without the assistance of a Central Authority because subsection 2 of article 7 of the framework decision of 2002 says, *"...a Member State may if it is necessary as a result of the organisation of its internal Judicial System make its Central Authority responsible for the administrative transmission and reception of European Arrests Warrants as well as for all other official correspondence relating thereto."* I cannot see why the Competent Authority in our case cannot fulfil the functions here without a need for a Central Authority and I can only suppose that since Gibraltar is not required by the decision to have a Central Authority it has been a political decision of the Government for reasons that we have not yet heard in the general principles of the Bill that they wish to have a Central Authority which they do not need to have if they do not want one.

Given that the whole purpose of this exercise is to expedite the surrender of people wanted in some cases for extremely serious

crimes as are shown in the list, it is unacceptable philosophically that we should have a situation where one has got a long list of crimes to which duality does not apply with which we are all in agreement. It does not have to be a crime here for us to have to arrest somebody and hand him over as we read the exemptions in the relevant clause. My Colleague has reminded me that we know that the intended decision itself requires this to be done we are well aware that this is not something that the Government have stuck in because they want to do it, it is there in the decision that it has to be done in respect of VAT, tax, import duty and so on even if these things are not things which in our law we would be arresting people for or even if the taxes did not exist as is the case of VAT.

The other thing is that given that this is going to go through the post-box we have a situation where if somebody committed a crime in Gibraltar, one of the serious ones as we indeed have had happening on rare occasions and slips across the border, whereas in a proper European situation what one would have would be the warrant for the arrest issued by the Magistrates' Court in Gibraltar would be quickly transmitted to the relevant Competent Authority on the other side in our case because of Spain's outdated and anachronistic view on its relationship with Gibraltar what does one have to do? One has to send it to the post-box in London which presumably has to send it to the post-box in Madrid and then has to send it to the relevant Competent Authority by which time the guy will have got to Rumania. So, we believe that it is desirable that this should be done because we think that this is a good thing that should be happening in the European Union but the Opposition takes strong objection to the fact that uniquely in the European Union we are being treated differently from everybody else and that in fact Spain was prepared to go to the extent apparently of stopping this because of its views of veto because of us and requiring us to adopt different procedures from what other people are adopting. As I have said on that count alone we would have abstained but there are many other things some of which have already been mentioned in relation to the actual drafting of this which when the time comes and after we have gone through the Committee

Stage and heard further explanations we will determine whether we vote against or we abstain.

In relation to the Central Authority, another point I also wish to make refers to the previous Bill we have already considered in the Second Reading where there is a Central Authority that is the Attorney General. In that particular instance the concept of Central Authority is not mentioned at all in the relevant clauses of Schengen and I do not know whether it will be mentioned in the other document which we have not had sight of and which we will be looking at between now and the Committee Stage but in the actual clauses of Schengen mentioned which were 48 to 53 there is no reference there at all to anything related to Central Authorities or the appointment of Central Authorities so although we have had the Second Reading of the Bill that says, *"...for the purposes of section 48 to 53 the Central Authority shall be the Attorney General,"* in this one the Central Authority is going to be the Governor but this particular framework decision does make a provision that makes the creation of a Central Authority possible but not necessary if one feels that in the circumstances of Gibraltar there is a need for such an entity and we ask the Government to explain to the House why they feel that in Gibraltar's case there is a need for it. Opposition Members do not know whether the Member State, the United Kingdom, have appointed separate Central Authorities, for example, for Scotland, Wales, England and Northern Ireland we have not been able to establish where in the UK law this has been given effect to. The provision is that if there is a decision on the part of the Member State to appoint a Central Authority then the Member State has to notify the General Secretariat of the Council that it has appointed such a Central Authority and it also has to notify under article 25 the General Secretariat of the Council of the Authority that it has designated as responsible for receiving transit requests. I am not 100 per cent sure but I assume that in our case the Central Authority will be the one that has to receive transit requests as well but in article 25 the way that it is drafted unlike the previous reference is as if the Authority for the purpose of transit was one single Authority for each Member State because it does not say *"an Authority"* or

Authorities” which is what it says in the previous article that I have quoted. In article 7 each Member State may designate a Central Authority or where its legal systems so provide more than one. In article 25 it says, “*..each Member State shall designate an Authority responsible for receiving transit requests.*” That to me implies that the Authority that is designated by the Member State, United Kingdom, for receiving transit request is the one that will be responsible in respect of Gibraltar as well but I would like that to be cleared up at this stage or when we come to the Committee Stage and we deal with the question of the provisions that we are making in this law for transit.

Article 33 makes a specific reference to the provisions concerning Austria and Gibraltar and in article 33 (2) it says, “*...this framework decision shall apply to Gibraltar.*” That positive inclusion of its application to Gibraltar raises the question of “*Does that imply that there is a requirement to specifically mention us when things apply to us and that if we are not mentioned it follows that they do not apply and if not why is it in this one? Why is it that in this particular one there is a specific reference to it applying to Gibraltar?*” The United Kingdom has to inform the Commission or the Council of the application in Gibraltar of the legislation and of the Authorities that are being appointed and we would like to know whether this is already happening, has happened and if not when it is intended that it should happen because presumably it is only after notification takes place that the mechanism can start to apply, can actually be made to do the job that it is intended to do and given that this was supposed to have been already the case on the 1st January this year we do not know whether that means that the necessary institutions of the European union were informed that as from the 1st January there would be in place these Authorities being in a position to receive requests but it would seem to suggest that from the way that this is worded and the fact that it is there. The other thing is that the request and the transmission of surrender procedures under article 9 is something that the issuing Judicial Authority not the Central Authority may decide to place on the Schengen

information system of which we are excluded so, presumably, uniquely out of the European Union the only Judicial Authority that is not able to avail themselves of the facility for pursuing somebody that has committed a crime in Gibraltar by placing an alert on the information system are the authorities here and we would like to know whether our reading of that is correct or whether the United Kingdom is in a position to do it on our behalf notwithstanding the fact that we are not on that system. Equally since we are not in the system if somebody was issuing an alert presumably we would not get to hear of it and we would not be able to do anything to help unless we had been directly notified and I do not know whether there is an informal system in place that enables us to do it because unacceptable as it is that we should have been left out at the end of the day from a practical point of view it is better if some way for the United Kingdom to inform the Royal Gibraltar Police or Her Majesty’s Attorney General of the wanted list as it were on the information system or what is there it would be preferable to have that because we do not particularly want people roaming in Gibraltar who have committed serious crimes elsewhere simply because we do not have access to that information, even though we should in our view, but it is better that we should know about it (a) so that we can be of help to others and (b) because we do not particularly want these people with potential criminal records capable of committing crimes here without our knowledge. That is or view on the general principles of the Bill and we will hear what the Government have to say on the points that have been raised.

HON CHIEF MINISTER:

Mr Speaker, I regret that the Leader of the Opposition did not accept my invitation to take the view that we should not have a Constitutional debate on every Bill as to what are the limitations of the powers of a colonial Government when it comes to the negotiation and contraction of international legal obligations. It is not as if he does not know them, as he well knows he was often at the receiving end of those very obvious limitations and

therefore one can argue whether one would like it to be different, one can argue whether the United Kingdom should or should not pay more heed to the representations it receives from places like Gibraltar before making these decisions, one can argue whether the Constitutional relationship should be indeed as we are proposing in our Constitutional reform proposals that they should not have the power to make international treaty decisions except with the consent of the Overseas Territories. Under the existing regime they have the power to do it and if they choose to exercise that power to do it to then come to this colonial Legislative Assembly to say that the Government of Gibraltar have somehow exercised the choice is a completely disingenuous argumentative process which is worse than Alice in Wonderland because I have no doubt that Alice in Wonderland was driven by naivety and good faith and lack of knowledge and lack of experience whereas I know that the same does not apply to any of those it does not apply to the hon Member so he is if one likes a sort of unmeritorious Alice in Wonderland when he makes points of that sort. The Leader of the Opposition will have the opportunity to bear his constitutional hairy chest to the British Government when we go to London to discuss our Constitutional Reform proposals with them in the meantime to stand up in this House pretending that the position is different to what it actually is I think adds nothing to the dignity with which this House conducts its business. We are where we are in our political evolution and the wish that it were different surely has to be kept separate from whether and to what extent it already is or is not different and if he likes we can have this little banter at the start of the debate on any EU Directive or legislation I am quite happy to have it but there it is.

On the Schengen information system the Leader of the Opposition is entirely correct. We wrote the alert procedures out of our legislation precisely because the Schengen information system upon which the alert system works we have been excluded from and therefore yes, in principle the Leader of the Opposition is entirely right that our laws do not contain the equivalent of this Bill. All the other countries have procedures

called the “*Alert System*” whereby if there is an alert on the Schengen information system – arrest the Leader of the Opposition of Gibraltar, that can be executed even if the actual Arrest Warrant has not been received. We are not plugged into that because we are not plugged to the Schengen information system which is the mechanical means by which that system works. We cannot legally provide cover for all the consequences of relying on that system if there is not the underlying legal structure namely participation in the Schengen information system. I agree with his views in terms of day to day crime fighting but the idea, I would ask him to consider the same scenario from the Constitutional/political point of view, that we should be excluded from European Community legal instruments for purely political reasons but that we should nevertheless be bound by the meaning and effect of that thing from which we are excluded by means of the intervention of the executive power of the colonial power would be music to Spain’s ears that is exactly what Spain wants. Spain wants the United Kingdom to exclude us in our separate rights from all these EU measures acting through our own Authorities et cetera and the United Kingdom from a distance exercising its colonial powers simply administer and enforce. There is a dilemma there. On the one hand I know that the Leader of the Opposition will attach as much importance as I do to not going down that road, on the other hand nobody wants an important fugitive to slip through our fingers simply because there is not an alert. I suppose that there will be some informal arrangement whereby some pretext or other will be found to keep somebody. It must be remembered that it can be received by telefax and that it is not desirable that we legislate in our legislation for an obligation from which we have been excluded by sheer political motivation and I am sure that the Leader of the Opposition will agree with me.

Again he reflects the choices, with the exception of the Competent Authority point to which we will come now I am not aware that there are any choices that we have exercised in this legislation so again the idea of policy choices on the Government is not something that the Government are

conscious of. The Competent Authority point if I could firstly deal with the point made by the Hon Mr Picardo I know that in colonies there is a tendency, I know this because in the Overseas Territories Consultative Council it becomes perfectly clear that in this respect Gibraltar is not unique, for Oppositions to want as little power as possible vested in anything that the elected Government their political opponents can control but the idea implicit in the Hon Mr Picardo's point that somehow any connection between the extradition process and the elected political Government, dreadful people, is somehow wrong is an entirely colonial point and has nothing to do with a proper administration of justice. In the United Kingdom, for example, the extradition process is inextricably in the hands of the Home Secretary who makes a political decision about whether people should be extradited or not. Now if these powers, not that I am suggesting that these powers should be exercised by a dreadful democratically elected politician in Gibraltar, but if these powers are exercised in the United Kingdom by an elected politician to argue that there is something wrong with a Gibraltar elected politician exercising the same powers does not raise issues of rightness and wrongness in the administration of justice unless one thinks that in the UK they are administering justice wrongly too it raises colonial issues.....

HON F R PICARDO:

The Court of Human Rights has found that on many instances they are doing things improperly by doing it through the Home Secretary.

HON CHIEF MINISTER:

I do not know what the Court of Human Rights has found on many instances, the fact of the matter is that what I am describing to him is to this day the law in the United Kingdom where for 300 years and still decisions as to extradition have had a very large measure of executive content and ultimately it

is in the hands of the Minister, both the initiation and the final extradition. I do not want anybody listening to me to think that this is because the government are trying to justify which it easily could adopting for its Ministers the same powers as Ministers exercise in the United Kingdom and the reason why that does not happen here has nothing to do with the things that appear to worry the hon Member. It is just that extradition in Gibraltar has never been regarded as a defined domestic matter that is why in Gibraltar it is not in the hands of a Minister and not because it is.....yes, the Leader of the Opposition cannot now pretend that he did not say what he said the whole essence of his complaint was that it should be distance, or does he not remember saying, the hon Member must be careful that he does not get a reputation on his first meeting for having such a short memory. The hon Member said that it was important to distance this function from the political government and although he was not casting aspersions on the political control exercised over the Chief Secretary he thought it was better that it should be the Attorney General or at the very least the Commissioner of Police because he thought that those two were less amenable to political nobbling by the Government of the day. The hon Member may now wish to wiggle but that was to any.....

HON F R PICARDO:

A point of order. I did not use the words, “*political nobbling*” and I think that it is a pity that on my first day here I have to fall into considering that it is the Chief Minister that has a very short memory because if the Chief Minister goes back to the tape that he referred me to earlier he will not find the words “*political nobbling*”.

HON CHIEF MINISTER:

Of course I will not find the words “*political nobbling*” this is why I said implied and not said. The hon Member must not get so nervous what I am saying to the hon Member is that any

rational, intelligent, objective listener to the point that he was making would have inescapably come to the conclusion that the essence of his point was the view that the function should be distanced from the political government and he actually said it, "*I am not casting aspersions on the political control....*" words to that effect, this is what he said for him now to try and pretend that that is not what he said simply because I have pointed out to him that in the United Kingdom there is even closer connection between the political process and these decisions adhere is just trying to change the course of recent history because he has suddenly realised that his description of it is not sustainable. The point is nothing to do whether it is right or wrong for these functions to be closer or less close to the political process. In the United Kingdom it is the political process, in Gibraltar it has never been the political process and therefore Ministers not because it is wrong in terms of the administration of justice but because in Gibraltar administration of justice including extradition has Constitutionally always vested in His Excellency the Governor and therefore the Competent Authority in Gibraltar, the Central Authority in Gibraltar is not as he erroneously opened his address by saying, "*The Chief Secretary is the Central Authority designated.*" It is not. It specifically says, "*The Central Authority for the purposes of this ordinance shall be the Governor.*" The Governor is the Central Authority for all purposes but the Governor is entitled to delegate to the Chief Secretary his powers under subsection 1 which happen to be limited more or less to the administrative aspects of it because the judicial aspects some of which in the UK are exercised by Ministers but we are not talking about those because the judicial aspects under the European Arrest Warrant is exercised exclusively by the courts and by the judges. This dovetails to the points made by the Leader of the Opposition. Regardless whether he is right and I am not in a position without further research to categorically say so whether the use of the word "*may*" means that there need not be any or whether there can be more than one but assuming that the hon Member is right for the purposes of the debate yes, there is a view on the part of the Government that the Magistrates' Court lacks the administrative resources and experience in dealing

with international correspondence and the administration of international obligations of this sort and that the Magistrates' Clerk and Court should indeed be supported by the Chief Secretary and his office when it comes to the administration of these matters. In the UK I cannot tell the hon Member who the Central Authorities are but even if it were to be the courts in the UK I am not suggesting that they were but somebody has got to have this function. If it is not a Central Authority then the correspondence et cetera I suppose will be done by a court system that is administratively resourced to a much higher standard. I will try to find out for the hon Members before the Committee Stage as a matter of interest how the United Kingdom have done this given that the views that Opposition Members have expressed about the importance of Government retaining the choice of doing things differently will not be compelling therefore on him or us as to whether it would not be the better for us to do it in another way. We believe that it is desirable that there should be a Central Authority in Gibraltar and that the Central Authority should be the Governor given that this is a Constitutional area where the Governor has always operated and that it is entirely right and proper that the Governor shall delegate to the Chief Secretary his powers when it does not involve a matter of internal security or defence which is what this says.

The point made by the Hon Mr Picardo to the extent that they are very detailed I will have checked particularly the one which he alleges to be misquotes of numbers and things of that sort and I will put the Government's position to him in the Committee Stage. The point that he made about section 9 (2) I do not know where that time limit is drawn from but certainly his was this point about 24 hours and whether it should be 48 hours. If it is not a mandatory 48 hours I can see no objection why it should not be reduced to 24 hours it ought not to be difficult unless there are issues, it assumes that the person is in custody so the person is available to be handed a copy of the arrest warrant the problem is that 24 hours after his arrest

HON F R PICARDO:

Obviously the warrant is in Gibraltar because otherwise he would not have been arrested so both elements are present.

HON CHIEF MINISTER:

I would just like to think about it a bit more and take some more detailed advice but from my knowledge of the provisions I do not think that there is any difficulty in reducing it to 24 hours precisely given that because we are not in the alert system where we could have arrested without a warrant necessarily there has to be a warrant in Gibraltar before one can arrest in original or in facsimile copy. We will look at that with a view to favourable inclusion of an amendment. I do not know what the answer is to the hon Member's point about whether things like section 9 (3) are in addition to, I suppose and I will check it now that he has raised it, but I had assumed that this Bill does not derogate from any established procedural systems so that this will be in addition to but just so that both our minds are put at rest I will have the matter checked. On the question of the remand institution actually this is a point that I had spotted and I did not take with the draftsman because I assumed that the remand wing of the Moorish Castle prison would be sufficiently identifiable as a remand institution but we had better just check that the remand wing actually operates as a separate entity with different rules et cetera and if does not then just to be on the safe side perhaps have a reference to prison on remand terms or define it as such although I fear that the directives specifically says in a remand institution. So depending on what we conclude when we look into it we will see the extent to which we may actually have a problem there or not. Grateful for him for pointing out some of these apparent contradictions in this section. I am not sure although I will look at it in detail that there is a conflict between section 20 and section 14 but as I say I will look at it in a more detained fashion. In Gibraltar courts can only confine people in prisons. Courts, judges, condemn or remand people to prison, where they are held in custody. I suppose this

is then almost an executive decision in the sense that once somebody is entrusted to the custody of the state so to speak the particular institution save the difference in remand and post conviction facilities is no longer a judicial matter. The court is concerned with should he be in custody or not and for how long but not where he is held in custody. I am not sure that in England if a judge says that "I condemn you to five years imprisonment in Pentonville Prison" I suppose it is just sentence to imprisonment and then the executive, the prison's administration decides in what particular institution somebody is held. I had read section 14 but I will have it looked into, not as there being any conflict between any proper exercise of power by a court and any improper overriding of that by any administrative department but rather that almost for the safety of the individual. If somebody is incarcerated by the state pursuant to a judicial order if it is thought necessary to remove him to some other place that is what section 14 is about because it has got to be in the interests of the person, it is necessary.

HON F R PICARDO:

Here we are dealing with somebody who is remanded in custody so the decision is made by the Magistrate and I recall that I referred the Chief Minister to the fact that the Magistrate is going to have to see who is remanded in custody every seven days and they are in the custody of the Magistrate on remand who puts them traditionally in Moorish Castle, now, for what reason would Central Authority, in this case the Chief Secretary interfere with that? I can think of an example, whereby if there is a fire at the prison and everybody needs to be moved what provisions apply then? Surely we do not go to the Magistrate and ask him to put them somewhere else.

HON CHIEF MINISTER:

That is what this is for.

HON F R PICARDO:

If that is what this is for then let us say so in Hansard and place that on the record because at the moment the obvious thing to say next is who can make representations to the Chief Secretary of the Central Authority? Should lawyers start ringing the Central Authority and say my client is not enjoying it up at the Moorish Castle I want to make representations? Can the Chief Minister see what I am trying to get at?

HON CHIEF MINISTER:

I can see the mischief that the hon Member is trying to get at and I will try to answer it regardless of whether the aforementioned Chief Secretary is or is not subject to influence by his political masters. This is a provision that is a requirement of the directive this is not something that Government have chosen to put in. The directive requires that the ability to move somebody in their interest, if the hon Member asks me now for an exhaustive or some sort of binding description of the parameters of what would be the proper exercise of this power in the interests of the person to be moved out of the police station or out of the Moorish Castle I do not know where it could be. I suppose it could be into an hotel room with a policeman guarding the door outside or to hospital if he is ill. There is just any number and I just do not see in what circumstances this may be abused. I can see that the hon Member

HON F R PICARDO:

I can see that it can create conflict between the decision of the Magistrate and the decision of the Chief Secretary on the advice of his political masters and that is really the issue. What I am concerned about is that if something were to happen today to somebody at Moorish Castle then I believe it is the Director of the Prison who will make a decision as to how that individual is taken to hospital et cetera whilst here we are introducing in

relation to a specific class of prisoner a different regime unless I am wrong.

HON CHIEF MINISTER:

I think that the hon Member is wrong although it does not say this. I believe that under the laws of Gibraltar everybody that is in lawful custody is either in the custody of the Commissioner of Police if he has not been sentenced to prison or in the custody of the Superintendent of Prisons if he has been and that regardless of the actual location so, for example, when somebody is removed to a hospital he remains in the custody of the Superintendent of Prisons and the prison service even though he is not physically located in the prison. The Chief Secretary does not take the person into custody he simply makes the decision whether in the interest of the person he should be moved but he remains in the custody of the custodians which remains if he has been remanded the Superintendent of Prisons and if he has not been remanded because he has not appeared before the courts it would be the Commissioner of Police whilst he is held in police cells.

HON F R PICARDO:

The Superintendent would make that decision in the interest of the person because he felt it was necessary to move that individual so I think we are creating a new class, a particular type of prisoner.

HON CHIEF MINISTER:

Mr Speaker, the hon Member may be interested in knowing and therefore in the light of this I think that I might very well have a closer look at his points to see to what extent our language mirrors exactly and I will come back to him at Committee Stage and I have only one or two very short points to make to the hon

Member. I think that it is a semantic point “as soon as may be” is a phrase that I have heard before. It means as soon as practicably possible I am not sure that there is any deficiency in the phrase it exists, whether it is the most appropriate phrase to use in legislation or not I will invite the draftsmen to consider and I will come back to him.

The final and very important point is that I do not think that the hon Member is right in believing that the effect of section 28 (2) is that dual criminality does not apply to tax offences. Dual criminality does not apply to tax offences is not the effect of that section what the section says is that the surrender of a person to an issuing state under this Ordinance shall not be refused on the grounds that in relation to a revenue offence no tax or duty of the kind to which the offence relates is imposed in Gibraltar. So, for example, if the offence is failure to submit a tax return in respect of VAT we cannot say “there is no VAT in Gibraltar therefore failure to make a return of VAT, therefore no duality”. That is the case of the tax not existing in Gibraltar but if in Gibraltar the concept of failure to make returns is not a criminal offence then that is where this provision comes in. If there is no offence in Gibraltar of failure to make a tax return, for example, then this does not let it in but if the offence of failure to make a tax return does exist in Gibraltar but obviously in respect of the taxes which do exist in Gibraltar and somebody has other taxes and has the offence of failure to make a return of one of those other taxes, let us choose VAT as a good example because we have not got it, we cannot say “no you cannot do this because we do not have VAT in Gibraltar”. If we have the offence of failure to make a return or a fraud or of evasion of VAT and things of that sort this qualifies by partial clarification the application of that principle to taxation but I do not believe that it is true, it is not true, that it eliminates the duality of criminality in principle. For example, under our Mutual Assistance directive in order to live with the Mutual Assistance directive we decriminalised certain things which had hitherto been criminal offences so those have ceased to be criminal offences in Gibraltar so the equivalent in some other countries’ taxes even

in respect of taxes that we have not got here cannot be let in by this clause because it is not an offence in Gibraltar.

HON F R PICARDO:

That is particularly important for the Finance Centre but can I just refer the Chief Minister to the fact that he is taking me to sub-section 2 (a) not to sub-section 2 (b) which is much more specific and is not conjunctive to be read disjunctively from the sub-section which says “the rules relating to taxes, duties et cetera” but apply in the issuing State different nature from the rules that apply in Gibraltar and the definition of revenue offences when read with that creates in me perhaps concern that we could not be doing what we set up to do as the Chief Minister said in the Mutual Legal Assistance and in the Criminal Justice Ordinance where we have taken things which used to be indictable and made them summary because the duality there makes them indictable offences and if the Chief Minister can give an assurance in that respect I think that would be very useful.

HON CHIEF MINISTER:

Yes, I think if the position were as the hon Member would be concerned about I would share his concern but I think this is subject to the same comfort as (a), If one has the offence of failure to make a tax return, for example, and somebody tries to exercise these rights in respect of failure to make a return in their country in respect of even the same tax, one cannot because of (b) say , “...no, no, it is not the same tax because we have different charging sections, or the circumstances in which the tax is payable is different or the allowances are different, or the rules....” The rules relating to the taxes are different not the offence the offence comes at the top it has got to be a revenue offence first and if it is a revenue offence in both places one cannot pretend that it is not a revenue offence in ones country because of differences of the type of (a) and (b).

HON F R PICARDO:

Mr Speaker, my last point, the definition of the revenue offence is very wide in sub-section 3 and to an extent we have done what we had to do by having this debate and putting in Hansard that this is not what this legislature intends that section to mean should any arresting state come with a warrant suggesting that they are entitled to execute in Gibraltar on that basis.

HON CHIEF MINISTER:

We are both agreed on that but neither the hon Member or I nor us all collectively are the arbiters of what is the nature of the obligation imposed under the directive that is how we are going to interpret it until we are challenged in some binding and effective way by somebody.

Question put. The House voted.

For the Ayes:

The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

Abstained:

The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares

The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bill was read a second time.

HON CHIEF MINISTER:

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

The House recessed at 2.15 pm.

The House resumed at 3.35 pm,

THE DRUGS (MISUSE)(AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Drugs (Misuse) Ordinance to comply with the provisions of the Schengen Convention, 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. As hon Members will have seen this is a comparatively

short Bill compared to the ones that we have dealt with this morning and much simpler in its construction and indeed much less significant in its reach. It is also the fourth of the four Bills that form the implementation of the Schengen Convention requirements in relation to Gibraltar. The Bill will enable our legislation to meet the requirements of the Schengen Convention and it does so by introducing five amendments to the text of the existing legislation. These are as follows, section 2 (a) introduces a definition of “*doctor*” into our drugs legislation. That is a requirement of Schengen. A “*doctor*” is defined as a person who is registered under the Medical Health Ordinance. Secondly, section 2 (b) is a minor amendment in relation to scheduled substances. The substances that are listed in Schedule 4 may be used in the manufacture of controlled drugs. The amendment will enable the Government to add substances to Schedule 4 if it is necessary to give effect to our European obligations including obligations under the Schengen Convention.

Section 2 (c) is a small amendment. It purports to make quite clear that an attempt to commit an offence under the Drugs (Misuse) Ordinance will be criminal even if in fact impossible to commit the offence itself. This will enable us to co-operate with other Schengen countries in arresting those involved in drug trafficking, for example, if an attempt to import drugs into Gibraltar came to the attention of authorities in another Schengen country the authorities working together might remove the drugs from packages in that other country but allow the shipment to continue to Gibraltar to find out who was importing the drugs. In other words, no drugs will be left in the package and therefore it is theoretically impossible to commit the offence of drug smuggling. However, this device will enable those persons to be arrested and charged in Gibraltar with attempting to import drugs notwithstanding that no drugs had actually been imported nor could have been imported given that the authorities themselves had secretly intercepted the package and removed the drugs.

Section 4 (2) ensures that the powers of search and seizure in our legislation are not simply in relation to controlled drugs but also to scheduled substances which may be used for the production of drugs, precursors to controlled drugs or substances that can be used to manufacture such drugs.

Section 2 (e) enables the making of regulations to prohibit the importation or exportation of scheduled substances to or from Gibraltar. The Bill is accompanied or will in due course be accompanied by two pieces of secondary legislation. This package of measures continues the legislative framework to combat misuse of drugs in Gibraltar as well as in meeting our Schengen commitments. Secondary legislation that it is intended to make includes an order amending schedules 1 and 4 to the Ordinance and secondly new regulations to be known as the Drugs (Misuse) Regulations 2004. The order will amend the list of substances which are controlled by the Drugs (Misuse) Ordinance to ensure that our legislation complies with the United Nations Drugs Convention. Apparently at the moment there are some drugs which are misreferred to in our Schedule. Other drugs which are in the UN list and which we are obliged to control but which we are excluded and therefore are not controlled. The order will bring our Drugs (Misuse) Ordinance into line with the United Nations Drugs Conventions and then the new regulations will modernise Gibraltar's existing drugs regulation and ensure that the Schedule to the regulations coincide with the Schedules to the Drugs (Misuse) Ordinance. The role of the regulations is to allow for legitimate legal use of substances which would otherwise be prohibited by the Drugs (Misuse) Ordinance, for example, by doctors or vets or on prescription. The regulation to allow general practitioners and pharmacists to issue article 75 Schengen Certificates. These are certificates which can be issued in a Schengen country to enable a patient who has drugs lawfully in one country to travel around the whole Schengen area carrying these drugs for their own personal consumption on the basis of the cover of one of these Schengen certificates.

Although it is not part of the Bill itself I have just wanted in order to create the full picture for the hon Members to explain the two pieces of subsidiary legislation which will follow upon the passage of this Bill. Neither of the things that I have said about the order or the regulations actually arise on the face of this Bill but they are what we intend to do in regulations if this Bill is passed. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, the first point I wish to make is really a drafting point to take note of which is that the amendments at 2 (b) and 2 (e) seem to me as presently drafted not to have the effect that we would want them to have because after looking at 15 (1)(e) of the Drugs (Misuse) Ordinance as it stands at the moment there is a full-stop and we would be adding this paragraph after a full-stop not after a semi-colon ditto in relation to the inclusion after section 14(3) (b). So we need to take note of that because I see both of them now will end with a full-stop, it will be nonsensical if we do it as suggested, of more substance is the amendment proposed to section 23. The amendment to section 23 follows an amendment made in the United Kingdom in 1981 in the Criminal Attempts Act which in section (1) (2) makes almost identical provision to that now provided for in section 23. Apart from the purposes of sub-section (1) what follows is identical to the Criminal Attempts Act section 1 (2) of the United Kingdom that was done in the United Kingdom in 1981. My comment in relation to this particular section is that we are making this provision as to impossibility only in relation to drugs misuse not in relation to criminal attempts generally which as I understand it will be continued to be governed by section 7 and 8 of the Criminal Procedure Ordinance and I would just like to highlight that and ask whether we should not be considering an amendment to the principle criminal statute in Gibraltar which

would obviate the defence and the possibility in relation to all offences.

HON J J BOSSANO:

We have heard from the Government the nature of the use they intend to make of the power to make regulations but the Bill says that what we are doing is amending the Ordinance to comply with the provisions of the Schengen Convention but it does not say unlike the other ones which are the alleged Schengen provisions that we are giving effect to in this Ordinance. It is not suggested that Schengen says the Member State must make provision in its primary legislation to be able to do things in secondary legislation as far as I can tell and that seems to me the main purpose of the Ordinance. I do not know whether we are being told that the amendment to section 23 to which my hon Colleague has referred in terms of not being able to use as defence the impossibility of carrying out an act is something that Schengen requires us to do and that we are not doing but it is not clear from reading the Bill and looking at the Schengen Convention which bits of the Schengen Convention we are in effect putting into our statute book with what the Bill says.

HON CHIEF MINISTER:

I fear that is because the hon Gentleman tries to simply compare text. Very often requirements in treaties and things of that sort take a sort of nebulous form and then the actual legislation language that one uses, for example, this is a good case in point the one that the Leader of the Opposition has just asked about whether Schengen requires us to amend in terms of attempts and incitement. The answer is yes but not in a way that he might immediately recognise by comparing text. So Schengen requires us to be able to participate in what are called "*controlled deliveries*". "*Controlled deliveries*" means allowing consignments which have been intercepted by some

law enforcement agency or another but nevertheless allowing them to go on under scrutiny and supervision in an attempt to catch the people who participate in the design. That is called in jargon "*controlled deliveries*" it is just one way, I suppose it could have been achieved in many other ways, this is the way that has been chosen in order to put into our laws something which legitimises Gibraltar participating in "*controlled deliveries*". I am told that everything in this Bill is to give effect to Schengen in one form so that is the answer to his question. Just to illustrate the point that I was making before, article 73 of Schengen says, "*..the contracting parties undertake in accordance with their Constitutions and their national legal systems to adopt measures to allow controlled deliveries to be made as part of the illicit trafficking of narcotic drugs and psychotropic substances.....*," this is the national legal system that we are putting into place to comply with that.

The answer to the question by the Hon Mr Picardo as to why this is limited to drugs and should we not be doing it more widely is simply that these four pieces of legislation are really just specific pieces of legislation to deal with Schengen implementation requirements. We have not addressed our minds to the merits or demerits or indeed we have had no consultation. If we were as a matter of domestic policy choice going to change the criminal law to that extent there would be a process of consultation with the judiciary, bar council, we do not consult in these cases because there is really nothing to consult about . It is not a matter of choice we have got to have some such system no one has ever invited, I do not know if anyone has ever put this view to the Attorney General but certainly no one has ever said to the political Government that it would be helpful or constructive in law enforcement if the same provision were to be extended more widely so the Government have not addressed their mind to it so the exclusion is not any conscious act but simply the fact that the Bill is only drafted around the Schengen obligations and not any wider policy considerations.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I have the honour to move that the Committee Stage and Third Reading of the Bill be taken on another day.

ANSWERS TO QUESTIONS

The House recessed at 5.40 pm.

The House recessed at 5.55 pm.

Answers to Questions continued.

The House recessed at 7.55 pm

The House resumed at 8.10 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 13th January 2004, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.05 pm on Monday 12th January 2004.

TUESDAY 13TH JANUARY 2004

The House resumed at 10.10 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 J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon Lt-Col E M Britto OBE , ED - Minister for Health
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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 12.15 pm

The House resumed at 12.25 pm.

Answers to Questions continued.

The House recessed at 1.45 pm.

The House resumed at 5.00 pm.

Answers to Questions continued.

The House recessed at 7.10 pm.

The House resumed at 7.25 pm.

Answers to Questions continued.

The House recessed at 9.30 pm.

The House resumed at 9.40 pm.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 14th January 2004, at 3.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 10.10 pm on Tuesday 13th January 2004.

WEDNESDAY 14TH JANUARY 2004

The House resumed at 3.35 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications

The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 4.50 pm.

The House resumed at 5.00 pm.

Answers to Questions continued.

The House recessed at 5.20 pm.

The House resumed at 5.35 pm.

Answers to Questions continued.

The House recessed at 7.40 pm.

The House resumed at 7.50 pm.

Answers to Questions continued.

The House recessed at 10.00 pm.

The House resumed at 10.10 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 15th January 2004, at 9.15 am.

Question put. Agreed to.

The adjournment of the House was taken at 11.05 pm on Wednesday 14th January 2004.

THURSDAY 15TH JANUARY 2004

The House resumed at 9.15 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 J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon

The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

FRIDAY 16TH JANUARY 2004

ABSENT:

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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 11.15 am.

The House resumed at 11.20 am.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 16th January 2004, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 12.50 pm on Thursday 15th January 2004.

The House resumed at 9.40 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon

The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

IN ATTENDANCE:

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

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 Committee Stage and Third Reading of Bills.

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 Mutual Legal Assistance (Schengen Convention) Bill 2004;
- (2) The Data Protection Bill 2004;
- (3) The European Arrest Warrant Bill 2004;

- (4) The Drugs (Misuse) (Amendment) Bill 2004.

THE MUTUAL LEGAL ASSISTANCE (SCHENGEN CONVENTION) BILL 2004

Clause 1

HON CHIEF MINISTER:

Mr Chairman, if I could just rise to place on the record of Hansard how we might get through this quite lengthy process given that there are four Bills. Hon Members are about to be handed a letter setting out the amendments that I wish to move. They can follow that if they want but actually the much more helpful document for them is the second document that they will receive which is a reprint albeit word processed not on green paper of the Bill that has been published with new words typed in in red so that hon Members can see the new language at a glance and the deleted words are in black but crossed out. The amended Bill assuming all the amendments went through would read the uncrossed out black language plus the red language that would be the surviving bits of the Bill.

Mr Chairman, even though the consideration of the Long Title comes at the end of the Bill there is an issue arising in the Long Title which I think requires me just to flag it at the front so that we can have a fuller understanding of what we are doing as we are discussing the rest of the Bill even though I will only propose the amendment to the Long Title at the end when it comes up in the ordinary course of business. Hon Members are aware that in this legislation we are implementing EU obligations, that is to say obligations that are obligations because when the UK signed up to bits of the Schengen Acquis they signed up for themselves and for us albeit that our list was slightly shorter than their list but nevertheless we are on the realms of obligation and as the hon Members I am sure will agree there

are no obligations as between Gibraltar and the United Kingdom arising from this nature. These are cross-border obligations and as Gibraltar and the UK are not separate Member States whatever will be the bilateral regime and in a sense this is just an example of the views that we expressed yesterday in answer to Questions about the Government's intentions on the taxation of Savings Directive an extension of it to the United Kingdom, whatever may be the regime between Gibraltar and the UK and vice versa, whatever might be the bilateral relationship on any matter it cannot be sourced in an EU obligation. For that reason and because this legislation was only dealing with obligations the Bill as published would not have extended to the United Kingdom and we would have been left with a situation which would have been remedied in due course whereby Gibraltar could assist through mutual legal assistance every other country in Europe but not the United Kingdom which leaving aside the question of obligations and bi-lateral arrangements of a consensual type is at first sight odd that one can co-operate on terrorism and serious offences with Germany, France and Spain as a matter of obligation but that with the United Kingdom one cannot do it. Since this Bill has been taken in this House the United Kingdom has indicated that it would wish that there were arrangements between Gibraltar and the United Kingdom on mutual legal assistance on the same basis as between other Schengen States. In principle the Government have no difficulty with there being mutually legal assistance with the United Kingdom. If the decision is made that it is in our interest to have those on the same basis as the Schengen arrangements that is fine too, so long as it has been made clear and hence the language of the Long Title that in the case of the United Kingdom any such arrangements would not be in implementation of an EU obligation but rather by reference to some bilateral arrangement outside the scope of binding international obligations. In the short time that we have had since the United Kingdom invited us to take this view we have not had the opportunity to consider all the possible implications of extending this mutual legal assistance to the United Kingdom. Indeed one point that immediately arises although I hope to give him a significant degree of comfort on it when we get to that

point is the point raised by the Hon Mr Picardo at the second reading when he expressed concern that the clause that speaks of fiscal offences that that might be damaging to the Finance Centre. Given that his perfectly proper observations have been reported already in the international press (widely reported in Spain as evidence that there is grave concern for the survival of the Finance Centre in Gibraltar) which I accept is a complete distortion and abuse of the words that the hon Member uttered, it really explains why we have to do these things using the least possible dramatic language but the points have to be made and the issues have got to be discussed, I accept that. Let us say that the Schengen Provisions of the Mutual Legal Assistance did indeed contain something that were damaging to the Finance Centre, one thing is to be stuck with that with countries in respect one has an international legal obligation where one has no choice and a quite different thing is to gratuitously accept the same burden vis a vis the United Kingdom as a matter of choice when it is not a matter of international legal obligation therefore adding a fifteenth problem for our Finance Centre rather than confirming it to fourteen. So, it is because I think we need to carefully consider also in consultation with the Finance Centre whether they regard any of the provisions of this regime as being detrimental to them if they were extended to the United Kingdom voluntarily that I have not introduced into the Bill the simple device of extending the whole thing to the United Kingdom simply by defining State and Schengen States. I could have just excluded the words "not being the United Kingdom". If the Hon Members look on page 2 of the annotated Bill there is a definition of "state" and "Schengen State" the very last definition in clause 2. If we simply deleted the words "*..not being the United Kingdom...*" then this Bill would apply to the United Kingdom in full because the United Kingdom is a State Party to the Schengen Convention. The Bill as published read "*...State and Schengen State mean a State Party to the Schengen Convention not being the United Kingdom...*" So, if we wanted to include here and now the application of this Bill to the United Kingdom we could do it just by deleting the words, "*...not being the United Kingdom.....*" if on the other hand we want to take a little bit longer to decide whether there is any downside worth

avoiding in that non-compulsory extension to the United Kingdom then the device that we have chosen to do it is to introduce, I will not consider the clause in detail because it will come in its turn, but at clause 23 the hon Members will find and will get to it in the normal order of things but there is a clause giving the Minister by regulations the power to make provisions extending to the United Kingdom in whole or in part the provisions of this Ordinance either with or without modifications because there are large, large chunks of this Bill which it would be very odd if we did not have those powers of co-operation with the United Kingdom. For example, offences related to organised crime, terrorism, serious criminal offences, there is a whole range of things in which co-operation between Gibraltar and the United Kingdom if anything should be easier than with foreign countries rather than harder. So clearly Government do not have as a matter of principle the slightest reluctance to have a mutual legal assistance regime in place with the United Kingdom but given the other challenges to our Finance Centre I think that we might want to take it in slower order the consideration of how that mutual legal assistance might affect our Finance Centre in a way which is not compulsory under the Schengen Acquis at this stage. So, with that background in clause 1 of the Bill there is an amendment to delete sub-clause 2 which simply was the commencement provision which used to read , *"That this Ordinance shall come into force at such time as the Government may appoint by notice in the Gazette,"* and it is just deleting that so that the Ordinance would come into effect as soon as it received the Royal Assent.

HON J J BOSSANO:

Mr Chairman, we had of course noticed that this did not apply to the United Kingdom and we assumed that it was deliberate because it was not something that would have been done by an oversight or by mistake since it is explicit in stating that the UK is not a Schengen State in relation to Gibraltar which I suppose, strictly speaking, it is not.

We agree with the approach that making an arrangement for serving process in the United Kingdom in respect of things initiated in the Gibraltar courts and vice versa make sense but it only makes sense that we should do it in the areas that we think is good for Gibraltar and not in the ones that we do not think is good for Gibraltar but what has not been said and I am not familiar with is what is the existing situation? Is it the case that we already have something in place in respect of Gibraltar and the UK which may not exist in respect of Gibraltar and say Spain or any other Member of the European Union, are the arrangements between Gibraltar and the United Kingdom currently different? Because if there is something there then I would think that the approach would be to look at what is there and see whether we amend that to bring it more into line. If what we have already is less than what we are going to be doing in respect of not less than the ground that it covers but less in terms of the flexibility that it has or the ease with which it proceeds or whatever because I do not think that it makes sense that it should be easier to serve a writ in Spain than it should be to serve it in UK or vice versa in Gibraltar if it comes from UK than if it comes from Spain but apart from that the only other point is, I would like to know when it is that the United Kingdom indicated a desire for this to happen because we have been told that it was so late in the day that there was not enough time to do the necessary job so we would like to know when it was. I find it odd that the UK knowing that this was in the pipeline for so long to decide only in the last minute that it wants to do it in respect of Gibraltar. We also need to know whether the UK has already done something about applying this in respect of Gibraltar in its own law or has still to do it and we would like to know if there is a particular reason for doing it by regulation rather than bringing it to the House. The only reason I can think of is that they want to do it quickly but given the fact that it is not a requirement and not an obligation and the UK has apparently very late in the day decided it wants it we would like to have an opportunity to have an input in this if it is possible.

HON CHIEF MINISTER:

If I could take those points in turn. First of all without wishing to imply that the Leader of the Opposition might have been using telegraphic language for the purposes of articulating the point, when he speaks about serving process the Bill is about much more than serving process. Serving process is the least of it this is about collecting evidence, it is about transferring information, obtaining it. This Bill is about investigating and obtaining evidence and handing over evidence it is not just a Bill that deals with serving process. It includes that, for example, the view that these are not obligations as between the UK and Gibraltar is a view shared by the United Kingdom it is the position that they have adopted in relation to investment services passporting where because it is not an obligation as between Gibraltar and the UK our financial services companies can passport into 14 Member States but not into the United Kingdom on the same terms and the United Kingdom take that position precisely by benefiting from the fact that cross frontier European Union legal instruments do not generate legal obligations as between Gibraltar and the United Kingdom.

The Leader of the Opposition asked what was the existing situation and was there something special in arrangements already in places between Gibraltar and the UK, the answer is no, what there is in this area is simply the Evidence Ordinance which is the historical regime that existed in Gibraltar. The "*commission rogatoire*" the letters of request regime which is what all these countries used to have before they introduced the concept of mutual legal assistance have replaced the old letters of request "*commission rogatoire*" principles and mutual legal assistance is available at a much earlier stage than the old letters of request for which proceedings needed to be afoot. That is the difference in the principle that is why it is called Mutual Legal Assistance as opposed to Judicial Assistance because this particular form of assistance arises much sooner at the investigative stages and not at the judicial stages which used to be the case with the old "*commission rogatoire*" system.

When did the UK make the point to ask that it harboured hopes and expectations? The point first arose several weeks ago as a drafting point. When the legislation was still at quite an advanced stage it was sent to the Home Office, at draftsman to draftsman level said, "*We would like you to amend the definition of Schengen State...*" and that is when the issue became and until yesterday the matter has not been raised other than at draftsman level with us. That gives the hon Member an order and a time, he also asks whether there was reciprocity whether the UK had extended this to us. The UK has an Act of Parliament called the Crime International Co-operation Act of 2003 which deals with all sorts of things including Mutual Legal Assistance. That Act says that the United Kingdom may co-operate with any country. "*Country*" is then defined as a country or territory. One of the points that I have raised with the United Kingdom in answer to their request to me yesterday was "*Is that provision in your law permissive or mandatory?*" Because a permissive power in their legislation and a compulsion in mine is not reciprocity there would be reciprocity if we are both compelled or if we are both permitted and I am awaiting an answer to that point but they have their legislation in place is the primary answer and on its face it allows co-operation with Gibraltar. The question to be decided before one could fully answer the obvious purpose of the hon Member's question is reciprocity. The point that needs to be established is whether there is reciprocity on the same basis namely on the basis of compulsion. As to the Leader of the Opposition's last point why by regulations and not bringing it to the House, I am perfectly happy to cast this clause in a way that requires the regulations to be Tabled in this House with an opportunity for debate albeit in a negative reporting process but the reason for it is much as he has deduced that if we are going to have arrangements for the UK I think that the UK wants them to be as contemporaneous as possible with the commencement of the Bill because otherwise for the interim period we are obliged to co-operate with Spain, France and Germany and cannot with the UK. We would find it uncomfortable it had always been our view that there would be some alternative law put into place to

provide for Mutual Legal Assistance with the UK it is just that we had never thought that a Bill that related to Schengen obligations was the place for it because it was not an obligation but a bilateral arrangement.

HON J J BOSSANO:

Would it be possible in the light of what the Chief Minister has said to let us have the draft regulation when it is ready to be published just before it is published so we can have an opportunity of commenting on it rather than waiting until the House meets?

HON CHIEF MINISTER:

Yes, I do not mind doing that on an informal basis alternatively but I accept that since we do not have a tradition in this House of the UK practice of positive approval of regulation, in the UK they have the system where one lays regulations on the House and then there is a default mechanism. If somebody takes issue then it needs to go to debate on a vote and if nobody takes issue it just goes through but in any case it would be after the event. I do not mind. As a matter of principle we should strive for the UK regime to be as close as possible to the regime whether it evolves and we should just consider in areas that affect the Finance Centre if there should be a curtailment of that regime. That would be my approach to the issue.

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

Clause 2

HON CHIEF MINISTER:

A point related to the issues that we have been discussing there is an addition of the definition of "*Minister*" which is defined as "*the Chief Minister*" who is the Minister who will have the power to make the regulation we have been discussing. Also in clause 2 there is the point that we discussed in second reading in the definition of "*offence*" where the Bill already says "*offence does not include a fiscal offence*" to add the words "*other than an offence relating to excise duty, value added tax or customs duties*" because actually the Schengen articles require us to give to the Schengen Member States mutual legal assistance on the terms of this Bill in relation to excise duty value added tax or customs duty but here is, for example, an issue that we might wish to consider in relation to the matters that we have been discussing earlier about how it might affect our Finance Centre in relation to the UK.

HON F R PICARDO:

Mr Chairman, would the Chief Minister give an indication whether we might benefit from a definition of a fiscal offence or not, what is the view in relation to that?

HON CHIEF MINISTER:

Our view has been that the words "*..a fiscal offence*" to which the Bill says it does not apply is the widest possible way of excluding what he and I might ever conceivably think of as a fiscal offence. The moment one starts defining it one runs the grave risk of leaving something out, a situation that one cannot at this moment in time conceive.

HON J J BOSSANO:

Is there a reason why the reference to the offence under the Traffic Ordinance was excluded previously and is included now?

HON CHIEF MINISTER:

No, it is the other way around it was included before and excluded now. Is it little (b) that has been crossed out?

HON J J BOSSANO:

Yes.

HON CHIEF MINISTER:

That has been excluded now.

HON J J BOSSANO:

The Chief Minister said before *"does not include an offence".....*

HON CHIEF MINISTER:

Why it has been excluded from the Bill? I thought the Leader of the Opposition meant why it had been excluded from the clause, sorry. Why it has been deleted from the exemptions from the definition of offence? That reflects the view put in by the United Kingdom that co-operation in relation to drugs matters had to be on the same terms as the rest of the offences for the purposes of the legislation and that there could not be a separate regime for co-operation in matters of drug trafficking. The effect of

having left the reference in would have meant that offences to which section 37 (6) of the Drug Trafficking Offences Ordinance 1995 applies would be excluded from the regime created by the Mutual Legal Assistance Ordinance. The UK said that we were not entitled to do that and I do not know why it was put in in the first place. Our local draftsmen took the view that because there was already a very special regime for co-operation in matters of drugs in the Drug Trafficking Offences Ordinance that that would be sufficient and that it was not necessary therefore to cover it in this. The UK advised that there was already a very enhanced co-operation relating to drugs trafficking under this it still did not entitle us this was in addition, we could not carve out, exclude drugs related offences from the operation of this legislation because the Schengen Agreement did not permit it.

HON J J BOSSANO:

The Schengen Agreement does not permit any offence other than the clause that says that it is an exception which then puts back the fiscal one so if it does not meet that criteria by definition it covers everything.

HON CHIEF MINISTER:

Absolutely so.

HON J J BOSSANO:

Was the idea originally that the provisions that we had were sufficient, is there any conflict now between putting it in here and leaving it were it was or will it require an amendment of the other?

HON CHIEF MINISTER:

I myself have not made a comparison of the effects of this legislation and the Drug Trafficking Offences Ordinance but I am advised that this one goes further than the other one so people might choose to use the other route but I suppose once this legislation is in place this is the route that other states will use. The other difference is that the Drug Trafficking Offences Ordinance is not limited to Schengen States and its application whereas this one is.

HON F R PICARDO:

Then Part III which is Mutual Legal Assistance of the Drug Trafficking Offences Ordinance which still goes through the route of the Attorney General will they probably now fall into disuse in relation to Schengen States and be relevant in relation to States which are outside the Schengen Area.

HON CHIEF MINISTER:

He is the Central Authority for this legislation as well but I agree that the legislation itself is a Statutory framework and is very likely to fall into disuse because this is much easier to use for a requesting state.

HON J J BOSSANO:

In clause 2 we have as it has just been mentioned the definition of who is the Central Authority but what we are implementing makes no reference to there having to be a Central Authority at all. It seems peculiar that we should say for the purpose of implementing clauses so and so to so and so in Schengen the Attorney General should be the Central Authority and then one looks at clauses so and so and there is no Central Authority anywhere and no requirement for one anywhere.

HON CHIEF MINISTER:

This is the discussion that we had on the debate on the second reading. It is true that it is not mandatory under the international legal instruments which are the source of these obligations. It is not compulsory that there should be a Central Authority appointed but as I said to the Leader of the Opposition at the second reading and for the reasons that I then gave him we have decided that in our case it is desirable that there should be so I said to the Hon Mr Picardo in the anteroom in relation to another piece of legislation or perhaps even this one why there might be a Central Authority and why we think that it is a good idea that there should be a Central Authority here and I am happy to whisper it to him privately but in any event the Schengen Convention that it alludes to, permits, therefore one is allowed to do it. So whilst the hon Member is right in saying it is not a compulsory requirement we are able to do it and we believe for reasons that I am happy to explain to him later that it is a good idea that there should be one.

HON J J BOSSANO:

I think I understand the explanation in respect of Central Authority who is the Governor and then it is delegated to the Chief Secretary but this is something different that is in the other Bill and in the other Bill the Schengen provision says one may have a Central Authority one does not have to have one but one may but in these particular clauses it does not even say "*may*". It says here that the transmission goes to the legal authority in the other Member State. We say here the Central Authority is the Attorney General and the Attorney General is a Judicial Authority and that seems to be the entire purpose of having Central Authority in this Bill. I suppose we could equally not call him the Central Authority and say in clause 4 the Attorney General is a Judicial authority for the purposes connected with article 53 without having him as a Central Authority because there is nothing anywhere that talks about the Central Authority in the provisions in Schengen. In article 48 to 53 of the

Convention which apparently is what we are doing, we are making provisions to comply with those articles, there is nothing in those articles that says that things have got to be sent to or received from a Central Authority or that the Member State may have a Central Authority in addition to a Competent Authority it is in the article we are implementing in respect of the Arrest Warrant in the provisions on “*surrender*” the Member State is told in Schengen that it may if the complexity of its legal system so requires have a Central Authority in addition to a Competent Authority. In articles 48 to 53 there is no reference at all to a Central Authority not only is it not compulsory, prohibited or permitted it is simply non-existent. So I do not understand why we have it, nobody else seems to have one in respect of these articles and we are doing something in order to comply with these particular articles in Schengen. What we are doing is saying in clause 2 Central Authority means Attorney General and then in clause 4 Central Authority is a Judicial Authority for the purposes connected with article 53 and the purposes connected with article 53 is the one that says that one contacts the Legal Authority not the Judicial Authority which as I understand it is what the Attorney General is already without calling him names, why do we not just let him be the Legal Authority and get on with the job?

HON CHIEF MINISTER:

The Leader of the Opposition will recall during the second reading that we had different texts of the Bill. I am assured by the draftsmen the authoritative texts says, “*Judicial Authority - requests for assistance may be made directly between Judicial Authorities and returned by the same channel.*” If the text that the Leader of the Opposition has which says, “*Legal Authority*” were the correct one which I am told it is not, but if it were, then the Leader of the Opposition would be right, then the Bill in clause 4 should refer to “*Legal Authority*” and not to “*Judicial Authority*”. That is that point. The Leader of the Opposition I think fails to make sufficient provision in his analysis for the fact that these international legal instruments are not specific as to

administration of them, they provide the substance, some of them provide specific provision in relation to that administration but not all, leaving it to Member States to decide how the matter should be administered. These things need to be administered in the UK, for example, he is absolutely right there is no Central Authority because the UK which used to have a Central Authority approach to international assistance has now decentralised so that in the UK it is prosecutor to prosecutor level there is no longer a Central Authority in the Home Office as there used to be to which all these things were channelled from any country in the world and then the Home Office would decide who then distributed internally. They have abandoned that principle in favour of allowing whatever prosecutor is making the request in the requesting state to contact the relevant Prosecution Authorities in the United Kingdom. In Gibraltar we only have one Prosecution Authority perhaps the Leader of the Opposition is just challenging the use of the word Central perhaps we should have just left it at Authority rather than Central Authority but in effect we are administering it in the same way because we cannot decentralise. The person who is administering this in Gibraltar is the same Authority as administers in the UK namely the Prosecuting Authorities. In the UK they have been able to decentralise because there are many Prosecuting Authorities and in Gibraltar we have only one Prosecuting Authority so we cannot decentralise beyond him. If the hon Member thinks it contributes to addressing his point we can delete the adjective Central and just refer to him as an Authority as the Authority for the purpose, I would have no difficulty with that proposal but there has to be somebody who is authorised to receive these requests from abroad.

HON J J BOSSANO:

Assuming that the text that we have obtained is incorrect or that the Chief Minister's is more up to date and was legal originally and was changed subsequently because he is assured that that is the latest text, we do not understand why it was legal before and judicial and the Chief Minister knows better than me

probably the significance between a Legal Authority and a Judicial Authority.

HON CHIEF MINISTER:

I am not saying that it might ever have been legal and that it has changed I think it is much more likely that whichever one of these is wrong has been wrong from day one not that there has been a change in the text, one of these texts is wrong, given that ours is sourced from official sources we are assured that ours is right but I have only got other people's assurances for that but in either case whichever is right and wrong it is not that there has been a change at some stage in the future from one word to the other it is that one of these documents has always been wrong.

HON J J BOSSANO:

The point that I am making in relation to Central Authorities is that we have got Central Authority in capital letters if one looks at that and looks at the other Bill we have today in the House it seems that we are talking about the same institution and then saying different people are going to be that institution for different purposes even though we are all doing it in respect of implementing Schengen. In respect of the other one it is clear from the text of Schengen that it is a matter of choice whether one wants to have a Central Authority or not. In respect of this one it is in my judgement perhaps in the judgement of a layman and a legislator rather than a lawyer, a lawyer might come to a different conclusion but I read this and I read the text and what I read there is that there is no provision for a Central Authority to be created in a Member State for this purpose and that as I read what we are supposed to be giving effect to in clause 4 in order to comply with our obligations under article 53 rather than complying with it we are in my view from reading the text actually going against what is required of us because if it says, *"...request for assistance may be made directly between*

Judicial Authority and return through the same channels..." as I see it the purpose of that exercise and the purpose of that provision given that this is supposed to be to facilitate things is that one court which presumably is the Judicial Authority in one Member State can contact directly another court in another Member State. Now, if the source says that they may do it and we say we are going to consider the Judicial Authority to be the Attorney General we are defeating the purpose for which article 53 (1) is there which is to make it possible for things to be done on the basis of court to court instead of National Central Institution to National Central Institution because the whole purpose of this is to make the system work quicker and with less bureaucracy. I would think that if the original provision said, *"....Member States may provide for requests to be made between Legal Authorities and returned through the same channels...."* then I would read that to mean that Member States may make that possible or may not if they do not want to but if the original says requests may be made directly to Legal Authorities it seems to me we are frustrating the intention by saying the Attorney General on this occasion is the Judicial Authority which means that if they intended for things to be going from court to court it is not going to happen. It may be that I am not looking at this as a legal expert and it may not be as legal experts read it but that is how I read it.

HON CHIEF MINISTER:

Accepting that caveat that the Leader of the Opposition has just made I have to say that the Government believe that the hon Member is reading it entirely incorrectly. The Leader of the Opposition has got to bear in mind that he appears to have persuaded himself and demonstrated by the aside that he had with the Speaker by suggesting that the Speaker knows the difference between legal and judicial. The hon Member appears to have persuaded himself of the view that Judicial Authorities means only judges and courts. There is absolutely no basis whatsoever for that view. In the United Kingdom, and we are so informed by the Home Office itself, the phrase Judicial Authority

includes the courts and Prosecuting Authorities apart from Judicial Authorities and he has got to understand that throughout the Schengen States there are many different prosecution systems. In Spain, for example, the prosecutors are judges. The investigating magistrate is part of the court system not as the Anglo-Saxon system where the courts only become involved until a charge is proffered and there is a trial, there are most of the countries in the Schengen States have a very different system with much less sharp distinctions than we have between Prosecuting Authorities, Investigating Authorities and Judges. So this sort of clinical distinction that he is trying to draw for the purposes of this continental document, remember that the Anglo-Saxon subscriber to this document came to it very recently this was a Schengen Acquis originally done by Luxembourg, Holland, and Belgium probably. These distinctions that he is drawing simply do not apply, for example, in the UK as I have just told the Leader of the Opposition this is administered by the Prosecuting Authority not by judges. I would urge him to recall that this regime comes into play long before our judges would normally be involved in something. This is done at the investigative phases the Mutual Legal Assistance Regime is most frequently invoked in the investigative phases so, these things that I am saying are not just my judgement which I do not suppose the hon Member would be immediately persuaded by, it is also the judgement of the experts. He is not immediately persuaded because we are political opponents but I am a lawyer but in any case this legislation has been reviewed by the experts that deal with the implementation of this same area of law in the United Kingdom and they have agreed and they have approved and they have passed it on this basis. It raises no issues on their mind, they have confirmed that this is perfect and that in effect this is just spelling out what is the position in the UK where the Prosecuting Authority does this function. The only narrow almost semantic point that I think that there is something to, we always use the phrase Central Authority because it is the language that they use in other States and we try to replicate the same sort of thing but one could argue if one wants to that if there is only one why call it Central why not just call it Authority. I am happy and I think it

would be completely unnecessary but if one wanted to remove the adjective “*Central*” so that it would just be the “*Authority*” I would not have any difficulty with that but it would be a semantic change it would make no difference whatsoever to the meaning and purport of the Bill. So I have to say to the Leader of the Opposition that I believe that he is misreading the implication of the source document and that the Government believe that he is mistaken in his analysis and believe that the provision is entirely correct in effect the same as the United Kingdom.

HON F R PICARDO:

Mr Chairman, when we had the debate on the second reading and we came across apparently different texts of article 53 in particular which is the one that makes the reference to Judicial and Legal Authorities the Chief Minister said that he would let us have the text that he was working from to ensure that there were no other differences that we might have been misled by. We have not had sight of that document and therefore unfortunately we are still working from the text that we originally had which uses the word “*legal*” and I am bound to say that perhaps there is a measure of agreement between the Chief Minister and myself that there maybe something lost here in the translation at the European Community level of the definition of a Judicial and Legal Authority because of the different legal systems some of which involve Judicial Authorities at investigative levels. I think therefore what the United Kingdom has done in giving the obligations in respect of Mutual Legal Assistance in this respect to the Prosecuting Authority is precisely to appreciate that difference and to take it outside the “*Judicial*” and put it firmly in the “*Legal*” and guided in particular by the Gibraltar Constitution Order which is section 56 provides for what will be the judicature and at section 77 provides for the rights and powers of the Attorney General all of which are legal powers in relation to criminal proceedings. Therefore I am very comfortable with the Attorney General having the powers and rights contained in this section he should be the party who receives this type of act because he is going to be the one taking the proceedings et

cetera for evidence et cetera but what I am not comfortable with and I think that this is more than just a semantic argument is that anywhere in our laws the Attorney General should be referred to even in error as a Judicial Authority and I would imagine that the Attorney General would be as uncomfortable as I am with that. Why? I think that as the Leader of the Opposition has already said the Speaker would be more able than most of us to appreciate why it should be that an Attorney General should never be referred to even in error as a Judicial Authority. There is some authority for the suggestion that an Attorney General should be apart from anything else a fountain of justice but I do not think that that in any way should make him be seen as a Judicial Authority so, really the problem that I have is that the inter-play between the definition section and section 4 at the moment is not satisfactory and it may be that we resolve it by saying something as simple in section 4 as the following, "...the Central Authority is the Authority for the purposes connected with article 53 of the Schengen Agreement" rather than having the word "Judicial" when cross-referring to the Attorney General. That is what I have to say in relation to that definition in particular but still in clause 2 if I could take the Members to the definition of "offence" which has been amended I have got this very helpfully marked up copy which is easier to follow than my own, if we are going to amend the definition of "offence" to take out the sub-paragraphs then that should flow as one and we should also get rid of the dash after the word include. It is also noted that at the end of each definition we have different grammatical punctuation. I am a believer that we should have semi-colons we have a semi-colon after the first one which is Central Authority, we have a semi-colon after the definition of Minister, There are commas after all the others and I understand that that is a question of drafting style but I think that the drafting style should at least be uniform within the Bill even if different Bills can have different drafting styles within the Bills there should be uniformity.

HON CHIEF MINISTER:

I am grateful to the hon Member for his intervention on this question of the punctuation marks it is actually standard legislative practice that there is a pre-publication of legislation proof reading in respect of punctuation marks which are always permitted even though they have not actually been debated in the House. The correction of punctuation grammatical errors even after we have passed the Bill has always been allowed and there is now a practice perhaps one that should never have arisen whereby perhaps people are more slap dash than they should be at publication phase because they know that if the Bill gets through they then have the opportunity to do it. The hon Member is absolutely right. Everything that he has said is right there should be at least consistency I am not saying that there has to be a semi-colon, I agree my preference is for semi-colons rather than commas and indeed this one has some commas and some semi-colons so he is entirely right.

The Government do not agree with the jurisprudence that Opposition Members are trying to right as to who is properly to be regarded as included in the phrase "Judicial Authority". If one wanted to become even more semantic I suppose that we could say that there is a difference between a "Judiciary" and "Judicial Authorities". "Judiciary" meaning judges but "Judicial Authorities" being a much wider concept. Government do not accept and the United Kingdom does not accept, the Schengen States do not accept the jurisprudence described by the hon Member. "Judicial Authorities" includes Prosecuting Authorities. That proposition is not disputed by anybody in any of the Judicial Authorities in Schengen and certainly not in the UK where this has been approved. So I would be reluctant to introduce an amendment which is the extent of which and the read across of which I could not on my feet assess to address a point which the Government believe does not have the degree of merit that the hon Members believe it has and which by agreeing to the amendment others may think that the Government are and for precedent purposes it may be thought that by agreeing to that particular amendment that the

Government were somehow endorsing to any extent the arguments put forward by the hon Member with which we differ. So we shall have to agree to disagree on that particular clause and leave it at that.

HON F R PICARDO:

Can I just take up his offer?

HON CHIEF MINISTER:

Yes of course.

MR CHAIRMAN:

The way to disagree can be done in two ways either by putting an amendment saying that that should be deleted and then voted on or voted on as it is.

HON J J BOSSANO:

We will just abstain.

HON CHIEF MINISTER:

Perhaps Opposition Members might wish to abstain just on that, I was just inviting them to express their disagreement of the definition of "*Central Authority*" as opposed to the whole of clause 2, Opposition Members can then object to clause 4 as well.

HON J J BOSSANO:

We are supporting clause 2.

HON CHIEF MINISTER:

So Opposition Members register their objection on this point in clause 4 not in clause 2.

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

Clause 3

HON CHIEF MINISTER:

Mr Chairman, in clause 3 there is a small amendment in which I do not see recorded in the letter where they have added the word "*criminal*" to the word proceedings and then there is a deletion of the words "*.....the decision may give rise to proceedings before a criminal court*" which are then rendered redundant by the use of the adjective criminal in front of the word "*proceedings*".

HON J J BOSSANO:

In the second reading I drew attention to the fact that in the time that we have looked at this and we have looked at it this morning it appeared to us that there were things here that were not being made in order to comply with article 48 to 53. That has not been addressed in the contribution of the Chief Minister. For example, in this case I could not find 3 (d) "*Clemency proceedings*". In 49 it says, "*Mutual Assistance shall also be afforded*", unless it is that we have got a text which is different from theirs. It will help if maybe the Chief Minister would supply us with the text that they are working from before we run aground into another problem as we did with legal and judicial.

HON CHIEF MINISTER:

I fear that that is the case. I am even reluctant to be sort of having a battle of the liturgy of documents because I just do not know from what document they are reading from. I can tell them that our document is an officially sourced document. I do not know what the source of their document is.

HON J J BOSSANO:

This is an example of why it is preferable if we get the document that is being used as a source document by the Legislation Unit because although these things are publicly available on the internet that is the source of this particular document. This has been downloaded from the internet, it is called Schengen Agreement Mutual Assistance In Criminal Matters, it has articles 48, 49, 50, 51, 52 and 53 so it seems to be all the things that we are being told in this Bill we are complying with. It is from the European Union Website and it is what is available to us. I think it is better if when the Bill is circulated the Legislation Unit can provide to the House what they are saying they are implementing and then we can look at that but until that happens I am afraid it is the only way we have of checking these things and frankly we think that part of our job is not simply to take for granted what the Bill says is being done in the explanatory memorandum or in the introduction. The fact that it says 53 is being implemented does not mean that we simply say, *"Well because they say so it must be so and we do not look."* We think that part of the job that we have to do in the House is in scrutinising the legislation is to look at 53 and see whether we agree that what we are doing is implementing 53 or 49 or 48 or whatever and that is what we have done.

HON CHIEF MINISTER:

Our document is sourced in the Home Office, it is an official text. I am assured that the European Parliament's Europa server

website shows our version of article 49 (3). Our version of article 49 (3) refers to clemency proceedings which from what the Leader of the Opposition is saying his does not. If he would take my word for the fact that I am reading from article 49 which starts, *"Mutual Assistance shall also be granted in (a) Proceedings brought by the Administrative Authorities et cetera, (b) in damage proceedings for wrongful prosecution or conviction (c) in clemency proceedings"*

HON J J BOSSANO:

We have got a Bill before the House that says, "We are making provision for compliance with article 48 to 53 of the Convention," before I cast my vote I would like to satisfy myself that that is what we are doing. Since the House does not have officially provided to it copies of articles 48 to 53 from the Home Office or whatever, then the only thing Opposition Members can do is go to the Internet and do a search and go to the Europa site and what we find there is article 49, Mutual Assistance shall also be afforded in (a) Proceedings brought by Administrative Authorities in respect of offences which are punishable in one of the two contracting parties or in both contracting parties by virtue of being infringements of the rules of law where the decision may give rise to proceedings before a criminal court. For all I know (a) is different from what the Chief Minister has got because I do not know what he has got. At one stage I think he said he would let us have a copy of this in the second reading but if somebody can make a copy of it and we can sit and look at it then we will both know whether we are looking at the same piece of paper.

HON CHIEF MINISTER:

The Leader of the Opposition says with a degree of almost suggesting that this is unusual that Opposition Members have not been provided with the source documents. This House has been transposing into the Legislation of Gibraltar EU directives

since 1973. It has never been the practice on any single of those occasions for Opposition Members to be provided by the Government with the source document for Government legislation. So, one thing is for the Leader of the Opposition to ask the Government whether Government would now start the practice and another thing is for him to make statements which suggest that somehow the Government have been deficient in comparison with past practice. I am perfectly happy to give favourable consideration to the first proposition but if the hon Member articulates it in terms of what do the Government expect if they do not provide us with the source document the answer is that no Government has ever provided any Opposition Members with any source document, except I suppose when they have specifically requested it. The hon Members requested it the day before yesterday and I agreed to send them a copy and it is true that that has been overlooked but we are not talking about this example the point that he is making is of a more general application. There could be other legislations, directives, texts of directives or things that might be different.

HON J J BOSSANO:

The problem with the Chief Minister is that anything that we say here gets under his skin because he thinks that it is a criticism of him and that is an unbearable thought. The reason why it has not happened before is because since 1973, and I have been here since 1972, on both sides of the House this is the first time that there have been two versions.

HON CHIEF MINISTER:

Well, we do not know that.

HON J J BOSSANO:

Yes, because on all the other previous occasions we have got the copies independently or is it that the Chief Minister has

forgotten that in every piece of legislation we have come back having looked at what we are implementing. This is not that we have decided for the first time ever that we are going to check the text of what we are implementing against the original. We have always done it all the time and never before as far as I am concerned since 1973 because I have been here since 1972 have I ever stood up in the House to be told, *"well, the reason why what you are saying is not correct is because the version that you have got independently of the Government"* I look obviously at the so-called official texts when we were in Government and I looked at the texts that were available not in the Internet between 1973 and the 1980's but in the Journal because there was no Internet and when I came to this House I did the job that I am doing now. When I was in government I did it on the basis that somebody prepared something for me and told me whether it applied or it did not and as an Opposition Member I do it for myself and I am doing the same thing. So, I am not saying to the Government *"how awful you are that it has always been provided and on this occasion you have not"*. What I am saying to the Government is, on the first occasion that we are being told in the House that the concerns that we are expressing is because the document we have obtained independently of them reads differently that there is only one cure for that and that is that we should both get the same document. Either the Chief Minister chucks away the one from the Home Office and I give him mine or I chuck away mine and he gives me the one from the Home Office I do not see any other solution to this problem.

HON F R PICARDO:

Could we have a photocopy prepared of articles 48 to 53?

HON CHIEF MINISTER:

Yes indeed it will be photocopied and handed over to Opposition Members. I should have done that yesterday but I did not but

that is quite separate to the general debate about whether generally sourced documents should or could be made available. The Leader of the Opposition has still not identified in a way that I have heard what is the document that he is reading from, from where they have sourced it. What is the website?

HON F R PICARDO:

It is from the Europa EU Int Website I can give the draftsmen the details so that it can be checked and it may be that there has been a subsequent up-date or something like that. In relation to this section in particular and not arising from those points after 3 (1) (e) whether there is a comma or whether there is a semi-colon there should be either an “and” or an “or” I believe it should be an “or” and then there is a very substantial difference between the Bill that was sent out to Members and published in the Gazette and what is being produced today by the Chief Minister marked up. There is a new sub-section 2 which is not in the Bill. Can I ask the Chief Minister to look at that. It may be that it is a printer’s devil and it disappeared from the green copies but the published Bill does not contain section 3 (2). In fact section 3 in the published copy does not have a sub-section (1) it is just section 3 and then we now have an introduction of a section 3 (1) which is identical to the section 3 published and section 3 (2). I must say I welcome the section 3 (2) that I see there, I have not had much time to consider it but I welcome it. I do not know whether we should have a definition of what a political offence is because I would not want to find myself a subject of a European Arrest Warrant for anything that I say in this House.

HON CHIEF MINISTER:

Mr Chairman we are just checking whether that is language that should have been underlined because it is new or whether it should have been underlined in any event even if it is not new because it might have been transferred from a previous place in

the Bill. I accept that in either case it should have been underlined at least to signify the fact that it had changed place if that were to be the explanation but to whether it is brand new language or simply language that has moved

HON S E LINARES:

If we go to section 12 (5) it has been transferred.

HON CHIEF MINISTER:

Exactly, it has been shifted. In any event I accept that there should be some indication there that the language has moved place but it is not new language. The language has been moved from section 12 (5) and I am grateful to both hon Members for pointing it out.

HON F R PICARDO:

Can the Chief Minister address the other point that I made which is that at the end of section 3 now 1 (e) there should be an indication of whether all those sub-sections are to be read conjunctively or disjunctively namely whether it should be an “or” or an “and” there I believe it should be an “or”.

HON CHIEF MINISTER:

I am advised by the draftsman that it is entirely a matter of drafting style. One could have an “or” at the end of it but it is not necessary, it is a list. They are all alternatives, I am assured if we wanted to have an “or” we could but that not putting in an “or” would not alter its proper interpretation.

HON F R PICARDO:

I am not as confident as the Chief Minister in that respect and I would like to see something in that list which shows that these are to be read disjunctively and not conjunctively. Usually in legislation and I speak from the point of view not of the draftsman but from my previous interpretation of legislation, if there is in legislation a list then either in the preamble to the list there will be a reference to any of the following and there is none here, or there would be an “or” or an “and” at the end of the penultimate provision in the list and I think it would not really be prudent to allow Bills to go forward without that. In order to make sure of that position I have checked through other parts of Gibraltar legislation and in every, every piece of legislation except for the definition section every Ordinance I have checked and I have only checked a few randomly provide in the penultimate provision of a list and an “and” or an “or” or provide in the preambular paragraph any of the following.

HON CHIEF MINISTER:

That may be true when the list relates to circumstances that need to be present and when the list is of circumstances that need to be present then one needs to know whether it is “and” or “or” because one needs to know whether any one of the circumstances need to be present or all of the circumstances need to be present. In that sort of list I think the hon Member’s point would be entirely correct. This list reads as follows, “*Unless otherwise stated, this Ordinance shall apply in relation to:-*

- (a) *Criminal proceedings and investigations, in respect of any criminal proceedings excluding proceedings excluding proceedings under military law*
- (b) *Criminal proceedings brought by the administrative authorities in a Schengen State or territory, including Gibraltar, in respect of offences which are punishable in Gibraltar,*

- (c) *proceedings for compensation in respect of unjustified prosecution or conviction,*
- (d) *clemency proceedings,*
- (e) *communications of legal statements relating et cetera, et cetera,*
- (f) *measures relating to the suspension of delivery.”*

The suggestion that that is not obviously a list of cases to which this Ordinance applies and that unless the word “or” there might be some interpretation of it possible that suggests that unless a case falls into all five or six categories the Bill does not apply to it is not a point well made, I think it is a point frankly with no merit whatsoever because there are two different types of lists. If accept that the point that the hon Member is making is necessary drafting technique in certain types of list but it is not thereby necessary in every type of list and this is a list of the type in which it is evidently on its face not necessary. Actually I would have preferred if we had to go into the grammar of it all my preference actually would have been to see semi-colons rather than commas at the end of these lists, I am happy to agree that proposal with him rather than “or”. It may not actually be “or” it could apply to more than one, a case might arise under more than one of these categories, so I think if he likes in the interest of consensus we agree to put semi-colons at the end of each of the lists and settle half-way, how about that?

HON F R PICARDO:

I am quite happy, I accept Mr Chairman but for the sake of clarification because in what the Chief Minister has read out at 3 (1) (b) at the very end he finishes by reading, “*..offences which are punishable in Gibraltar*” and the text that I have got says, “*punishable either in Gibraltar or that state,*” after the amendment was the Chief Minister just short-hand reading or has he got a different text to us?

HON CHIEF MINISTER:

"...or that state".

HON F R PICARDO:

Right, the Chief Minister has got that.

HON CHIEF MINISTER:

"..or that state.." the rest of the language has been deleted.

HON F R PICARDO:

I see the Chief Minister was just paraphrasing

HON CHIEF MINISTER:

Yes, I am sorry.

HON CHIEF MINISTER:

I think that the hon Members have now got photocopies.

MR CHAIRMAN:

Can I take it that clause 3 stands part of the Bill?

HON J J BOSSANO:

Mr Chairman, we are looking at clause 3 which is the scope and the scope seems to be complying with article 49. We have got

article 49 here and we are now looking to see whether this 49 says the same thing.

Mr Chairman, 49 (a) is being translated in 3 (b) I take it and here it says, *"..proceedings brought by administrative authorities in a Schengen State or territory.."* is there a particular reason why we have *"territory"* there? The original versions that we have been provided by the Government says, *"In proceedings brought by the administrative authorities for offences which are punishable in one of the two contracting parties or in both contracting parties by virtue of being an infringement of the law and where the decision may give rise to proceedings before a criminal court."* The version we had read virtually the same, *"In proceedings brought by the administrative authorities in respect of offences which are punishable in one of the two or in both by virtue of being an infringement of the rules of law where the decision may give rise to proceedings before a criminal court."* In this particular instance it seems to be almost the same but we have got in ours, *"In a Schengen State or territory,"* that would suggest since it is an offence in a contracting party it suggests that apart from the States there are the territories which are contracting parties.

HON CHIEF MINISTER:

No, I do not think that the Leader of the Opposition is right and if he is just concerned that the language is not the same then we are going to have this problem with every line of the Bill. The language does not have to be the same as the source document. If the Leader of the Opposition is concerned that Government might be going further than the requirements, that we may be doing more than is required of us, that would be a substantive point. The answer is no because this is a definition of proceedings to which this Ordinance shall apply, the scope clause, therefore it applies both to incoming and outgoing requests. It does not just apply to requests received by Gibraltar it also applies to requests made by Gibraltar, outgoing requests and therefore criminal proceedings brought by the

administrative authorities in a Schengen State or territory including Gibraltar. If we said a Schengen State including Gibraltar we would be asserting that Gibraltar is a Schengen State which it is not. Gibraltar is a Schengen territory but not a Schengen State and therefore the

HON J J BOSSANO:

But if we said a "*Schengen State or Gibraltar*" this argument would not apply. I am asking why we need to have the word "*territory*" there if what the Chief Minister is telling me is that the only territory is Gibraltar?

HON CHIEF MINISTER:

Well, it can be argued both ways if one said "*Schengen State or Gibraltar*" one would be implying that Gibraltar is not part of Schengen whereas the language is intended to recognise that Gibraltar is in Schengen but is not a state and therefore it is in Schengen by virtue of being a territory of Schengen. If one deletes the reference to territories so that it reads, "*..in a Schengen State or Gibraltar,*" it suggests that Gibraltar is external to Schengen. This is just a question of language it does not alter the scope.

HON J J BOSSANO:

I do not agree because if it does not alter the scope is the Chief Minister telling me that 3 (b) means proceedings brought by administrative authorities in a Schengen State or only in the territory of Gibraltar or in a territory which includes Gibraltar but can be somebody else who is not Gibraltar because if it says , "*..of territory including Gibraltar...*" it may mean something different to a lawyer or a law draftsman but to me, "*..a territory including Gibraltar,*" means that Gibraltar is not the only such territory. I have asked if there is any territory that is not Gibraltar

and not a Schengen State in respect of which the administrative authorities can issue proceedings which we have to accept?

HON CHIEF MINISTER:

I do not know as a matter of political geography the status, for example, of places like the French territories and places of this sort but the effect of this formula of words is that it is up therefore to the equivalent legislation in the other Member States as to whether their territories are included or are not included within their definition of their Schengen State. The Leader of the Opposition cannot ask me now, "*Are there other territories?*" "*Yes, there are other territories,*" but I do not know how the national laws of their Schengen State describes them whether it describes them as territories or whether it describes them somehow else in the definition of their state. I do not know how France deals with its Overseas Territories. If we were looking at the French equivalent of this piece of legislation of this Bill whether this would read, "*..in a Schengen State or territory including Martinique..,*" or would it just read, "*..Schengen State,*" on the basis that French law describes its territories as part of the French State. It is up to the Constitutional arrangements and the legal and Statutory provisions of each of the Member States in their equivalent piece of this legislation.

HON J J BOSSANO:

Clause 2 that we have just passed defines what "*State*" and "*Schengen State*" mean. They do not define what "*territory*" means so, is the Chief Minister saying that we require in the legislation to define what "*State*" means and what "*Schengen State*" means but not what "*territory*" means but it is self-evident that "*territory*" only means a territory belonging to a Schengen State?

HON CHIEF MINISTER:

That is a much better point in the sense that there is an assumption that “territory” means, “territory of a Schengen State.” There is that assumption and that is true because “State” and “Schengen State” means a State party to the Schengen Convention not being the United Kingdom. So Schengen State is defined and then there is an assumption that when one uses the phrase “Schengen State or territory” one is necessarily and exclusively referring to territories that are “territories of a Schengen State” and if I were looking at the drafting of this Bill as critically as possible then I would certainly agree that if there was going to be a reference to territory it should be defined to mean territory of a Schengen State covered by the Schengen Agreement. I can see the merit of that point entirely.

HON J J BOSSANO:

Can the Government say what they think it means since they have brought the Bill to the House, are they saying that they are happy that as it is now it is only territories which are part of the Schengen State?

HON CHIEF MINISTER:

Well of course that is what the Government think it means, we are not discussing what the Government thinks it means we are discussing whether what the Government thinks it means is unambiguously and exclusively reflected in the language used in the Bill but given all that Government have said before about this being an obligation and about not being extended to anybody to which it is not an obligation then the Government could not possibly think that it is in this legislation and all the fuss that we have made about not extending it to the United Kingdom because it is not an obligation I do not know what leads the Leader of the Opposition to think that the

Government's intention might be to extend it to a territory to which Schengen Acquis does not extend. It is not a question of can we know what the Government's intention is? It is perfectly clear to the Leader of the Opposition what the Government's intention is.

HON J J BOSSANO:

I have not used the word “intention”.

HON CHIEF MINISTER:

Well, what the Government thinks it means it is the same point. It is perfectly clear what the Government thinks it means that is not the issue the issue is whether what the Government thinks and wants it to mean is actually delivered by the language of the legislation and I have agreed with him that on a strict interpretation somebody might try to argue, for example, the Government of a territory that is not in Schengen might say, “*ah it does cover,*” because this legislation applies to Criminal Proceedings brought by the administrative authority in a Schengen State, which I am not, or territory which I am and because the territory is not qualified by it having to be a Schengen territory somebody might try to argue that it extends to Schengen States and territories but presumably not states that are not in Schengen. I think that it would be a far fetched argument but I accept on the face of it it is an advanceable argument which ought to be dealt with I accept that entirely. I shall have the draftsmen think of an amendment unless the hon Members have one immediately to hand and propose it in just a few moments.

HON F R PICARDO:

In relation to clause 3 there is an issue that on the basis of the articles as provided by the Chief Minister what is presently clause 3 (a) is not reflected in article 49.

HON CHIEF MINISTER:

I beg your pardon?

HON F R PICARDO:

For the benefit of the Chief Minister what is presently in clause 3 (1) at (a) is not reflected in article 49 (a) to (f) which is this very extensive definition that the Ordinance shall apply in relation to Criminal Proceedings and investigations in respect of any criminal proceedings excluding proceedings under military law. I deduce from article 48 (1) that that in fact may be the obligation imposed and which was referred to us at the last reading of this Bill by the Convention of 1959. If it is not and we then move on to see that in 3(b) we are more restrictive of the type of criminal proceedings to which the scope of the Ordinance shall apply then I would say that we would be uncomfortable with 3 (1) (a) as drafted. Article 49 (d) which relates to assistance also being granted in civil proceedings that are combined with criminal proceedings as long as the Criminal Court has not yet given a final ruling on the criminal proceedings is not actually at all reflected in our scope clause 3 but it is reflected in our service of process clause 5 at 1 (e).

HON CHIEF MINISTER:

Can the hon Member just repeat the reference to that second point?

HON F R PICARDO:

Yes, article 49 (d) is not reflected in our scope clause 3 but it is reflected in our service of process section 5 (1) (e) in the original Bill. If we are taking the scope in the Bill to be as set out in the framework of article 49 there may be a good reason for not including there 49 (d) but I cannot see what that reason is unless the Chief Minister wants to give me an indication of there being a specific purpose for having left 49 (d) out of the scope clause but allowing it in the service clause.

HON CHIEF MINISTER:

I will have to check the second point given that it relates to civil proceedings that are combined with criminal proceedings in relation to the stage to which criminal proceedings have reached. I would have to check whether that is provided for generally elsewhere in the Bill rather than in the scope clause. The hon Member has found it in the service of process but I think as I understand it the point that he is making is that the curtailment of the need to assist ought to be limited to the whole Bill and not just to the service of process provisions, I think that is the point that he is making.

HON F R PICARDO:

Unless there is a good reason for doing it in a different way, for example, I could imagine that there might be some sort of civil proceedings which we would not want to extend the scope of the Bill to but where we might be bound to give service obligations.

HON CHIEF MINISTER:

Mr Chairman, perhaps we can leave this clause pending whilst I have the draftsmen look into that and his first point had been in

relation to the “*all crimes*” and sort of call it why “*all crimes*” in (a)? Can we stand that one by, clause 3?

MR CHAIRMAN:

Yes.

HON J J BOSSANO:

In the provision in article 49 (b) is “*wrongful prosecution*” and “*unjustified prosecution*” the same thing? Because it says “*wrongful*” in the original and “*unjustified*” in ours I do not know if it means the same thing. It does not mean the same thing in normal language.

HON F R PICARDO:

The concept that we have in common law is that there is a wrongful prosecution which is actually the language in the Convention but we have converted that in our transposition into the language of “*unjustified prosecution*” which I do not know is the concept as well known to our law as “*wrongful prosecution*”.

HON CHIEF MINISTER:

I agree I have never heard the phrase “*unjustified prosecution*” I am not quite sure what it means, whenever there is an acquittal the prosecution was “*unjustified*” necessarily it may not be “*wrongful*” but the word “*unjustified*” in the English language means that there was no justification for the prosecution which is always the case when the trial leads to an acquittal because when the trial leads to an acquittal what the court is in effect finding is that the person was not guilty, then people who are not guilty should not be prosecuted. So, I would agree with the hon Member entirely that we ought to change that language to

“*wrongful prosecution*” which introduces an element of impropriety in the decision to prosecute. Where is that in our Bill?

HON F R PICARDO:

In 3 (1) (c).

HON CHIEF MINISTER:

That stands as an amendment Mr Chairman.

The House recessed at 11.30 am

The House resumed at 11.50 am.

HON CHIEF MINISTER:

During the short recess I have had the opportunity to consider the points made in his last intervention by the Hon Mr Picardo and I can respond to him as follows. I am not necessarily dealing with these points in the order that he raised them because my note is not that tidy and I cannot remember the order in which he asked but he asked basically in respect of 3 (1) (a) why did it in effect extend to “*all crimes*” using telegraphic language and indeed he himself speculated correctly in the event as to the answer. This is a requirement of the 1959 Convention which expresses a concept of all crimes albeit in slightly different language but it boils down to the same thing when it says, “*...the contracting parties undertake to afford each other in accordance with the provisions of this convention the widest measure of mutual assistance in proceedings in respect of offences the punishment of which at the time of the request for assistance falls within the jurisdiction of the Judicial Authorities of the requesting party.*” That is all “*all offences*” the punishment of which is in their jurisdiction. There is no

restriction permitted by way of the nature of offence by that very wide scope clause and then article 2 is the one that had been transferred in place and the one the Hon Mr Linares found in 12. Then article 2 sets out the restrictions to that. It goes on to say, *“article 2 – assistance may be refused if the request concerns an offence which the requested party considers a political offence, an offence connected with a political offence or a fiscal offence.”* That is why *“fiscal offences”* and *“political offences”* are carved out of this but it is the only carve outs.

The other point that the hon Member made which I believe he is correct is in suggesting that there may not be justification for limiting the principles set out in clause 5 (1) (e) only to clause 5. So there is a process but because that derives from article 49 it ought to apply to the whole scheme of the Bill and I believe that that, and the draftsmen confirm, that is correct and I would propose to deal with that by inserting as a new clause 3 (g) the language of clause 5 (1) (e). Whilst that point was being researched and if we want to tidy up the Bill further and not waste half a page of paper it does no harm to leave it in but it is duplicated, having done that there are then no other differences between the lists in clause 3 and the list in clause 5. So having transferred 5 (1) (e) to 3 we can actually delete the whole of clause 5 (1) and I move both of those amendments. So, let us just be clear and by way of summary the amendments that I have moved so far are in addition to the ones in which written notice has been given. In clause 3 the addition of a new clause 3 (g) in the same language as is presently contained as in clause 5 (1) (e). A second amendment which does not yet arise because we have not got to clause 5 I will leave until we get to clause 5 but there was military law point which I will come to in a moment, but I do wish now also to move the amendment a further amendment just so that we are keeping up with the clause numbers in clause 2 by adding a definition of the word *“territory”*. *“Territory”, a subject I know dear to the Hon Mr Bruzon’s heart means, “..the territory of a Schengen State to which articles 48 to 53 of the Schengen Convention applies.”*

The hon Members also asked in relation to 3 (1) (a) what was the source of the reference to excluding proceedings under military law. Article 1(2) of the 1959 Convention reads, *“this Convention does not apply to arrests, the enforcement of verdicts, or offences under military law which are not offences under the ordinary criminal law.”*

HON F R PICARDO:

Just on 3 (a) and this is an issue where I think in my short time in this House the Chief Minister and I have been able to establish an element of understanding. In section 3(1) (a) because of its wide ambit and because of the reference in what the Chief Minister has read to us in the 1959 Convention does away with the principle if I can put it in terms of the European Arrest Warrant, of duality, and therefore I ask rhetorically I think because I think this must be the answer that we rely in terms of the issues that would concern us on the carved out exclusion in relation to fiscal offences and clause 3 (2).

HON CHIEF MINISTER:

..and the definition of offence.

HON F R PICARDO:

The carved out fiscal offences and 3 (2).

HON CHIEF MINISTER:

I would just like to add to what the hon Member has said that he will always find me amenable to reaching an understanding with him when we can agree with each other that we are both right. [INTERRUPTION] I agree but the Leader of the Opposition has

got to understand that there is some advantage to having a majority in Parliament.

HON J J BOSSANO:

Infallibility is not one of the advantages.

MR CHAIRMAN:

I have got to revert back to clause 2, what happened to *“Central Authority” and*

HON CHIEF MINISTER::

That stayed. It stayed on the basis that the hon Members will take up the point in clause 4.

MR CHAIRMAN:

There was just one amendment and that was a deletion of 2(b) a drug trafficking issue that was deleted.

HON CHIEF MINISTER:

Yes but that one has been given written notice of. That is as it appears in the letter and the text. Mr Chairman you are right there is an amendment which appears by the text but I do not think it is included in the written notice and that was the point spotted that the language in the annotated text at clause 3 (2) is strictly an amendment because it does not appear there in the published Bill it appears elsewhere so it is technically an amendment. The third amendment therefore is that the language presently contained in clause 12 (5) of the Bill as published be inserted as clause 3 (2) of the Bill. It already

appears in the annotated version but because technically the formal amendments of which notice have been given are the ones in the letter.

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

Clause 4

MR CHAIRMAN:

What do you want to do with clause 4?

HON DR J J GARCIA:

We are voting against clause 4.

HON F R PICARDO:

My Colleague Mr Randall reminds me that there is a point in clause 4 which we had not raised before leaving aside the dispute we have about the judicial and legal question that just at the end of that sentence there is a reference to the Schengen Agreement. I had assumed that that was an error and that it should be a reference to article 3 of the Schengen Convention so we will table that amendment but we still have to vote against.

HON CHIEF MINISTER:

I am grateful to the hon Member for having pointed out the error. I will move the amendment thereby leaving the hon Members free to continue to vote against the clause. Mr Speaker I move

as my next amendment that the word “*Agreement*” be changed to the word “*Convention*” in clause 4.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

For the Noes: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

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

Clause 5

HON CHIEF MINISTER:

Following on the amendment that has been introduced to clause 3 by adding the new “g” in the language of 5(1) (e) the remainder of clause 5 (1) can now be deleted and I so move. I

propose by way of amendment that clause 5 (1) be deleted and the numeration (2) and that all the numbers in the remainder of clause 5 be reduced by 1 so that sub-clause 2 becomes sub-clause 1, sub-clause 3 becomes sub-clause 2, sub-clause 4 becomes sub-clause 3, 5 becomes 4, 6 becomes 5 et cetera.

There is one other amendment so if we are moving on it would stand part of the Bill as amended not just as I have just said but also the amendment to which notice has been given in the language of the presently numbered sub-clause 5 by the addition of the words “...*on the person to whom the process or document is addressed*” rather than “*on him*”.

HON F R PICARDO:

In relation to what is now 5 (1) an Authority of the Schengen State we are told “..*may directly serve persons in Gibraltar by post with the following list of documents...*” and there is a list of the documents that may be served, in those circumstances does the document come directly from the requesting State or does it come to the Central Authority? I am not very clear on that.

HON CHIEF MINISTER:

Directly served means directly served it means that they can post it directly to the person there are then limitations about the legal effect of that but that is how the service can be achieved.

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

Clause 6

HON CHIEF MINISTER:

In clause 6 (1) I have given notice of the amendments illustrated there in the annotated Bill deleting the words "*sub-section 2*" to the word "*witness*" where they appear in sub-section 1 and replacing them with the words "*no obligation to comply with the processes imposed by virtue of its service*" and that is what I meant when I said earlier in my last intervention that there are then limitations about the effect of direct service. They are able to serve and it becomes valid under their law but there is no obligation imposed in terms of procedure on the person who receives it here so it is not a legal summons in the sense that there are any consequences for not

The other amendment is really tidying up. Stating the effect of sub-section 1 rather than paragraph 1 of the Schedule.

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

Clause 7

HON CHIEF MINISTER:

Mr Chairman, I am moving an amendment to clause 7 by inserting after the existing sub-clause 7 the addition of a new sub-clause which would be (8) to read as:-

"(8) The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in proceedings before the Supreme Court."

HON F R PICARDO:

I have absolutely no problem whatsoever with the principle set out in that clause but I am conscious of the fact that we sometimes are allowed the scales provided for in our Ordinances to fall perilously into age and that what we may be providing for may be very little and I would ask that we look at that at some stage to ensure that we are not giving the person travelling to Norway 10 chillings a day or something like that to survive and ensure that we are providing a real level of subsistence. I do not have the ordinance with me now and the one that I have got now is not updated but I know that that is a problem that has afflicted legal aid and issues such as that.

HON CHIEF MINISTER:

The hon Member just gives me a very good idea to how the effects of this might be circumvented whether it is not desirable to give him the 10 shillings and then he does not travel to Norway because it is not enough to get him there but I take the fact that in a lot of these Ordinances these figures have fallen behind the times.

Clause 7, as amended, was agreed to and stood part of the Bill.

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

Clause 9

HON CHIEF MINISTER:

Clause 9 is amended in sub-clause (1) (d) which says "*...if it appears to any judge or justice of the peace in Gibraltar...*" and then it says (a), (b), (c), (d) which presently reads, "*the judge or justice of the peace may request assistance under this*

section.” That is obviously not sui generis that is what applies to the rest of the list so it has just been removed from the list and made language which applies to the whole of the list before it.

HON F R PICARDO:

Section 9, sub-section (1) makes much more sense like that. Sub-section (3) at the very end of the list at the moment there is a comma and there is either something missing thereafter or there should be a full-stop.

HON CHIEF MINISTER:

I am just looking at it and obviously as it comes at the end of a section it should be a full-stop but that was not the hon Member’s whole question the other thing was whether there was something else missing. If nothing else is missing there should be a full-stop in any event the question is whether there are words missing before the full-stop, I am just giving it a quick read. No, I think it is just a full-stop.

Clause 9, as amended, was agreed to and stood part of the Bill.

Clauses 10 and 11 – were agreed to and stood part of the Bill.

Clause 12

HON F R PICARDO:

There are a number of differences between the text that we have been given today and the Bill that has been published. I am pleased to see that some of those differences are actually what we believed should be the amendments made.

HON CHIEF MINISTER:

I am not aware but the hon Member may be entirely correct. I have not been informed by my people that there are any amendments.

HON F R PICARDO:

At 4 the conjunctive “and” appears after 4 (c) it should actually appear after 4 (d) where a full-stop has been provided where there should be a comma or a semi-colon because the list does not end there but then more importantly the whole of 5 has been left out of that one without being crossed out.

HON CHIEF MINISTER:

Yes, I have moved that amendment already that is the point that we discussed at 3 that is the language that has become clause 3 (2) that the hon Member spotted earlier and suddenly appeared in the text of clause 3 where it had not been before. So, in a sense I cannot remember the language in which I moved the amendment did I say transferred from 2, I cannot remember whether the original amendment included the deletion of the language from clause 12.

HON S E LINARES

The Chief Minister did use that language I would think that Mr Chairman would now say “*stands part of the Bill as amended.*”

HON CHIEF MINISTER:

Yes. I will deal with sub-clause 4 in a moment but it is clear that when we pass clause 12 it will be without sub-clause 5 which is presently in it and that the previous amendment has also had

the effect of deleting sub-clause 5 from clause 12 which in fact is as it appears in the annotated version where sub-clause 5 does not appear in clause 12.

It could be argued both ways the safest course may indeed be to delete the “and” but what I think it is intended to achieve and I am just speculating on my own reading of it is that (d) only applies where the request for assistance is service of process so, what it is saying is “(c) *where possible the identity and the nationality of the person concerned and where necessary*” that is to say where it is a case of service one must give the name and address of the person to be served. That is what I think it is intended to mean, one cannot serve process on somebody whose name and address is not provided. So in the case of process the name and address of the person to be provided is mandatory but I do not think that by deleting the word “and” it alters the fact that it is mandatory in the case of the process of service so I move that we amend it by removing it.

HON F R PICARDO:

I am not actually suggesting that we should delete the word “and” from there what I was suggesting was that it seems to me to be a list to which something was added. It seems that 12 (4) was 12 (4) (a) to (d) and that there was an “and” showing that they were all conjunctive because of the full-stop after the.....

HON CHIEF MINISTER:

I see what the hon Member means that is possible.

HON S E LINARES

Mr Chairman it could well be (c) (i) and (ii) that could also be done as well where (c) and (d) are together as in (c)(i) and (ii) and then add it down at the bottom.

HON CHIEF MINISTER:

It could be but I am told that in any event whether or not, whichever of the two versions it is I think the word “and” can safely be deleted and then the issue does not arise. The hon Member’s last possible explanation may well be true. If an (e) has been added the “and” might have been the pause before the final item of what previously was the full list and it has now stayed behind. It would really need to be brought down to the end of (d) but I think that we can just delete it altogether.

HON F R PICARDO:

In relation to clause 12 (2) there, if we have added a definition of territory, we get rid of the substantive arguments we might have had about that, we need to know whether the territory definition that we have voted is going to carry capital “t”. If it is then we need to insert it throughout clause 12 (2) where we use the word territory to ensure that we are talking about the defined territory.

HON CHIEF MINISTER:

I think that the definition of territory would not have a capital “t” and what the hon Member says would only be a problem if he finds a reference to territory somewhere in the text with a capital “t”. The definition of “territories” that I proposed did not have a capital “t”.

HON F R PICARDO:

No problem.

HON J J BOSSANO:

In 12 (2) (c) it says, *“the request for assistance may be made by the International Criminal Police Organisation.”* I assume that this is giving effect to the requirements of article 53 but what article 53 says is that the request may be sent through the National Central Offices of the International Criminal Police Organisation. Is sending something to the National Central Office the same as the IPCC making the request?

HON CHIEF MINISTER:

I follow the numbers and the places where the Leader of the Opposition is referring to in the two documents could the hon Member just repeat the issue in his mind?

HON J J BOSSANO:

In article 53 (2) paragraph (1) it says *“request for assistance may be made directly in Judicial Authorities”* which is clause 4 it says, *“shall not prejudice the possibility of the request being sent through the National Central Offices of the International Criminal Police Organisation.”* My reading of it is that to send something through the National Central Office of the International Criminal Police Organisation is not the same thing as the International Criminal Organisation on its own initiative making a request which is what we seem to have in the legislation but I may be wrong.

HON CHIEF MINISTER:

The Leader of the Opposition's point being that article 53 makes it a channel whereas our language makes it a source.

HON J J BOSSANO:

Yes.

HON CHIEF MINISTER:

That sounds right. The way I propose to deal with the helpful observation by the hon Member is to delete little (c) from 12 (2) and add a new sub-clause 12 (5) dealing more accurately with the content of article 53 (2) of the Treaty which would read, *“requests under this Ordinance may be sent and returned through National Central Offices of the International Criminal Police Organisation.”* I will have to ask somebody where the National Central Office of the International Police Organisation is, New Mole House or New Scotland Yard. This is Interpol in effect. In 12(2)(a) delete the words “or the United Kingdom”.

Clause 12 – as amended, was agreed to and stood part of the Bill.

Clause 13

HON CHIEF MINISTER:

Clause 13 requires a little bit of explanation. The reference in section 15 (a) should be changed to a reference to section 14, (b) I have moved the deletion of sub-clause 13 (b) the reason is that the need for it is removed by section 6 and 7. It is not that the effect of it is it exists, a provision to the same effect

exists in section 7(5). For example, it is not necessary because it duplicates provisions elsewhere in the Bill. I do not suppose that the hon Members are too concerned a deletion does not invoke their concerns. Little (c) is removed because its provisions are now in clause 7(8). This is about the travelling expenses remember when the hon Member referred to Norway and the 10 shillings when we added it was as the new clause 7 (8), and sub-clause (2), (3), (4), (5) and (6) are removed but are placed as the new clause 18 it is just that the Home Office expressed the view that that was not the right place for those provisions it was the wrong heading these things do not deal with powers to arrange for evidence to be taken abroad and therefore it was simply mislocated in the Ordinance. So the hon Members will see that there is a new clause 18 which we will come to in a moment so at the moment all we are doing is deleting the amendment now is to delete so, as appears by the annotated version of the Bill the amendments are that the only part of clause 13 as published which survives is little (a) which then does not need to be numbered (a) at all so it just says "13. *The Central Authority*" remove the dash "*may arrange for evidence to be obtained under section 14*" and then everything else of clause 13 is deleted and a full-stop at the end of the word Kingdom.

We need to remove from what is left of clause 13 the references to the words "*or the United Kingdom*" because this does not apply to the United Kingdom at all at the moment and it can only apply to the United Kingdom under the regulation making powers and then we would not want that constraint in the language. So in respect of what I have just said the words "*or the United Kingdom*" should be deleted from what is now a single paragraph clause 13 and I move that amendment.

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

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

Clause 15

HON CHIEF MINISTER:

In clause 15 it is really just an amendment. Here we have given notice of the removal of the phrase "*..or the United Kingdom*" and also the removal of the word "*extension of*" from the heading it should just read "*statutory powers*" not "*extension of statutory powers*".

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

Clause 16 - was agreed to and stood part of the Bill.

Clause 17

HON CHIEF MINISTER:

Clauses 17 and 18 are new clauses. Clause 17 is the language of the existing clause 20 in the Bill as it was originally published so, it is not new language but it is in a new place and clause 18 is the stuff that has been transferred from the old 13 it is just in the wrong place.

HON F R PICARDO:

In relation to this new 18, 18 (1) which was 13 (2) I have very strong views that we should make it very clear that that list is a conjunctive list and we should have "*and*" just after (d). There the Attorney will be petitioning the court only if he is satisfied that each of those provisions have been satisfied and on 18 (2) there is a little bit of left over from the old language when it was 13 I think it should read, "*in a case within sub-section 1 of*

section 13 the Central Authority may arrange ... it should read as we have amended it *"in a case within section 13"*.

HON CHIEF MINISTER:

This is precisely the sort of list in which I said much earlier in the case where I did not agree with him that his views would have been correct. I also agree with the view that there should be a semi-colon at the end after each and indeed I have even seen legislation, I am not sure if it is modern legislative practice, but in the old days there would have been an *"and"* after every semi-colon to put the matter beyond doubt but I understand that that is not modern drafting practices. Modern draftsmen feel free to change grammatical practices but there again certainly what we should do is that we shall put semi-colons and also at the end of (d) there should be *"and"* after the semi-colon. There is also another amendment required in sub-section (2) that should read, *"in a case within sub-section 1 of section 13 and sub-section (1) above...."* I

HON F R PICARDO:

It cannot say in *"a case within sub-section (1) of section 13"* because section 13 in the manner now amended has a sub-section.

MR CHAIRMAN:

So you delete sub-section (1).

HON CHIEF MINISTER:

Of, so it reads *"in a case within section 13 and sub-section (1) of this section."* So sub-clause (2) would read as amended *"in a case within section 13 and sub-section (1) of this section,"* the

list appearing immediately above *"..the Central Authority may arrange processes given only if satisfied."*

MR CHAIRMAN:

You delete *"and to"*.

HON F R PICARDO:

Can I just be taken through the logic of that because I am a bit at sea with the *"and"*.

HON CHIEF MINISTER:

I was surprised with it too. The draftsman thinks that in that case *"and"* means that it can be from either place but I do not see how it can be *"and"* means that one has two tests to pass whether one falls within one section or the other the following things apply so we will change that to *"or"*. It would now read *"in a case within section 13 or sub-section (1) of this section the Central Authority....."*

HON F R PICARDO:

We then come to what we would have taken up in section 13 which is 18 (2) the list that follows where we have, it is the first time that I have seen it I do not know whether the Chief Minister can help, where we have *"(a) and (b) or (c)"*. I do not know whether that should actually be (a) (i) and (ii) or (b) that would be the way that I would have seen it before.

HON CHIEF MINISTER:

This is just a question of looking at the source to see what the obligation is I do not think it is just a matter of drafting technique. The source document may provide a permutation which may vary so I do not think it just raises issues of drafting technique. Can we move on from this whilst the draftsmen check the point it depends what these obligations that they are trying to transpose is because it does make sense, as it reads at the moment what it means is that (a) has always got to be present and then it has got to be (b) or (c) in addition.

HON F R PICARDO:

What I imagine and I am really in the realm of speculation what I imagined we had been trying to achieve is that it should be either that both the elements in (a) and (b) had to be present or the element in (c) not that.....

HON CHIEF MINISTER:

That is what it says.

HON F R PICARDO:

The first one that I have got my hands on is the Animals and Birds Rabies Controls Rules.

HON CHIEF MINISTER:

It is not a question of finding another example it is not a question of drafting style or grammatical error or layout error it is a question of going back to the convention and seeing what the permutations are that the Convention requires. It makes sense as it is but the only sense that it makes is if (a) has got to be

present and then one of (b) or (c) and I am just checking that that is what the Convention intends should be the provision.

HON F R PICARDO:

I accept the provision.

HON CHIEF MINISTER:

Can we move on to the other clause and then come back.

HON F R PICARDO:

Can we be told what article of the Convention it is that we should also be looking at in terms of

HON CHIEF MINISTER:

They do not know what particular article number it is. Can we standby clause 18 whilst we confirm that sub-clause 2 (3) is correct?

Clause 19

HON CHIEF MINISTER:

It is amended in sub-clause (2) by removing the words "*any member of*" and substitute it by the word "*a*" so instead of "*any member of the police,*" it would be "*a police officer*".

HON F R PICARDO:

There is a reference throughout section 19 (1) to “*state*”, “*requested state*” and “*requesting state*” I think we should ensure that has a capital “S” so that our definitions of “*state*” with capital “S’s” apply to that section also otherwise they might not.

Again the list with which the Attorney General is to be provided with we would want all of those to be clearly required and to make that clear I would request an “*and*” after paragraph (c).

HON CHIEF MINISTER:

Given his eye for detail the hon Member presumably wants “*a requested state*” and not “*an requested state*” in the second line of clause 19.

HON F R PICARDO:

I will tell the Chief Minister why I had not spotted it because the green version was right.

HON CHIEF MINISTER:

I am just checking the list in 19 to see if it is a case for an “*and*”. Yes, I agree so, we shall add the word “*and*” after the semi-colon in 19 (1) (c).

HON S E LINARES

It is semantics but 19 (2) should it not read “*supervised by a police officer or police officers*” instead of “*by police officer*”?

HON CHIEF MINISTER:

Yes, “*by a police officer*”. Existing clause 17 is now renumbered 19 because we have added new clauses 17 and 18 so existing clause 17 becomes his renumbered 19.

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

Clause 18

HON CHIEF MINISTER:

Existing clause 18 is renumbered 20 and the clause so renumbered is enlarged by the addition of new sub-clauses (1) and (2) which the hon Members will see in red on page 16 of the annotated Bill. This is language which is required to properly transpose the provisions of article 12 which had been thought to be insufficiently covered by the original language.

HON F R PICARDO:

I am a little confused by the reference in this clause to “*Party*” . Is that state?

HON CHIEF MINISTER:

The problem is that the draftsman has taken the language straight from the treaty probably and any reference to a “*Party*” should be to “*state*”. Once in sub-section (1) and twice in sub-section (2).

HON F R PICARDO:

As I read the two new sections and the Chief Minister will have to forgive me as I only had chance to read them now, the only difference between them are the six words at the end of sub-section (2) which seem to make the whole of subsection (1) irrelevant if provision has been made in the summons. So, essentially sub-section (1) says a witness or expert from Gibraltar can make his transfer or can make his appearance before the Judicial Authorities conditional not being prosecuted and something is done before he has left Gibraltar. The second one is exactly the same unless that is provided for in the summons.

HON CHIEF MINISTER:

Except that sub-clause (1) applies to a witness or expert and sub-clause (2) applies to an accused person.

HON F R PICARDO:

In sub-section (3) should we not be talking about the “*accused person*” rather than just “*accused*”?

HON CHIEF MINISTER:

To be consistent to the language in sub-section (2), yes. So, the word “*person*” should be added after the word accused in sub-section (3).

HON S E LINARES:

We are on clause 18 which now becomes 20, if we go to the original 18 it reads at the beginning (1) “*A court in Gibraltar shall not order a witness or expert*” and this one starts with a witness

or expert so therefore what we should do is delete the first few words in the green one. The amendments should appear in the amended copy.....of “*A court in Gibraltar shall not order*” and section 2 likewise.

HON CHIEF MINISTER:

In a sense the whole language is being replaced. The hon Member could if he wanted say, “*Where is the amendment deleting the existing (1) and (2) in 18?*” There is new language for sub-section (1) and sub-section (2) so implicit in the fact that there is new language is that the old language is deleted. I suppose that should be included as part of the amendment. The deletion of the original language and its substitution by this one.

MR CHAIRMAN:

Clause 20, stands part of the Bill as amended.

HON CHIEF MINISTER:

It does say substituted for sub-clauses (1) and (2) the following sub-clauses in the letter. Existing section 19 is renumbered 21 as it appears there on the annotated version but otherwise there is no amendment except that if the hon Member is so constructively going to have his reading glasses on I think I better put on my reading glasses on too and I have spotted a reference to the word “*parties*” over the page which means something else. It will be “*states*” again.

HON F R PICARDO:

In that same sub-section in the third line of the amended text “*nationals of those states*” I think that has to be a capital “S” as well. In sub-section 3, 21(3).

HON CHIEF MINISTER:

The hon Member’s earlier point I have taken to apply to the whole Bill so the Bill will be trawled and where the reference should properly be to a capital “S” it will be so as when the Ordinance is published.

HON F R PICARDO:

Can I just ensure that there it is a capital “S” *state*.

HON CHIEF MINISTER:

It is. In my version it is a capital “S”.

HON F R PICARDO:

In the third line down?

HON CHIEF MINISTER:

I am in 21 sub-section (3).

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

In the second line it says, “*the Registrar of the Supreme Court shall inform any other Schengen States in respect of nationals of those states...*” yes capital “S”. I would not be surprised if there was any reference to “*state*” which is indirectly a Schengen State and therefore should be with a capital “S”. If we are standing that part of the Bill the next amendment is existing clause 21 which is renumbered 22 and the existing clause 20 has been moved to section 17. So existing clause 21 becomes clause 22 and then there is this regulation making power which arises in the context of the points that I made at the beginning of the presentation and in respect of which I have undertaken to give the hon Members sight of an early draft.

Clause 18, as amended, was agreed to and stood part of the Bill.

Clauses 19 to 22 - were agreed to and stood part of the Bill.

The Schedule

HON CHIEF MINISTER:

In the schedule paragraph 1 of the schedule is deleted on the grounds that there is no need to make specific provisions for this here because it is provided for in some of the clauses that we have already discussed.

HON F R PICARDO:

I have only one issue in the whole of the schedule which relates to what is now paragraph 3 of the schedule sub-paragraph 4 and I was just concerned that that did not read right in the second sentence, “*a person cannot be compelled to give any*”

evidence if his doing so would be prejudicial to the security of Gibraltar” and then a new sentence, *“a certificate signed by and on behalf of the Governor to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact.”* The way that second sentence is set out I do not think is proper.

HON CHIEF MINISTER:

I really cannot identify a difficulty with that. It may not be the most elegant of English but I think it makes perfect sense.

HON F R PICARDO

The words “so” is probably.....

HON CHIEF MINISTER

“If doing so” perhaps the word “his” might be removed. *“A person might not be compelled to give evidence if doing so would be prejudicial....”*

HON F R PICARDO

It is not that word that I am concerned with it is the second.

HON CHIEF MINISTER

I see, *“a certificate signed by on and behalf of the Governor to the effect that it would be prejudicial...”* the “so” is not actually superfluous because the Governor certificate has got to be to the effect that it would be prejudicial to the security of Gibraltar. It is not enough for the Governor just to say that it is prejudicial. The prejudice that he certifies has got to be the prejudice that is

required by the first sentence namely, to the security of Gibraltar.

HON F R PICARDO

Yes but that is clear when it goes on to say *“for that person to do so is conclusive evidence of that fact.”* I just think it is not elegantly worded.

HON CHIEF MINISTER

I honestly think it works both ways if the hon Member is happier without the word “so” we can take it out. It is not usual to amend legislation for reasons of style of language it either means what one wants it to mean and if it does not then we must use different language but a preference for a particular style is not normal.

HON F R PICARDO:

I will tell the Chief Minister that I have considered that because the language says, *“so prejudicial”* is it possible to argue that *“so prejudicial”* means *“how prejudicial”* is it *“so prejudicial ...”*

HON CHIEF MINISTER:

...not in this context. There are contexts in which the word “so” is capable of meaning that it is not capable of meaning that in this sense.

HON F R PICARDO:

With defense counsel's hat on I thought that the inelegance of that was open to mischief rather than just to criticisms of inelegance.

HON CHIEF MINISTER:

I honestly do not think so but as the hon Member can be safely accommodated we shall accommodate him although we do not actually think there is a need for it but we will do it we will remove the word "so" and then there are the other amendments that I have given notice of, the renumbering of the paragraphs and the reference in 3 (2) to section 22 rather than to section 21, all that appears by the annotated version.

MR CHAIRMAN:

There is another one which is not important and that is at the beginning of the schedule, "...*securing attendance of witnesses*..".

HON CHIEF MINISTER:

I am advised by the Attorney General that my first view of the benefit of leaving in the word "so" is correct and he would be worried if it were not in because there would then not be a sufficient linkage between the first and the second sentences so I now move that the word "so" if we have already deleted it I now propose that it be reinserted I apologise. I hope that the hon Member will understand that my position was that whilst I could accommodate him without thinking that we were doing ourselves any harm I was willing to do so but I prefer to defer to the view of the Attorney General.

MR CHAIRMAN:

At the beginning of the section there is "*securing attendance of witnesses*" but then all the paragraphs are deleted.

HON CHIEF MINISTER:

Oh, we should delete the heading as well. Yes indeed.

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

The Long Title

HON CHIEF MINISTER:

In relation to the discussion we had on clause 18 (2), just to recap, the issue was whether the "(a) and (b) or (c)" was correct. The hon Member felt that it was confusingly set out. It actually is correct but there is a way of making it less unconventional in its layout which is to merge (a) and (b) so that one deletes the little letter (b) one leaves the "and" at the end of (a) and then the text of (b) becomes part of the text of (a) after the word "and". It would read the three lines in (a) "*and that proceedings in respect of..... that section 3 otherwise applies.*"

The way to give effect to that is to delete the little (b) but not the text just (b) take the words "*that proceedings in respect of the offence have been instituted.....*" just the language of little (b) and add it after the word "and" in little (a). Then (c) becomes (b).

HON J J BOSSANO:

Which articles of the Schengen Convention are we transposing here or is this doing something that has to do with the other stuff?

HON CHIEF MINISTER:

Article 49 which is implemented by the combination of (a) or (b).

HON J J BOSSANO:

I see nothing in article 49 about *“transit”* or *“temporary transfer”* that is what I want to know. I want to know where does the provisions that we are putting in our law about temporary transfer where do they come from?

HON CHIEF MINISTER:

The answer to the Leader of the Opposition is that in article 49 in all except the civil proceedings there is a requirement. They all require the commission of an offence and the commencement of proceedings except civil proceedings in which one cannot speak of offences and proceedings being committed.

HON J J BOSSANO:

What I am asking is where is the requirement in this article, and if it is not in this article is it from one of the other conventions that we are referring to for the temporary transfer of prisoners?

HON CHIEF MINISTER:

The Leader of the Opposition is not addressing the stuff we have just been doing does he mean for the whole clause?

HON J J BOSSANO:

Yes, for the whole clause.

HON CHIEF MINISTER:

I will just find out the article in the 59 Convention.

HON J J BOSSANO:

Whilst we are looking at the 59 Convention to find the article, in article 53 (3), have we got the 59 Convention?

HON CHIEF MINISTER:

Yes article 11 of the 1959 Convention requires these provisions for the temporary transfer of prisoners that was the Leader of the Opposition's question.

HON J J BOSSANO:

Is article 11 of the 59 Convention , is it mandatory?

HON CHIEF MINISTER:

The whole of the Convention is mandatory.

HON J J BOSSANO:

So, when we start saying "*the Central Authority may petition....*" Does it mean that they have a choice?

HON CHIEF MINISTER:

It is not compulsory to make a request it is compulsory to consider the request to be received. One may or may not make requests out for other people's prisoners to be temporarily transferred.

HON J J BOSSANO:

No, this is not making a request out. The Chief Minister has not read correctly his own legislation this is – the Attorney General goes to the courts for an order for a person in custody here to appear somewhere else because he has had an application by the requesting party. He may do it or he may not do it am I reading the law correctly? Because if that is the case then we do not have to do any of this unless the Attorney General chooses too.

HON F R PICARDO:

Which also exposes the fact that we have all left the word "*party*" in without noticing in 18 (1) which should be "*State*".

HON CHIEF MINISTER:

It seems that the language of the convention is "*shall*" in other words he shall apply so that there cannot be a transfer without a court application and I suppose it ought to be changed to read that. Then the conditions for the transfers are such, for example, requiring the consent of the person in custody that in

effect it is voluntary. The application to the court is mandatory but not the transfer.

HON J J BOSSANO:

The application of the court is not mandatory. If the Attorney General may petition the court....

HON F R PICARDO:

It has been changed to "*shall*".

HON J J BOSSANO:

If it has been changed to "*shall*" then it is different, is it?

HON CHIEF MINISTER:

I think it has to be "*shall*" "*..the Central Authority shall petition.....*" but that does not mean that there is an obligation to temporarily transfer the prisoner but if there is a request there has to be an application so the application is mandatory but not the transfer. The court has to apply in all those items in the list and then there may or there may not be a transfer but I think that the hon Member is right to the extent that what we are referring to in 18 (1) is to the petition, I think the actual making of the petition is mandatory so therefore I move to amend that the word "*may*" will be "*shall*" in clause 18 (1) first line.

HON F R PICARDO:

If the Chief Minister is going to amend that second amend it for the "*party*" issue as well.

HON CHIEF MINISTER:

Yes.

HON J J BOSSANO:

In relation to 18 and the clause on transit through Gibraltar and the clause on transfer of judicial records all three appear to be covered by article 53 (3) which the hon Member has provided which says that such requests must be effected through the Ministries of Justice now is there anything that we should be doing here to give effect to that requirement which is mandatory because we do not seem to be doing anything different in these three from what we are doing in the rest of the Bill but the rest of the Bill does not require that it must be done through the Ministry of Justice and these three clauses do.

HON CHIEF MINISTER:

Do we have a Ministry of Justice I do not know.

HON J J BOSSANO:

Well, we may have to say they can only be processed if they are received from Ministries of Justice....because that is what it says in the Schengen Convention.

HON CHIEF MINISTER:

In our article it is *"transit through Gibraltar"*

HON J J BOSSANO:

Article 53 says, *"...request for temporary transfer, transit of persons under temporary arrest, or being detained or whilst serving a custodian sentence and the periodic or occasional exchange of information from the judicial records must be effected through the Ministry of Justice."* So, if the requests for any of these must be effected then we do not have to process any request that does not come from a Ministry of Justice whether we have one or not.

HON CHIEF MINISTER:

Whilst that is being looked at can we discuss the Long Title? I wish to expand on it.

HON F R PICARDO:

I have a small amendment which I forgot to bring up is it appropriate to do it now or after the Chief Minister?

HON CHIEF MINISTER:

At Committee Stage I understand one go backwards and forward. I would rather do the Long Title at the end.

HON F R PICARDO:

It was section 15, I have got a bit confused with the renumbering, it is still 15 and it is 15 (b) that is extending the provisions of the Criminal Procedure Ordinance in relation to search warrants to the provision of this Bill and it reads, *"...would if it occurred in Gibraltar constitute an offence punishable by imprisonment of at least six months,"* there we come back to the principle of duality and I have had a look at the Criminal Justice Ordinance

of 1995 and how we had dealt with a very similar provision were we had really wanted to say “*indictable*” offences and we had actually used that language. If it occurred in Gibraltar therefore I would suggest the Bill should read, “*..if it occurred in Gibraltar would constitute an “indictable offence”*” because all summary offences whether provision is a maximum of six months would at the moment be covered also by this where the intention of the draftsman is to cover only indictable offences.

HON CHIEF MINISTER:

I can see the advantage of doing that provided that we have the latitude to do it. We have just got to check at the source to make sure that that is not a requirement of either convention.

HON F R PICARDO:

Can the Chief Minister see the argument that summary offences with a maximum of six months might be caught?

HON CHIEF MINISTER:

Yes in fact the hon Member might want to leave them both because, it is some time since I practiced law, “*are there indictable offences which are punishable by.....in six months*” there may be indictable offences punishable with less than six months are there or not?

HON F R PICARDO:

Certainly.

HON CHIEF MINISTER:

Simply making it indictable would not actually do the trick that the hon Member wants, it would have to be both.

HON F R PICARDO:

I think that the trick that we both understand why was introduced in the Criminal Justice Ordinance. Of course there are indictable offences where the judge has the discretion and the only thing that is prescribed is the maximum.

HON CHIEF MINISTER:

Whilst that point is being researched, the point of whether we have the latitude under the Conventions to alter the formula of six months, whether the Convention requires one to offer search, powers, assistance so long as it is punishable by six months or whether that six months business is something of our confection and therefore we can change.

Can I refer the hon Member to article 51 of Schengen and he will see there that it says, “*the contracting parties may not make the admissibility of letters rogatory for search or seizure dependent on any other conditions than the following (a) the offence giving rise to the letters rogatory is punishable under the law of both contracting parties by a custodial sentence or a security measure restricting liberty by a maximum of at least six months or is punishable under the law of one of the two contracting parties by an equivalent penalty and under the law of the other contracting party as an infringement of the regulation.*” That does introduce the six month requirement. If ones law provides for a punishment of at least six months then one is obliged to do it when one receives an inward request for a corresponding offence. So, helpful as it would have been for the reasons that the hon Member suggested that we might have been able to do that I do not think that we can.

HON F R PICARDO:

Can I ask that we flag this point in our minds even if we do not deal with it any further today because it may be that we can use the formula of the indictable offence because it is only summary offences where the penalty is for less than six months.

HON CHIEF MINISTER:

That is the point that I was asking just now given that we are stuck with the six month period can we nevertheless say would if it occurred in Gibraltar constitute an offence triable on indictment and punishable by imprisonment for at least six months so that he would have a second hurdle.....

HON F R PICARDO:

.....it could then be argued that we were not complying with the provisions of the article.

HON CHIEF MINISTER:

The difficulty with the suggestion is that article 51 just classifies the issue by relevance to the maximum of the sentence without allowing one to impose any other type of condition so to suggest six months and a second hurdle is precisely a breach of the prefix to article 51 which is that the contracting parties may not make the admissibility of letters rogatory for certain seizure dependant on any other condition than the six month rule.

HON F R PICARDO:

I think we would not be adding any other condition other than the offences having a penalty prescribed of at least six months

but we could say under our law all of those are indictable offences.

HON CHIEF MINISTER:

We can not do that in this Bill we might do that somewhere else.

HON F R PICARDO:

No, I am saying that in explaining why we add the hurdle of indictability we could do so by saying "*because in our law all offences which carry less than six months penalty are considered to be summary offences*" and thereby we would not be offending our obligations to transpose.

HON CHIEF MINISTER:

If that were the case one would not need to say it here. That provision would not be said here, the rest of the law of Gibraltar would be as the hon Member is wishing it to be and then when a request was actually received it would need to be an indictable offence because there are no other types of offences that would meet the six months rule.

HON F R PICARDO:

In that case we need to move fairly quickly to address that other point almost by consensus of this House to ensure that we do not fall foul of the mischief we were trying to avoid previously.

HON CHIEF MINISTER:

I am not sure that this particular point arises in respect of that mischief. Remember that we are talking only of the statutory

search powers here we are not talking about the other forms of mutual legal assistance but we will think about that in slower order.

HON F R PICARDO:

The way I see the statutory research powers being abused is that a sort of disclosure of documentation which we might not want to provide outside Gibraltar.

HON CHIEF MINISTER:

In respect of the preamble I would like to introduce language there making it perfectly clear that the inclusion of powers to extend this by regulation to the UK is being done on terms which make it perfectly clear does not conceive the point that it is mandatory in terms of the Schengen obligation. So, the Long Title presently reads, “*..an Ordinance to make provision for compliance with article 48 to 53 of the Schengen Convention of 19th June applying the Schengen Agreement of the 14th June 1985.*” A Bill that was doing only that would not contain a provision enabling its extension to Gibraltar by regulation to Schengen obligation. I want to change the references to make provision for compliance with to simply implement and there is nothing particular with that but then I want to say after 1985 add, relating to mutual legal assistance, “*to enable further provision to be made by regulation making arrangements for mutual legal assistance in favour of the United Kingdom and other provisions in that respect.*” We have provided a cover for the regulation making powers for its extension to the United Kingdom other than the Schengen Agreement obligation that is the purpose of that extension of the Long Title. This Bill now does two different things, it implements Schengen obligations and quite separately it makes provisions for the making of mutual legal assistance in favour of the United Kingdom.

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

HON CHIEF MINISTER:

Mr Chairman, I see some political virtue to Constitutional virtue to the hon Member’s point but if it says Justice Ministries should address these things directly to us I think it is a good opportunity to require certain parties to do that and of course if they do not then the request will not be in accordance with the rules and cannot be addressed.

HON J J BOSSANO:

I think it is important that it is mandatory.

HON CHIEF MINISTER:

Yes, so what I will propose is that we keep this over lunch and we will find the three places and what language we would have to introduce to reflect the Ministry of Justice channel point.

The House recessed at 1.50 pm

The House resumed at 3.15 pm.

THE DATA PROTECTION BILL 2004

Clause 1

The Hon the Chief Minister moved that the existing clause be deleted and substituted by:-

“1(1) This Ordinance may be cited as the Data Protection Ordinance 2004.

(2) This Ordinance comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for the coming into operation of different sections or for the coming into operation of the Ordinance, or sections of the Ordinance, in relation to different types or different purposes of processing."

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

Clause 2

The Hon the Chief Minister moved the following amendments:-

Insert after the definition of "blocking" the following:

"The Commission" means the European Commission;"

Insert after the definition *"the Commissioner"* the following:-

"compensation order" means a decision of the Commissioner under section 25(4);"

In the definition of *"data controller"* delete the words *"controls the content and use of personal data"* and insert *"determines the purposes and means of the processing of data;"*

Delete existing definition of *"data processor"* and insert:

"data processor" means

(a) not being a data controller, or employee of a data controller.

(b) a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the data controller;

In the definition of *"data subject"* insert the word *"natural"* after the words *"means a"*;

After the definition of *"direct marketing"* add new definition:

"EEA" means the European Economic Area;"

In the definition *"EEA State"* delete the words *"but excludes the United Kingdom;"*

In the definition of *"filing system"* delete the words *"such that specific information relating to a particular person is readily available;"*

In the definition of *"processing personal data"* insert after the words *"collecting, storing"* the words *"recording, organising, consulting;"*

Delete existing definition of *"right to privacy"* and insert:

"right to privacy" means the right to respect for family and private life, home and correspondence in accordance with article 8 of the European Convention on Human Rights;"

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

Clause 3

The Hon the Chief Minister moved the following amendments:

Delete existing sub-clause (2) and insert:

“(2) Unless specifically provided, this Ordinance shall not apply in relation to the processing of personal data by a natural person in the course of purely personal, family or household activity”;

HON F R PICARDO:

Just pursuing this point further because there is a business in providing resilience or redundancy I think is the right word, copies in case there is an earthquake in the original state et cetera. We seem to find ourselves in a situation where a party that is incorporated in another Member State, does all its data processing et cetera in another Member State that simply uses Gibraltar for the purpose of storage of back-up data in the event of there being a natural disaster, for example, in the state of its business activity is going to find that that data is subject to the provisions of this Ordinance even if there is no similar provision in the original State. One can imagine somebody saying, *“I am not entitled to the information from the bank or the financial institution here in the Cayman Islands but I know that they have a redundancy with Gibraltar so I can simply go and request that information in respect of the data tapes or whatever it is kept in Gibraltar”* and if that is what we are doing we could be doing ourselves out of some business in that respect.

HON CHIEF MINISTER:

Indeed but such a person would be the person entitled to the data, it would be the owner of the data it would not be somebody snooping about. The position that he is describing is correct but that is the necessary consequence of the directive it is not that it is a defect on the Bill which is not required by the directive.

HON F R PICARDO:

Is it within the parameters that we are allowed in the transposition of the directive for us to say that there should be an exemption where the processing of the data occurs outside the EEA, is processed outside the EEA and is simply brought to Gibraltar for the purposes of providing backup.

HON CHIEF MINISTER:

I do not know if the hon Member has the directive available to him but a combined reading of the definition of processing with the scope clause in article 3 of the directive would not appear to suggest the degree of latitude that the hon Member would wish but I repeat, the hon Member presumably is not concerned about the security of the data in terms of breach of confidentiality because the only person who could come here from the Cayman Islands or from Turkey would be the data subject. The whole principle of the data protection regime is that it is thought to be a human right now so certainly Gibraltar would not wish to be a haven, Gibraltar or anywhere else that has gone to the trouble of imposing this burden on its own businesses surely does not want to be a haven for foreign companies to come to Gibraltar to deny their citizens of the same human rights by doing it in Gibraltar. So, I see what the hon Member is trying to achieve mechanically but I do not think he should harbour that degree of concern about the scenario that he has described such that we should be unduly concerned about accommodating it.

HON F R PICARDO:

Having looked now at the provisions of the directive in greater detail article 4 (1) (c) makes it even clearer, I will refer the Chief Minister to that.

HON CHIEF MINISTER:

That is exactly the source of the provision that I read to him when I said to him the use of equipment in Gibraltar. That is the source of that provision in our Bill. The data controller is outside Gibraltar, the United Kingdom or an EEA State, for example, the Cayman Islands or Turkey, and makes use of the equipment in Gibraltar it is the same provision it is just that perhaps the point was clearer to him from reading the language of the directive.

That is the last point that arises in clause 3.

HON DR J J GARCIA:

In relation to what we have been doing in the directive with the United Kingdom there is a mention of the United Kingdom in clause 3(b) of the Bill that we are looking at, page 275.

HON CHIEF MINISTER:

Yes, we can exclude the United Kingdom because the United Kingdom is now EEA State. So, we can delete from clause 3 (3) (b) the words *"the United Kingdom"* and the *","* after *"Gibraltar"* so it would read *"established outside Gibraltar or any EEA State."*

HON J J BOSSANO:

Is it the case that a frontier worker who is a data controller is not covered by this?

HON CHIEF MINISTER:

A frontier worker would not be capable of being a data controller. If the Leader of the Opposition uses the phrase

"frontier worker" in its strict sense meaning somebody who lives in Spain and is an employee of a company in Gibraltar, worker in that sense, it is incapable of arising. If by *"frontier worker"* he means a businessman, a self-employed person who lives in Spain and has a stall in the market-place or something that is possible, yes. If they process data in respect of an establishment in Gibraltar they would be captured by this.

HON J J BOSSANO:

When the Chief Minister removed (b) and (c) from sub-clause 5 which says for the purpose of sub-sections 3 and 4 each of the following is treated as being established in Gibraltar and the one that is left is an individual who is normally resident in Gibraltar. So we are saying here, a data controller is established in Gibraltar if he is an individual who is normally resident in Gibraltar.

HON CHIEF MINISTER:

No, there is a second one at the bottom of the page *"a person who does not fall within paragraph (a) but maintains in Gibraltar (1) an office branch or agency to which he carries on any activity or a regular practice,"* which is the individual I am trying to describe. The individual who may not be resident in Gibraltar but may have a business, a dentist, lawyer, doctor or a shopkeeper, trading in his own name as an individual, does not reside in Gibraltar but has an establishment in Gibraltar and they would be covered under (c) which should read (b) because it was (a), (b), (c) and (d). We have removed (b) and (c) the next one after (a) would be (b) not (c).

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

Clause 4

HON CHIEF MINISTER:

In relation to clause 4 I cannot remember if any of the hon Members raised this point or whether it is a point that we had spotted, I think one of them might have raised it this business of Electronic Communications Ordinance yes it was the Hon Dr Garcia. There is no Electronics Communications Ordinance. There is a reference in other Gibraltar legislation to electronic means and things of that sort but it is not defined so the terms “*electronic means*” and “*electronic communication*” when it is used in other Gibraltar legislation is thought to be self-explanatory and I propose that we do the same here by deleting sub-clause 3. The hon Members are aware of the limited scope of this section it simply means that if one has to give any notification one can do it by e-mail that is what it basically means but it is a channelling of notices and communications it does not actually go to the route of the regime of data protection it is an administrative provision not a substantive provision of the Bill. So, the amendment as can be seen there is to delete the whole of (3).

Clause 4 – as amended stood part of the Bill.

Clause 5

HON CHIEF MINISTER:

The amendment to clause 5 is to sharpen the scope of this. The section deals with when somebody can act for somebody else. When the data subject either by reason of infancy or by reasons of mental incapacity cannot exercise his rights and choices himself and it deals on how this can be done for him. Originally 5 (1) simply read “*a child*” and I do not think that “*a child*” is a sufficiently certain concept in law so it has been just made to read, “*where a data subject is (a) an individual under the age of 16 any action which may be taken by the data subject by virtue*

of this Ordinance may be taken by his parent or guardian.” In the case of mental incapacity it was thought to be too open to abuse because it does not define when somebody is mentally unable to understand their rights it simply said, “*where a data subject is a person who is mentally unable to understand their rights under this Ordinance any action which may be taken by their data subject by virtue of this Ordinance may be taken by the person who may act on his behalf whether by order of court, power of attorney or otherwise.*” I could turn up and say, “*I do not think my friend Mr Britto is mentally able to exercise his rights therefore I have come along to exercise the choice for him*” and in order to avoid those difficulties we have introduced the concept of a patient in the meaning of section 45 of the Mental Health Order. The law decides when somebody is unable to exercise through mental incapacity rather than some subjective nebulous unspecific concept that people could invoke against the interests of the data subject when really he is not in that situation and that is the amendment to clause 5.

HON F R PICARDO:

A semi-colon after (a), it is a full-stop.

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

Clause 6

HON CHIEF MINISTER:

The provisions of clause 6 of the Bill are amended principally by including the word “*including*” after the word “*fairly*” so where it used to say “*data shall be processed fairly (In accordance with section 10)*” the effect of including the word “*including*” in front of the words “*in accordance*” is that section 10 is therefore no longer exhaustive as to what is fair. Whereas before if one complied with section 10 it was deemed to be fairly processed

now section 10 is just a list of the things which if one does not do it is not fair but it still needs to be judged to be fair even if one has complied with section 10.

The amendment in (d) is simply to make the words “*reflect*” the exact words of the directive as to technical security measures “*shall be taken to prevent*” and then the words deleted are replaced by the words in red which are the exact words used in the directive.

HON DR J J GARCIA:

There is one point in relation to 6(1)(a), the words “*shall be*” are repeated twice in the sub-clause “*shall be, shall be*”.

HON CHIEF MINISTER:

Delete one “*shall be*” yes.

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

Clause 7

HON CHIEF MINISTER:

In relation to clause 7 which is criteria for making data processing legitimate the amendment is at (e) (ii) and the words deleted are simply to delete words that are put in there by accident. Those are a secretarial error, those words should never have appeared there in (e) to invoke the rights under the Human Rights Convention or the Gibraltar Constitution Order, remember I told the hon Member that there were places in the Bill where both the Human Rights Convention and the Constitution were invoked because it was a carve out from an exemption. So, where somebody is being relieved of data

protection duties and obligations it is done in terms which is nevertheless saved, Human Rights, Convention Rights, and Gibraltar Constitution Order Human Rights this is one example. Then a small amendment in sub-section (ii) to make sure that the Minister can make regulations specified in particular circumstances in which the provisions of sub-section (e) will or will not be satisfied. Before the hon Member could only specify in the positive now he can specify in the negative too.

Clause 7 – as amended, was agreed to and stood part of the Bill..

Clause 8

HON CHIEF MINISTER:

Clause 8 deals with sensitive personal data. Sensitive personal data which as the hon Members can see is data that reveals racial origin et cetera, et cetera, political opinion, religious philosophical beliefs et cetera, is subject to a special and additional tier of protection. The two amendments at (f) and (g) need little explanation it is just to make it consistent with the structure of the rest of the list. At (b) there is an important amendment because whereas before there was one list of data for one list of conditions, one list of obligations, for non-sensitive data and a different list of obligations and conditions for sensitive data the effects of the amendments that I have proposed there in sub-clause 2 is that the lists are combined for sensitive data so the extra layer of protection is additional to and not instead of the normal regime in the lists that provide. They have to comply with the processing of sensitive personal data is prohibited save where section (6) and (7) on data quality and data security are satisfied and at least one of the conditions in section (7)(a) is met and at least one of the following conditions is met. They have now got to comply with (6) and (7) and one from each of the two lists as opposed to having read before which is one from the following list.

HON F R PICARDO:

The amendments to (f) and (g) do not need an introduction because we proposed them. My Colleague Miss Montegriffo has just pointed out and if I can just ask the Chief Minister to look at this that in 7(1)(c) (ii) there is a reference to his or her vital interests in relation to the data subject. I had in relation to a query that she had raised with me this morning told her that where the word “*he*” appeared we had to read a “*she*” and that where the word “*his*” appeared we had to read “*her*”. She has just pointed this out to me to show me how wrong I must have been but actually it is true to say that in our legislation we stick usually only to the “*his*” or the “*he*” and this would be an anomaly.

HON CHIEF MINISTER:

It would be an anomaly it would just be a different drafting style the hon Member is quite right, under the Interpretation and General Clauses Ordinance the feminine includes the masculine and the plural et cetera, et cetera unless the context otherwise requires. The context here does not otherwise require so we could easily just say “*his*” and leave it to the Interpretation and General Clauses Ordinance to make it clear that it also applies to the girls. Delete “*or her*” in page 279 at the top of the page (c)(ii) second line.

The amendment to new (h) at the top of page 282 is also self-explanatory so it applies it to the processing of the sensitive data is required it is just to make the complete sense of the provision it does not alter the meaning in any way. “*The processing of a sensitive data is required for the purpose of preventative medicine, medical diagnosis, the provision of medical care or treatment, medical research or the management of healthcare services and the sensitive personal data are processed (1) by a person, (2)....*” It is just to make it easier to introduce the conditions, it does not change the meaning.

HON F R PICARDO:

I spotted at the very end of (c) and at the very end of (d) that we actually have the word “*or*” appearing where I actually think it should not appear because the word “*or*” appears after new “*i*” to show that they are all to be read disjunctively otherwise we could be falling into half measures.

HON CHIEF MINISTER:

No, because the hon Member is overlooking that that is a very long list one of which has got to be present. It is (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m) because it is a list at least one of which has to be present.

HON F R PICARDO:

I agree entirely that is not the point that I am making the “*or*” has to stay there after the “*i*” it is just that it has to disappear after (c) (ii) and after (d) (ii).

HON CHIEF MINISTER:

Yes, I would agree with the hon Member. We delete the word “*or*” in page 281 in line 2 at the top of the page and the one about three inches below it at the end of (ii) in section (d). That is the end to amendments in clause 8.

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

Clause 9

HON CHIEF MINISTER:

Existing clause 9 is deleted because it is combined with the new clause 19 so that at this point in our discussion all we have to note is that it is deleted but the effects and the language do not disappear, they will reappear and in its place there is a new clause 9 which brings in the provisions to which I referred earlier as to the Defence and National Security Provisions in compliance with the 1981 Council of Europe Convention. These are the exemptions of data protection that are permissible and are therefore achieved by this section if the exemption from that provision is required for the purpose of safeguarding defence or national security. Section 6 dealing with quality and security except for 6(1)(b), (7) to (8) section 10 dealing with information to be given to the data subject, 12 dealing with confidentiality of processing, sections 14 to 18 dealing with access and rectification, section 24 and Part 5 dealing with registration.

Clause 9 – as amended, was agreed to and stood part of the Bill.

Clause 10

HON F R PICARDO:

There should be an “and” after the item in (d) because it is clear.....

HON CHIEF MINISTER:

What would be the hon Member’s fee for proof reading but only as to punctuation and things of that sort? In the jest I failed to take note of the hon Member’s point which I am sure

HON F R PICARDO:

The exemptions are for all of those so it should be “and” at the end of (d) before the (e).

HON CHIEF MINISTER:

It can be but it does not need to be there. This is an example of the lists that do not need it. It can be included.

Clause 10 - as amended, was agreed to and stood part of the Bill.

Clause 11

HON CHIEF MINISTER:

Clause 11 is amended to substitute “shall” for “may” in relation to “*have regard to the state of technical development and costs of implementing the measures*” and also to introduce the same wording as in the directive in (b) (ii) as opposed to the homemade language.

There is a reference in item 13 in the letter to an amendment of the language in 11 (3) (b) which is not reflected in the annotated version. I am just trying to see whether that is a mistake in the annotation or in the letter.

The hon Members should regard the whole of 11 (3) (b) which are those three bottom lines on page 286 and the content of (i) and (ii) overpage as being underlined not because it is all necessarily new but because there is a series of very little almost small word amendments and it has been easier to recite the whole language anew rather than explain the location of each little word by reference to the words in line et cetera, et cetera. There is similar language in the original Bill with some

amendments so the hon Members should look at the language on page 286 and ensure that they are satisfied with that.

HON F R PICARDO:

All I have is at 11 (1) (a) at the end a semi-colon and otherwise I am happy with the section.

Clause 11 - as amended, was agreed to and stood part of the Bill.

Clause 12

HON CHIEF MINISTER:

Clause 12 is deleted as it was because we had been advised that as originally drafted the offences created were too strict in that they provided for no defences. There was just too much strictness of liability in the breach of confidentiality, in the breach of one of the data principles which is the duty to process data confidentially the hon Members will see there that there is a whole series of offences, things that one cannot do but no exculpations, no way of defending oneself if it happens innocently and therefore the hon Members will see that in the new language of 12(1) in red let me point out where the defences come in. If the hon Members circle the word "*knowingly or recklessly*" in the very first line that already provides a layer of defence. Then in sub-section 2 there are all those defences in (a), (b), (c) and (d). Sub-section 1 does not apply to a person who shows *(a) that the obtaining, disclosing or procuring (1) was necessary for the purpose of preventing or detecting crime or (2) was required or authorised by any enactment by rule of law et cetera, et cetera; (b) that he acted in the reasonable belief that he had in law the right to obtain* so on and so forth. Those now provide a defence regime where one was completely missing before and (4) and (5) do however introduce the new offence which should have been there from

the beginning for a person who sells or offers to sell but because (4) requires the person who sells to have obtained the data in contravention of sub-section (1) in effect anybody charged with selling or offering to sell has the same defences as are set out above because anyone who can avail themselves of the defences in 12(1) would not have obtained the information that he has offered to sell in contravention of sub-section 1.

HON F R PICARDO:

There is a point to be made about the commas and full-stops but I will not make it I am just concerned about 12(2)(a)(i) creates any new rights of access to information to the Authorities which might not have been there before without an order of the Supreme Court or a search warrant. It creates a defence of having knowingly accessed information for the purposes of preventing or detecting crime. It might very well be that those crimes are subsequently not the subject of successful prosecution because the evidence which led to their detection was improperly obtained under the Criminal Procedure Ordinance but the police may nonetheless have a defence to interfering with data and the data controller when otherwise they might have been themselves responsible for acting improperly.

HON CHIEF MINISTER:

I do not think that there is that danger in any case it may, I am not saying that it necessarily will or indeed that it necessarily should comfort the hon Member to know that these are the defences contained in the UK Act.

Clause 12 - as amended, was agreed to and stood part of the Bill..

Clause 13

HON CHIEF MINISTER:

The amendments to clause 13 sub-section 2 are simply corrections of references that were cross references that were either wrong or missing in the original Bill.

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

Clause 14

HON CHIEF MINISTER:

The first amendment there at sub-section (2) is self-explanatory instead of a person it says *"an individual"* for the same reason as before and in sub-section (3) the amendment is just to make sure that when a data subject exercises his right to have a copy of the data or to have the data that is held about him it is given to him in intelligible form and that the data controller does not give it to him in some computerised gobbledegook or in some code or foreign language in the knowledge that the data subject will not be able to understand it. It has got to be in intelligible form. The amendment in (5) again is just to tidy up the language instead of *"..unless the communication and information is contrary to the public interest"* simply to say, *"save as provided by this Ordinance"* so it has got to be something provided by this Ordinance rather than the general concept of the public interest.

A *"data controller is only obliged to"* is just to complete the language which is just deficient. In (d) the deletion because the language is not necessary because (4) no longer provides for giving a description of the property but now rather requires the giving of the property itself, (d) was written in because what the *"data subject"* had to be provided by the *"data controller"* was

not the data itself but a description of the data. Now, that has been changed so that the data subject is entitled to the data itself that (d) has become superfluous.

HON F R PICARDO:

Perhaps by error (c) has been deleted and it needs to go back in.

HON CHIEF MINISTER:

I wish to introduce an amendment but not the one mentioned. It is supposed to read as part of (b) but I do not think it is good technique to have two long separate sentences in one statutory provision. Normally they are broken down by the numbering plan so what I am going to propose is indeed to restore the (c) but then cancel the second proposed amendment so that it would read *"(c) a data controller is only obliged to comply with the requirement in sub-section (b) with...."* Insert after with *"...the requirement of"* and then not delete sub-section (b). The point being that the content of (c) only applies to (b). *"A data controller is only obliged to comply with the requirement of sub-section (b) where the personal data concerned"*

HON S E LINARES

In *"a data controller"* would the word *"a"* not be a capital and one would have to remove the full-stop in *"(b)"*?

HON F R PICARDO:

We are obliged to because we are still dealing with subparagraph of sub-section 3 where we have opened the parenthesis after saying in writing

HON CHIEF MINISTER:

A semi-colon would do the trick. At sub-clause 8 again “a person” becomes an “individual”. In sub-clause 9 it has been principally altered to deal with “the individual” rather than “the person” and there is an additional new (c) where it would otherwise be reasonably in all the circumstances. There is an amendment in (11) which provides that “*information supplied pursuant to request under sub-section 2 of this section may take account of any amendment over the personal data concerned made since the receipt of request by the data controller being an amendment that would have been made irrespective of the receipt of the request and any amendment made pursuant to sub-section 9(a) but not to any other amendments.*” It is just to add a second type of permissible amendment. In (12) it is just to replace “he” with the phrase “the data subject” and over the page at 13 (b) to replace the words “*may be overridden in a particular case*” by the words “*..will not apply in a case were it would result in the breach of..*” it is just another way of formulating the same point.

At the tail end of sub-clause 15 the hon Members will see that the original language was just incomplete, it just pitted out, there is a list of things “*and requires that other person*” and I did not go on to say anything else, that is the language which was missing and finally at 16 it is to add the words which are new “*save were such a statement would undermine the reason for the refusal...*” the point here is that one of the data subject’s rights is to demand information. Where the data controller refuses a request for information made under this section he is obliged in writing to notify the individual making the request of its refusal. The notification shall include (a) a statement of the reason for the refusal, now the new words amount to, one does not have to make a statement of the reasons for the refusal where to give those reasons would undermine the reason for the refusal. If in explaining why one has not given reasons one is in effect undermining the reason for the refusal it is completely self defeating but that is the change there.

HON F R PICARDO:

The amendments to include sub-section 9 (c) brings in an element of subjectivity to the text where we are dealing with disclosure of information relating to a third party. That deals with the data controller revealing to somebody who has asked him for information (a) information about (a) and information about (b) who is not the requesting party. That information, the information about (b) should in some circumstances be considered private the whole purpose of this Bill is to create that right of privacy in relation to ones information and to say that there are circumstances where it may be reasonable that that right to privacy is broken may not be adequately catered for simply by (c) as it is at the moment and that we may have to prescribe that or may want to consider prescribing that a little bit more. In what circumstances would it be reasonable to reveal data about (b) to (a) surely there is black pen that can be put through data if it discloses information about another party. At this stage I would urge that we look at that again.

HON CHIEF MINISTER:

This (c) has been added to comply with the case of the requirements of the judgement of the European Court of Human Rights in the case of Gaskin. It is basically the case of an orphan who was brought up in the care of Liverpool City Council and he knew nothing about himself, how he had been brought up, who had looked after him, what his problems had been in his childhood and he asked Liverpool City Council to provide all that information to him and the problem was that it contained information about other people as well. So this (c) allows the court’s judgment in Gaskin which allows individuals such as Mr Gaskin to get the information notwithstanding that when it is necessary to know who one is and to discover ones identity and all of that provided it would otherwise be reasonable in all the circumstances. That requires a judgment which will then have to be made by the Data protection Commissioner in the last instance but in the first instance by the Controller. Controller,

commissioner, Court in that order. In Gaskin the problem was that Liverpool City Council did not want to give him the information it was just that they were constrained by their obligations to third parties. Gaskin was a case where information was given not a case where information was declined and this with all the safeguards that the judgements are made first by the data controller, if he refuses the Data Commissioner can make an information order, issue an information notice from which either of both parties can appeal to the court but I think it does raise a fair balance and a necessary one because we have got to comply with that ruling of the European Court of Justice which is binding on us.

HON F R PICARDO:

I am more satisfied now that the Chief Minister has said that and that we place that on the record of Hansard so that it is clear that that is the type of hurdle that has to be surmounted if information about a third party is going to be revealed. Can I now take the Chief Minister to sub-section 10 (b) where a small “p” starts the sentence and it should be a capital “P”. Subsection 10 paragraph (b) the word “*paragraph*” should start with a capital “P”. Ditto on page 294, sub-section 13 sub-paragraph (b) the only reason I am saying it is because I am conscious of the issues of punctuation et cetera but these are points that come up also in the published version and if it has been published like that I would not like to see it become legislation like this. Finally, just to take up one point that the Chief Minister explained because I do not think either I did not hear the Chief Minister correctly or the Opposition have got a version which is different to the one that he has got. In sub-section 15 (a) (iii) the Chief Minister said that the words disappeared. The text that I have “*..required that person.....*” and then we had (i) to make a request on sub-section 2 or (ii) to supply him with data relating to that other person obtained as a result of such a request. That is what was in the Bill is that what was missing or are we just simply getting rid of that sentence being divided into two further sub-paragraphs?

HON CHIEF MINISTER:

It is just elegance of drafting the words are there in peculiar style (i) and (ii) after a little one and a little two is just too many sub divisions. It has just been written in text form rather than in list form there. The words that were actually missing were the words that have not been underlined curiously. It is the words, “*require that other person...*” that is new.

HON F R PICARDO:

No, in the green papers published copy they are actually attached to (3).

HON CHIEF MINISTER:

Those words which were wrongly attached to (3) had to be brought back to the margin because it applies to (1), (2), and (3) not just to three and thereafter that having been corrected the content of that peculiar Roman one and Roman two has been made into the red sentence that now appears in the annotation. Two things have been corrected there, “*....require that other person..*” has been transferred out of (3) and put to a position where it affects all (1), (2), and (3) and not just (3) and then there has been a clean up of peculiar (1) and (2) that follows them all.

HON F R PICARDO:

In the next sub-section in the new sub-paragraph which is (b) where the Chief Minister says “*...an indication where the individual may complain to the Commissioner about the refusal ...*” “*an indication*” should we not say “*a statement that the individual may complain to the Commissioner about the refusal...*” what is an indication in legal language?

HON CHIEF MINISTER:

We can change it to “*statement*” but it is just supposed to be the fact that having refused to give the information the refuser has got to point out to the data subject the right of appeal stating that the right to appeal exists, any of those words will do if the hon Member is happier with “*a statement*” or “*pointing out*” we can use that language it does not matter.

HON F R PICARDO:

I think “*a statement*” is better language.

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

Clause 15

HON CHIEF MINISTER:

The amendment to clause 15 at page 295 is a very minor amendment in 15(3)(b) the deleting of the word “*to*”.

HON C A BRUZON:

Why is the word *et cetera* appearing after “*..rectification et cetera of data...*”.

HON CHIEF MINISTER:

It is legitimate in headings which are just indicative of a sort of thing that the subject matter deals with.

HON F R PICARDO:

They are not part of the Ordinance.

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

Clause 16

HON CHIEF MINISTER:

The first amendment in 16 is just to change the reference to “*person*” to the reference for “*an individual*” . The second amendment is to qualify distress by indicating or stating that it must be substantial distress and the third amendment is so that the list in (1), (2), (3) and (4) should be consistent with the language used in section 7 and indeed the same is the reason for all the remainder of the amendments to this clause.

Clause 16 – as amended, was agreed to and stood part of the Bill..

Clause 17

HON CHIEF MINISTER:

The first amendment in clause 17 is the same one “*person*” becomes “*an individual*” and to add sub-section 2 the sentence “*data recording a data subject’s request*” under sub-section 1 are not required to be deleted. In the data that requires to be deleted in those circumstances one does not need to delete the data that is the data of the request. This is for the preservation of the record of the fact that the request was made.

In sub-section 6 it is to make a reference to the complaining to the Commissioner and the words deleted in sub-section 7 which

is the whole of the sub-section are no longer needed because of the provisions of clause 5.

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

Clause 18

HON CHIEF MINISTER:

The regime created by section 18 is prohibitions against making decisions which affect the data subject simply on the basis of data which has been automatically processed, for example, whether one gives credit to somebody or not that decision being made simply or whether he appears on a credit agency's black list and the amendments at A (a) on page 301 is that in respect of the exceptions to that principle is not just in relation for the purposes of considering whether to enter but is actually for the purposes of entering into a contract with the data subject and in the new B (b) it will be in the course of performing such a contract and in both cases adequate steps have been taken to safeguard the data subject's legitimate interests, for example, but without prejudice to the generality of the forgoing allowing him to make representations to the data controller in relation to the proposal. In effect the entering which had been that peculiar (ii) has been lumped in with *"the considering of entering into a contract both together"* as (aa), (b) *"in the course of performing such a contract"* which was there before and then the new language applying to both is that safeguard requiring those safeguards to have been taken. In (bb) a bit further down the page it is just changing the word, *"enabling"* for allowing and the words deleted are just superfluous and (3) adds a new section giving the data subject *"the right to complain to the Commissioner if he believes that such a decision is going to be made contrary to this section."* That a decision that prejudices him is going to be made on the basis of automatically processed data only.

Clause 18 - as amended, was agreed to and stood part of the Bill.

Clause 19

HON CHIEF MINISTER:

The existing clause 19 is deleted altogether because the existing clause 19 is now combined in a new clause 19 with the provisions of the old clause 9 which the hon Members will remember I told them at the time were being deleted but carried forward into another provision. This new clause 19 combines both the old clause 9 and the old clause 19 into a new clause 19 and they set out between them exemptions from prohibitions on processing and also exemptions from data subjects rights. If the hon Members want roughly to follow I can give them an indication of the areas of life where these exemptions, the withdrawal of the protection of this regime occurs. At 19 (1) those are the lists of sections which are affected by this section so those are the rights that are being cancelled and they are being cancelled under sub-section 2 in the area of police work under (a) *"preventing, detecting or investigating offences apprehending or prosecuting offenders et cetera, et cetera,"* (b) *"..tax, customs, and other public monies collection. Assessing or collecting any tax, duty or other monies owed or payable to the Crown et cetera."* Sub-section 3 relates to the regulatory world. Financial Services Regulator.....

HON F R PICARDO:

Before the Chief Minister carries on because he may be able to address the point I am going to raise now in the way that he is dealing with this. I have problems with sub-section 2, sub-section 3 and sub-section 5 because they make statements as to data but they do not say what happens as a result of that. If one looks at them they say, *"...personal data processed for this*

purpose,” but there is no statement as to what happens to that data it is as if the proviso had been left out.

HON CHIEF MINISTER:

That is what I tried to explain when I explained 19 (1) it is all in 19 (1) so let us read 19 (1) which says, *“personal data processed for the purposes set out in sub-section 2 to...”* and there is a word missing that should be 2 to 8. Now it encapsulates the whole list. It says 2 – and then there is a blank space and the 8 has been gobbled up there. *“...are exempt with the following sections of this Ordinance to the extent that compliance will be likely to prejudice the proper discharge of these functions or prejudice those purposes.”* Then those sections set out there in (a) to (d) are the sections that contain the rights that would normally be available but which are being suspended and then the rest of the sections sub-sections 2 to 8 set out the areas and circumstances and the parties for whose benefit those rights are suspended. There is no notice given of the need to insert (8).

HON F R PICARDO:

At the end of each of the sub-sections we have got different types of punctuation either they should all be full-stops or they should all be semi-colons. In this instance I think that they should all be full-stops.

HON CHIEF MINISTER:

I am sure that the draftsman is listening and will consider the matter later.

Clause 19 - as amended, was agreed to and stood part of the Bill.

Clause 20

HON CHIEF MINISTER:

This is another of those examples where there are a few amendments and rather than identify them by location the letter giving notice of amendment on item 35 in the letter, says that clause 20 is amended by substituting for the existing clause the following and then one has in the annotated version a few amendments marked up but not the whole language underlined. The amendments are the ones that one can see underlined. By adding 24 to the list of sections and by adding *“where necessary to safeguard defence, national or”* so that whereas before it said, *“where necessary to safeguard public security”* it is now *“where necessary to safeguard defence, national or public security.”* Again in sub-section 2, section 24 is added to the list and in sub-section 3 there is a deletion of language indeed the whole of it which is no longer necessary.

Clause 20 - as amended, was agreed to and stood part of the Bill.

Clause 21 - was agreed to and stood part of the Bill.

Clause 22

HON CHIEF MINISTER:

There is an amendment here, it really is a tidying up amendment. Instead of the reference to *“referred in this Ordinance as “the register”* “ the words in brackets is simply *“the register of”* instead of persons to whom the section applies the words *“processing operations”*. It is important to bear in mind that this directive does not create a register of data controllers it creates a register of registrable data processing operations so what one enters is ones data process operations not oneself on the register. Ones name and identity is what one

has got to reveal but what is registrable is the operation and not the controller, for example, if a data controller has more than one registerable data processing operation he has to make a separate registration of each and cannot take the view that just because he is a registered data controller he may control as many different sorts of data processing operations as he likes and this simply makes it clear that it is a register not of persons to whom the section applies but of processing operations which is a defined term. Sub-section "a" is deleted because it is unnecessary there as it is now in section 23 sub-section 3. There is a small amendment there in "2" at the bottom of "(2)(a)" instead of entries in the plural the words "*any entry*". In sub-sections "3 and 4 (b)" is being deleted in each case because it is being thought to actually duplicate the provisions of (a) in each case. Both refer to the evidential value of an extract from the register but do so in different terms so one or the other is going to be removed, for example, (a) says "*in any proceedings a copy of or of an extract from any entry in the register certified by the Commissioner or a member of his staff to be a true copy shall be evidence of the entry or extract*" and then it used to say, "*..and a document purporting to be such a copy and to be certified as aforesaid shall be deemed to be such a copy and to be so certified unless the contrary is proved.*" It has been thought that (b) adds practically nothing to (a) and therefore it is going to be deleted and removed from (a) and (b) list form so that 3 will now read, "*...in any proceedings a copy of....*" so one again removes the dash and the words in any proceedings are joined to the words, "*a copy of*" and the same in 4 .

HON F R PICARDO:

I agree that both those (b) are beautifully torturous pieces of language which add very little except for the last five words of each sub-paragraph which will be lost completely unless the contrary is proved. Therefore what we should have is the deletion of the sub-paragraph but the inclusion of the words, "*..unless the contrary is proved ...*" at the end of 3 or 4.

HON CHIEF MINISTER:

We had that precise debate when we were deciding this or not and we came to the conclusion that it was not actually necessary to save those words because if the contrary is proved, if it has not been signed by the Commissioner or a member of his staff namely it is a forgery, or it has not been signed by an authorised person then "a" is not the case either, then it is not a copy of or of an extract from an entry in the register certified by the Commissioner or a member of his staff to be true. So, if it is not signed by them then "a" is enough to defeat one because the words that the Member is suggesting we should try to salvage from "b" is when one can demonstrate that this is in effect either a forgery, it is not signed by the Commissioner at all by somebody purporting to be the Commissioner nor by a member of staff by someone purporting to be a member of staff or by the office cleaner who is not the Commissioner or a member of his staff with the proper authority. In both such cases or in any such case the certificate is valueless under the language of "a"....

HON J J BOSSANO:

It can also be proved not to be so because that is not what the register says because one can have the copy signed and all the rest of it purporting to be what is in the register and it is not in the register.

HON CHIEF MINISTER:

That is the point of the clause that the content of an extract by the Commissioner shall be definitive evidence. I see the Leader of the Opposition means a certificate issued in error by the Commissioner.

HON J J BOSSANO:

And I come along and I say I am not in the register and I cannot prove it.

HON CHIEF MINISTER:

That is true. That is a possibility. A perfectly bona fide valid authentic certificate but one issued in error as to content by the Commissioner. The person who is adversely affected by the issue and the content of that certificate must have the opportunity to say, *"....but look it is a mistake you cannot use this to say what is obviously untrue simply because somebody has made a mistake and signed the certificate."* The way to deal with that is that the words *"...unless the contrary is proved,"* should be added at the end of (a) at both sub sections (3) and (4).

HON F R PICARDO:

It is not actually at the end of (a) it is at the end of the sub section.

Clause 22 – as amended, was agreed to and stood part of the Bill.

Clause 23

HON CHIEF MINISTER:

Amendments to clause 23 also as I have explained in the previous clause make it clear that what is being registered is not the person but the processing operation. So instead of reading *"..a person wishing to be registered.."* on the register, it says, *"..a person wishing to register a processing operation on the*

register.." again making it clear that this a register of processing operations and not the persons who do the registering and sub section 2 is no longer required for that very reason because it is no longer relevant now that it is clear that each processing operation requires separate entries and not just the data controller's entry in the register.

There is a new sub section 2 which enables the Minister by regulations certain types of processing operations which will be subject to what is called a prior checking system. The normal regime is that one notifies and gets on with it and one does not have to wait for the Commissioner to say, *"okay I approve the registration of your data processing before you can get on with the processing,"* unless the Minister has designated certain types of operation under this clause as being prior checking. Certain types of operation which cannot begin unless either the Commissioner has notified one that the registration has been accepted or 28 days have passed from the date of the application for registration. This may not be done, in the UK this power has not been exercised so there is no special type of processing operation that requires this prior checking business and therefore all the data is subject to normal regime which is that one sends in ones application and then one gets on with it. The amendments to sub section 3 are just by way of greater clarity they do not alter the purport or the extent of the provision it is just again to make clear that what is being registered is the processing operation and amendments incidental thereto.

In sub section 4 it used to say, *"...the Commissioner shall examine applications for registration or renewal registration and shall accept any application made in the prescribed manner..."* This is an important point. This is the first point in which it arises although it arises more substantially in sub-section 5, as the Bill was published it would have required annual re-registration of every data processed and on reflection we have taken the view that that is unnecessarily onerous and unnecessarily bureaucratic. I suspect that the hon Member will support this because he will recall that one of the concerns that he expressed, the Hon Dr Garcia, was that this should be done in

a way that was as unonerous as possible on business, relieving them of the obligation to re-register annually but simply once they have registered simply to notify the Commissioner of any changes to the modification is much less onerous than an annual re-registration process. That is achieved in the remainder of this sub-section. All that one has to do to notify and get on with it is make sure that the form contains all the information that it contains and pay the fee and then one gets on with it.

The hon Member did make a point in sub section 4 (b), “*...the applicant is one to which sub section 2 applies and the applicant for registration is likely to contravene any of the provisions of this Ordinance*”. The hon Member questioned whether that was not giving too much discretion to the Commissioner who could therefore refuse to register if he thought it was somebody who was likely to breach. First of all the words in red now make that sub section applicable only to applications covered by sub section 2. That is the particularly sensitive type of data that is subject to the prior checking process where one cannot start until the Commissioner has either approved the application or the 28 day default period has expired. The system is that if one has not heard within 28 days even in respect of this prior checking process after 28 days there is a deemed acceptance.

HON DR J J GARCIA:

In relation to the wording, although I take the point that this is now being made subject to sub section 2 which narrows down the effect of the provision the wording that the Commissioner shall accept any application made in the manner provided for in sub section 8 and in respect of which any fee payable has been paid except where the application is one to which sub section 2 applies and the applicant for registration is likely to contravene any of the provisions of the Ordinance. How does the Commissioner know whether an applicant is likely to contravene the provisions of the Ordinance or not? I can understand in relation to (a) where if one does not provide sufficient

information or the application is flawed then it does not go forward but what criteria and on what basis does the Commissioner consider that somebody is likely to break the law?

HON CHIEF MINISTER:

The Data Protection Commissioner is actually quite a powerful man not just in relation to this point. He is to be presumed that he will exercise his powers reasonably bearing in mind that the mischief that this power has in mind is that people who are notorious abusers of people's personal data should not be able just to carry on re-registering. There comes a time when the Commissioner says, “*I am not interested that the form has the information on it, you have demonstrated presumably by past abuse, I suppose, that you are not a person who should be trusted to process citizen's sensitive data*”. This does not apply to the general regime this only applies to data that the Minister has specified in regulations is much more sensitive, not the sort of normal information about us but very sensitive information about us that should be subject to particular safeguards and should not be kept by people who the Data Protection Commissioner feels is unfit. The only counterbalance to that because that has got to be reasonably exercised is (a) that there is a right of appeal from his decision to the courts given here and even if there were no right of appeal there is a right of judicial review for the exercise of a quasi judicial judgement as to reasonableness here which may expose the potential data controller to a degree of delay because these rights exist but they may not be instantly accessible between a Monday and a Tuesday so that delay is a reasonable price to pay for making sure that very sensitive data about citizens are not processed by people who have demonstrated that they are reckless or indolent as to how they look after it.

HON F R PICARDO:

The amendment to sub section 2 refers to proscribed processing operations and there is a reference three times to that should it not be prescribed? Proscribed means outlawed prescribed means laid down in regulations.

HON CHIEF MINISTER:

I agree with what the hon Member has said that that is what each means but I had read it to mean that that is what was intended. It was intended to call it something that was proscribed unless all these conditions were met but let me ask the draftsman which version she meant.

Yes, the intention was to call them proscribed because they are proscribed, it is forbidden until it has gone through the prior checking mechanism unlike the rest of the information which is permitted the moment one submits the application. Either could have been used because this is only invoked when these things are proscribed by the Minister in regulations but I do not think it is an improper use of the word "*proscribed*" given that it is intended in the sense of not allowed. One is not allowed unlike the regime that applies to normal data, with this type of data one is not allowed to do it until one has submitted to the prior checking regime.

HON F R PICARDO:

This is one of the times where we want to make clear that the subparagraphs are to be read conjunctively one has to meet both of that criteria before one is able to proceed. In 2(a) at the end I think one has to say "*..and..*" it has got to be clear that the person must apply to the Commissioner and not carry out the processing until either the Commissioner has said "*..yay or nay*" or the 28 days or such other period has passed otherwise if one leaves that in the air the person could simply by applying claim

that he has complied with the provisions of the Ordinance and set off to start his processing operations.

HON CHIEF MINISTER:

I accept that if it did say "*..and..*" it would be beyond doubt but I think it means that anyway.

HON DR J J GARCIA:

Also in sub section 2 of the Bill the person wishing to register a prescribed processing operation on the register or to have the particulars of "*..an such entry...*" I think it should read, "*..such an entry..*"

HON CHIEF MINISTER:

In the second line of sub clause 2, "*..register or to have the particulars of any such entry.*"

HON F R PICARDO:

At the end of (4) because we have gone through so many deletions we also need to get rid of the "*or*" and give finality to that clause and we have to do the same at the end of sub clause 5.

HON DR J J GARCIA:

In sub clause (4)(b) at the end there is also an extra (b).

HON F R PICARDO:

My Colleague Mr Randall has shown me that in his version sub section 4, sub clause 7 (c) is not crossed out, in mine it is crossed out. My amendments to sub section 4 to delete the semi colon and the “or” makes no sense if this stays in but it makes all the sense if it is taken out as it is in my version. There seems to be two versions.

HON CHIEF MINISTER:

We agree that the correct version is the version where it is crossed out.

HON F R PICARDO:

Therefore the amendments to it lie.

HON CHIEF MINISTER:

What I cannot explain is how there are two versions of this it must have been part of an earlier draft which has been photocopied rather than the latest draft. This has all been done until the early hours of the morning late last night.

MR CHAIRMAN:

To be on the safe side, sub section 4 would read, “...*shall accept any application made in the manner provided for in subsection 8 and in respect of which any fee payable has been paid except where (a) the particular proposal for inclusion in the register are insufficient of any other information required by him and has not been provided or is insufficient or (b) the application is one in which subsection 2 applies and the applicant for*

registration is likely to contravene any provision of the Ordinance.”

HON CHIEF MINISTER:

The old 5, 6, and 7 are deleted. Now there is a new 5 and it should end with a full stop. Having changed the regime so that in the case of the normal data one can process the moment that one has notified without waiting for any assessment by the Commissioner and the entry is deemed to have been made from submission new 5 then says that if once the registrar gets round to looking at it he finds that there is a breach and notifies that the deemed entry, for example, if one sends in a form and the cheque which is all that one needs to do to be deemed to be on the register, if when the man cashes your cheque it bounces or he looks at ones application form it is missing information that it needs to contain the basis upon which the application was deemed to be accepted where not in fact the case and therefore he notifies one of that and at that point the deemed entry is no longer deemed and that is the effect of 5.

HON F R PICARDO:

As presently drafted it takes effect the moment that the Data Controller receives the notification.

HON CHIEF MINISTER:

Yes, the entry, it is deemed. What 5 says is, “...*in a case to which sub section 1 applies...*” in a case which is not subject to the prior checking regime, in a case where all one has to do is send in the application form with the cheque and one is deemed to be on the register from that moment so that it is not illegal to process once one has shoved that in his direction, in that case, in a case which has benefited on that regime the deemed entry shall expire on receipt by the data controller of written

notification from the Commissioner that the application that he has submitted is not in accordance with the requirements of subsection 4 and that written notification by the Commissioner shall specify the reasons that the application is in breach

HON F R PICARDO:

The point is that it will be up to the Commissioner to prove service on the Data Controller.....

HON CHIEF MINISTER:

No. It is a three day rule. There is a general provision in clause 4 – Electronic Communications and Service of Notices, where it is being sent by post it has been deemed to have been received three days after posting which is now two days longer than is needed but this is precisely why there are the electronic communications provision because I would expect the Data Commissioner to do that by electronic means, e-mail, facsimile or by such some person I would not expect him to do it by post because the consequences of it then taking longer than three days in the post is that for any day between three and the date of arrival he is actually breaking the law, the Data Controller, because his deemed entry is no longer valid and he is not allowed to process data without the entry so I would expect the Data Commissioner to use the electronic means of communication route.

HON F R PICARDO:

For the new sub section 8 I do not think it makes any sense to just add those words at the end, that is either a separate sentence or say, “...as the Commissioner may require and publicise..”

HON CHIEF MINISTER:

Remove the “,” in red and add the word “..and such requirement shall be publicised.”

HON F R PICARDO:

We are stuck with the word “publicised” but what does it mean because it is in the context of notification of changes to legislation where the word “publish” would imply “publish in the Gazette” whilst “publicised”.....

HON CHIEF MINISTER:

All changes in the law need to be published in the Gazette so this is more than that it means that he has got to “publicise” the fact. That means a campaign of advertising to make sure that it is not just the technical publication in the Gazette which most data controllers would not read.

Clause 23 – as amended, was agreed to and stood part of the Bill.

Clause 24

HON CHIEF MINISTER:

The first amendment in clause 24 is basically this one of language as is the second one, the addition of the word “where” to little “(b)”. The only substantive amendment to “(e)” is the addition of a new item to the list as provided by section 9 or section 19 because those provide.....in sub section 3 is the section that provides the deemed provisions that we have been talking about in respect of the main data. So all that language in red at the bottom of page 311 and over the page is the language that delivers the regime that I have been talking about when I

have been telling the hon Members that unless it is a prescribed processing operation then one can get on with it as soon as one has notified it without having to wait for a comeback from the Commissioner. Sub section 4 is deleted altogether because it is no longer needed given that clause 24 (3) each processing operation now needs to be registered so section 24 (4) used to speak of data controllers and we are not now registering data controllers it is now clear that the registration is of processing operations. There is a new sub clause 5 which is in a sense the opposite of the power by regulation to create a more onerous regime for particularly sensitive data which we have been calling the “*prescribed processing*” this is the opposite, this is where by giving the Minister the power by regulations to exempt from the need to register processing operations in relation to data which the Minister has specified is unlikely to adversely affect data subject’s rights under this Ordinance or data subject’s rights under the European Convention of Human Rights or the Gibraltar Constitution Order. Just as we have created a more onerous regime for particularly sensitive data there is here created the possibility to create a much more lax regime for data which is of the sort which is unlikely to be able to adversely affect people and that is then capable of being exempted from the need to register.

HON C A BRUZON:

When we say that a person who contravenes sub section 3 is guilty of an offence why is it specifically mentioned there that if somebody contravenes that section he is guilty of an offence?

HON CHIEF MINISTER:

This provides that if one is processing data that requires to be registered and one is not registered one is committing an offence and there is throughout the Ordinance in several places the creation of offences. So it does not imply that only this bit is an offence there will be other places in the Bill which will say,

“.....and if you break this it is an offence and if you break this it is an offence.”

HON F R PICARDO:

In sub section 24(1)(a)(i) surely it must be, “*...processing the sole purpose of which.....*” not “*whose sole purpose....*” The processing is not

HON CHIEF MINISTER:

Where are we?

HON F R PICARDO:

We are at sub section 24(1)(a)(i) where “*processing*” has been described as a person.

HON CHIEF MINISTER:

As I understand the hon Member’s point given that the reference is to data it should not be whose because whose refers to a human being and not to a thing. Delete the word “*whose*” and add the word “*the*”.

HON J J BOSSANO:

Mr Chairman, the provisions for the Minister to make regulations that sub sections 3 and 4 do not apply to particular categories processing operations which are unlikely to adversely affect the one that the Chief Minister mentioned last is that something that we are required to do?

HON CHIEF MINISTER:

It is something that the directive allows to be done in recognition of the fact that there is types of data which falls under the definition of data is innocuous and unlikely to breach anybody's rights. This may not be used just as the higher than normal regime, the prescribed process may not be used but they are enabling provisions, I cannot think of an example right now but if somebody says, *"Do we really need to register processes of this is gong to affect lots of people there are going to be lots of registrations it is very onerous on this category of data controllers and really the data could not be more innocuous even if it were published in the newspaper it could not cause anybody any prejudice or harm therefore Minister what about it why do you not pass a regulation saying that in the case of this data one should not have to register,"* this is what the provision means it is not required, one is not obliged to do this but it is a derogation permitted, it is a permissive derogation that we have given ourselves and which is permitted in the directive.

HON J J BOSSANO:

What somebody might think is unlikely may not be what somebody else thinks is unlikely and unlikely what in the judgement of a Minister making the regulations?

HON CHIEF MINISTER:

Just as it is in the judgement the Minister making the regulations whether it should be subject to even more stringent rules than the normality.

HON J J BOSSANO:

Yes, but the more stringent rules provide more protection and therefore I do not mind giving the Minister the right to make

regulations to protect people more but I am not sure that I want regulations to protect people less because the whole purpose of this is protecting people.

HON CHIEF MINISTER:

Yes, but when they need protection.

HON J J BOSSANO:

In whose judgement in the judgement of a Minister making the regulations.....

HON CHIEF MINISTER:

In the Judgement of a Minister who has been elected to make judgements.

HON J J BOSSANO:

Then we have a provision in the law were what is deemed to be likely or not likely could depend, for example, on the fact that there is a new Minister for Health and a new Minister may think that there is information in the health service which the old Minister might have deemed was necessary and the new one may not.

HON CHIEF MINISTER:

This is not the Minister concerned with the subject matter this is the Minister charged with responsibility to suppress.

HON J J BOSSANO:

Presumably if the Minister charged with the subject matter thinks so he would be able to persuade the colleague that has to make the regulations.

HON CHIEF MINISTER:

The Leader of the Opposition presumes that in all governments Ministers are not allowed to exercise their own judgements, in this one they are.

HON J J BOSSANO:

No, I am saying that in this case since we are legislating and creating.....

HON CHIEF MINISTER:

As a Member of the House passing primary legislation one can say, *"I do not think that the Minister should have this power."*

HON J J BOSSANO:

That is what I am saying. I am happy to give the power to restrict further but not to loosen it.

HON CHIEF MINISTER:

Government do not agree but I will take note.

MR CHAIRMAN:

You are voting against 5?

HON J J BOSSANO:

Yes.

HON CHIEF MINISTER:

Except that I would say to the Leader of the Opposition that it is not a power which is granted in terms of sole discretion, if the Minister exercised this power he could be judicially reviewed and then the courts would have to decide if the data is likely or not to adversely affect the data subjects rights under this Ordinance or the Constitution so it would be his judgement in the first place but it would not be unchallengeable.

HON J J BOSSANO:

Like any other power that is challengeable in court because if it is in breach of the Constitutional Rights of the person then presumably it is challengeable. That is what it is saying here. The Minister can pass a rule and say, *"..you can keep somebody's personal data, you do not have to register because in my judgement the data that you are keeping is not data which is likely to be in breach of that person's rights under the Constitution"* and I disagree.

HON CHIEF MINISTER:

I have understood the point.

HON J J BOSSANO:

If I disagree I have to go to court and get the court to agree with me and I would rather not create that situation and therefore we vote against.

MR CHAIRMAN:

Are you voting against or abstaining?

HON J J BOSSANO:

We are voting against dealing on how to make regulations so that the Minister can say whether somebody's human rights are likely to be affected, section 24(5).

Clause 24 – as amended, stood part of the Bill with the exception that sub-section (5) is voted against.

Clause 25

HON CHIEF MINISTER:

In clause 25 this is one of the points that we discussed at Second Reading where we have added the entitlement of the data subject in new (iii) the entitlement of the data subject to compensation for any damage that he suffers as a result of a breach by the data controller of the requirements and of the data subjects rights. In sub section 4 the Data Protection Commissioner is actually empowered to make compensation orders and then in the rest of (4) in (c) there is a requirement of the directive that no compensation order shall be made where a data controller proves that he had taken such care as in all of the circumstances was reasonably required to comply with the requirement or requirements that the Ordinance concerns. That is a statutory defence that the directive requires that to be

available to the data controller and (d) is that "*the Commissioner shall notify the parties in writing of his decision in relation to...*" there is an "*it*" extra in the second line of (d) that "*it*" should not be there it should read, "*...the Commissioner shall notify parties in writing of his decision in relation to a compensation order and either party may if aggrieved by the decision appeal it to the Supreme Court under section 32 (5).*" This is the only direct access to the Supreme Court all other appeals from the Data Protection Commissioner's decisions are in the first instance to the Magistrates' Court. In the case of the compensation order the first appeal is directly to the Supreme Court.

HON F R PICARDO:

In effect by this part we are going to make the Commissioner a quasi judicial body who is going to be making decisions as to rights and compensation and so be it I think that this addresses the point that we dealt with at question time in relation to Financial Services where if we have got a Financial Services Commission that can do in its field what the Commissioner can do in this field but without the power to provide compensation. It is good that this Commissioner should have that power, we need to make sure that if we are going to burden the Gibraltar Regulatory Authority with the obligations contained herein in so far as they would relate to a register those might be easy to comply with but in so far as there is going to have to be provision for the Regulator to make decisions in his capacity as Commissioner et cetera that he should be properly resourced in this respect.

HON DR J J GARCIA

I welcome that the Chief Minister has taken up the point made during the Second Reading which was that the compensation provided for in the original Green Paper was narrower than what is being provided now in the amended.....

HON CHIEF MINISTER:

...whilst I accept that the hon Member also mentioned it he will recall that this was one of the points that I myself had already said in my own Second Reading speech that would be moved because the Government had already spotted this point itself.

Clause 25 – as amended, was agreed to and stood part of the Bill.

Clause 26

HON CHIEF MINISTER:

This relates to enforcement of notices and the only amendment is at sub clause 6 with the additions after the list at (a) and (b) of the words, “...of the blocking, ratification, erases, destruction or statement concerned..” This language was in before but again is one of those cases where it has been inadvertently tagged onto (b) rather than walk back to the margins so that it would apply to (a) and (b) so it is a repositioning of language that was there originally.

HON F R PICARDO:

The Chief Minister is also amending 5 and I agree with the amendment.

HON CHIEF MINISTER:

The adding of the word “and”?

HON F R PICARDO:

Yes.

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

Clause 27

HON CHIEF MINISTER:

Clause 27 deals with information notices and that is the power that the Commissioner has under this clause to require data controllers to provide him with information so that he can assess whether he is complying or not complying with the requirements of the Ordinance. The amendment at 27 (1) is simply to add the words, “...such information as is specified in the information notice.” It requires that person to furnish to him in writing “such information as is specified in the information notice within such time specified in the information notice rather than have that such information in relation with the matter at the end of the section,” so again it is repositioning of language.

Clause 27 – as amended, was agreed to and stood part of the Bill.

Clause 28

HON CHIEF MINISTER:

Clause 28 is amended in the way that the hon Member can see there by adding the word instead of “dealing with personal data,” the phrase “dealing with” is not consistent with the concept of the Bill. The Bill talks about processing personal data so the words “dealing with” are changed and substituted by the word “processing”. In sub clause 2 (a) where there is a of any community finding the community finding is the community finding that is defined in section 32. In (b) there is the deletion of the words “...or the European Council..” and in (3) again “dealing with” is substituted by “processes”.

HON F R PICARDO:

We appear to have fallen into the trap in 28 (2) which the Chief Minister identified earlier this morning as the old style of drafting where we have an “and” after each of (a) and (b). I think we should delete the first one after (a).

HON CHIEF MINISTER:

So, what....?

HON F R PICARDO:

Does the Chief Minister want to do it or not? The Chief Minister is the one that said that it was old style drafting this morning I picked it up for him.

HON CHIEF MINISTER:

It is old style drafting the question is whether it means what it is intended to mean.

HON F R PICARDO:

It means what it is set out to mean but this morning when dealing with that issue we looked at lists and decided that if we were going to create conjunctive language we would add it at the end of the penultimate item in the list.

HON CHIEF MINISTER:

Government have not agreed with the hon Member and will not agree with the hon Member a drafting style of which he approves. The Government bring legislation into the House if the language means what the Government intends for it to mean

it is going to stay, if the hon Member as he has done on several occasions today very helpfully points out to the government either things which do not actually deliver what the Government intends or do deliver what the Government intends but the Government were mistaken in wanting that delivered, that which is the purposes of Parliamentary scrutiny of legislation and which we very much welcome is what will result in things being changed but I am not agreeing with the hon Member a legislative style which the Government are entitled to the exclusion of all other legislating styles to adopt in its legislation.

HON F R PICARDO:

I obviously made the mistake of believing that there might be an element of consistency in the way that the Chief Minister wanted to approach an issue. Clearly I was wrong. This morning we were told something about the way that modern drafting style was to be adopted and this evening we are being told something else, so be it. I have no difficulty with that legislation is in the hands of the Government and they will pass it as they see fit but the fact of the matter is that we are dealing with a completely different Bill to the one that has been provided to us with seven days notice and we are doing our best in order to be constructive to provide all those points that we believe need flagging. We flag them, if the Government do not wish to adopt them so be it that is why they have a majority in this House.

HON CHIEF MINISTER:

The hon Member is simply stating the obvious absolutely stating the obvious. Different Bills are drafted by different people with different drafting styles. It is even possible that different sections of the same Bill is drafted by different people with different drafting styles, so what, there are different drafting styles in the Bill.

HON F R PICARDO:

The law of Gibraltar will be rendered an absolute mess and a shambles if we had different parts of the same Bill drafted in different styles and I for one certainly will not vote in favour of any Bill which is arranged in that way and that is what I am highlighting to the Chief Minister and I think that we are having a row over nothing because I think that it is fair to describe him as I described myself as a purist when it comes to issues of legislation of this sort but if the Chief Minister wants to fight over this let us fight over this.

HON CHIEF MINISTER:

I do not have to fight with the hon Member, for him everything is a fight and a row. The reality of the matter is that the hon Member can vote for or against things as he likes. If the hon Member is saying that he will only vote for legislation which regardless of the efficacy of its content is drafted in a linguistic grammatical presentational style that he likes and that he will vote against it if it is not even if the content is to the effect that it should be then he should vote against all the legislation that he likes. The Government are concerned with the content of legislation and will not allow the hon Member to decide the drafting style of legislation.

HON F R PICARDO:

I am concerned with the efficacy of the legislation and the legislation however well intentioned if not properly expressed will have no efficacy whatsoever and what is the point of spending time in this House and indeed what is the point of legislating if the legislation that we come up with is later shown not to have any effect and the Attorney General I am sure can remind the Chief Minister that although it may be many years since he left the courts the fact that legislation is not properly expressed sometimes means that it is struck down.

HON CHIEF MINISTER:

I agree with the hon Member but he started this tirade by conceding that it was properly expressed it is just that it was properly expressed in a different style to some other proper way of expressing it so what is wrong so long as it is properly expressed as he has just conceded if it is properly expressed in a different style. I agree entirely with this last remark and it is precisely because what he has just said in his last remark is the case but it is not necessary to change it and the point that he is raising here do not raise points of efficacy of the legislation.

HON F R PICARDO:

The issue of whether or not pieces of legislation are drafted in different styles within one Ordinance is an issue which concerns me and this is not a tirade I have not had my chance yet to have my first tirade in this House, I will soon and I hope the Chief Minister enjoys it.

HON CHIEF MINISTER:

My last word on the matter. It appears to be the hon Member's debating style that he thinks he wins it by being the last person to speak on the issue. I have never subscribed to that principle in life so, let us do a deal so that the hon Member understands what I find necessary and what I do not find necessary. When I have finished saying what my final position on a matter is I am happy for him always to have the last word so I am going to sit now. The hon Member may stand up, repeat for the 13th time what he has already said 12 times and I promise him I will not get up to challenge him.

HON F R PICARDO:

I am very grateful to the Chief Minister for that opportunity. I intend to take him up on that in the next four years. I do the deal as I have just said I am just concerned that the legislation should be effective. Thank you for the last word.

Clause 28 – as amended, was agreed to and stood part of the Bill.

Clause 29

HON CHIEF MINISTER:

The principle amendment in sub section 2 in respect of authorised officers that the powers which the hon Members and I think agreed may be excessive would be the subject of careful reconsideration but because we have not had time to do the reconsideration and we cannot hold back the Bill we have deferred it to regulation making powers.

HON DR J J GARCIA

When we raised this point during the second reading of the Bill in relation to section 29 (2) the point that was made was that we felt that having somebody flashing a badge and entering premises in order to inspect, examine, operate or test any equipment et cetera was rather a wide power and something that we were not comfortable with unless it was made subject to a warrant, court order, or Justice of the Peace. For reasons that he has just explained the Chief Minister has decided to pass the powers from the Commissioner to the Minister or to regulations made by the Minister.

HON CHIEF MINISTER:

What we had before was the provisions in the Ordinance itself. The powers to enter to search to flash the card as the hon Member called it, those were all set out and he said that he thought they were a bit excessive and I said that they may be and we would look at them. We had not got time to look at them and recast them so there are now no powers in the legislation to enter and search et cetera. Such powers can only be created now by regulations.

HON DR J J GARCIA

I understand what the Chief Minister has said but the powers are not there but there is now a regulation making power which actually lists that the power is a power to enter, inspect, search premises et cetera. What would allay the Opposition Members on this issue, which is of concern to us would be if perhaps we could make this subject to the judiciary – a court order, Justice of the Peace, a warrant – either by inserting that into sub section 2 or perhaps if the Chief Minister could allay us verbally and record it in Hansard.

HON CHIEF MINISTER:

If I was not in tune with the concerns that the hon Member has expressed I would simply allow the legislation to pass in its existing form so I think he can safely assume that the delay for reconsideration albeit that it then is done by ministerial decision is to make it less stringent than that and it would be likely to include such things as warrants. The view has been expressed that perhaps there should not be a need for a warrant but I tend to agree with the hon Member. What will emerge with these regulations is not an abuse of them to have something which is tougher but rather something which waters down this in a way which makes it less unbridled and the sort of ways that it can be

done is by the sort of mechanism that the hon Member has mentioned subject to warrant

HON DR J J GARCIA

If this is an undertaking that this is the position then we will have no problem.

HON CHIEF MINISTER:

I do not mind doing as I did with the Leader of the Opposition let him have sight of a copy as normally. The reason I undertook to the hon Member this morning to give him advance sight of the regulations as I am happy to do to him is that if it were not for the rush to get this legislation in normally we would amend this so he would be in a position to express a view now. Because we do not have time and we are doing it by regulation which deprives him of the ability to discuss that is why I am happy to give him a copy of the regulations in draft in advance as I did in the same circumstances this morning to the Leader of the Opposition.

HON DR J J GARCIA

I am grateful to the Chief Minister for that.

HON F R PICARDO:

There is a misspelling in the new sub section 2 of “*authorised*” which is in the Americanised version and in sub section 3 the extent of the amendment is not clear because the only words in red start with the word “*or*” but before that the words “*by this Ordinance*” do not appear in the published version but they do appear here, if the Chief Minister and I could get back to the

collegiate atmosphere that we have been in for most of the day I would ask him to also move that as part of his amendment.

HON CHIEF MINISTER:

The amendment should be as if the words provided by this Ordinance were also in red. The four words immediately before the words in red as if they were also in red. I move the addition before the words in red of the words “*..provided by this Ordinance.*”

Clause 29 – as amended, was agreed to and stood part of the Bill.

Clauses 30 and 31

HON CHIEF MINISTER:

The amendment in clause 30 is simply to reflect the precise language of the directive which we think more effectively actually delivers the requirement than in our original Bill and improves the data subjects rights considerably.

HON F R PICARDO:

In the version that I have got they have deleted 31 (c) but not added finality to what appears just before it.

HON CHIEF MINISTER:

That needs the deletion of the last “*or*”.

HON F R PICARDO:

...and the semicolon.

HON CHIEF MINISTER:

...and the semicolon.

HON MISS M I MONTEGRIFFO:

If I could make a slight contribution if the Chief Minister could go to page 320 I have noticed that under 31 (b) it reads, “..a country or territory ensures an adequate level of protection for the.....” and then we have “the” again.

HON CHIEF MINISTER:

I am obliged to the hon Lady for pointing this out. Finality is delivered by removing the semicolon, replacing it with a full-stop and removing the last “or”. That is just so that there is a reference as to where the definition of community findings is to be found rather than leaving it in the air.

Sub clause 5 is deleted in its entirety. As the hon Members will see there are now two or three pages of deletions and it is all replaced by a new sub clause 5 which starts on page 324 and the reason for this is the point that it was not very clear that there were exceptions to the general rule and that just how they have been cast in different language to make them clear that this is a list of things that are exceptions to the general rule. That is all it is language to make the reader more obviously realise that they are exceptions. Before they were cast in language which delivered the exception but in a way that the quick reader would not have regarded it as obvious and that is all that happened there there is no change of substance or effect. It is to improve the language not to alter the meaning.

HON L A RANDALL:

Just a small observation in clause 30 there are two (iv) in page 321 it should start at the top with (v) and finish with (ix).

Clauses 30 and 31 - as amended, were agreed to and stood part of the Bill.

Clause 32

HON CHIEF MINISTER:

Clause 32 contains the main amendment that we decided that in order that the data subjects which is likely to be an individual citizen with limited resources should most cheaply have access to the courts that the right to appeal should be to the Magistrates' Court rather than to the Supreme Court except as I mentioned earlier where there is an appeal against a compensation order in which case it is to the Supreme Court.

HON F R PICARDO:

After (f) in 32 (1) get rid of that full-stop there.

HON CHIEF MINISTER:

Yes, agreed. In sub clause 5 it is the right of appeal against a compensation order which is to the Supreme Court as I said and sub section 4 is to provide that the decision of the Magistrates' Court on appeal made shall be final save an appeal being brought to the Supreme Court on a point of law. So there is a right of appeal to the Magistrates' Court on law and fact and thereafter to the Supreme Court just on law by that stage there would have been two bites at the cherry on fact.

Clause 32 – was agreed to and stood part of the Bill.

Clauses 33 and 34

HON CHIEF MINISTER:

In clause 34 sub clause 1 the hon Member raised the question about the one year limitation and why that should be so. It provides that proceedings for an offence under the Bill may only be instituted within one year of the offence. The directive does not itself require this one year period and therefore the House is free to leave it in or to change it if it wants to. This is an area where we have freedom. If the sub clause were deleted the effect would be that prosecutions in the Magistrates' Court could only be brought within six months of the date of the offence in accordance with the existing provisions of section 65 of the Magistrates' Court Ordinance while by specifying the one year period prosecutions on indictment in the Supreme Court could be brought at any time. We are extending the jurisdiction of the Magistrates' Court in effect for six months and we are curtailing the Supreme Court which would not otherwise be subject to limitations on the basis that there should be some finality that breaches should not be prosecuted if they are historical and the moment has passed and no one has been

Clauses 33 and 34 – were agreed to and stood part of the Bill.

Clause 35

HON CHIEF MINISTER:

Clause 35 is just to give the Magistrates' Court or the Supreme Court different levels of fines. Both are specified as level five I think it is important that the higher court should have a higher fining power than the lower court so it is level four on the scale which is £2,000 and the Supreme Court is level 5 which is £5,000. There is a maximum and the courts can fine whatever it wants up to those limits.

Clause 35 - as amended, was agreed to and stood part of the Bill.

Clause 36

HON CHIEF MINISTER:

The amendments to clause 36 are the ones that I described to the hon Members at Second Reading namely that this special regime for being relieved of the duty to register not exempted from the Ordinance, just exempted from the duty to register where the data controller appoints a special personal data protection official in the published Bill applied only to public bodies and Government departments and by virtue of the amendments applies to all data controllers in the private sector too.

HON DR J J GARCIA

There was one point raised in relation to section 36(2)(c) and that is that that refers to section 23(a) to (e) of the Ordinance. In the published Bill there was no (a) to (e) because there was no (d) and (e) but since we have amended public Bill there is no section 23 anymore. If we check in this one with the amendments there is actually no section 23.

HON CHIEF MINISTER:

Section 23 has been deleted.

HON DR J J GARCIA

The same point applies in relation to sub section 3(b)(ii) once again we have the reference to section 23 over there.

HON CHIEF MINISTER:

It should be section 23(3)(a) to (e) not section 20(3). I am grateful to the hon Member for pointing that out.

MR CHAIRMAN:

The same thing happens at the bottom.

HON CHIEF MINISTER:

In both places yes.

Clause 36 – as amended, was agreed to and stood part of the Bill.

Clause 37

HON CHIEF MINISTER:

This is the general regulation and rule making power and it is to divide the regulation making power which in both cases belongs to the Minister into two types, one which under the directive he is allowed to discharge himself and sub clause 2, matters on which by the terms of the directive he is obliged to consult the Commissioner so, for the matters specified in sub section 2 any regulations that the Minister may make he has to consult the Commissioner before making them whereas the matters referred to in sub section 1 which are basically legislative matters as opposed to enforcement matters and administration matters he has the general legislative right.

HON F R PICARDO:

The reference to directive in 37 (1) should be with a capital “d” in the second line.

Clause 37 – as amended, was agreed to and stood part of the Bill.

SCHEDULE 1 and the Long Title

HON CHIEF MINISTER:

The main amendment to Schedule 1 is that whereas the published Bill in sub section 2 says “may”, the “may” has been deleted from there because some of the things have to be “may” and some of the things have to be “shall” so whether it is “may” or “shall” it has to be transported into each item. So, (a) and (b) are “may”, (c) is “shall” because the directive requires him to do that (d) is “may”, (e) is “shall” and (f) is “may”.

HON F R PICARDO:

Little (d) and (f) are new it is a power to co-operate with similar supervisory authorities and to request the supervising authority somewhere else.

HON CHIEF MINISTER:

He has an obligation under the directive to co-operate with supervisory authorities and render assistance to supervisory authorities in Schengen States, people bound by the Schengen Agreement but he has not got that obligation in relation to third parties so that is why one is “shall” and the other is “may”. The additional language in addition to the split up of the “may” and the “shall”, the additional language is that to circumscribe the kind of assistance, it should not be thought that he can assist by

providing the data itself. This is not a means by which any foreign body can get hold through these co-operation mechanisms of a data controller through the Data Controller Commission all that he is required to do that the co-operation and render assistance to Supervisory Authority states party to the convention

HON F R PICARDO:

I agree with the Chief Minister it is better if he does not have any power whatsoever other than to provide what is specified there.

HON CHIEF MINISTER:

The word *"including"* is dangerous in the context of the quite far fetched concern. There is no requirement to go beyond that language so we could take out *"including"* and *"through"* and just put instead of *"through"* *"by the furnishing of information"* making it clear that that is what he can do. We are deleting *"including through"* and substituting it with one solitary word *"by"*. Again in the second line of little (d) where the same two words *"including through"* appear.

HON F R PICARDO:

The concern that we have just touched upon now I do not know whether little (f) opens the door to the suggestion that if we are going to seek other supervisory authorities to act for us, or rather the Commissioner is going to seek that should he provide reciprocity in that respect which is what we are trying to get away from by getting rid of the *"including through"* and going to the *"by"* he probably needs to have a power to be able to call other Commissioners to assist him but how do we do that satisfactorily.

HON CHIEF MINISTER:

We should not be concerned about the importation of information should we?

HON F R PICARDO:

If our Commissioner is going to seek that others assist him does he in that way open the door to a suggestion that he must assist others when they come? He will defend himself with this *"I can only give you....."*

HON CHIEF MINISTER:

Absolutely and when he in turn asks somebody else for assistance it can only be in accordance to whatever limitations there might be in his laws.

I wish to make amendments to the Long Title to better and more fully recite the obligations being transposed. I would like to delete the words *"Schengen Convention Articles 126 to 130 in relation to data processing"* and add *"...Articles 126 to 130 of the Schengen Convention of 19th June 1990 applying the Schengen Convention of the 14th June 1985..."*

Schedule 1 and the Long Title, as amended, were agreed to and stood part of the Bill.

The House recessed at 7:30pm.

The House resumed at 7:40pm.

THE EUROPEAN ARREST WARRANT BILL 2004

Clause 1

HON CHIEF MINISTER:

Just to record that we are following the same procedure. The hon Members have had a copy of the letter of amendments and they have before them the annotated Bill.

HON F R PICARDO:

This is the point in relation to clause 1 (2) that I raised with the Chief Minister at the time of the Second Reading. We are legislating retrospectively explicitly so.

HON CHIEF MINISTER:

It is academic because there have not been any requests but even if we pass this Bill today it will not come into effect until it receives the Royal Assent and there may be requests between now and then so we had better delete the whole of sub section 2 and therefore the sub categorisation of sub section 1 so, clause 1 just reads “..This Ordinance may be cited as *The European Arrest Warrant 2004*.”

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

Clause 2

HON CHIEF MINISTER:

In the definition of European Arrest Warrant the reason why the words “subject to sub section 2” have been added is that the definition of European Arrest Warrant as it appeared before referred to a warrant issued under the laws of a Member State under such laws “*for the arrest and surrender by Gibraltar....*” It presupposed only incoming warrants but it is also a European Arrest Warrant when Gibraltar requests the surrender from another country. It says subject to section 24 because section 24 deals with outgoing warrants and there it is defined as an outgoing warrant as opposed to an incoming warrant. Hon Members might like to glance at the Long Title it says, “*An Ordinance to give effect to council framework decision of the 11th June 2002 on the European Arrest Warrant and the surrender procedures between Member States and matters connected therewith and to make similar arrangements as between Gibraltar and the United Kingdom....*” Here is a case in which it is important also as was the case in the other one, Mutual Legal Assistance, to make clear that anything that we do in relation to the United Kingdom is not an obligation and the decision is that it would be odd if it were harder to extradite somebody to and from the UK than it was to extradite them to or from France or Spain but here instead of leaving it to regulations so that one can think about it and curtail it the Government have formed the view of which I think I will be able to persuade the hon Member when he sees how we have made clearer the language in respect to the taxation point that there is no point beating about the bush we might as well just extend this to the UK so long as we are extending it to the UK in a way that makes it clear that it is not by virtue of an obligation but simply because the House has decided to legislate as a matter of domestic legislation. That is the only point that the Government needs to be saved here and it is saved in two ways the Long Title amendment but also hon Members will have seen that we have removed in the European Arrest Warrant definition “*Member State*” has been removed and “*its state*”. If the hon Members then go to the definition of “*States*” it means “*a Member State of the European Community, and the United*

Kingdom” thereby making the distinction that it is not extended to the United Kingdom qua Member State of the European Community. We only have the obligation to do this qua Member States of the European Community to those with whom we have the cross frontier obligation but we are extending it to the United Kingdom as a matter of domestic legislative choice on the basis that this House, if it agrees, believes that it would not be right on matters of extradition and its equivalent for the regime as between the United Kingdom and Gibraltar to be harder than with France, Germany, Spain, or Denmark.....

HON F R PICARDO:

To become harder.....

HON CHIEF MINISTER:

.....to become harder after this bearing in mind that traditionally extradition between Commonwealth countries was always supposed to be easier under the Fugitive Offenders Legislation rather than the Extradition Legislation. This is a matter of choice. In the Mutual Legal Assistance we made provision to extend it to the United Kingdom because there were things that needed to be thought about, here Government have made a judgment that there is nothing to think about and there is therefore no need to defer the extension to the United Kingdom to regulations.

HON F R PICARDO:

I am grateful that my suggestion that a definition of International Criminal Court be adopted has been taken but can I ask in relation to this substantive issue of the extension of the provisions to the United Kingdom which in principle would appear unobjectionable whether the United Kingdom will also be

extending to us the same benefit of being able to rely on their provisions as we would if we were another Member State?

HON CHIEF MINISTER:

Yes indeed. It may not have finished happening yet but if the hon Member looks at the United Kingdom's corresponding legislation which is the extradition act of 2003 it is split into what is called Category 1, Category 2 and Category 3 territories. Category 1 territories are basically EU territories to which this applies, Category 2 territories are basically non-EU but Commonwealth fish type territories and Category 3 are third parties and we are to be designated Category 1.

HON F R PICARDO:

We will be designated Category 1?

HON CHIEF MINISTER:

Yes but there is a published intention I do not know whether it has happened yet. In the commencement notice of the UK's Extradition Act which I have here there is an explanatory note that says, “...all requests received by the British Overseas Territories with the exception of Gibraltar which will be designated as a Category 1 territory.....will continue to be done under the Extradition Act 1989 until orders in council have been drafted.”

HON F R PICARDO:

I take the point. The definition of International Criminal Court one needs a capital “c” when referring to “*Criminal Court*”. After the word “*United Kingdom*” instead of comma there should be a

semicolon which would give uniformity with the rest of the whole.

HON CHIEF MINISTER:

Yes agreed and we should also delete the words “and commencement”.

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

Clauses 3 to 7 – were agreed to and stood part of the Bill.

Clauses 8 and 9 - as amended, were agreed to and stood part of the Bill.

Clause 10

HON F R PICARDO:

There seems to be two parts to the Bill. In one part of the Bill the words Magistrates’ Court are with a small “m” and a small “c” in the second half of the Bill for the whole part the word “*Magistrates’ Court*” appears with a capital M. Throughout our legislation the word Magistrates’ Court appears with a capital M so if I make the point once then I will not make it again because it occurs on a number of occasions.

HON CHIEF MINISTER:

It will be reviewed and it will all be made consistent with capital M’s.

Clause 10 - as amended, was agreed to and stood part of the Bill.

Clause 11

HON CHIEF MINISTER:

There is an amendment in (3) that commits a person “...*where there shall remain a court order under this section, it shall commit the person to a prison....*” And this is the remand institution point which we have resolved by saying, “...*provided that, if the person is not more than 21 years of age, he shall be held on remand terms.*” There are different regimes for remand and prison sentences.

HON F R PICARDO:

Under this Bill everybody would have to be held on remand terms in any event but we get rid of the problem of the remand institution and that is what I highlighted.

HON CHIEF MINISTER:

In (6) there is an “and” added there and in (i) and in (iii) there is the addition of the person who is required to serve all or part of the remainder of that term of imprisonment. At sub section 5 that relates to the release of persons that are not going to be surrendered is curtailed if there is an unexpired prison sentence.

HON F R PICARDO:

If the Chief Minister recalls my point in relation to this had been that the sub paragraphs did not read and the new (iii) being inserted makes this provision a mirror of the provision of sub

section 7 of section 12 because it did not make sense before, now it works.

Clause 11 – as amended, was agreed to and stood part of the Bill.

Clause 12

HON CHIEF MINISTER:

In clause 12 there is the removal of all the provisos in sub section 1 because there was complete repetition. My own personal reading of clause 12 sub section 1 and 2 as published were that they added practically nothing to each other and that I thought that with the exception of a reference to the word “*statement*” in sub clause 2 that there was an addition to undertaking that there was no difference between sub clause 1 and sub clause 2 so now they have been merged in effect. Sub clause 3 has been removed because there is now a provision which the hon Members will see in a moment for appeals against a decision of the Magistrates’ Court which was insufficiently provided for in the Bill. There was a quick reference to an appeal but there was no structure and the hon Member could see that there is now in large, appeals to this section later on in the Bill.

HON F R PICARDO:

...and not limiting any longer the right of appeals just to a point of law.

HON CHIEF MINISTER:

Apart from the point that the hon Member made about limited to appeal, Government had limited its appeal provisions to two

lines when in the UK it is two and a half pages. The hon Member will see what the new appeals regime is and that in addition to addressing the hon Member’s point it actually now provides for a much more comprehensive appeal regime.

HON F R PICARDO:

In any event as we would expect the right of appeal and issues of fact is the first stage to the Court of Appeal in the usual way.

HON CHIEF MINISTER:

I do not think it is a Court of Appeal the hon Member will see when we come, I think it is Supreme Court followed straight to the Privy Council thereafter. Little (3) “*is held on remand terms*”, (5) that is provided in the new appeals procedure in effect it is 10 days after one has exhausted all the appeal provisions.

HON F R PICARDO:

I was just getting a little confused. The Chief Minister has made the right amendment to the new 5 (b) (ii) which should now be (4) instead of (6) but then he has not changed the numbering of 8, 9, and 10 which has to now be 6, 7, 8.

HON CHIEF MINISTER:

Indeed. In defence of the draftspeople I should say that they were up until 4 o’clock in the morning last night preparing these annotated drafts from the letters so a lot of these errors had not been there if they had had more time.

Clause 12 – as amended, was agreed to and stood part of the Bill.

Clause 13

HON CHIEF MINISTER:

There what we have done is a little bit of presentation of skulduggery, does the hon Member remember the debate that we had about whether the person should be moved or not moved from the prison?

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

On reflection because it is not a compulsory thing we have decided to remove it altogether so the hon Members will see that we have removed the old section 14 altogether. So as not to have to renumber every other subsequent clause in the Bill we have split section 13 (1) and (2) into sections 13 and 14 to fill up the numbers and not therefore have to change all the cross referrals in the Bill thereafter.

Clause 14 – as amended, was agreed to and stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

There is no amendment there until page 354 in sub clause 6 where the proviso in part (a) 3 of sub clause 5 has been substituted with a new proviso. It is no change of language but it has just been removed again from (iii) to which it had become attached and made a separate paragraph given that the proviso

applies to all three parts not just to part 3 and the same at the bottom of page 354.

HON F R PICARDO:

I am still at 5 (a) those three provisions are not to be read conjunctively they should be read disjunctively but there is an “and” after the second one. I think that they are each to be considered separately.

HON CHIEF MINISTER:

Yes, the hon Member is right that should be an “or”.

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

Clause 16

HON CHIEF MINISTER:

Again here because we altered the definition of “*Member State*” to “*State*” that amendment is reflected there so that “*state*” is now both a Member State and the UK and the amendment at the bottom of the page is to rescue those words from (b) to which they had become attached and again I do not think that (b) should be crossed out.

Clause 16 - as amended, was agreed to and stood part of the Bill.

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

Clause 18

HON CHIEF MINISTER:

The hon Member will recall that we were both concerned that these search and entry provisions were simply too Draconian. This was really the Bill which we had much discussion not so much the other one it was this one really and the hon Members will see that we have done the same thing, *"The Government may make regulations to provide for powers to authorise to enter into premises and seize property in connection with the execution of a European arrest warrant"* and that language is purposely chosen so that we can craft powers which do no more and no less than are needed for the specific purpose that we are obliged to do it which is *"in connection with the execution of an European Arrest Warrant."* There the hon Member is right, there arrest and warrant should be in the small case.

HON DR J J GARCIA

In the same way that the Chief Minister was supplying us with a copy of the other draft regulations would he be willing to do that in this particular instance also?

HON CHIEF MINISTER:

Yes indeed.

Clause 18 – as amended, was agreed to and stood part of the Bill.

Clause 19

HON CHIEF MINISTER:

The same here because we have included the regulation making power *"..enter premises and seize property."* Clause 18 was only search and entry and clause 19 is seizure. Those go in favour of the regulation making power at clause 18 and therefore old 20 becomes 19 now. New clause 19 the words in brackets should read instead of *"or,"* *"..provided that if he is not more than 21 years of age he shall be held...."* So, delete *"...in such a place as the Central Authority may specify"* and replace them with the words *"..he shall be held on remand terms."*

HON F R PICARDO:

I recall that I also referred this question of the 48 hours of detention. There were two periods of time I referred to one was the time before one was given the copy of the warrant. The reason for concern here is that traditionally somebody who is arrested is brought before the Magistrates' Court at the next session of the Magistrates' Court here we are talking about a person being remanded in a police station only for 48 hours. I think that could be problematic and I will tell the Chief Minister on what particular occasions, for example, if we had a long weekend one would have to have a special sitting of the Magistrates' Court or take the fellow up to prison instead of keeping him in the police station. There was a similar problem in the Criminal Procedure Ordinance which I managed to exploit to great effect on one particular long weekend to get the Magistrate out before the Monday and that was cured somehow, so maybe the Chief Minister will have to look at how that was resolved.

HON CHIEF MINISTER:

It may actually be more serious than the hon Member thinks because the power to remand in prison presumably is remand

by the court, so in fact it is not get the Magistrate out or send him straight to prison it is get the Magistrate out or release him.

HON F R PICARDO:

That is probably right. That is how I exploited it last time in relation to somebody not subject to the civil warrant.

HON CHIEF MINISTER:

I think that if somebody who is being seized on a European arrest warrant

HON F R PICARDO:

One has got the anomaly that for all the period that he is before the court he is really in the custody of the Chief Secretary.....

HON CHIEF MINISTER:

The position is that this is supposed to be the provision that gives power to hold somebody the moment the warrant is executed. It does not work for a different reason in addition to the one that the hon Member says because only a court can remand and therefore we need to change the language and we have to as legislators we have got to decide how long somebody should be held before they have got to be brought before a court. Section 10 deals with the arrested person being brought before the court. A language that requires the person to be brought before the court as soon as may be after his arrest and that is what the directive says and actually does not specify a period. It then goes on to say what the court can do. Section 20 if it serves any purpose at all therefore is simply to specify how long as soon as maybe can be. The most practical thing

that we can do with Clause 19 is to use it to specify the maximum period that a person should be capable of being held before being placed before the Magistrates' Court and as far as I am concerned it should be the shortest period of time that accommodates a weekend unless we do it by reference to the next sitting. In other words that the power to detain should be until the next occasion on which the court sits.

HON F R PICARDO:

Which is why if the Chief Minister remembers when we had the discussion on clause 10 at the first reading issue here we say, "*..as soon as may be..*" and I said "*..you have got to be careful there I think to use the word as soon as may be practicable which is what is said in our Criminal Procedure Ordinance which is what imports the obligation to take them at the first available sitting.*"

HON CHIEF MINISTER:

On that basis section 19 serves no purpose whatsoever. Will the hon Members approve that there should be consequential renumbering done by the draftsmen instead of trying to sit down and work them out now. So, clause 19 deleted and all subsequent clauses to be consequentially renumbered and all cross references to be consequentially changed.

Clause 19 - as amended, was agreed to and stood part of the Bill.

Clause 20 - was agreed to and stood part of the Bill.

Clause 21

HON CHIEF MINISTER:

The only amendments here are all references to "*Member State*" should be '*state*'.

Clause 21 – as amended, was agreed to and stood part of the Bill.

Clause 22

HON CHIEF MINISTER:

The amendments there are that instead of "*it shall*" it will be removed from the main paragraph 22(1) and then (a) says "*The Central Authority shall...*" and (b) says, "*The Central Authority shall....*" Instead of "*it*". So the hon Members will see the "*it*" crossed out in (b) and the "*..it shall..*" is crossed out. In 22(1) five lines down from the top or sub section 2 "*or (2)*" is crossed out and then in the last line before one gets to (a) and (b) "*it shall*" is crossed out and then it is (a) in which..... "*the Central Authority shall*" as "*it*" meant the Central Authority before which was sited at the top half paragraph and again the "*it*" is deleted in little (b) the second word in (b) and instead of "*it*" it is "*the Central Authority*" which is what "*it*" meant before.

Clause 22 - as amended, was agreed to and stood part of the Bill.

Clause 23

HON F R PICARDO:

Sub paragraph 23(1), if the court does not do it under this Ordinance, does it under the law of Gibraltar generally in relation to surrender, what are we left with the provisions of surrender are really contained wholly within this law, are they not?

HON CHIEF MINISTER:

It would be extradition not surrender on the second page. In 23(1)(b) both references should be to extradition.

HON J J BOSSANO:

The original version said, "...*conflict between surrender and extradition request..*" in the first one and what we are doing is putting that back yes?

HON CHIEF MINISTER:

And in the heading.

HON J J BOSSANO:

In the heading I am talking about.

HON CHIEF MINISTER:

In both that is the point that the heading should be "*conflict between surrender and extradition request...*" and then in little (b) it should be in relation to the request for extradition under the law of Gibraltar in

HON F R PICARDO:

I think that this must be the victim of one of those Microsoft search and replace because in the original Bill as published the word extradition actually appears on a number of occasions in the whole of the text of this section so if we go to sub-section 2(ii) that should also be a reference to extradition, 2 (c) should also be a reference to extradition.

HON CHIEF MINISTER:

Yes and if we go to the third line 21 (3) the reference to surrender which is the first word in line three should also be extradition.

HON J J BOSSANO:

Technically what we have got in front of us in the Committee Stage has extradition because these are things in replacement of this which contain words which have not been introduced as amendments and therefore we do not need to do anything all we need to do is stick to the green paper.

HON CHIEF MINISTER:

I am just checking to see that they should all be as originals some of them may be intended amendments.....

HON J J BOSSANO:

But then they would be highlighted in red.

HON F R PICARDO:

So if it is of assistance to the Chief Minister there is no reference in his letter notifying the amendments to the change of the word “*extradition*” to “*surrender*”. The only amendment is just the words ... “*shall be performed.....*” switched for “*..it shall be performed...*”

Clause 23 – as amended, was agreed to and stood part of the Bill.

HON F R PICARDO:

I cannot understand the provisions of section 3 as amended and if I am going to be brutally honest I cannot understand the provisions of section 3 as not amended because what we are saying there is the Magistrates’ court shall not perform functions under the Ordinance in relation to the Arrest Warrants unless the arrest and surrender of that person pursuant to such request is prohibited or not provided for under the law of Gibraltar I really do not understand that.

HON CHIEF MINISTER:

I think it refers to an arrest and surrender in the context of the international report. What that is intended to mean, whether it achieves it effectively, we are talking about resolving conflicting requests what this is intended to mean when there is a request for arrest and surrender by the International Criminal Court the Magistrate shall not perform functions under the competing European Arrest Warrant unless the person is not arrestable under the law of Gibraltar for the purposes required by the International Criminal Court in which the European Arrest Warrant then becomes activatable.

HON F R PICARDO:

I can understand that logic I do not think the section does that.

HON CHIEF MINISTER:

I have only deduced it from reading it so it cannot be that unclear.

HON F R PICARDO:

If one reads the final line as saying, “....as the request by the *International Criminal Court*....”

HON CHIEF MINISTER:

It makes perfect sense if the hon Member makes allowance for the fact that the functions by the Magistrate under the European Arrest Warrant are referred to as functions under the European Arrest Warrant and the arrest and surrender referred to the arrest and surrender pursuant to the International Criminal Courts so if the hon Member refers to those two lines if the Central Authority receives a European Arrest Warrant in respect of a person and a request is received from the Europe International Criminal Court for the arrest and surrender of the same person so the references to arrest and surrender in this sub clause are pursuant to the request from the ICC.

HON F R PICARDO:

Including the words “*pursuant to the request*” by the International Criminal Court again in the penultimate line instead of to such a request.

HON CHIEF MINISTER:

It would mean that no one would have to work it out .

Clause 23 - as amended, was agreed to and stood part of the Bill.

Clause 24

HON CHIEF MINISTER:

We are now entering the territory of the reverse this is all issue of European Arrest Warrants by the Gibraltar Authority when we want somebody abroad arrested and surrendered to us.

HON F R PICARDO:

There is no specific mechanism in this Ordinance with a transmission of such a warrant, do we then fall back on the provisions of the Mutual Legal Assistance?

HON CHIEF MINISTER:

Every European country has provisions in their own laws mirroring our chapter 1.

HON F R PICARDO:

What we do not have here is the provision that says that once the European Arrest Warrant has been issued in Gibraltar in respect of a fugitive from Gibraltar, for example, what do we do with that warrant is it then taken by the Attorney General and transmitted in keeping with the laws of the state where we

believe the individual is and what if we do not know what state he is.

HON CHIEF MINISTER:

The European Arrest Warrant is issued and is then transacted internationally through the Central Authority.

HON F R PICARDO:

But are we not making particular provision for that in the legislation or is it not necessary to make specific provision for that?

HON CHIEF MINISTER:

The Central Authority for the purposes of this Ordinance shall be the Governor for all the purposes of this Ordinance.

HON F R PICARDO:

Except that he delegates them all.

HON CHIEF MINISTER:

Subject to delegation.

HON CHIEF MINISTER:

I do not think there is a requirement to specify the mechanics for the exportation of a Gibraltar European Arrest Warrant because that is a matter for the corresponding provisions in our favour in the laws of the other country. So in effect our Central Authority

will be the channel, the Attorney General seeks the warrant from the Magistrates' Court, the Magistrates' Court issues the warrant, the warrant then comes into existence and it is then exported to the relevant Central Authority in the country where we want it executed from Authority to Authority.

HON F R PICARDO:

It is not clear, once the Magistrates' Court issues the warrant does the Magistrates' Court communicate the warrant to the Governor or does the Magistrates' court hand the warrant to the Attorney General?

HON CHIEF MINISTER:

Warrants are handed to the person making the application. The issue of the procedure is the Attorney General goes to the Magistrates' Court and says, "*Magistrates' Court please give me a warrant*". The Magistrates' Court says "*Okay, here is a warrant*." The decision of a Magistrates' Court is not just to bring into creation a piece of paper but to exceed to the petition of somebody who has a hand stretched out saying "*Issue me the warrant*." This is the equivalent in Part 1 Chapter 1 where we have said where the court in the issuing country has issued a warrant. The other way around that court would be our Magistrates' Court would have issued a warrant and that warrant that is in issue would have been handed to the party that has requested the warrant which is the Attorney General and then the Attorney General channels the execution up through the Central Authority to the Authorities in the requested state.

HON F R PICARDO:

At the end of the day the clarification sought would have been for the benefit only of the Authorities that could seek such a

warrant and if the Authorities that are going to seek such a warrant are satisfied with the clarity in that respect then there is no issue.

Clause 24 – as amended, was agreed to and stood part of the Bill.

Clause 25 - was agreed to and stood part of the Bill.

Clause 26 - was agreed to and stood part of the Bill.

Clause 27

HON S E LINARES:

Just to give notice to the draftsmen that although we are using the old numbers and the Chief Minister said about cross section it would be advisable that, for example, 28 (1) (b) in 27 (1) should read 27 (1) (b).

HON F R PICARDO:

In the first reading it might be recalled I raised this question of how paragraph 27 (1) (a) had been drafted and I see that no amendments have been posed in relation to that. There were really two limbs to the issue I raised first it is very fresh in our minds today we have been going through the Mutual Legal Assistance Ordinance and the Data Protection Ordinance, the number of references in both of those two European Convention of Human Rights when we referred to it in those terms in this Ordinance we are referring to it in different terms but it is exactly the same Convention we are actually specifying the number protocol et cetera and just from the point of view of uniformity is

that a point that should be dealt with now and also this question more fundamentally of referring to Gibraltar's obligations under the European Convention of Human Rights and the word "*Gibraltar*" seems to be a little bit wide and is it the Gibraltar Government's obligation?

HON CHIEF MINISTER:

That is common Parliament language "*the United Kingdom's obligation under International Treaties*" the obligation belongs to the country not to an institution within it. They may be contracted on behalf of the country by its Government but the party is the country not the government.

HON F R PICARDO:

In this particular case the party is the United Kingdom that has extended the provisions.

HON CHIEF MINISTER:

This is a point that the Foreign office might wish to take I would never have thought that it would have been taken locally.

HON F R PICARDO:

I must confess I am simply trying to understand it from the point of view of interpretation.

HON CHIEF MINISTER:

We have always taken the view in this House when an international obligation is extended to us we regard it as our obligation and it is true that the United Kingdom wheezed down

our neck to make sure that we honour it. There have been occasions in which I have seen language such as obligations incurred by the United Kingdom in respect of Gibraltar but I really do not think that we should be worrying too much about these points.

HON F R PICARDO:

In that case certainly the (a), (b), (c) in this section I intend it to be read separately and that should be made clear in this 27.

HON CHIEF MINISTER:

I have no objection to the draftsmen changing the way that the treaties are described that is if the hon Member is still concerned about that point.

HON F R PICARDO:

I do not think whether I should or whether I should be or whether I should not be this seems like a more precise reference than the one we have been making but I think that the one we have been making is sufficient to identify the Convention.

HON CHIEF MINISTER:

It is "1994; or....." At the end of (a) then it is brackets semicolon "or" . that gives the hon Member's point.

Clause 27 - as amended, was agreed to and stood part of the Bill.

Clause 28

HON CHIEF MINISTER:

Here is an important point. This is the place where we have restructured. It is clear that there is no requirement that there should be a loss of duality and what we have done is that we had used language designed to make that even more obvious than it was before to us but not apparently to the hon Member. We did not doubt that the previous language did not prejudice the duality requirement the hon Member read it , it raised the question in his mind and therefore we have used language which is designed to make sure that nobody else that reads it could have the question in his mind that entered the hon Member and that is being done in several ways. First of all the hon Member will see that the words subject to sub section 2 have been deleted from sub section 1. Sub section 1 creates the duality requirement and therefore let no one think that the words subject to sub section 2 means that anything in sub section 2 is a carve out of the duality required by sub section 1 so that is the purpose of deleting subject to sub section 2 and starting sub section 1 with simply, "*A person shall not be surrendered....*" Then the existing language in which we had specified the tax and duties point is removed in favour of the language of the directive which to boot we have preceded with the words "*..without prejudice to the application of sub section 1.*" We have removed the subject to sub section 2 in sub section 1 and then we have made it clear in sub section 2 but it does not prejudice the duality requirement in sub section 1 and then said that notwithstanding that duality is required for the purposes of comparing the offences and whether they exist in both places it is done in the following way, in a new way, without prejudice to sub section 1 which is now a second layer of clarity, "*(a) if the conduct which constitutes the offence relates to a tax or duty it is immaterial that the law of Gibraltar does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the issuing State*" Those are the words of the directive therefore we have made it clear that duality is required, we have made it clear that the provisions of sub section 2 are without prejudice to the requirement of duality but one cannot allege that it is not duality simply because one

does not have that tax or because one has different tax rules, for example, if we have an offence in Gibraltar of evading income tax and we get a request from abroad asserting evasion of capital gains tax we cannot say, “...*ah no duality because we have not got capital gains tax*” because we have got the offence of evasion in respect of our own tax. So there is the duality requirement in respect of the offence of evasion of a tax but the duality is not destroyed because we have not got that particular tax or because that particular tax is subject to different rules and regulations in Gibraltar. In our view that was always the effect of the original language but these three layers of change, the removal of subject to sub section 2, the prefixing of sub section 2 itself by the words “...*without prejudice to the application of sub section 1..*” which says that one cannot surrender somebody unless there is duality in interpreting what duality means for the purposes of tax and duty we then use the language of the directive and that leaves it not open to any possible misunderstanding.

HON F R PICARDO:

I am reading it as if it read as follows, “...*If the conduct that constitutes the offence which must be dual relates to a tax*”. That would really be the shorthand way.

HON CHIEF MINISTER:

The only departure from symmetry is that we do have that tax but subject to different rules.

HON F R PICARDO:

The Chief Minister will excuse me if I do not determine whether I am satisfied or not at this stage of the proceedings but I understand exactly how he is structuring.

HON CHIEF MINISTER:

What I am saying to the hon Member is whether he is satisfied with it or not this is the maximum that can be done which complies with the directive. Continuing to oppose it would be, “*I oppose it because I do not like it even though I recognise it is an obligation.*”

HON F R PICARDO:

I think I have understood but it is sufficiently late that maybe I have not. I think I have and the Chief Minister seems to think I have.

HON CHIEF MINISTER:

I personally put a lot of time to this since we had our discussion and I am entirely satisfied that it does. The maximum possible extent to exclude any possibility of the interpretation of this as meaning fiscal offences are excluded from the duality requirement which was.....

HON F R PICARDO:

It would have been an abusive interpretation in any event but potentially open.

HON CHIEF MINISTER:

Yes.

Clause 28 - as amended, was agreed to and stood part of the Bill.

Clause 29

HON F R PICARDO:

We actually referred the Chief Minister to the fact that 29 (2) there was a reference to “*issuing state* “ but that reference should be to “*executing state*” if we were implementing article 3(1) of the decision. The Chief Minister said he would come back on that but I do not know whether that has been checked or not. That sub section is almost entirely out of the framework decision almost identical out of the decision, it is article 3 (1).

HON CHIEF MINISTER:

Yes the hon Member is right the “*executing state*”.

HON F R PICARDO:

I must confess I do not know whether the second one is.....

HON CHIEF MINISTER:

Gibraltar cannot give somebody immunity from prosecution. Article 1 is that Gibraltar as the executing Member State has given amnesty where that state may be Gibraltar has jurisdiction to cross over the offence under general law.

HON F R PICARDO:

That could become very relevant.

Clause 29 - as amended, was agreed to and stood part of the Bill.

Clauses 30 to 33 – were agreed to and stood part of the Bill.

Clause 34

HON F R PICARDO:

The amendment moved in relation to section 34 which is really just an amendment in relation to the heading but it actually highlights what the section is about, this will not apply in relation to any offence committed outside the issuing state because of the nature of Gibraltar’s jurisdiction. I do not know whether the Chief Minister has followed that . In relation to section 34 where he made the amendment just to highlight the change in the title.....

HON CHIEF MINISTER:

That is just because little (b) has got nothing to do with Gibraltar that does not mean that they do not have a nexus with the issuing state.

HON F R PICARDO:

What we are doing here is saying if the UK arrest warrant has been issued by an issuing state in respect of something done by one of its subjects outside the issuing state then we will not extradite because as Gibraltar only has territorial jurisdiction and no extra-territorial jurisdiction we will never have an offence in Gibraltar for having done something outside Gibraltar.

HON CHIEF MINISTER:

The law of Gibraltar now regularly create extra territorial offences.

HON F R PICARDO:

Do they?

HON CHIEF MINISTER:

Yes, the relation to all manner of things, terrorism, conspiracy to commit offences, merchant shipping, aviation, all manner of extra-territorial offences created in Gibraltar law.

HON F R PICARDO:

I do not think that we need to have the discussion because I do not agree because I think that what we are doing is policing other laws when we do that. We have not created the offence of terrorism outside Gibraltar. If somebody commits an act of terrorism outside Gibraltar, Gibraltar will assist internationally to bring that person to justice.

HON CHIEF MINISTER:

I agree with the hon Member. I have heard others with whom I used to practice law constantly remind me about the fact that our Constitution did not allow it but that has gone by the board. There are now many laws of Gibraltar and as a matter of interest not in connection with this issue. I will have a few of them found and sent to the hon Member that create offences in our laws which would be regarded by him as being extra-territorial.

HON F R PICARDO:

There was a traditional problem which the Attorney General will bear out about possession of drugs for supply abroad where the Supreme Court regularly has denied jurisdiction in terms of the intention to supply whether the intention to supply has been proved to have been abroad but it is a jurisprudential debate which I will enjoy if the Chief Minister gives me the material.

Clause 34 - as amended, was agreed to and stood part of the Bill.

Clause 35

HON CHIEF MINISTER:

The language in the new sub clause (2) is rendered necessary by the totally new provisions which we will come to in clause 41 in relation to appeals against discharge and are rendered necessary by cross referencing provisions.

HON F R PICARDO:

The provisions of (2) I am prepared to accept but then (3) is repeated that second (3) must be wrong. Even as a (4) it must be wrong.

HON CHIEF MINISTER:

It cannot be there it is not part of the list.

HON F R PICARDO:

It is not that it is the wording of it, we cannot have a stand alone.....

HON CHIEF MINISTER:

Here is a case of the consequences of mixed drafting styles. This provision and indeed many of the provisions that we are going to be considering hereafter are lifted straight from the UK Act because we believe that our own provisions were either non-existent or deficient and in fact this is exactly how the UK Act reads. Now, the UK Act that implements the European Arrest Warrant requirements, the Extradition Act of 2003, what it means in the sort of telegraphics in the telegraphic almost bullet point style in which the UK Act is drafted is that in the circumstances described in (2) or (3) above the Magistrate must order the person's discharge. That is what it means. In our drafting style we would have drafted that differently so the following provision of this section applies if at any time in the relevant period the Magistrates' Court is informed by the Issuing Authority that the European Arrest Warrant issued in respect of a person has been withdrawn. Then there is a definition of a relevant period so that one can make sense of sub clause 2 and then it says "*..the Magistrates' Court must order that person's discharge in the circumstances described above..*" that is how we would say it to make it clear but the UK says it in this almost stiletto way.

HON F R PICARDO:

Does the Chief Minister not agree with me that in our law this does not work and I think that.....

HON CHIEF MINISTER:

It does work because the provision is linked and the purpose for which it is there are also taken from the UK law.

HON F R PICARDO:

It is not linked it is just in the air at the moment so what I would suggest

HON CHIEF MINISTER:

I suggest the hon Member waits and leaves this point to one side until we have finished with the new sections that he has not yet seen.

HON F R PICARDO:

With respect I do not think that I am persuaded by that because I think the easiest course is to tag this on to the end of (2).

HON CHIEF MINISTER:

Why is the hon Member making observations in relation to something that I am telling him is linked to provisions that he has not even cast eyes on.

HON F R PICARDO:

I have not cast eyes on because the Chief Minister has just given us new material but even so there is a stand alone phrase in our law that says the "Magistrates' Court must order the person's discharge". Now, let us at least flag it to come back to.

HON CHIEF MINISTER:

All right we will come back to it. [INTERRUPTION] The answer to the Leader of the Opposition's question is that whilst he has

been away we have been considering it in so much excruciating detail.

HON J J BOSSANO:

But we are now coming to something where there is a lot of new stuff and in the last 10 minutes we have just heard that it is there because it has been lifted straight out of UK. Fine, now we know that it is there because it has been lifted out of UK but we have not seen where in UK it has been lifted out of and we have not seen the framework directive that is being transposed here and in UK and therefore on that basis and given that we have seen it in the last 10 minutes what do we do with it now? If we take the job seriously and want to take a long time doing it the time is not here and now.

Clause 35 - was agreed to and stood part of the Bill.

Clauses 36 to 40 – were agreed to and stood part of the Bill.

Clause 41

HON CHIEF MINISTER:

In clause 41 in (2) a reference to 48 (2) should read 35 (2) and that is the cross reference we spoke in respect of the section we stood by. The hon Member should bear in mind that all of this is necessarily desirable stuff because it all replaces two lines of Rights of Appeal. In the previous Bill we had a Right of Appeal that simply said that one shall have a Right of Appeal to the Magistrates' Court on a point of law and the hon Member said that why should it just be limited to a point of law. When I was researching in response to the hon Member's point I said, *"well, look it is not just that it should be limited to a point of law it is that everybody else that has done this has got a machinery*

relating to the appeal with further appeals, how can we have only one appeal reflected in two lines." So, rather than pass the legislation as we would have passed it if we would not have done that digging with a skimpy two line appeal provision even if I had corrected which I would have done, the hon Member's point, to extend the appeal that we had originally to law and fact.....

HON F R PICARDO:

Which you did.

HON CHIEF MINISTER:

.....which we have done, everything else is to add further Rights of Appeal beyond it. I understand that the hon Members want to read it and that they have not read it before but they should not view it suspiciously. Whatever it says it is not something that the Government have done to gain, it is all to the benefit of the arrested person. It is all to give more Rights of Appeal, to get more court scrutiny, to reduce the automaticity of the whole process.

HON J J BOSSANO:

In the light of the explanation that we were given that this was replacing what was there which was simply an appeal on a point of law, in terms of the amendment to the original provision it says *"the appeal is now on a point of law of fact in accordance with the provisions of Part 4"*. So, the whole of this for us as we understand it is in order to be able to interpret how the Right of Appeal against an order to be surrendered against ones wishes has to proceed. I do not see that this is adding to the Right of Appeal, this is just explaining how it will work.

HON CHIEF MINISTER:

My view is that the whole of sub section, now 8 on page 350, can probably be done away with but I think that he is reading it too narrowly for a start that only applies to the appeal under that section and all it is saying is if one is aggrieved by the decision of the Magistrates' Court under that particular section one can appeal to the Supreme Court on a point of fact of law in accordance with Part 4, Part 4 sets out what the Supreme Court's powers are on appeal and then provides for an appeal upwards from the Supreme Court. So if the hon Member is reading this somehow to mean that the in accordance with Part 4 is only as sort of a housekeeping exercise or an administrative provision in a sense almost explaining the power, that would be completely wrong.

HON J J BOSSANO:

The law says one has the right to appeal on a point of law or on a point of fact which I think was an omission that has been put right by putting fact as well as law then presumably in the absence of Part 4 he would appeal like people appeal on any other matter where they have got the Right of Appeal to the Supreme Court. As far as I am aware we do not legislate each time saying that when they appeal to the Supreme Court the Supreme Court can do one of those two things which is to say yes or no to the appeal. Is it that if we did not put it in Part IV what would the Appeal Court do other than be able to say yes or no?

HON CHIEF MINISTER:

There is a specific regime here bearing in mind that this is a European Arrest Warrant that is supposed to be an accelerated process of Europe-wide bringing of people to justice and therefore there is a tailor-made appeals procedure. For example, the Leader of the Opposition will have noticed that the

Court of Appeal is skipped that the appeal from the Supreme Court is to the Privy Council just as in the UK it goes from the High Court to the House of Lords. I have not invented any of this this is exactly how it is done in the UK.

We can delete the whole of sub clause 8 on page 350 and then the entirety of the Appeals Procedure is in Part 4.

HON J J BOSSANO:

In clause 40 what we are doing is saying what the Supreme Court may consider in terms of the circumstances in order to allow the appeal so they have got very little discretion but is it in fact that if we did not have "*their*" there would be less discretion? Because the argument that has been used is that this is going to be for the benefit of the person that is being surrendered. It seems to me that the Court hearing the appeal has to go to the law and we are telling the Supreme Court that they can only.....the appeal if a certain set of conditions are met.

HON CHIEF MINISTER:

If somebody appeals to a court there are only two things that the court can do. It can allow or dismiss the appeal.

HON J J BOSSANO:

I have not mentioned anything about allowing the appeal or dismissing the appeal. I said that when I first spoke the first time when I said it was ridiculous that that should be there. I am not talking about that I am talking about 43 that we have just been looking at where we have said if the court and it says the judge in the United Kingdom. So, if the Court of Appeal is going to say yes then it says here "*..the court may allow the appeal only if the conditions in subsection 3 or the conditions in subsection 4 are satisfied..*" That is what I am talking about. My

question is if we did not have the conditions in (3) and (4) would the Court be able to allow an appeal on more grounds than the ones we are laying down or unless because the argument that is being used in support of this is that we are giving more rights to the appellants.

HON CHIEF MINISTER:

The answer to the Leader of the Opposition's question is "no". If he reads (3) the conditions are that the Magistrates' Court ought to have decided a question before it in a different way at the surrender hearing differently. What that is saying is if the Magistrates' Court has made an error either of law or fact that had he not made the error he would have decided the question differently then the Court has the power to allow the appeal. So in other words it is a full re-hearing and the Court can substitute its findings of fact and law for that of the Magistrates' and that is all that can ever be done by the Supreme Court. One may ask why this is necessary? This is necessary because in the time that is available to us we have not wanted either not to expand our appeal procedures which would have been the case if we would have let it and we would have wanted to use a drafting kit that is already tried and tested.

HON J J BOSSANO:

The answer is that this is the only thing that the Court of Appeal could have done even if we had not put it there. Is that the answer? My question is quite clear and quite specific. If I am being asked to vote in favour of putting something in the law which is going to improve the chance of the person that is appealing, I am in favour. If we want to have it there but it does not make any difference I suppose it is just that we are having such a nice time together at 10 o'clock that we might just as well do unnecessary and useless things but if it is not clear and normally since I react to the legislation on the basis of reading the English and trying to read it as if it were normal English I

assume that if somebody says to me "...you can allow an appeal.." or somebody says to me "...you can allow an appeal only if the conditions are met..." the second one constrains my freedom of action more than the first one, as a question of common sense. If in fact what I am being told is that even if the conditions that we are laying down did not exist a Court of Appeal can only allow an appeal on the basis of those conditions then fine we will vote in favour but I do not see we are doing anything different from what is already there.

HON CHIEF MINISTER:

The Leader of the Opposition's view appears to be predicated on the belief which is mistaken that laws do not often curtail an Appellate Court freedom of action and laws often do that. There are, for example, if the hon Member looks at the Income Tax Appeal Legislation and the Transport Appeal Legislation and many other Ordinances he will see that laws very often specify a specific role for an Appellate Court and if the Leader of the Opposition thinks that all statutes in Gibraltar simply say appeal to the Supreme Court leaving it to some general regime applied to the Supreme Court as to what the remittal of the case to the Supreme Court means when it gets there, I agree that is the run of the mill that is most but it is not all there are plenty of statutes in Gibraltar that specify the powers of an Appellate Court in different circumstances and this one I believe although it is not for me to proffer the hon Member legal advice or interpretation [INTERRUPTION] he has asked me to explain, no, no.....

HON J J BOSSANO:

The Chief Minister is not going to sit down?

HON CHIEF MINISTER:

The Leader of the Opposition.....

HON J J BOSSANO:

We are going to be here a long time I can see that.

HON CHIEF MINISTER:

We are going to be here a long time because it is clear to me that the Leader of the Opposition wants us to be here a long time but the hon Member has just stood up and given me an explanation of the circumstances in which he would vote four things and the circumstances in which he would not leaving it to me to explain to him what this means otherwise what was his question. I am standing up to explain to him what this means since I am not myself the Privy Counsel all I can be doing is giving him my assessment of what it means. My assessment of what it means is that this in effect paints the canvas of the Supreme Court's freedom of action, putting it in layman's terms, which is complete. The Supreme court says, *"..has the Magistrates' Court made a mistake of fact or law?" "If they have not made the mistake would it have made a different decision?"* If the answer to that is "yes" appeal allowed decision reversed. There is no more than an Appellate Court can do than that and therefore there is no curtailment of the Supreme Court's powers.

HON J J BOSSANO:

First of all I want to correct that there is nothing in what I have said justifies the opening remark of the Chief Minister that I seem to be working on the premise that non of our other laws do not lay down what the Appeal Court may do. I am not concerned with any of the other laws I am concerned with this law and I am concerned with the reason for the new addition of Part 4 to the law that we have here and the explanation that we

have been given for this being here is that it is better for the appellant because the original one which simply said that the guy could appeal to the Supreme Court was not as good as this one. What is in other ones or not in other ones for me is irrelevant. I am just looking at whether this does what we were told before the break it was intended to do. That does not mean that I require legal advice from the Chief Minister, in fact with a number of changes we have had here I would seriously think of not going to get legal advice on any issue if ever I wanted legal advice from him.

HON CHIEF MINISTER:

If that is the view that the Leader of the Opposition is going to take.....

HON J J BOSSANO:

I have not finished either we can both do it as the House can see. So, therefore the position is that having had the chance to read this and taking into account indeed what he said that he said the norm, the majority of the laws, just say appeal and leave it to the Appeal Court to decide on how they do it but that there are some, the tax and some others, which specify how the Appeal Court has to do it. We are supporting this if by specifying it we are benefiting the appellant which is what we were told originally was the reason. If by specifying it we are neither benefiting it nor hindering him then it is irrelevant and if by specifying it we are curtailing the grounds on which the courts may grant the appeal by saying they can only do it if this happens then that is not the reason that was given to us for putting it there in the first place.

HON CHIEF MINISTER:

What I suggest Mr Chairman does is put the clauses one at a time and we just vote on them and if the Leader of the Opposition does not want to support them let him not support them but if he does not want my explanation of what I think they mean because he does not want my advice and I am the last person that he would go for advice then there is no point in my getting up to give him explanations and I will do so no more. Let us just vote on it. These are the legislative proposals before this Committee.

HON J J BOSSANO:

If the Chief Minister thinks that when the Government bring legislation to the House and are asked to explain the policy of the Government that is giving legal advice to the Opposition then that can only be because he is a lawyer because if any other Member was moving, I know that the Chief Minister is the one that moves most of the Bills, but on the rare occasion that other Ministers move Bills I would ask the mover for an explanation and I would not be asking legal advice from them so I suggest that we do what he says we put the sections and then we get over with this and then we look at this in our own time and then we decide what we do with it.

HON CHIEF MINISTER:

If the Leader of the Opposition only wants to know what the policy of the Government is, the policy of the Government is that the Appeals Procedure, rights, extent, and sequences in the law of Gibraltar should be the same as the equivalent law in the United Kingdom. That is the government's policy and that is what he has got in front of him.

HON J J BOSSANO:

Therefore I take it that if we can do better than the United Kingdom the Chief Minister would not want to do so?

HON CHIEF MINISTER:

I do not believe that we can.

HON J J BOSSANO:

Then we are talking about hypothetical situations and matters of opinion. The Chief Minister might believe one thing and I might believe another.

HON F R PICARDO:

There is a serious error in section 41 which is that the European Arrest Warrant is referred to as the European Surrender Warrant which I imagine is how it is referred to under the English Act and that there is a reference to something happening when a person is discharged under section 48 (2) which does not provide for discharge apart from that [INTERRUPTION] with the time that we have had I do not have anything else I can add apart that the issue which was flagged which is the issue at 35 (4) I still believe should be dealt with as the Chief Minister indicated by adding those words at the front of it at the very least.

HON CHIEF MINISTER:

So what is the proposal?

HON F R PICARDO:

No, the Chief Minister made a proposal because at the moment it is just standing there the Magistrates' Court....

HON CHIEF MINISTER:

"In a case to which subsection 2 and 3 applies....." we are on page 374 going back to the clause we had left aside a while ago and the red writing on that page in 3(3) the second 3(3) because that should be 3(4) because they have got a 3 immediately above it does Mr Chairman see that?

MR CHAIRMAN:

Yes.

HON CHIEF MINISTER:

Where it says the Magistrates' Court must order the person's discharge that should start, *"....in a case to which subsection 2 and 3 apply the Magistrates' Court must order the person's discharge."* Does that cover the point the Hon Mr Picardo wanted?

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

Thank you.

HON F R PICARDO:

If I am allowed to make two more points then there is no need for section by section.

HON CHIEF MINISTER:

The hon Member can continue to make in the vane in which he was previously making them as many points as he likes.

HON F R PICARDO:

We have the concept here that the appeal must be brought in section 45 (7) page 380 and then certain things happen consequent on an appeal not being brought within a particular period. It is essentially the discharge of the appeal. I just want to raise with the Chief Minister the point that I do not think we have the concept of appeal being brought. I think we have the concept of a memorandum of appeal being filed or a record of appeal being filed. So, I think and confess I forget which one is the one that comes first but I think there one needs to have a reference to a record of appeal which has not been filed within the permitted period.

HON CHIEF MINISTER:

Is that not a matter for a Court of Appeal rule? I accept that the bringing of an appeal is

HON F R PICARDO:

Shall we just flag it for the draftsmen to look at?

HON CHIEF MINISTER:

It is what comes after the lodging is.....

HON F R PICARDO:

When does the lodging occur when notice of appeal is given or when record of appeal ...?

MR CHAIRMAN:

Notice of Appeal must be given first.

HON CHIEF MINISTER:

Then if given notice and one does not comply with the subsequent procedural steps thereafter under the rules of the Appellate Court ones appeal will.....

HON F R PICARDO:

So, then really what we are saying is that section 7 should say, *"Notice of Appeal must be filed before the end of the permitted period."*

HON CHIEF MINISTER:

Section 45, Sub section 7 deals with the granting of leave because remember that at that stage one is before the Privy Council. One cannot appeal to the Privy Council without leave so whatever one wants to do cannot be by means of removing the need for leave to appeal. If there is a similar point in respect of the previous step which is appeal from the Magistrates' Court to the Supreme Court that would be the point to deal with.

HON F R PICARDO:

It only arises there but it can stay in that section and go back to sub section 4. I think there is an *"and"* between the sub paragraphs which I do not think should be there. It says, *"...leave to this section must not be granted and this is an appeal to the Privy Council unless the Supreme court has certified as a point of law of general public importance involving the decision and it appears to the Court granting leave that the point is one which ought to be considered by the Privy Council."* That cannot be the case where one is going to the Privy Council because the Supreme Court has not granted leave on the grounds that there is a point of law of general public importance so the Privy Council must be free to grant leave only on the basis of (b).

HON CHIEF MINISTER:

Yes. One can always seek need to appeal from the court itself. Sub section 3 says, *"..an appeal under this section lies only with the leave of the Supreme Court or the Privy Council."* So, if one wants appeal to the Privy Council one must seek leave either from the Supreme Court or from the Privy Council.

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

So, leave to appeal under this section must not be granted by the Privy Council unless the Supreme Court has certified that there is a point of general public importance. By the time one gets to 4 one is already in front of the Privy Council because the Supreme Court said *"No"*, [INTERRUPTION] fine but then one does what one has always got to do and one goes and one gets

them to seek leave directly from them. That is the position under the normal rule.

HON F R PICARDO:

Yes, but then one finds oneself with a section that says “*..leave to appeal.....*” even if one is in front of the Privy Council, “*...must not be granted*” imperative “*unless the Supreme Court has certified and the Privy Council wants to give you leave.*” I think it should be an “*or*” because the Privy Council has to be free to give leave to appeal even where the Supreme Court has.....

HON CHIEF MINISTER:

Not certified a point of law of general public importance.

HON F R PICARDO:

Because the Supreme Court has just given the wrong decision as far as one is concerned.

HON CHIEF MINISTER:

I have to tell the hon Member that regardless of whether there is merit or not to his points it is exactly the same except that the references are to High Court instead of Supreme Court and House of Lords instead of Privy Council, and I am reading directly from the English Act so it must be intended as a curtailed access to the Privy Council. The point that I am trying to make sense of is what is the point of the reference to the Privy Council in subsection 3. If the Supreme Court gives leave it is because they have been willing to certify a point of law. If they do not give leave it is because they have not been willing to certify a point of law so there are no circumstances in which one

might need to seek leave from the Privy Council following the refusal of the Supreme Court.

HON F R PICARDO:

Even if the Privy Council were prepared to hear you one is not allowed to go before them.

HON CHIEF MINISTER:

What I think 4 is intended to mean is that even if one gets leave from the Supreme Court the Privy Council can still refuse to hear one on the grounds that it appears to the Privy Council that the point is one which ought not to be considered by them, no, because it appears to the court granting leave.

HON F R PICARDO:

That is right.

HON CHIEF MINISTER:

If the hon Member does not mind we should leave it on the basis that we are replicating the United Kingdom's Appeal Process.

HON F R PICARDO:

As far as I am concerned that is the worst reason for leaving it but I stick to my view firmly that it should be an “*or*”.

HON CHIEF MINISTER:

An “or” where between (a) and (b)?

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

Yes. The other interpretation which I think would make sense, would make more sense of it for the hon Member, is to say “little (3) always protects ones rights to seek appeal of leave from the Privy Council and what (4) says because one must remember that (4) is formulated in the terms of the court granting the leave so, leave to appeal under this section, that is to say leave to appeal by the court considering the application for leave to appeal must not be granted unless the Supreme Court has certified that there is a point of law of general public importance involved in the decision and it appears to the court granting leave whether or not it is the Supreme Court that the point is one which ought to be considered by the Privy Council. What the hon Member is saying is if the Supreme Court under (a) declines to certify and one finds oneself in front of the Privy Council under little (3) seeking leave the Privy Council ought to be able to invoke little (b) to grant one leave even though the Supreme Court has not certified a point of law because it, the Privy Council, being the court granting leave considers that it is one that ought to be considered by the Privy Council. I am happy to depart from the UK’s model to achieve that result even if it is not the UK’s model without conceding that the UK’s model does not have its own effect but in any event willing to allow leave to the Privy Council unfettered by any view that might have been expressed by the Supreme Court below.

HON F R PICARDO:

So the “and” for (a) should be an “or”.

HON CHIEF MINISTER:

To achieve that at a different regime.

Part 4 - as amended, stood part of the Bill. The Opposition Members abstained.

Part 5 - stood part of the Bill. The Opposition Members abstained.

Schedules 1 and 2

HON CHIEF MINISTER:

There are a couple of amendments to the amendments. In Part 5 going back to the section Costs Orders. In 5(1)a it should be “*..the person’s surrender..*” not “*..the person’s extradition...*” In Clause 51 (1) instead of the records to “*Part 1 warrant*” it should read “*European Arrest Warrant*”. In clause 51 (7) on page 387 the letters “*JUDG*” in front of “*court*” should be deleted. The third last word in the introductory paragraph in sub clause 7. There are amendments there in red as well and in the Long Title to add the words as appear in red and to make similar arrangements as between Gibraltar and the United Kingdom. Schedules 1 and 2, as amended, stood part of the Bill. The Opposition Members abstained.

The long Title – stood part of the Bill.

THE DRUGS (MISUSE) (AMENDMENT) BILL 2004

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

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that:

- (1) The Mutual Legal Assistance (Schengen Convention) Bill 2004;
- (2) The Data Protection Bill 2004;
- (3) The European Arrest Warrant Bill 2004;
- (4) The Drugs (Misuse) (Amendment) Bill 2004;

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

The Data Protection Bill 2004 and the Drugs (Misuse)(Amendment) Bill 2004 were agreed to.

The Mutual Legal Assistance (Schengen Convention) Bill 2004 and the European Arrest Warrant Bill 2004;

Question put. The House voted.

For the Ayes:

The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

For the Noes:

The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 5th February 2004 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.30 pm on Friday 16th January 2004.

THURSDAY 5th FEBRUARY 2004

The House resumed at 10.35 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 J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares

The Hon Miss M I Montegriffo
The Hon L A Randall

IN ATTENDANCE

P E Martinez - Clerk of the House of Assembly (Ag)

DOCUMENTS LAID

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

- (1) The Ombudsman's 4th Annual Report for the year ending December 2003 and the Annex thereto;
- (2) The Gibraltar Community Projects Limited annual reports for the years ended 31st March 2002 and 31st March 2003.

Ordered to lie.

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

- (1) The Consolidated Fund Reallocations – Statement No 1 of 2003 - 2004;
- (2) Supplementary Funding – Statement No 2 of 2003 - 2004.

Ordered to lie.

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

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

Readings, the Committee Stage and the Third Reading of the Bills for the European Parliamentary Elections Ordinance and the Equal Opportunities Ordinance. In moving this motion I should indicate to the hon Members that it is not my intention to proceed beyond the Second Reading today on either of those Bills.

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN PARLIAMENTARY ELECTIONS ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for Gibraltar's participation in European Parliamentary elections and for the regulation of programmes included in television and radio services in Gibraltar in relation to European Parliamentary elections, and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members I know are united in welcoming the event that this Bill assists in bringing about, namely

Gibraltar's participation at the forthcoming European Parliamentary Elections due in June of this year and therefore in considering the Bill I do not intend to address any question relating to the history by which that right was secured, I think the House is of one mind that it has been a long, hard-fought battle which Gibraltar should not need to have fought, but needed to fight and won, and we are at the threshold of enjoying the first fruits of that success. Hon Members will have noticed that there are references in this Bill, for this Ordinance, to two types of UK legislation. One is legislation in the UK that is already in place and another is legislation in the UK which is envisaged, remains in draft, I have obtained clearance to give the hon Members a copy, which I will pass in just a moment, that is the 2004 Regulations which are not yet in place.

Mr Speaker, ideally we would have wished to have waited to bring this legislation until all the UK legislation to which it refers is in place in the United Kingdom, but unfortunately it has been impossible to wait any longer for the UK to finish putting in place its part of the legislation, the 2004 Regulations remain outstanding, because until this legislation is in place our Registration Officer cannot formally initiate the canvas that he must conduct to compile the new election register, and we are now at the limit of the period of time which is the minimum period of time that he needs in order to do that in time for the June elections. So, we have been left with no choice but to take this legislation before the United Kingdom's legislation to which it refers is fully in place, because otherwise we would not be ready logistically, locally, with the register that needs to be drawn up. The legislation to which I am referring as to not yet being in place is the 2004 European Parliamentary Election Regulations, which are regulations made under the UK principal legislation. I will now hand to the hon Members a copy of the draft of those Regulations which is dated 3rd February, just a few days ago. I have been asked to impose as a condition that this document be given to the hon Members confidentially and whilst it is possible to refer to them in debate in this House it is not otherwise for wider publication, given that this has not been laid in the UK. These Regulations have not been published in the

UK to Parliament where it has to be laid and they have to be considered. So in a sense this House is going to see them before they have been seen by the UK Parliament. The other caution that I have been asked to make in giving them to the hon Members, is that it is subject to change, they are still in draft form. They do not think that the changes will now be very many but technically they are still drafts and may change.

Mr Speaker, in a sense the fact that we are debating this issue at all, this Bill, is in itself the result of a position taken by the Gibraltar Government in negotiations on this issue with the UK. It had been the UK's intention that all the legislation affecting Gibraltar and Gibraltar's participation in relation to our enfranchisement, should be United Kingdom legislation primary and subsidiary, and they were of that view because although it is a combined constituency, the United Kingdom starting point is that all parts of the combined constituency had to be subject to the same body of law. In other words, we could not have the Gibraltar bit of the constituency subject to Gibraltar law, and then the UK part of the Southwest constituency subject to a different body of law, when we were all in effect voters in one homogeneous constituency and the UK, as a matter of policy, took the view that they had to do the legislation to ensure that it was not just the same body of law, in other words that the whole of the constituency was subject to the same legal regime affecting all aspects of the elections, but that it had to be from the same source of law so that there would be no issue of difference between one part of the constituency and the other, as to the source of the law regulating them. That was the UK starting position. In contrast, the Gibraltar Government, well as the hon Members know because I have said it in this House before, in the whole issue of the manner in which we are enfranchised, the Gibraltar Government have always attached quite a lot of importance to the principle which we have discussed in the House before, that it should not be just the people enfranchised but the territory. In other words, that no one not a million miles from us could say "Ah, the Gibraltarians are being treated as if they were residents of Penzance and they are being divided from their territory, and from their

constitutional institutions", rather like they go to universities in the UK so that they can vote in the UK but not linked to our right as Gibraltarians in this area of land. So the Gibraltar Government set about, not in any way that is important from a quantitative point of view but from a qualitative point of view, we set about trying to persuade the British Government of the importance of allowing us at least some measure of institutional participation in this process so that it could not possibly be argued that the making of these legislative arrangements in the UK for perfectly good and sound reason, should not be used by others to distort that our Constitution and our territorial rights had been ignored and that Gibraltar was not being territorially enfranchised as opposed to the people being allowed to go off to vote in England. We set ourselves two flagship issues in that respect, one, that this House as Gibraltar's Parliament and legislature, should play some role in creating the legislative framework on the basis that this House must play some role in the legislative framework, then Gibraltar's parliament was acting and intervening in the election process and no one could say that this was entirely made in the UK process and that Gibraltar's constitutional institutions had not participated. The second flagship role that we sought for our constitutional institutions is that our judiciary, our courts, should have jurisdiction in matters to do with election petitions and the sort of things one complains to courts about in the conduct of an election. That has been achieved in two ways, first of all the Gibraltar courts have jurisdiction in a large area of election litigation and in respect of the areas of litigation which have to be conducted in the UK election court for example, if somebody challenges what happens in Gibraltar during the elections, they are not just challenging the election of MEPs in relation to Gibraltar, they are challenging the election of the MEPs for the whole of the Southwest region. In other words, they are saying the election of these seven MEPs for the combined region of Gibraltar and the Southwest is invalid because there has been this and this irregularity. So there are certain types of election petitions which the UK has insisted should be dealt with by the United Kingdom election court but has agreed that a judge of the High Court of Gibraltar, of the Supreme Court in Gibraltar,

should be an ex-officio, should be seconded as a judge of the United Kingdom election court. So our judiciary has obtained two methods of participation and therefore our constitutional institution, the judiciary, participates in this process in two ways. First of all that the local courts, both the Magistrates' and Supreme Court, have direct jurisdiction territorially in an area of litigation relating to the election and in the residue of areas relating to litigation, Gibraltar judges sit in as judges of the UK election court when the dispute involves something that affects the combined region. Now, I say therefore Mr Speaker that in a sense, given the reason why we wanted this House to play some role, the Government are not overly concerned by the extent of that role in terms of the width of areas of operation, the important thing for the Government was that Gibraltar's participation in elections should not be possible without some part of the legislative process that is contributed by the Gibraltar Parliament so that we will have a stake institutionally as a territory, as a constitutional institution of this territory in that process, and that is why we are debating this Bill otherwise all of this would have been contained in the United Kingdom legislative framework like everything else that regulates our participation in the electoral process.

Mr Speaker, the Bill for the Ordinance therefore deals primarily with two areas of legislative framework for our enfranchisement. All the rest has been contained in United Kingdom legislation. Those areas are basically the regulation of political broadcasting and the composition, administration and management of the electoral register. And through that second part we gain a very important role for a third local constitutional institution namely, the public administration in Gibraltar, the Civil Service, the local registration officer is the Clerk of this House, the Gibraltar Government are responsible for the provision of administrative support statutorily now mandatory under the Bill, for the provision of human and financial resources to the electoral registration officer, not just for the composition of the register but for the conduct of the electoral process itself. The Bill is divided as the hon Members will have seen, in two parts. The Bill itself is only 14 clauses long and much of the nitty gritty is contained

in the schedule, in Schedule 1 to the Bill. So, Mr Speaker, clause 2 of the Bill provides definition sections and the need for the definition of Accession States will be relevant to the consideration of the second schedule of the Bill, because of course it is envisaged that these Accession States will join the Community, or the Union on 1st May, that is before voting in the European Elections is due, it is due in June. So on the one hand arrangements have got to be made to enfranchise them, when they are entitled to vote as they are in other Member States, their citizens, but only if they do actually sign the Treaty of Accession before the elections in June. So the effect of Schedule 2 is that citizens of Accession States are written in to the register in circumstances where citizens of other Member States are entitled to be included in the register, but then they are not allowed to vote, in fact, come voting day, if by voting day their country has not actually joined the Community, given that the joining of the Community comes before the election but so close one event to the other that they would not have time to start drawing up the register in May. So there is this sort of contingency procedure whereby one draws up the register on the assumption that they will join in May as envisaged, but that then one can disenfranchise them, if for reasons which are not described, their countries do not in fact join before June. Clause 3 of course makes reference to the United Kingdom legislation to which Schedule 1 is subject, and of course Mr Speaker it has to be clearly understood by us all that it is not we through this Bill that are invoking United Kingdom law, so the United Kingdom law will not apply to Gibraltar because we are referring to it in this Bill, the United Kingdom law will apply to Gibraltar because on its face, Parliament is legislating for Gibraltar as well as for the UK. So in other words, the United Kingdom law will apply to Gibraltar by its direct effect and not because we are applying it through this. So this is a separate piece of local legislation which is part of the jigsaw of the total legislative framework, quite a complex one it is too, to allow us to participate in the voting system, but this is just one of the pieces of legislation, there are other pieces of legislation, there are two Acts of Parliament in the UK, there is the Political Parties Elections and Referendum Act of 2000 which has been

extended to Gibraltar to the extent that it is necessary for the purposes of our participation in European Parliamentary Elections. There is the European Parliamentary Elections Act of 2002 which similarly has been extended to Gibraltar with the modifications necessary to allow us to participate in the European Parliamentary Elections, there is the European Parliamentary Representation Act 2003 which is the principal Act of the United Kingdom which enfranchised us and then there is subsidiary legislation. There is the principal body of subsidiary legislation which is these European Parliamentary Elections Regulations 2004, which are not yet in place which are dated 3rd February and which the hon Members now have a copy of, and then there is the subsidiary legislation which I think was debated in the House of Lords last week and which was reported in the last few days in the local press, and that Order has now been adopted by the House of Lords and that is the European Parliamentary Elections Combined Region and Campaign Expenditure United Kingdom and Gibraltar Order 2004, and that is together with this Bill, the whole corpus of statutory law that will regulate and enable, facilitate our enfranchisement. So Clause 4 modifies Schedule 1 in relation to Accession States citizens just for these next elections, because of course by the elections after the 2004 elections, they will either be in or not going in, so the transitional arrangements in favour of Accession States is limited to these 2004 elections. Clauses 5 and 6 are housekeeping in the sense that they impose duties on the Registration Officer and officers that he appoints to act for and assist him, and Clause 6 creates an offence for such officers who without reasonable cause are guilty of any act or omission in breach of their official duty. Then Clause 7 provides for the regulation of political broadcasts and the basic mechanism through which this is done is the same as in the United Kingdom, in other words, there is a code of standards published which is binding on broadcasters produced by the regulator, in the UK this is OFCOM. OFCOM does what the Gibraltar Regulatory Authority is going to do here, is done by OFCOM in the UK as regulator of the independent broadcasters and insofar as the BBC is concerned, that is regulated by their charter. I will be making a small amendment of which the hon

Members have now hopefully been given written notice, I will be making a small amendment at Committee Stage in sub-clause (5) of section 7. Clause 8 provides for what the code of conduct, the code of standards has got to be based on and these are lifted from the UK provisions they provide for the same effect. Basically due impartiality and undue prominence and how that is to be measured, objects of a political nature and political ends are defined given that advertisements of that sort are not permitted in radio or television broadcasts. Clause 10 provides for the statutory entitlement to party political broadcasts in relation to European Elections. It is important to remember that this Bill regulates only European elections. Clause 11 deals with the Gibraltar Regulatory Authority establishing a procedure for the handling of complaints about the observance of the standards set in the broadcasting code of standards. Clause 12 gives rights of audience to citizens of the rest of the combined constituency in the Gibraltar courts and also the equivalent UK legislation does the same for our citizens having right of access to the UK's court, otherwise there would be no right of litigation in a court in which one does not reside, and incidentally Members of the Bar will be interested that the effect of this legislation is that our lawyers will get a right of audience and get a right of audience in the UK Courts in relation to proceedings related to the conduct of European elections. Clause 13 designates the courts in Gibraltar for the purposes of the exercise of the Gibraltar Courts jurisdiction in such matters, and the hon Members will see that it provides for the Magistrates' Court, the Supreme Court and our Court of Appeal and Clause 14 provides a regulation-making power in favour of the Government. Now the Schedule provides for the nitty gritty administrative provisions relating to basically the compilation and the administration of the register. The basic entitlement, the basic definition of who is entitled to register and vote in Gibraltar is contained primarily in the 2003 Act of the United Kingdom, the 2003 Act and in Schedule 4 of the 2004 Regulations. So the hon Members will see that paragraph 1 of Schedule 1 provides a definition, the rest of the sections of paragraphs 2 to 7, that is the remainder of part 1 of that schedule, the first schedule, deals with issues such as how communications are to be given, how

electronic signatures and related certificates are to be issued, how documents may be copied and how the concept of time is defined, in other words what days do you exclude from the computation, if a provision says seven days notice, what days does one exclude from the computation of those days, the sort of things that we are familiar with in our own Standing Orders in this House. Part 2 deals with the maintenance of the Gibraltar Register, and the hon Members will see what these provisions are for themselves, the principal factor is the conduct of the canvas. Although it is an open rolling register there is an obligation to conduct canvas, obviously one has to conduct a canvas for the first one, but thereafter one conducts canvases, I think from memory it says that the canvas has got to be in at least October of the year before an election is due. So the canvas, which involves sending out forms to all households et cetera is done every time there is an election coming, the year before, and that is not a canvas for a new register, that is a canvas to update the existing register which is therefore in a sense an open register, it is not a question of a new register for every European Parliamentary election.

Mr Speaker, clause 11 relates to the publication of the register and separately of any alterations that the Registration Officer has made to the register. Clause 12 in which I will be moving a small amendment just to eliminate some language, three words that have crept in two places where they should not, provides for the Registration Officer's entitlement to alter the register and the circumstances in which he may do it. Clause 14 deals with the concept of the overseas elector. Now the hon Members wish to follow this provision in more detail, not that it makes an enormous amount of difference to our debate on this Bill but if the hon Members for their own general knowledge want to understand in detail what the concept of the overseas electors are, these are defined in the fourth schedule of the 2004 Regulations. Basically it is people, in a nutshell and this is not a complete explanation but just so that the House can know in passing what the concept of the overseas elector is, it is somebody that used to be in the Gibraltar register any time up to fifteen years earlier and is entitled to carry on voting even

though he is not resident in Gibraltar at the time of the new elections. For example, when we are doing the next register not this one, somebody can say "Ah, although I am living in Australia, if I were living in Gibraltar I would be entitled to be on the register and I used to be so living and so entitled and on the register during the last fifteen years. This is Anglo-Saxon concept of retaining your voting rights for up to fifteen years after one has moved abroad, but of course one still has to have been an entitled person. So that is the concept of the overseas elector. There is also a concept in the Bill of a person with a local connection and those are people who live in Gibraltar, who have a local connection but have no fixed abode, it is all derived from the UK, the legislation accommodates people who reside in Gibraltar with an address, people who are incarcerated, people who are committed to a mental institution but the UK legislation makes provision for so called in effect, although it is slightly wider than this, in effect homeless persons, so that there is a regime whereby homeless persons, which are called persons with a local connection in the statutory framework, have a means of getting on to the register even though they have not got a fixed abode and address that they can give. That is the concept of a person with a local connection. So it is not Gibraltar-specific, this is not a local status thing particular to Gibraltar.

Mr Speaker, just taking the hon Members through the principal provisions, the hon Members will see that there are detailed provisions as to the application for registration in clause 25 and then in clause 26 we start with the regime for objections to registration and the hon Members will see it is quite a sophisticated process for adjudicating on disputes, not only when somebody applies to register and there is a dispute about his entitlement but also for objections by third parties and how those disputes are resolved, and there are two regimes, resolution with a hearing and resolution without a hearing and both are subject to well, the resolution of dispute with a hearing is subject to appeal to the courts. And then the hon Members may have noticed in Part 3 from clause 44 onwards, the hon Members may have noticed that the provision related to, very

detailed provisions again which mirror the United Kingdom provisions, as to who is entitled to receive a full copy. The principal rule is that the full register cannot be made available to anybody except as provided for in the Ordinance. People can inspect the full register and make manuscript notes from them but the regime is that no one can copy electronically or receive a full copy to take away of the full register. They can inspect the full register and take manual notes from it and the full register is publicly available amongst various other Government buildings and in the Mackintosh Hall library. The reason why all this is the case is data protection legislation because one of the rights that citizens get when they receive their canvas form, is the right to opt, the right to choose as they are entitled to do under the Data Protection Ordinance which we passed the other week, whether they are happy to have their names supplied to somebody, even as one of 20,000 names in an electoral register, so the hon Members will notice in clause 44 onwards of the register that there is a concept of the full register and the edited register. The edited register is the full register minus all those people who positively opted by ticking the appropriate box in the canvas form not to be included in the publishable, not in the publishable in the distributable version of the register. So copies of the edited register are freely available, copies of the full register, because of data protection are available only to the persons listed in all that series of clauses, starting at clause 46 under the heading General Restriction. So clause 46 is the General Restriction and then clause 47 onwards makes exemptions from the general restrictions so that on the terms set out in the legislation, full registers may be made available to all those parties and all those parties have a copy available in John Mackintosh Hall for inspection, the UK and Gibraltar Statistics Office, clause 49, moving on to the Electoral Commission, clause 50, moving on clause 52, elected representatives for electoral purposes and restrictions on use, moving on to clause 57, local constituency parties, clause 54 registered political parties, these are all people who can get the full register on the safeguard terms, notwithstanding the fact that it is not publishable, the Government of Gibraltar and the Government of the United Kingdom, candidates at the elections, police forces

and people of that nature. And all that distinction is data protection driven. Then the Appendix sets out the wording of the canvas form and of the electoral registration form canvas questionnaire. Schedule 2 to the Bill deals with the transitional arrangements for the Accession States citizens. Mr Speaker, the hon Members have a letter with three very small amendments to this Bill which I propose to move at Committee Stage. 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, I am certain as the hon Chief Minister has said, that every Member of the House welcomes the principle of the enfranchisement of Gibraltar for European Parliamentary Elections which has come about after a long and often bitter legal and political campaign. I recall that shortly after the 2000 Elections the House adopted a unanimous motion which appointed a group of British Labour, Conservative and Liberal Democrats members of the European Parliaments to look after our interests in Brussels and Strasbourg. I take the opportunity to thank them for their efforts and to all those others that were appointed previously. We are obviously not appointing anyone this time round because after the 10th June Elections we will have 7 MEPs who will be accountable to us and who we will be able to call our own. This does not mean Mr Speaker, the system is perfect. I for one would have preferred our own Gibraltar MEP elected by the people of Gibraltar in our own Gibraltar constituency. We are told this is not possible given our size. In my view nothing is impossible if the political will to find a solution is there. For example, Britain was allocated new seats in the European Parliament after the Treaty of Maastricht. One of those seats could easily have been allocated to Gibraltar at the time. After German reunification, Germany obtained a series of observers in the European Parliament for the East as a prelude to their full representation. Again this was not even

considered for Gibraltar. So with the years there has been a distinct lack of political will on the part of London on this issue. We have been given a series of absurd excuses as to why Gibraltar could not vote, including that we did not have VAT or that we did not belong to the Customs Union. Indeed, more recently when all the party leaders in Gibraltar went to the House of Lords to support an amendment by Lord Bethell on this issue which sought to enfranchise Gibraltar by changing British law alone, the British Government argued at the time that this was illegal, and that what was needed was to amend the European Act, something that would be vetoed by Spain. In the end, Mr Speaker, the United Kingdom has done now what they previously argued could not be done, and changed British law alone, following on a successful legal challenge. It is shameful that we had to secure our right to vote in European Elections by taking Britain to court, when the right to vote is a fundamental human right. Mr Speaker I would also like to take this opportunity before entering into the details of the Bill, to pay tribute to the Self-Determination Group and to its then Chairman Dennis Matthews and to his daughter Denise, who were at the centre of the legal challenge that took place. Equally I think it is important to the Leader of the Opposition who backed the SDGG and backed the legal challenge when in government, and it is also very fitting that one of the lawyers who handled the case was my honourable Friend and Colleague Fabian Picardo, who is now a Member of this House, and will be able to participate in the debate on the Bill. Mr Speaker, the hon Member has said that this is a complex and complicated piece of legislation and I think the Opposition would share that view. This is one of the few pieces of legislation that I have seen since I have been in this House where the actual schedule to the Bill is actually longer than the Bill itself, and where Schedule 2 to the Bill amends Schedule 1. One of the areas of clarification, I know the hon Member has already elaborated upon that but it is not exactly very clear, that is as to why amendments incorporated into the first schedule rather than having a Schedule 2 amending Schedule 1. I would welcome having clarification on that particular aspect of the Bill. There is another area and that relates to the definition section of the Bill itself and

to the position of Malta and Cyprus, which obviously once they join the European Union, there will be apart from the United Kingdom, three countries that belong to the Commonwealth that also belong to the European Union, and it would be useful to know where exactly, to have some clarification from the Government side, as to where exactly Maltese nationals resident in Gibraltar, or Cypriots who live in Gibraltar would qualify to vote, whether they would be doing so as citizens of the European Union under one particular section, or as citizens of the Commonwealth or qualifying Commonwealth citizens under another section. It would be useful to have some guidance also on that particular aspect of the Bill, Mr Speaker. Also on page 6 of the Bill, in relation to the definition of the combined region, and I will be going through these more detailed points in the second reading in order to give the Government an opportunity to look at the points when we come to Committee Stage. The definition of the combined regions says that this means the electoral region which includes Gibraltar, mainly the Southwest electoral region. This is page 6 of the Bill, in the definitions sections. It says the electoral region which includes Gibraltar, mainly the Southwest electoral region. It might be helpful Mr Speaker, to add at the end of that the Southwest electoral region of the United Kingdom which is not actually specifically mentioned in the definition of what the combined region actually means. Mr Speaker, moving on now to page 13 of the Bill which is actually the Schedule, there is a point to be made in relation to the definition given to the full register. It says that the definition of the full register has the meaning given in paragraph 45(1) below. If one looks at 45(1) below in the Schedule, although there is a mention in passing as to what the full register actually means, the fact that it comes under the heading of "unedited register" is something which can create confusion because we look at paragraph 45(1) of the Schedule which is on page 46, one finds that 45(1) reads "at the time when the Registration Officer publishes a version of the register under paragraph 11(1) or (3) above and then (the full Register) which presumably that is a definition, it should also publish a version of the register under this paragraph and then (the edited register), because all that comes under something called edited version of

the register, I think it is something which is liable to create unnecessary confusion. In relation to again in Schedule 1, paragraph 9 page 17 of the Bill, there is a reference in 9(2)(b) "thereafter on 15th October in any year preceding a European Parliamentary General Election", I am not sure whether the word general in reference to a European election is actually correct, because as I understand it there are only European elections, European by-election is something which does not actually exist, the people are elected on list and then the next person automatically gets selected if somebody vacates the seat. So that is another area we would welcome some clarification to see if the Government would take on board the comments made.

Mr Speaker, in relation to the publication of the register on page 20, the hon Member mentioned that this is an open register and I am not sure exactly whether the process being used here is identical to the process used in the United Kingdom in relation to the production of the register itself. Although the wording of the Schedule on page 20 allows the publication of more than one version of the register between elections, my understanding is that the United Kingdom practice is that there is actually a draft register published every month containing the amendments, containing the divisions, containing changes of address, new people who want to put themselves in the register, and others may want to remove themselves. We had one particular query as to whether the procedure being used to publish the register in Gibraltar is exactly the same as the procedure being used in the United Kingdom because our understanding from the Electoral Commission is that that process may be different and we were under the impression that the two had to be identical processes. The other area where clarification would be welcomed from the Government, relates to the question of qualifying Commonwealth citizen and a Commonwealth citizen. This arises, for example, on page 29 of the Bill where we see both terms are used in the text of the Schedule and paragraph 23(2). If one looks at the definition section in the Schedule itself, the impression given is that the definition used is that provided in the 2003 UK Act for Commonwealth citizens but there is reference to qualifying Commonwealth citizen and

Commonwealth citizen, without the use of the word qualifying. So it is something that we would also welcome some clarification on that. The UK Act seems to distinguish between them on the grounds of residency, that a person who is registered, a person who is entitled to be registered if he is resident is not subject to legal incapacity, is a qualifying Commonwealth citizen or is at least 18 years of age. This is in section 16(1) of the 2003 Act and then in section 16(2) it applies to somebody who is not resident in Gibraltar, so we would just like to have some clarification on that or some confirmation on that particular point as well. There is also the question that the hon Member referred to at the beginning and this was the 2004 Regulations. In page 12 of the Bill, in the definitions section of the Schedule it refers to these Regulations. I mean there was no indication given there, we have seen the amendments that the Chief Minister intends to move this morning that the Schedule actually refers to regulations made under UK law and not Gibraltar law, and although we appreciate that this was only available on 3rd February, it certainly would have been very helpful to Opposition Members to have had the UK draft Schedule earlier, because it appears, I mean I counted no less than 35 references to the Regulations, to the 2004 Regulations in the Bill and it would have been helpful to obtain a picture as to what exactly it is that we are trying to do.

Moving on now to paragraph 22 of the Schedule and page 29 of the Bill, this is the procedure for determining applications for registrations and objections without a hearing, that is what the heading says. If we look at subsection (7) of that paragraph which is, sorry I am looking at the page, page 29 paragraph 22 so I will just go back. No the Chief Minister is right, it deals with the power to require information and that is the section we are on now. There is one point to be made in relation to paragraph 22(1) which is that the Registration Officer may require any person to give information required for the purposes of his duties in maintaining the Gibraltar register. I do not know whether qualifying that by saying within a reasonable period of time might be something which is relevant in the context of what the Bill is doing, given that the failure to supply information

makes one liable to a fine not exceeding £1,000. Mr Speaker moving on now to paragraph 28(7) which is on page 35 of the Schedule, which is the one that I was looking at earlier, this is the one that refers to the procedure for determining applications for registration and objections without a hearing, there is a case to be made that in subsection (7) which is on page 35 which reads as follows: "in cases to which subparagraph (6) above applies, the Registration Officer shall state the grounds for his opinion that he intends to disallow the application or objection unless that person gives the Registration Officer notice within three days from the date of the Registration Officer's notice". There is an argument to be made that three days is actually too short. Especially three days from the date of the notice of the Registration Officer which may have been dated a couple of days earlier before it was posted, so there could be a delay from the production of the notice, the dating and posting of the notice and then the receipt of the notice by the person to whom it is addressed. So there is a case perhaps there for extending the three days.

The next point which I want to make relates to page 36 and that is paragraph 31 of the Schedule. This paragraph deals with the hearing of applications and objections. It says that the person entitled to appear and be heard are as follows: (a) on application – the applicant; (b) on an objection – the objector and the person objected to; and (c) on an application or objection, any other person who appears to the Registration Officer to be interested. I think (c) is rather loosely drafted because anybody who appears to the Registration Officer to be interested is rather a wide discretionary power which begs the question like who and might it not be better to say who it is, a legal representative or whoever it might be. In paragraph 32(5) which is on page 39, it defines an elector and then it defines a relative and a relative means a husband, wife, parent, grandparent, brother, sister, child or grandchild. Given what it is that the relatives would be doing, which if I am not mistaken is actually notifying the Registration Officer that somebody has died, might it not be pertinent to add after husband, wife, parent, brother, sister, child or grandchild, of voting age, otherwise we

are leaving that open to being exercised by people who are not of voting age and may even be schoolchildren. There is also a couple of points in relation to the notices which the relevant officer has to publish in relation to these elections, and that is on paragraph 35 which is on page 40 just over the page, the notices in connection with registration. A notice under 11(3), which is basically a notice to publish a revised register is being published. It then gives three ways in which that is made known to the public. The first one is not less than 14 days before the publication of the revised version of the register, which must be published in the Gibraltar Gazette and by posting a copy of it at his office and at some conspicuous place or places in Gibraltar. There is something to be said, Mr Speaker, I mean those three areas might not be, I cannot imagine many ordinary citizens reading the Gibraltar Gazette or going around coming over here to the House of Assembly to look at a notice board, and it might be better to include the local media as a (d) where also notices can be published. In relation to the alterations to the register, which is what subsection (2) does on the same page, it is paragraph 35(2), again there is something to be said there although this is simply alterations to the register, not as important as publishing a revised register, again a copy of it is available for inspection and supervision at the office of the Electoral Registration Officer and at such place, if any, in Gibraltar to allow members of the public reasonable facilities for that purpose. I do not whether again it might be in the public interest to make sure that there is a wider public circulation of this notice as well, or perhaps what places the Government have in mind where somebody can go under supervision to examine the notices in question. In relation to page 49 and paragraph 48 of the Schedule it seems to me that in paragraph 48 and in paragraph 49 which is overleaf, we are actually legislating for what can happen or what can not happen in the British Library. This is that we supply a free copy of the Register to the British Library and to the John Mackintosh Hall Library and the descriptions as to use. For example, the 48(2) says no person employed by the British Library or the John Mackintosh Hall Library may supply a copy of the Register et cetera, et cetera or make copies of it, so there is something to be said that

from a colonial point of view it is something which is very commendable that we should seek to legislate, for what can happen in the British Library or in the National Statistics Office, but would welcome some clarification from the Government on these two points, because we seem to be legislating for what can happen there and for what they can do there. There is one general point to be made, also on the same page, page 49, at paragraph 4 which allows what the Chief Minister said in his introduction, it allows people to inspect the register at the British Library and the John Mackintosh Hall Library, they may not make copies of it or they may only record particulars included in it by means of handwritten notes. I understand the point made about the data protection legislation but it is a question of whether it is actually possible for somebody to sit in the British Library every day and make handwritten notes of the whole register, or of entire pages of the register because that is what this allows. Mr Speaker, some of the points also apply to the National Statistics Office of the UK which is overleaf on page 50, paragraph 49 of the Schedule. In relation to 49(2) it says in subparagraph (1) the duty to supply is the duty to supply in data form unless prior to publication the office has requested in writing a printed copy instead. My question is the way that is drafted it does not allow the office being both the National Statistics Office or the Gibraltar Statistics Office to have both, that is to say to have a copy in writing, a printed copy which they may want for some purpose and to have a data copy which they may want for another purpose. It seems to allow one or the other by the use of the word instead at the end of that particular sub-clause.

In relation now to the political parties receiving copies of the register, that is on page 54 of the Schedule and also paragraph 54 of the Schedule, I cannot seem to find any provision in the Bill to allow Gibraltar political parties to obtain a copy of the register for European Elections other than by registering in the United Kingdom under British law as a British political party, which would then give one access to a register. I would like confirmation where that is the case and whether perhaps any provision can be made for political parties in Gibraltar who may

not necessarily be contesting the European Elections but who certainly have an interest in registers of electors, to receive also copies of the register itself without having to register in the United Kingdom under the United Kingdom Act. Then also in terms of supplying the register, on the next page in page 55 paragraph 55, in subsection (3)(b) it says that the Government of Gibraltar or the United Kingdom Government departments may supply copies of the register, or disclose or make use of information contained in it that is not contained in the edited register, for the purposes of the vetting of employees and applicants for employment, where such vetting is required pursuant to any enactment. That seems very odd Mr Speaker, that in a Bill that deals with voting for European Elections and in the section that deals with the production of registers and the supply of registers that people who put their name down in order to vote, that information ends up being used in order to vet them for employment purposes by either the UK Government or the Gibraltar Government, that is an area we would like the Government to look at. In relation to page 60 there is something about postal voting that this is actually in the appendix to the Bill. If one looks at page 60 it says "would you prefer to vote by post." Anyone on the electoral register will be able to vote by post. We know here in Gibraltar elections people can only vote by post if they are not in Gibraltar. It says anyone can vote by post. One can have a postal vote for just one election, for all elections in a set period or for all elections indefinitely. I think that is an area which needs an explanation because not only is the procedure used in Gibraltar very different but I am not sure whether people can register in a register for European elections in order to vote in all elections indefinitely, which includes House of Assembly elections, which is a different register to the one being produced here. So certainly that is another area where we would welcome some clarification from the hon Chief Minister. Also on page 62 of the Bill, which refers to the canvas of European parliamentary electors in Gibraltar, it also says under the subheading "the full register" halfway down, it says that the information supplied may be used for other purposes such as the prevention and detection of crime, and for checking ones identity when applying for credit. I am not quite sure again

how that falls into the spirit of the Bill which is supposed to deal European elections with people exercising their democratic right to vote, they then have the information that they supplied used to vet them for employment or used to check against when they apply for credit. So I think that also looks slightly peculiar. These are the comments that I have for now and I look forward to the reply from the Chief Minister. Thank you.

HON F R PICARDO:

Mr Speaker, we have got to get through a lot of business at this sitting of the House and a lot of it is very important but both the motion of the report on the Select Committee of the House, which I do not know whether we will be taking before we adjourn again, and the Bill for the Equal Opportunities Ordinance are both of them tremendously significant for reasons that obviously we will each refer to when we are dealing with those. But I must confess Mr Speaker, a particular delight and pride in welcoming wholeheartedly this piece of legislation to this House. In fact I am sure that the Bill for the European Elections Ordinance will find no enemy in this House, and that I am sure we all agree that the enfranchisement of our people irrespective of the European Parliamentary Elections is very long overdue. Indeed in my view, all previous elections to the European Parliament have been flawed, given that they have not resulted from direct universal suffrage in all the Member States of the Union as required by the Treaty of Rome, as a result of the exclusion of Gibraltar from the franchise in each case. That democratic anomaly is now to be resolved with the inclusion of Gibraltarians in Gibraltar in the coming elections, and I think that the fact that we are going to be included in Gibraltar is particularly important. I have to disagree with the Chief Minister because in order to do justice to the exercise of legislating in relation to this Bill, it is right and proper that we should refer to the history of Gibraltar's exclusion, which he has said he does not want to refer to, and to the success of having clutched enfranchisement from the jaws of the United Kingdom's denial of the vote. For that reason I think it is proper that I should speak to the general principles

and the genesis of the Bill and not just to the details which my Colleague has already done.

Mr Speaker, in recent years the European Parliament has developed from what euro-sceptics used to laughingly refer to as just a European talking shop. Each European treaty which has delivered ever closer union, has also delivered greater powers to each of the institutions of the EU, giving the European Parliament a role akin to those parliaments in the rest of the Member States of the Union, a role akin to the national parliaments of each Member State. It is in that context that as the European Parliament gained more powers, there was also I think a rolling momentum in Gibraltar urging representation in that place. Mr Speaker, the editors of The Sun newspaper in London often seem more concerned with the fact that the European Parliament was debating the size of the European banana and whether or not salt and vinegar crisps and the great British banger were going to be banned by Europe, than by the real power that might reside in that institution. But in Gibraltar I think we had as a people a jealous eye on what it was that the European Parliament was becoming and the fact that we had no influence, no even observer status there and certainly no representation. It is that that brings me to recall a meeting of the Self Determination for Gibraltar Group, held in the very early nineties, which addressed this very issue, with a Gibraltarian lawyer then resident in Paris, who kept Gibraltar and the denial of our rights very much in his mind even though he was by then no longer a resident with us. That lawyer was Michael Llamas and since I met him I have the pleasure to say that I have consistently held him in the very highest regard. The meeting of the SDGG which I referred to, was followed by a public meeting also addressed by Michael Llamas and all parties present there agreed that a representative action should be taken in the name of a young voter who would be able to vote for the first time in the elections following that meeting. The case that followed is the case of Matthews versus the United Kingdom, and I was very lucky to have had a chance to be involved both as a law student and as a very junior lawyer because I was a Member of the SDGG, with a very minor logistical role in providing what

little help I could to Michael in this case. All credit must go to Michael Llamas for having achieved the legal victory in the Matthews case. That is what brings this Bill to this House and this House must consider Mr Speaker, how it recognises Mr Llamas' achievement in the future because it was an achievement for all of Gibraltar.

Mr Speaker, the action in Matthews versus the United Kingdom was commenced during the course of the last GSLP administration. The Hon Joe Bossano himself believed in the case from the beginning and provided support morally and logistically throughout. From the very beginning the United Kingdom unmeritoriously and to their eternal discredit, fought tooth and nail to have our case dismissed and have the disenfranchisement of our people perpetuated. But every set back that Gibraltar suffered seemed to give Michael Llamas a greater zeal to succeed in the case and his boundless energy and nationally unparalleled knowledge of EU law galvanized resolve to win the case. And Gibraltar did win Mr Speaker, having been heard by the full Court of Human Rights, the decision delivered on 18th February 1999 does credit to the true independence of the court and to the single-minded determined conduct of the case by Mr Llamas. But I want to recall one particular thing at this stage. The dissenting opinion was delivered by the English judge. I think it is important and fair at this stage to refer to the contributions made to that case by three others. The first is Mr Dennis Matthews who was the Chairman of the SDGG at the time when the case was started and he was instrumental in ensuring that the case was seen through to a conclusion. Second is Louis Baglietto, a close friend of mine and until recently also one of my partners at Hassans where he is the head of the litigation department, who was involved in his professional capacity. And the third and final person I think we have to recognise Mr Speaker, is Mr Rafael Benzaquen, who I recognise in this House sitting behind the Chief Minister, of the Legislation Support Unit, who attended the final hearing also to answer difficult questions, very difficult questions about the transposition in Gibraltar of European law and other European legislation, especially as to its volume

compared to legislation emanating from this our national parliament.

Mr Speaker, the case of Matthews in the United Kingdom did not just establish the right of Gibraltarians to vote at European Parliamentary elections. It did much more than that. It has become European authority for two particular important issues. The first is that the European Parliament is now to be regarded as a legislature, with the right to initiate legislation. The second is that by Matthews versus the United Kingdom, the Court of Human Rights in Strasbourg exerted jurisdiction over the institutions and emanations of the European Union, to ensure that they comply with its own statutes and the convention of human rights. So the effect of the Matthews judgment reverberates beyond our shores and permeates now the whole jurisprudence of the Union. Gibraltar having won the right to enfranchisement in the court, we were not yet in the clear, how would we be enfranchised? The manner of our enfranchisement still remains to be determined and there were two particular concerns which I think the Chief Minister has flagged himself. The first was obviously that we should have a constituency for ourselves, if at all possible, so that Gibraltarians would be electing their own representative to the Parliament. Gibraltar is quite distinct to all the other regions in the United Kingdom and to all the other regions of Europe that have a European parliamentary constituency. That may sound fanciful for me to suggest that 18,000 or 20,000 voters should have their own representative, their own constituency may sound fanciful. If we put that in the context of the fact that Luxembourg itself has constituencies where the total number of votes is less than 50,000 people, it appears more obvious that perhaps we could have enjoyed such a constituency for ourselves. Admittedly in the context of the United Kingdom as Member State, each constituency is much larger than those that we might find in Luxembourg and the Government have not been able in its bilateral negotiations with the United Kingdom to be able to secure a constituency for Gibraltar. As a result there is therefore a second concern and consideration. If we are to be enfranchised as part of another constituency, will that

constituency be part of the United Kingdom or of another Member State? Clearly all Members of this House would not have countenanced accepting that we should form part of a constituency in a territory other than that of the United Kingdom. That was particularly relevant when addressing the fact that we must vote in Gibraltar and from Gibraltar. We must not in the next European Parliamentary Elections have found ourselves voting in the United Kingdom from Gibraltar with the territory suspended. I believe that the Bill that is presented to the House in its framework secures that position. Therefore the Bill presented to the House in that respect today will certainly enjoy our support. But it is a highly technical piece of legislation that we are looking at today. It has to be read with the Political Parties Elections and Referendums Act of 2000, The European Parliamentary Elections Act of 2002, the European Parliament Representation Act of 2003, a draft Statutory Instrument which is the European Parliament Elections Combined Region and Campaign Expenditure United Kingdom and Gibraltar Order 2004, which I think may now already no longer be draft, and the document passed to us by the Chief Minister this morning, the European Parliamentary Elections Regulations of 2004.

Mr Speaker, that model and I do not know what it is that I may have said that may give rise to mirth, it may be that one of those is no longer to be considered relevant, but that model means that we are talking about a very complicated elections framework. Our analysis would unfortunately not have had the benefit of our being able to investigate the regulations which we have been given today, so I hope that we will have some time before Committee Stage because the document we have been given today is substantial, and it does interlace at least on 35 occasions as my Colleague has said, with the Bill that we are to pass. But in principle of course, the United Kingdom code for parliamentary elections, for European Parliamentary elections and for referenda is generally, of course as far as we are concerned, unobjectionable, but there will be some technical and substantive issues that we have to take at Committee stage. There is one particular issue that I want to highlight now, which is that we are dealing with an English Act that Parliament

is extending to Gibraltar and that our Parliament, this House, is also extending to Gibraltar by its Bill today. Having regard to the English Law Application Ordinance, although the Chief Minister seems to suggest that that is not the case and section 3 thereof, in particular, at 3(1)(b) an Act of Parliament at Westminster can be applied to Gibraltar either by an Order in Council of Her Majesty or an express provision in the Act or necessary implication or by any ordinance. We seem to be doing, and I do not necessarily think that this is wrong, I am just highlighting the fact, we seem to be doing the extension by way of ordinance and by way of express provision in the Act. That may just mean that we do it more effectively than if we were to do it by only one method but I highlight that issue in relation to the English Law Application Ordinance. Mr Speaker, finally, I think that the fact that this Bill is before this House is a great reason for celebration and I certainly will do nothing but support the passage of this Bill through the House.

HON J J BOSSANO:

Mr Speaker, just making a brief reference to the UK position on Gibraltar being able to participate in European elections, which has not been mentioned so far in the debate, I think it is worth recording that in fact the United Kingdom was arguing even after the court case was won, that we could not be enfranchised without the European Act being amended which required unanimity, and indeed when the Hon Dr Garcia and I went to give our support to Lord Bethell's attempt to include us in the UK constituency through an Act of Parliament, the only argument that Baroness Symons gave to the House of Lords was that much as they would have loved to do it they could not do it because it was ultra vires European law. I think it is worth recording that because it shows either the degree of incompetence of the legal advice that we get from the United Kingdom or the degree of duplicity that they exercise when they interpret the correct legal position as it suits them. Subsequently, Peter Hain let the cat out of the bag when he informed Parliament that indeed it was now possible to proceed

unilaterally by the United Kingdom legislation because Spain had given the green light, and Spain had given the green light to this breach of European law so that United Kingdom could act illegally in respect of Gibraltar as one of the early fruits of the relaunched Brussels Process, which Mr Hain tried to convince Parliament and the Gibraltarians, was indicative of all the good results that would flow if we were willing to swallow the shared sovereignty concept. Since all this is a matter of public record I think it is an appropriate time to put it in the record of the House because here we are looking at a piece of legislation which from the beginning, according to the expertise of the UK and according to the information provided to the House of Assembly, is in fact in conflict with the Member States' obligations under EU law because it is the Act that should have been changed. And it is significant that the last element in this bizarre episode is that having boasted in Parliament that he had managed to persuade the Spanish Government to support unilateral action by the United Kingdom when the joint sovereignty deal is sabotaged by us in Gibraltar, Spain seems to withdraw its green light and starts threatening to block the UK legislation by complaints to the Commission and by possible commencement of legal proceedings in the European courts. Since we believe in this House in the rule of law, and we believe that as a parliament we have to act constitutionally, it shows that it appears that we subscribe to higher standards than some other parliaments and some other governments do in other places. Clearly we are totally committed to the concept that it is the territory of Gibraltar that is part of the territory of the European Union and that therefore what we are doing is making Gibraltar territorially, the whole of it including the isthmus, where many of the voters will be residing in Laguna and Glacis, part of the Member State UK. So I do not know whether Spain given its argument in the European Court in respect of the airport and the isthmus has woken up to that particular nuance on this occasion, and of course, in making sure that in the part of the constituency that is the constituency of the Member State UK comprised of the Southwest region and Gibraltar, we are today putting in place what is required to have the electoral process taking place this year in Gibraltar, when for the first time since

we joined in 1973 we will be participating in the election of a Euro MP. It is, in my experience in this House since I joined it in 1972, we have not had anything like it before, where we are debating a Bill which refers to legislation which is not legislation of this House and where we have to look at that other legislation to find out what it is that we are doing. Although we are fortunate that my Colleague has been able to produce for us all the stuff, I really think the House ought to have in front of it provided for all Members of the House, without them having to spend their time and effort to chase it up for themselves on the internet or whatever, that if in this House I am being asked to vote on a section that says that something means what it says in a particular piece of UK legislation in a particular paragraph then, what it means should be available to me here when I vote. I raise this point in relation to EU Directives where there has been an informal system that when we need it we ask for it and we get it, and I know that it is possible to get it on the internet and certainly if we have the Journal where all this stuff is published, regularly available as part of the information that is available in the House, we might not need to go asking the Legislation Unit. But in this particular case we are talking about the whole range of UK laws which have been mentioned by my Colleagues to which we have just added what the Government has provided to us this morning, which is this fairly bulky document and which has got a schedule dealing with Gibraltar and where there are definitions here which refer to what is in that schedule, and that raises I think some important issues as regards the general principles of what we are doing in this occasion when we are legislating. If we take, for example, just to take an arbitrary point for the sake of illustration, if we take a reference to definitions in our laws which say "service voter means a person who has made a service declaration pursuant to paragraph 17 of schedule 4 of the 2004 regulations" which is here, not only do we have a situation where we are voting something in the House which may mean something different if they decide to amend it when they approve this in Parliament, but in respect of this reference and in respect of many other references, we are going to be voting in this House today things that may subsequently be changed, and if the content of any of

the sections that we are referring to here subsequently get amended, then without us having had anything to say here, the law that we have passed acquires a new meaning. Now I am not aware of having done anything like that before, it may be that in the context of this particular piece of legislation, where most of what is going to be done in Gibraltar by definition has to be practically the same as what is being done in the United Kingdom, because presumably the requirements are driven by the EU, given that the whole concept is that one is voting a European parliament and indeed, the concept goes further than that. The concept is that the European elections are fought on a Europe-wide basis along ideological lines, so that to some extent theoretically we are moving into a situation where they will be for the whole of Europe, and a socialist party manifesto for the whole of Europe, as opposed to different manifestos in different Member States. That is the direction in which it is going, then logically the framework ought to be as near identical as possible in all the Member States. But of course we are looking to adapting things here and, for example, if in Gibraltar's case the person that has to ensure the standards of independence and impartiality of GBC is the Regulatory Authority in Gibraltar, then that I imagine, is because the Government of Gibraltar have taken a policy decision that that should be, it has nothing to do with what is being done in the United Kingdom or what is being done in Spain or what is being done in any other Member State. Since we have had no participation in any of this negotiating process between Gibraltar and London, we might think, when the crunch comes, that we do not agree that it should be the Gibraltar Regulatory Authority that it might be somebody else. So what we are talking about, the general principles of the Bill, they were talking about a situation where there are elements in this Bill which reflect the preferences of the party in government with which the Opposition Members might not necessarily agree, because although we are talking about something that has to do with participation in the European elections, the entire exchanges have been between the Government and the British Government and therefore, in this House, we may find ourselves voting against bits of this law with which we do not agree, which

has nothing to do with the object of the Bill. Equally, I imagine, that the stuff that refers to Gibraltar in the United Kingdom legislation has been the result of the negotiating process between the United Kingdom government and the Government of Gibraltar. We might find things there, when we study this, with which we are not in agreement but that we can do nothing to change of course. But if we are in disagreement with something in the United Kingdom legislation, which is then referred to in the Gibraltar legislation, we may then have to oppose that because we do not agree to what is being referred to in the UK and we have to assume that it is there because that is what the Gibraltar Government either has settled for in its negotiation with the UK, or has proposed to the UK and the UK has accepted. In looking at the actual Bill before the House I do not think my Colleague mentioned the second schedule, which was something we had noticed was rather peculiar, I do not remember seeing that mechanism before, which is the second schedule in page 66 which appears to consist of a series of amendments. If we look at the first clause in the second schedule it says in paragraph 1 of Schedule 1, in the definition of elector, after the word age insert or subject to section 61(a) of the 2003 Act and so on. Well, why do we need a second schedule to amend the first schedule when the first schedule is what we are debating in this House and we can amend it at Committee stage. So why do we vote an unamended first schedule first and then we vote a second schedule to amend what we have just voted unamended. It is a most peculiar way of introducing amendments in the House that the amendment is actually printed, when all that was needed, presumably, was to actually do what it says here and print it in Schedule 1. Although the Chief Minister went through most of the sections in the Bill he made no reference at all to the second schedule or what it was there for, in his opening remarks.

The question of the overseas electors declaration, which we were told was a provision where somebody that has been residing in Gibraltar and able to vote in European elections up to 15 years ago, can apply to vote. Well, of course, if that is something that everybody in the European Union that was in the

European Union 15 years ago has, then what we have here is a situation where people who ought to have been enfranchised 15 years ago and were not, will not now be able to vote in this election either simply because their right was denied to them 15 years ago. So although we are making a provision here for overseas electors on the explanation we have been given, it appears to be a provision which nobody can exercise, because there was no register of electors 15 years ago from which people have since been removed. But I wonder whether that does not raise a point of principle as to whether people who ought to have been able to vote then, because we have been claiming that they should have been able to vote all the time, and who might want to vote now that they finally can, should be in fact deprived of that opportunity. Without having gone into the actual detail of the way the provision is contained, it is a question that I am putting as a matter of principle so that when we come to deal with that particular section we see whether in fact this is something that should be happening, given that if we are putting it there it is because we think it is right that they should have that, and presumably because everybody else in every other Member State and throughout the territories of the European Union, in respect of those Member States which of course have been over 15 years in the Union, will have that right.

As regards the provision of the full register and the explanation that has been given about the data protection well, we will look to see to what extent in fact the explanation of the data protection actually fits what is contained here, but I must say I find it very peculiar that we should be legislating so that the full register of electors appears to be available to lots of entities for which we see no justification. For example, I think certainly the Gibraltar archives ought to have a full register for posterity, given that we believe that all the documents that we produce here should be there, and we would want to see that included unless there is a peculiar reason which determines at EU level, who can be provided with the full register and who cannot. The Gibraltar Data Protection Ordinance is the one that has been mentioned and we shall look at that, but certainly if there is an

element of discretion, if there is an element of flexibility in the way we do things, then in terms of the general principles of this Bill and indeed of all the Bills that have to do with European provisions being transposed in Gibraltar, the basic philosophy on which we have operated in this House since 1972 has been that the discretion is exercisable by this Parliament and in this territory, independent of the option that may be exercised by the United Kingdom Parliament in respect of the United Kingdom. Now therefore, the degree of autonomy, the degree of self-government that we enjoy under our Constitution means, that if European law permits choice then we are not required to choose the same alternative that the United Kingdom as the Member State does, because we are the European territory for which they are responsible but of course, the fact that they are responsible for this European territory does not mean that we cannot exercise a different choice. We will be looking on the basis of that principle to see whether in fact we have maximised the range of possible choices here because we do not know to what degree, given that we have said that we have been told that this is primarily UK-driven, we do not know to what degree other than in the points mentioned when the Bill was introduced by the Chief Minister opposite, by the mover, we do not know to what extent the Government have been pressing or whether they have actually chosen as a matter of Government policy, to do things in a range of areas in the same way as the UK has done it because they think that is the best way, or whether in fact it has been the other way round, that the United Kingdom having started from a position of wanting to apply everything to Gibraltar the same as in the UK, has effectively been resisting us doing different things. I think it is important to get an answer as to whether of those two scenarios has been what has dominated the context in which this has finally been arrived at. As my Colleague has said clearly, the more time we have to go into the detail, the better equipped we will be to put views across at the Committee Stage in things which concern us.

The House recessed at 12.20 p.m.

The House resumed at 4.35 p.m.

HON CHIEF MINISTER:

Mr Speaker, I am grateful to the Opposition Members for the indications that they will support the legislation. I am not quite sure what the Leader of the Opposition meant when he said that they might vote against some of the proposals but I generally gleaned that they were supportive of the legislation on the whole and in principle. If I could just take their comments in the order, or some of their comments in the order in which they made them. The Hon Dr Garcia said that the system was not perfect and that he would have preferred his own Member of Parliament and he felt that nothing would have been impossible for Britain if it had had the political will. Well, of course, we can deal in ideals and in perfect worlds and all that if he likes but the reality of it is that if a dedicated MEP for Gibraltar would, I think have been politically difficult for the UK to deliver, even when they had single Member constituencies for the European Parliamentary elections. The moment that the UK moved away from single Member constituency to regional lists system, so they had for example, 5 or 6 million people in the southwest of England represented by 7 MEPs in the case of the southwest, collectively in that system, there would be no way to give Gibraltar within the context of the UK Member State and its arrangements, there would have been no way to give Gibraltar, much as we would have liked it, our own MEP without obtaining head for head as individuals, massive over-representation compared to an equivalent 30,000 people in any part of the United Kingdom. That is the mathematical realities of the consequences of the UK's movement from single Member constituency to regional list system, and I do not say that because if I pretend that that had not happened, we might then have been more successful in getting our own dedicated MEP, I think we would have been equally unsuccessful because I agree that the UK does not have and never has had the political will to

give Gibraltar its own separate and distinct MEP. So regardless of how likely or unlikely with or without the required measure of political will, something else might have been possible or not possible in historical terms, that it should not be available to us today given that the UK's movement subsequently to regional list system, I think is simply too easy for them to defend and too difficult for us to make the alternative case. Ultimately, our case would have to be, "well, we are not part of metropolitan UK, we are not actually part of the United Kingdom, therefore you should treat us separately and give us one of your MEPs, leaving, I think we have got 87 now, leaving 86 so you know share one less amongst your remaining population, so 30,000 of us can have our own MEP". Mr Speaker, we can debate the desirability of it, well I am not sure that there is any need for us to debate the desirability of it, we are probably both agreed on that but I think there is no point in debating whether it was ever realistically available. I think it was never realistically available, it is worth bearing in mind now with the principle of enlargement, or rather with the enlargement of the EU, I understand that the UK and some of the other Member States are having to give up some of their MEPs thereby increasing the number of millions of citizens that each MEP is representing, and therefore even less likely that there would be one available just for us 30,000 people. I agree at least with the factual analysis, not necessarily with some of the comment, that has been made by the Hon Dr Garcia and the Leader of the Opposition, as to the history of the UK's refusal to deal in this way from the outset. The hon Members are absolutely right in their analysis, successive Gibraltar governments have been urging the UK to do precisely this. I remember the first Minister of State that gave me any indication that this might be a way forward was Keith Vaz, who, first raised the spectre that if Spain did not play ball then the UK might have no alternative. The hon Leader of the Opposition went on to develop that point, to point out the chronology of events following the breakdown of the joint sovereignty negotiations and the Spanish complaint. Well I think he is probably right in that assessment too. Clearly, there was some sort of understanding in the context of the joint sovereignty negotiations between the UK and Spain about Spain "allowing",

in other words not making a fuss, about the UK proceeding unilaterally. I think it is also clear that for Spain, quite apart from any consideration such as that the Leader of the Opposition has mentioned about whether Spain reacted to the breakdown of the joint sovereignty talks by sort of reversing its cooperative attitude, there is also the question that Spain believes that the UK breached their understanding by the way that the enfranchisement was actually given. Spain believes that it is a breach of that understanding that Commonwealth citizens should have been allowed to vote in Gibraltar, or that Gibraltar should have been so territorially enfranchised, and it was really when Spain saw the detail of the way this was going to be done when the 2003 Act was first published as a Bill, that she started kicking up the fuss saying 'hey chaps, this is way beyond the scope of what we had understood at the time'. So I agree with that analysis and would venture to suggest that there was this additional dimension to it too.

Mr Speaker, I do wish that one of the new Members of the House would not change the words that I have said in order to make it fit more easily with something that he wants subsequently to say. The hon Mr Picardo said that the Chief Minister had said that he did not want to go into issues of the history but he thought that it was necessary to do so. I did not say I did not want to, I said I did not think it was necessary to, given that I thought that the House was of one mind on that issue and if I had been minded to give the House a history lesson, I can assure the hon Member it would have been more accurate an account than the one that he gave. The view that I was asking Opposition Members to take was that by not addressing the history of the Matthews case we might have had a chance, which I am afraid the hon Members have now rendered impossible by their statements, we might have had a chance of avoiding the somewhat undignified spectacle of one side trying to claim the right whilst denying the other side any credit at all, or the other side trying to take all the credit whilst denying the other side no credit at all, which unfortunately, either the hon members did not read between the lines that was the signal or they were so determined to take credit for

something for which they frankly have none, that they decided that my suggested approach did not suit them. Mr Speaker my own personal style is that I take responsibility for the things that I do badly or the things that I might have done better, but that I allow others to judge the extent to which I might have done things well or the extent to which praise is due. Frankly, it is not particularly dignified to see the hon Members standing up one after the other to give themselves credit frankly for events which if they wish to be accurate about it started in their term of office but mainly occurred in ours. I do not say that the Government is solely responsible for the success but what I can tell the hon Member is not true, is that the Government have no credit to be recognised either. I think it was noticeable by its obviousness that the hon Members between them thanked and recognised the achievements and contributions to this first and foremost of themselves, then of the law draftsman and of Mr Dennis Matthews and of Michael Llamas and of all manner of people, at no stage did they mention the Government of Gibraltar either, because they genuinely believe that the Government of Gibraltar had no role in the prosecution and conduct of the Matthews case or because they cannot bring themselves to recognise any measure of success on the part of the Government. And all of this part and all of this discussion and all that I am now going to say on the matter, would have been totally unnecessary if the hon Members had not quite inelegantly in my opinion, sought to claim credit for themselves in respect of achievements which frankly is down in very small measure to any political input on their part. I mean, I do not know whether the hon member's recollection is not as good as it should be but, I am certain he would benefit from being reminded of what actually happened and the dates and the chronology of events which are these. That in April 1994 as an initiative of the Self Determination for Gibraltar Group a complaint was filed with the European Commission of Human Rights in the name of the daughter of the then chairman of the SDGG Mr Dennis Matthews. That is to say Miss Denise Matthews. By May of 1996 that is to say when there was a change of government in Gibraltar in favour of the party which now forms Government, by May 1996 all that had happened is that there had been an oral

hearing in front of the European Commission, not court, the matter was not even before the court yet, that the European Commission had considered the limited question of admissibility, of admissibility of the complaint, that is all that had been achieved by May 1996 when the GSD came into government. On 16th April 1996, that is to say a month before the change of government, the European Commission ruled that the complaint was admissible, in other words that they could hear it, that is all an entirely procedural preliminary stage. That is the entirety of the progress achieved in this matter during any time that any of the Opposition Members were politically connected with this matter and before that it was not the Opposition Members in government, it was the SDGG whose authorship of this initiative the Government have always recognised. But Mr Speaker, surely the hon Members must know that Miss Denise Matthews did little more than lend her name to the process, that from the day that the Commission ruled in April of 1996 that the complaint was admissible the case was in effect under the care and conduct of the Government and that it was conducted with Government funding by the Government's lawyers with the Government making decisions about the arguments that should be adopted or not adopted. Surely the hon members must know that. It is not a matter for which I want to take particular credit, it is one of many decisions and one of many litigations in which the Government have participated and helped but look, I do not want to claim any credit for the Government but frankly, there is all the difference in the world between not wanting to take credit for the Government and allowing the hon Members repeatedly as they have been doing during the last six months, repeatedly trying to claim for themselves credit fraudulently for something which is frankly of absolutely no credit of theirs. Well Mr Speaker, the hon Members can continue to re-familiarise themselves with the chronology of these events. On 16th April 1996 the Commission ruled that the case was admissible. The Commission then said 'now that the case is admissible please give us proper arguments in support of the substance of your complaint'. Between May 1996 and January 1998 not Miss Matthews or Mr Matthews or the Leader of the Opposition Mr Bossano, nor even

the ever-present Hon Mr Picardo, had anything whatsoever to do with the formulation of this case or this argument. I am sorry to have to speak in such stark terms but there is no other way of addressing a phoney claim for credit where frankly, not only is there no need for credit but in fact there was no intervention or involvement at all. When the Commission having received all these arguments rejected the application, the Commission the hon Members will recall, the European Commission of Human Rights rejected the complaint and the matter had to be referred to the court and that did not happen until 1998, Gibraltar had been long rid of them for two years by then. And in 1998 the court says we now accept jurisdiction in this matter and the Government through their lawyers, Miss Matthews I do not know what she was doing at the time but she certainly was not conducting this case, right, the Government through its lawyers you know, I was asked from time to time to approve arguments and to say whether the Government were content for this or that argument but I was not compiling the case, I am not claiming credit, I was not the author of the arguments, I was not the author of the strategy, I was not the author of the proceedings but that they were occurring during our term in office and that it was under the conduct, care, control and cost of the Government exclusively there is no doubt.

Mr Speaker, having started in the court from scratch, from square one with new pleadings, new arguments, everything had to be started from the beginning. Eventually in 1999 that is three years after the hon Members, it is odd, they hate us reminding them of their history when it is bad but when they think it is good they immediately take us back to their own history. So history is something that we can all have recourse to when it is good for them but not when it does not suit them. Three years later the court eventually ruled and the Government have never, the Government in all the time that has passed from 1999 through the elections that immediately followed thereafter in 2000 or more or less thereafter, and then again at the last elections, the GSD Government have never put out a press release saying this is a feather in the cap of the GSD Government or anybody else, the Government have recognised

the work of the lawyers Michael Llamas and that is all. Therefore for the Opposition Members to try to claim credit for anything other than the fact that it was during their term in office that the SDGG lodged the first complaint, for them to claim credit for anything other than that is a massive political heist. About the only thing that I can agree with of what the Hon Mr Picardo said this morning on this particular aspect of the matter is that it is in effect all down to the conduct of this case by Michael Llamas, that is what it is down to, I spent many hours with him going over his argument because he wanted some sort of political comfort as to whether the Government of Gibraltar thought it was a good argument. Now, these are the realities of the matter and then the Hon Mr Picardo may wish to, or I can not remember if it was him or the Hon Dr Garcia on his behalf, because of course listening to the hon Dr Garcia, his Colleague Mr Picardo was leading counsel on the matter. When the Hon Mr Picardo himself then got up he had at least the decency to recognise that his role had been minor, which is a reality, and certainly perhaps as a Member of the Committee of the SDGG he was instrumental in the decision to make the complaint, if that was the case I warmly congratulate him for it. But that was really the extent of his involvement and when the case eventually came to the European Court for the oral hearing by which time we were in Government, this is 1998, I was asked, Mr Picardo says that he is no longer instructed on the case but as he was originally involved as a Member of the SDGG and he has got an interest in the matter, please would the Government mind if he went along to the Court and sat with their team of lawyers, and I said no I do not mind at all as long as he does not expect to be paid a fee for it. That is exactly what happened. To now, these years later, for the hon Member to stand up in those circumstances and really for us to have to hear the things that we have had to hear, I regret to say to the hon Member, I had offered the hon Member through my own omission in my own initial address, I desisted from commenting on the history of the matter altogether but I am afraid the hon Members have left me no alternative but to deal with the matter just to put the record straight. Just to put the record straight.

Mr Speaker, I will respond to the hon Members in respect of their more detailed points at the Committee Stage given that I understand that they were raising them with me in a sense to alert the Government to the fact that the areas upon which they would want some detailed clarification. The Hon Dr Garcia said that it would have been helpful to have the 2004 draft regulations earlier which in fact are not, contrary to what the Hon Mr Picardo I think he said at one stage that he believed that they were no longer draft, they are still draft, they have not been settled, still less have they been adopted.

HON F R PICARDO:

The Combined Region were in draft.

HON CHIEF MINISTER:

Well, the Combined Region have certainly been adopted in the House of Lords, whether they have also been adopted in the House of Commons I do not know. They may have been adopted in the House of Commons. Alright I accept that. It was not clear when he said it but I accept it now that he clarifies it. I had given the hon Member the explanation the only reason that is available, that this is not our legislation, it is late in being produced by the UK and in a sense although I recognise that the hon Members need to see that in order for them to have in their minds a clear understanding of what the electoral regime in Gibraltar is going to be, it is a mistake to think that we can look at the UK regulations and decide whether there are things in them that we do not like. I mean we can decide that there are things that we do not like and sort of say so but it forms no part of the consideration of this Bill because this is not a proposal from the UK, this is UK legislation and the laws of the UK are what the UK wants not what we want.

Mr Speaker there is one or two other points that they made that I think are worthy of being considered at this stage where we are discussing the principles and I will respond to them. For example, the Hon Dr Garcia yes I think it was him, almost

certain it was him, he would correct me if it was not him. Dr Garcia when alluding to the contents of page 60 said, queried how that in the UK one could vote by post and how was this going to work in Gibraltar, we have got to do the same. In the UK voting by post is not something that is allowed only in the circumstances in which we allow it in our general elections, in other words when you are going to be away on polling day. In the UK one can vote by post even if one is next door to the polling station on polling day. In other words, it is every voters right to vote by post even if he is not absent, even if he is standing outside the polling station on polling day. We have got to do the same. When the Electoral Registration Officer publishes the voting procedures, this will be included amongst them and the hon Member will then be able to see that we shall all be able to vote by post on the day, and this is nothing to do with the postal voting system that we have in our own domestic general elections.

Mr Speaker the closest that the Hon Mr Picardo came to acknowledging that the Government might have had a very small measure of success in anything whatsoever to do with this matter was when he recognised that we had succeeded or rather that the legislation, I am not sure that he gave us the credit for it, but certainly he recognised that the legislation saved in his judgement the point that Gibraltar was being territorially incorporated into the arrangement and that we were not, to borrow the phrase that I used publicly myself two or three weeks ago, voting as if we were residents of Cornwall. It is an important achievement. I do not claim it, I have no doubt that others in Government would have taken the same point but it was not a point that was obviously available to us at the very beginning. But one can see now subsequent events have revealed in a sense the pincer movement to which the UK was subjected. On the one hand they had the Gibraltar Government pressing for territorial incorporation and for participation and institutional role and all of that, on the other hand, we did not know it at the time but I think we have all discovered it since, from the other side the Spaniards were saying "well don't you dare do this and don't you dare do that and if you do this I will

do that", so one can just see the UK doing the usual sort of high-wire rope act and this is what they have come up with. But as I have said publicly in the past, I think that we have got the better of it because I do not think it is possible, I mean one can argue about whether we might have liked to do more locally in our own legislation, one can add certainly a debateable point but it is not possible to look at the totality of the legislative framework dealing with this issue and come to any conclusion other than that Gibraltar as a territory has been enfranchised. And that Gibraltar's constitutional institution at several levels are playing a role, judicial, legislative, executive, playing a role not just in bringing about the voting framework but then in administering and in policing it through its own courts. I think that that is a substantial and significant victory for Gibraltar because had it been different, I think what would have happened is that we as individuals would have been enfranchised in the southwest of England, and they might have put a polling booth here to save us the 30p stamp of sending the letter the post, but the reality on any proper analysis would have been that the territory was not being enfranchised, and I believe that this Bill, without saying that it could have been done even better, but I think this Bill sufficiently, this Bill and the UK legislation sufficiently saves that point. I think I have already said enough to recognise and in any case I wish to take the opportunity by endorsing the remarks of the Hon Mr Picardo, in recognising Michael Llamas' role in this. I think it is no secret that the Government in general and I in particular as a fellow professional lawyer of his, hold him in the highest possible regard. It is not for nothing that at considerable expense we have recruited him to be the Director of the Gibraltar Government office in Brussels and that in addition to that he conducts almost the totality of European Union related legal advisory work for the Government and I think Gibraltar, without going further than one should, I think Gibraltar is fortunate that one of its own chose that particular professional career path of going to Brussels and Paris and becoming steeped in European Union law. It is of course always possible to buy in legal advice but it is almost always impossible to buy legal advice where one gets more for ones fee than just a technical legal opinion. Where the technical legal opinion is

given with the passion and commitment that Mr Llamas as a Gibraltarian shares with us all in this House. The hon Member said that the House must consider how his achievement might be recognised, well I do not know, I suppose one does not quite know what sort of things he might have had in mind, perhaps put up a bust to him but I suppose perhaps there are others that might claim that, I think that he feels valued and I do not think he needs more recognition than that. He knows the esteem in which the Government, indeed the whole House holds him and the people hold him, which is one of the reasons why we invite him to come to Gibraltar every year round National Day, so that he has the opportunity to absorb some of that sentiment, and indeed now that there are regular meetings of a European Legislation Committee that I have formed and of which he is a Member, he is in Gibraltar once a month to attend this Committee, and I think it is good that his links with Gibraltar should go from strength to strength.

So that is the backdrop against which I think the House and others have got to evaluate the Hon Mr Picardo's statement, "that the Government was not able in its negotiations with the UK to secure a separate constituency/MEP for Gibraltar". It is true that the Government were not able to secure that, I think it was unsecurable, it is also true that I do not recall having seen any great ground swell of public lobby coming from any opposition party in Gibraltar during the last two years pressurising on this particular aspect of the matter, but still the statement is certainly true, the Government were not able to secure that, it was certainly worth trying but that we should not have secured it frankly is not something that comes as a great surprise to us in terms of the logic of the UK's own voting system. Quite apart from the lack of political will which would have been present anyway as the Hon Dr Garcia quite rightly said, even if they did not have that ready excuse of the UK's system available to them. The Leader of the Opposition also raised this question about the fact that you could not analyse or investigate the regulations, no I do not think it was actually I am still at the stage of the Hon Mr Picardo who asked for indication he expressed the hope that the Committee Stage would be

delayed, I really do regret to tell him that it is just not possible. The Committee Stage will take place tomorrow. But I would urge him, I would urge him to accept the view that he has got plenty of time to familiarise himself with the 2004 Regulation and that we must not confuse familiarising ourselves with the 2004 Regulations on the one hand and the legislative process that we are engaged with in this Bill. Whatever the hon Member may find in the 2004 Regulations that he does not like, whatever might be the references in the 2004 Regulation to the 2004 Regulation in our own Bill, it is not changeable, it is not changeable because it reflects that provisions of United Kingdom law either in the 2004 Regulation or in our own, the only area where there is a little bit more of home-madness and we will come to this I am sure in the Committee Stage, is in the sections relating to broadcasting. But all the other references to the 2004 Regulation are there by compulsion and this is a draft that the UK has wanted to see, because of course the UK having agreed to allow us to legislate for institutional reasons, then also wanted to make sure that our legislation delivered their concern that the law in this part of the combined constituency would be the same as the law in the other part of the combined constituency. Therefore, the references to the UK legislation in our Bill which are capable of being debated by us and changed if for example they could persuade us that it was not a good idea, there is almost no scope for that except in relation to the broadcasting sections and I will indicate those parts to them in the Committee Stage. For the rest of it the Government's position as I explained in my first address to them this morning, is that frankly we are just pleased to have been able to get a legislative role, albeit a token legislative role, only in three areas, broadcasting, a little bit about the judiciary and the register, because for us this was in effect a monument to our institutional constitutional participation in the franchise, much more so than the actual content of the legislation. Were it not for that it might all have been done in the United Kingdom and then we would have had nothing to debate and nothing to analyse because that was the UK's starting position.

The Hon Mr Picardo then concluded by saying, well he explained to the House that there were two ways in which the United Kingdom legislation could apply to Gibraltar, he explained that one way was by the Application of English Law Ordinance or the other one was by direct reference in the UK Act and that he felt that we might be doing both here on a sort of belt and braces approach. That actually is not true as I explained in my own first address. As I explained in my own first address nothing in our Bill makes UK law applicable. The fact that our Bill says that the provisions of our Bill are subject to UK law is very different to making UK law applicable by virtue of us applying it in this Bill. That is not happening. UK law is applying to Gibraltar by virtue of its own direct provisions. In other words, the 2003 Act says on its face that it applies to Gibraltar and gives the Lord Chancellor, I think it is the Lord Chancellor or the Secretary of State, power to make regulations, subsidiary United Kingdom subsidiary legislation applicable to Gibraltar. Because they take the view that this is one combined constituency. That is the point. I can assure Opposition Members that it took a lot of meetings including visits by me to the Lord Chancellor's Department to persuade them to get them to accept the principle of the House playing some legislative role in this matter.

The Leader of the Opposition also had occasion to regret that it was well, perhaps he did not express it in those terms, he made the point that it was unusual for us to have to be passing legislation which requires the interpretation of UK law and which refers to UK law and things of that sort, and I think he said that this was a unique or unusual situation. Well I think he is absolutely right, it is a completely unique and unusual situation. I suppose the full-blooded integrationists amongst us in Gibraltar would have preferred if all the legislation had been dealt with in the United Kingdom. But anyway, the fact of the matter is that it is a joint legislative effort, it is a unique situation. Never before has part of the territory of Gibraltar and part of the territory of the United Kingdom been lumped together for any purpose, in this case for the purpose of organising an election and the same, the resulting combination been subjected not just to the same, I

mean our original starting point in the discussion with the UK was that it was possible, even if it meant that the UK had to approve our legislation. It was possible to replicate the law in Gibraltar and the law in the United Kingdom by laws that we passed here. All we had to do was make sure that the legal provisions were the same, even if it meant photocopying the UK legislation then adopting it here. We could have done that with the whole lot. The UK took the view that not only did the law have to be the same but, save in the areas where we eventually extracted concessions from them, it had to come from the same source. In other words, it was not enough that the same law came from two different sources namely, Parliament in London and the House of Assembly in Gibraltar, it was not acceptable to them that two bits of the same constituency should have, in respect of one bit laws made in Westminster and in respect of the other bit, which was as far as they were concerned the same constituency, it was almost as if Gibraltar had been towed up the Atlantic and parked next to the Scilly Isles, as far as they were concerned was one indivisible unit, not acceptable that the law in relation to our bit of that should have been made here and the law. And that was the position on which we could not shake them from that position, they swore to have legal advice. So it is very much a unique, one of the points that I forgot to comment on from his own contribution about the Hain volte-face on this was that of course they used to swear in-house to have legal advice that rendered as I have said before, both his Government and mine were saying to the British Government, we have legal advice that says that we can do this. Well we have legal advice that says that we cannot. But of course I think it is now pretty notorious that in-house legal advisors in some of the United Kingdom departments of State are really there to give legal shape to the result that the department wants politically rather than to shape policy by virtue of the correct statement of what the law is, and I do not think that this is the only example, I do not think it is the first example and I feel almost certain, to stake my pension, my reduced pension on the fact that this will not be the last instance in which self-serving legal opinions will be provided by in-house departmental lawyers. So the combination of the fact that it is genuinely a unique situation, that it is

genuinely a joint legislative framework effort, that the United Kingdom part of the laws are not all ready, that the United Kingdom laws do apply, I think renders some of the things that the hon Member said about the uniqueness of this situation and the strangeness of it correct. But I think that is a reflection of the genuine uniqueness rather than about something that could be avoided. Surely if there had been more time we might have had the 2004 Regulations in the public domain, a better period of time before this House had to debate this Bill, so that when we are saying in a sentence if there is a reference, even if we cannot change it at least we can understand it, that is of course absolutely right but it has not been of the Gibraltar Government's making and frankly we have waited for as long as we could to bring our legislation forward until we could wait no longer given that I am advised by the Chief Secretary and the Registration Officer that six weeks is the absolute minimum that they need to prepare the canvas and that without this Ordinance, the canvas has no statutory basis and therefore insufficient validity for the purposes of the European Elections. I am satisfied whilst recognising the constraints that it has put on the hon Members, I am quite satisfied that it is not for anything that the Gibraltar Government could have done more quickly or could have remedied.

I would also just like to say to the hon Member that he is mistaken in assuming that the United Kingdom has engaged us in a sort of detailed process of consultation, let alone negotiation on the references to Gibraltar in the UK legislation. The areas of consultation have been mainly, well I say mainly not to say almost exclusively, on the areas that I have been talking about persuading them to let us do it ourselves, and the arguments have been, "well why can't we do this, why can't we do that", and there has been arguments about that. The fact is that the UK legislation has always been produced rushed, last-minute, short of time and with practically no consultation, let alone negotiation with us, so what has driven this what has driven the UK legislation is not any idea that the Gibraltar Government should agree with it, but the United Kingdom's requirement that it should replicate their law in a way which renders uniform the

legal regime across all parts of the constituency. I suppose it is arguable that if that is the imperative, for which there is some logic I have to say, but I suppose it is arguable that if that is the imperative there is really not a lot of point in engaging the Gibraltar Government in negotiations if the position of the British Government in any case is going to be, well whatever the consultation, whatever negotiation, whatever discussion, this is how it has got to be because our in-house lawyers have told us that this is how it has got to be so that it is the same law here and the same law there. That has been the reality of the process.

Mr Speaker, I think the hon Member must have been momentarily distracted in relation to the point that he made about the second schedule and his remark that I had made no reference to it in my opening statement, which I did. I explained what we were told and I repeat for his benefit now, what the second schedule is for and why it is there, and really if he had heard the explanation which obviously he did not, the hon Member would not have been left with the impression that the second schedule are amendments which could have been made in this House. The second schedule are transitional modifications to Schedule 1 to accommodate the accession States in the context that I also explained in my first address, that they might or might not vote, depending on whether they acceded and depending on the fact, and that is why it only applies to the 2004 elections and not to subsequent elections. The content of the second schedule is not a permanent amendment to any provision of the Bill. It is a transient modification to accommodate a circumstance which straddles the 2004 elections in the context of the fact that it coincides, almost coincides, with the accession date of some new Member States. Therefore whilst recognising that the hon Members would have benefited from seeing this longer in advance, the 2004 Regulations, I think we are agreed, whatever else we might have disagreed on in relation to this matter, I think we are agreed that the most important aspect of this is that we are voting in 2004, that we are voting in June 2004 for the first time after never mind who brought it about, a hard-fought and hard-

won political and legal struggle, that this Bill is just a small part of the legislative framework to bring about that highly desirable result and that we should focus on the big picture of facilitating the election and perhaps on this occasion pay less attention to the small detail of exactly how it had been done, which in any case is outside of our control. In that spirit I would urge the hon Members to support the Bill in all its stages.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that Committee Stage and Third Reading be taken on another day.

THE EQUAL OPPORTUNITIES ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar, Council Directives 1997/80/EC of 15th December 1997 on the burden of proof in cases of discrimination based on sex as amended, Council Directive 2000/43/EC of 29th June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27th June 2000 establishing a general framework for equal treatment in employment and occupation, and to amend the Employment Ordinance; and for connecting purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Member States of the European Union have established a common framework of legislation to tackle unfair discrimination on fundamentally six equality strands, sex, sexual orientation, race, religion, disability and age. Council Directive 2000/43 implements the principles of equal treatment between persons irrespective of racial or ethnic origin. Council Directive 2000/78 establishes a general framework for equal treatment in employment and occupation. Council Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions as amended by directive 2002/73 read with Council Directive 97/80 relating to the burden of proof in cases of discrimination based on sex. Now Council Directive 76/207 was implemented in Gibraltar by way of amendment to the Employment Ordinance in 1989. That is, of the ones that I have just read out, the one on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion. That was done in 1989 in the context of amendments to the Employment Ordinance. But Council Directive 97/80 has not yet been transposed in Gibraltar. Unlike the United Kingdom, Gibraltar does not have legislation covering the ground on religion or belief, race or ethnic origin, sexual orientation, disability and age. In view of the circumstances evolving out of the three recent framework directives namely, 2000/43; 2000/78 and 2002/73, Gibraltar requires to have a comprehensive piece of legislation in place to tackle unfair discrimination and ensure equality of opportunities on the six equality strands. The ground of sex, as I have said, is already covered by the Employment Ordinance. There is a need to make an amendment to the Employment Ordinance to update that provision, to make it entirely consistent with some of these directives and the hon Members will see, if they glance at the back of the Bill, at clause 55, that there is in fact there a clause

introducing a new clause 52A to the Employment Ordinance, I do not intend to proceed with that. I have given notice to delete that. I think it is not the best legislative practice to amend an Ordinance in one name, in a completely different Ordinance, because it is then very difficult for people to know that it exists. Lawyers and trade unions and employers are not going to think to look in the Equal Opportunities Ordinance for amendments to the Employment Ordinance. So what I am intending to do is to bring back to the House, but in a different Bill, not today, that same provision but as a Bill amending the Employment Ordinance so that when it comes to consolidation of laws and things of that sort, it will be more logically located.

Mr Speaker, the House will be aware that unfair discrimination has a damaging impact, whatever the basis on which people make assumptions about the needs, ability or potential of others but the extent to which discrimination arises and the way in which it occurs differs across the six equality strands. The Bill covers the grounds of race or ethnic origin, religion or belief, sex and sexual orientation. In broad terms the new legislation outlaws four types of behaviour. Direct discrimination, indirect discrimination, harassment and victimisation, and I am just pulling out for the benefit of the hon Members what is the common strand what is in effect the model of the Bill which is then replicated in various different strands. So it is six strands and four discriminations, four methods of discrimination the ones I have just read out, indirect discrimination, direct discrimination, harassment and victimisation. These concepts are defined in their legislative forms by sections 4 to 11 of the Bill. Just by way of summary direct discrimination occurs where a person is treated less favourably than another on grounds of religion or belief, sex, race, ethnic origin or sexual orientation. Indirect discrimination occurs where a provision, criterion or practice which is applied generally, puts persons of a particular religion or belief, sex, race or ethnic origin or sexual orientation, at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. Well the hon Members can see how one can devise a set of rules and say that they apply to everybody but that in practice they only victimise

particular minority groups. That is indirect discrimination. Victimisation occurs where a person receives less favourable treatment than others by reason of the fact that he has brought or given evidence in proceedings, made an allegation or otherwise done anything under or by reference to the Ordinance. In other words, one can just see victimisation means in effect when an employer victimises an employee for having dared to invoke the law against him or to make a complaint against him. Harassment occurs where on grounds of religion or belief, sex, race or ethnic origin, or sexual orientation a person is subjected to conduct which has the purpose or effect of violating his dignity or creating an intimidating hostile, degrading, humiliating or offensive environment for him. More or less what the Opposition Members do to the Government on a continuous basis, that is the definition of harassment for the purposes of this Bill.

The Bill transposes into the law of Gibraltar Council Directive 97/80 of 15th December 1997 on the burden of proof in cases of discrimination based on sex. Council Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78 establish a general framework together for equal treatment in employment and occupation. So the hon Members will have seen that the first of those that transfers the burden of proof in cases of discrimination based on sex, actually says that when certain allegations or facts are established from which this discrimination can be deduced or implied, the onus of proof switches to the person complained against to disprove that it is in breach of the Ordinance. The Bill is designed to ensure that people have equal opportunities, there is nothing to prevent an employer from deciding not to recruit or promote a particular person if he or she could not do the job as well as another candidate but there are some limited circumstances when it is legitimate to treat people differently because they have a particular characteristic. These are called occupational requirements in other words, when one is allowed to discriminate against or in favour of somebody because of a particular characteristic that they have which is a legitimate

occupational requirement. These are called as I say occupational requirements and in some circumstances an employer can also take positive action to compensate for disadvantages which particular groups have experienced in getting jobs or at work.. So for example, I suppose, examples of legitimate occupational requirements are that Chinese restaurants like to employ Chinese people and if there is a West End production of a play and there is a character in the work of art of Asian origin, it is not a breach of the Equal Opportunities Ordinance to choose somebody of Asian origin and to turn down white Caucasians because that is a legitimate occupational requirement. There are of course many others and those two are not typical of the various examples that one could choose. The Bill applies to the Crown by virtue of section 3(5), sections 12 to 36 of the Bill, prohibit discrimination, victimisation and harassment in the fields of employment and vocational training. In particular they protect employees under section 12, contract workers under section 17, officeholders under section 21 and partners in firms in section 22. Unfortunately for the hon Member, there is not a provision protecting partners in firms who want a political career to remain partners in the firm so there is no protection against discrimination against politicians. They not only prohibit discrimination in all its various manifestations by employers, but also by trade organisations, section 18, bodies conferring professional qualifications, that is section 28, trading providers section 23, employment agencies section 27 and further education institutions section 28. By virtue of section 36 discrimination, victimisation or harassment occurring after a relevant relationship has ended is unlawful if it arises out of and is closely connected to that relationship, an interesting concept. Not all differences of treatment on grounds of religion or belief, sex, race or ethnic origins or sexual orientation are unlawful. There are exceptions in sections 39 to 41 for differences of treatment relating for example to public order and public security, and positive action and in section 40 for benefits dependant on marital status. So for example it is not discrimination to say that something is available only to married couples, that is not discrimination, there is a particular permitted under the directive exemption for that. Section 14 provides an

exception where sex is a genuine occupational qualification and section 15 provides an exception where being of a particular racial group is a genuine occupational qualification. Section 16 provides exceptions where being of a particular religion or belief, sex, race or ethnic origin or sexual orientation is a genuine and determining occupational requirement for a post if it is proportionate to apply the requirement in the particular case. Section 16 also provides an exception for employers with an ethos based on religion or belief, where being of a particular religion or belief, sex or sexual orientation is a genuine occupational requirement for a post and it is proportionate to apply the requirement in the particular case. The Council Directive 2000/43 is the most extensive in scope. It prohibits race discrimination in employment and training, the provision of goods and services including housing, education and social measures and protection. Hence section 32 makes it unlawful for a person concerned with the provision of goods, facilities or services to the public to discriminate another person on the ground of race or ethnic origin who seeks to obtain or use those goods, facilities or services. Similar provisions are made in section 33 in the area of disposal or management of premises and in section 35 in the area of assignment or sub-letting of premises. Individuals have the right to complain if they believe they are the subject of unlawful discrimination. Cases about discrimination in employment and workplace training are mostly within the jurisdiction under the Bill of the Industrial Tribunal. Others about providing goods, facilities or services for example, are in the jurisdiction of the Supreme Court. The Industrial Tribunal can award compensation for example to cover a loss of earnings if a person or company is found to have discriminated unlawfully. To this end sections 42 to 49 are designed to cater for remedies for individuals including compensation by way of proceedings in the Industrial Tribunal and in the Supreme Court. There are special provisions about the burden of proof in those cases in sections 44 to 47, which transfer the burden of proof to a respondent as I said earlier in a case, once a complainant has established facts from which the court or tribunal could conclude in the absence of an adequate explanation that an act of discrimination or harassment has been committed by the

respondent. Section 48 and the Schedule also include a questionnaire procedure to assist complainants in obtaining information from respondents.

Finally Mr Speaker, the Bill does not cover the grounds of disability and age which are two of the six equality strands. That is because tackling age discrimination raises new wide-ranging and complex issues. Indeed the Directive, that is 2000/78, gives Member States an additional period of three years, that is to say until December 2006 to transpose the provisions of the Directive on age and disability discrimination in order to take account of the particular difficulties in those two areas. Indeed the UK has not yet finalised any legislation on age discrimination. The Disability Discrimination Act dealing in the UK with disability 1995 Amendment Regulations 2003 covers disability discrimination and does not come into full effect until 1st October 2004, that is towards the end of this year. So, we have got time to complete the job in terms of discrimination and age, the Government are currently in the process of drafting that legislation and we would hope to be able to bring it to the House if not towards the end of this year certainly by the beginning of next and we would not expect to have to avail ourselves of the full period for implementation that we would have under the directive. I should just add before I sit down, that the hon Members will have already hopefully received a letter with a list of amendments. Tomorrow when we come back the hon Members will also have the pages of the Bill marked up as I did the other day showing those amendments tracked. I commend the Bill to the House.

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

HON F R PICARDO:

This is, as the Chief Minister has said, very important piece of legislation and in fact Opposition Members have been calling for it for some time. Mr Speaker the Constitution that we already

have provides some protection in respect of the discriminations of the grounds of sex, race, slightly in relation to religious belief and ethnicity but only to a very limited extent. The Employment Ordinance as amended provides as the Chief Minister has already indicated some protection in relation to the discrimination on the grounds of sex in the workplace. Obviously the whole body of law in Gibraltar must also be read to an extent subject to the European Convention of Human Rights which provides similar and relevant protections. This is the first time that we see in our law the concept of discrimination on the grounds of sexual orientation in any form and that must be welcome. The legislation also makes redress in respect of certain of the discriminations that are referred to within it easier to enforce through action in the industrial tribunal rather than through necessarily an action in the Supreme Court under section 15 of the Constitution. But Mr Speaker there are issues that we have to address about the way that the legislation is framed and the structure of it, and the structure of it as I understand it and as I see it is based loosely on the United Kingdom Employment Equality Sexual Orientation Regulations of 2003, no doubt I will be corrected if I am wrong but they are almost identical.

Mr Speaker, there are principally I think two issues of concern to highlight. The first relates to the question of the displacement of the burden of proof which we have been referred to in the terms set out in the relevant articles of the directives which we believe are not adequately provided for. Secondly, that the Ordinance provides in our view, far too subjective a test in respect of positive discrimination which could have the effect of making this Equal Opportunities Ordinance a bigot's charter, which would be totally contrary to the intention of the directives and I am sure of all the Members of this House regardless of what side we sit on. Mr Speaker I think it is important to discern two particulars in going through the Bill at this stage, although not in as much detail as we will tomorrow. Since 1969 we have had a great advantage in having in our Constitution a chapter of fundamental rights which avails us of some of the protections which I have referred to. We also have the advantage of having

regard to the Convention of Human Rights. An advantage Mr Speaker that we have had long before the United Kingdom citizens had it, who have also only been able to enjoy it in the past decade in their national law. I am sure that members on both sides of the House will agree that the discriminator, the party that comes with prejudice to a transaction, be it in employment or in any other field of life, has been afforded a certain protection by the sheer complexity and expense involved by any citizen going to law, however accessible a system of justice may pretend to be. As I said before in Gibraltar enforcement of constitutional rights required an application under section 15 of the Constitution Order to the Supreme Court. The expense has always been considerable and sometimes unaffordable, especially given the standards of legal aid and assistance remuneration in Gibraltar and the amounts which are so low which an individual has to be in possession of in terms of assets or income before he qualifies. The procedures under the Court of Human Rights without getting caught up in the argument we were caught up in a moment ago, are even more torturous and an individual has first to exhaust all national remedies before he is able to have recourse to court and that court is in Strasbourg. All of that is relevant because in defending the rights not to be discriminated on or against in respect of sex, sexual orientation, racial or ethnic origin, religion or belief, accessibility to justice is as important as the protection of the rights otherwise they become barren, constitutional legal provisions and prejudice is allowed to reign over right. In fact because of the expense issue which I am referred to and labouring at the moment I think that the legal system at the moment allows the richer to take advantage of the poorer because the poorer cannot defend their rights in that respect. So I welcome and I say that obviously giving recognition to the mover of the Bill, I welcome the fact that a lot of these rights will now be justiceable by the Industrial Tribunal and that that will make them more easily enforceable by normal citizens and members of our society, usually the most vulnerable who have to avail themselves of these protections. It is in that background that we are going to make a contribution on the debate which we hope will be seen to be positive because of this Bill. I said I

had to make two points in particular in the way that the Government brings the Bill. The first is that the three directives that we are transposing have been allowed to pass their long stop date for transposition. Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, should have been transposed into law by 1st January 2001. Our exercise in transposing certain provisions of that directive into law today are already three years out of date. Council Directives 2000/43 and 2000/78 should have been transposed last year. Now I understand that there are areas of EU law that create real difficulties for our economy and for our society. This is not one of them. This is an unobjectionable issue to prevent discrimination and to make the prevention of discrimination more easily justiceable and we should not have failed to meet the transitional provisions in respect of these directives. The directives establish the principle of equal treatment and they entrench it further than it is already and I am sure that all sides of the House embrace it now as they would have in 2001 and as they would have last year in relation to the transitional provisions which expired then. Mr Speaker, I recognise that the Gibraltar Gay Rights Group has rightly also made the call in relation to the introduction of these prohibitions in relation to the discrimination on the grounds of sexual orientation and also in relation to minorities generally for some time. The time for this legislation is overdue and we welcome the Bill caveated on that basis that it should have come earlier.

The second point I have to make relates to the main substantive areas of concern to Opposition Members which relate to the standard of burden of proof in the case of discrimination and to the subjectivity test in relation to positive discrimination. When I am making criticisms of this I am fully conscience that some of the criticisms that I am making are criticisms as much of this Bill as they are of the blueprint from which they are taken which is the United Kingdom Employment Regulations and part of the Sex Discrimination and Race Relations Act. All of those three UK provisions transpose parts of the Directive which we are transposing today. Let me start with the burden of proof. All of the directives use the same language in relation to the shifting of

the burden of proof, and it is the language which the Chief Minister himself has used in introducing the Bill. The three directives say the following: where persons consider themselves wronged because the principle of equal treatment has not been applied to them, are able to establish, and I emphasise the word establish, before a court or other competent authority, facts from which it may be presumed, and I emphasis the word presumed, that there has been direct or indirect discrimination it shall be for the respondent to the complaint to prove that there has been no breach of the principle of equal treatment and I assume that there we should read by the respondent. That is the language of the directives. What the Directives are telling us is that it is a free stage test. Let us distil that language into this. Where a complainant establishes facts from which something may be presumed, namely that there has been discrimination, he has discharged at that stage the burden of proof and I think it is certainly not an issue of dispute between us that that is what the Government is trying to do in this Bill because that is the language that the Chief Minister himself has used when introducing the question of how the burden of proof is relevant to this Bill. At that stage Mr Speaker, it is up to the respondent to prove that there has been no breach of the principle of equal treatment and although the directives are not clear on this I assume it is up to the respondent to show that there has been no breach by the respondent, by his servants or agents, because the Bill also deals with the issue of precarious liability. Mr Speaker in the Bill before this House however, in relation to the burden of proof, we reproduce the language of section 63(a) of the Sex Discrimination Act 1975 as amended in 2001, I believe, in order to give effect to the directive of section 54A of the Race Relations Act as amended in 2003 to give effect to the 2003 directive, although the transitional provision which expired in 2003 in relation to race, and in regulation 29 of those Employment Equality Sexual Orientation Regulations 2003 which gave effect to the sexual orientation aspects of those directives. I have to accept that all of those UK provisions have to date not been challenged by the EU Commission as falling short of adequately transposing the relevant articles of the directive which they are required to transpose, although they

assume the language of complainants establishing facts in which discrimination may be presumed. In fact the language used which is the language in our Bill, favours a reference to complainants proving facts from which a tribunal can conclude that discrimination has occurred. I think those two things are very different. That language in our view makes the burden higher, makes the standard of proof higher before the burden shifts. I flag that point for consideration by Government because our preference is for the language of the directive rather than for the language of the Acts and the Regulations which has been adopted.

Mr Speaker the other very important aspect and I do not know whether this is addressed in the amendments which have been passed to us by the Chief Minister this afternoon, I obviously have not had an opportunity of going through them, but the next point I want to highlight Mr Speaker relates to the subjectivity element in cases of positive discrimination. What I am referring to in particular relates to the provisions of section 41 of the Bill. That section is transposing the provisions of article 7 of the Framework Directive which is the 2000/78/EC Directive and article 5 of Directive 2000/43/EC. Now both of those directives in those respective articles provide that a Member State may maintain or adopt specific measures to prevent or compensate for disadvantages linked to discrimination on the grounds of the discrimination addressed. That is what the directives say we are allowed to maintain within our law. The purpose of that article as provided for in the preambles in recital 26 and 17 respectively of Directive 2000/78 and 2000/43 is to enable the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial, sexual, ethnic or religious group and/or to promote the special needs of that group. In the UK the way that that has been given national effect is regulation 26 of the Employment Equality Sexual Orientation Regulations which says the following: "nothing in part 2 or part 3 of those regulations shall render unlawful any act done or in connection with (a) affording persons of a particular sexual orientation access to facilities for training which would help them fit for

particular work, and the reference there is just to sexual orientation because the UK does sexual orientation, race and religious origin in different places, or (b) encouraging persons of a particular sexual orientation to take advantage of opportunities for doing particular work, and these are the important words, where it reasonably appears to the person doing the act, that is the act of positive discrimination, that it prevents or compensates for disadvantages linked to sexual orientation suffered by persons of that sexual orientation doing that work or likely to take up that work. That is a direct quote from the Act. Our Bill in section 41 follows that to the letter save that of course there should not be a reference just to sexual orientation but to we will say all the issues which arise under the directive. At the moment the section deals only with religious beliefs, sex or sexual orientation and ignores race or ethnic origin, but I believe that we should be certainly be doing that in respect of all the discriminations. That is one of the issues.

HON CHIEF MINISTER:

The exclusion of race and ethnic origin is in several places in the Bill.

HON F R PICARDO:

Yes. So I do not need to address that then, that has been dealt with, I appreciate that. Mr Speaker the effect of the way that the transposition is to be entertained in this draft section, we do not believe closes the loophole in respect of discrimination which is what was intended. The reason is that the arbiter of reasonableness under the section is the person who is doing the act which is complained of. Now in our view what the directive is saying and what the section is seeking to enable is positive discrimination in favour of minorities, but as presently drafted I do not think the Gibraltar Bill or the UK provisions actually do that. Read mischievously I accept but we are trying to test the section at extremes to make sure it works in all the

circumstances in which it is intended to work. Instead as drafted, I think that the section actually will allow somebody to negatively discriminate using the cloak of positive discrimination by favouring one person over another, in fact over a member of a minority group on the blatant basis that discriminating in that way prevents or compensates, which is the language of the directive, for disadvantages linked to religion or any of the other discriminations et cetera, suffered by people of those groups in the mind of the person committing the act of discrimination. Given that the only arbiter of reasonableness would be the person committing the act of discrimination, the act will be unchallengeable on every basis, even on the basis that it is absurd. Notionally Mr Speaker, as a result of that language a person could give an advantage, a job which is really most of the Bill deals with employment et cetera, or a property or a consent in relation to a property or a good or a service, to one party simply on the basis that he is not a member of a minority race. In other words somebody could say that he felt that was necessary in order to compensate for his own perceived disadvantages of the majority. So this notional bigot could say "I shall discriminate in favour of white Anglo-Saxon Christian males" because in this notional bigot's own subjective view, he believes women, gays, lesbians and non-whites already have too much sympathy and too many advantages already in society. That is not what the section is setting out to do or what the directives are setting out to do, but that is one potential effect in my view of the present wording. The answer, as is habitual in English law in these circumstances is to provide wording where a judicial tribunal can replace for itself the decision as to whether the standards of reasonableness have been met. In this case it would be the Industrial Tribunal, Supreme Court. In fact Mr Speaker, in the circumstances of Gibraltar, you said yourself in another capacity and in another place, I am sorry to remind you, in a maritime case that the standards of the reasonable man were to be set by the standards of the man who buys his Chronicle at the Piazza kiosk and I think that is probably to put it as perfectly as could. That would impute a necessary objectivity to the decisions which are complained of and which might be complained of in

respect of section 41. So we will be proposing at the Committee Stage that section 41, section 41(1), section 41(2) and section 41(3) which all use the same language, should be amended so that the words “where it reasonably appears to the person doing the act that it prevents or compensates” should be replaced with the following words “where it is reasonable to prevent or compensate”. Mr Speaker then the arbiter of reasonableness ultimately on a complaint will be the judicial tribunal determining the issue.

MR SPEAKER:

The chap buying the Chronicle.

HON F R PICARDO:

The chap buying the Chronicle, in whose mind the judge will put himself. There are a few other miscellaneous points also to be highlighted but not many. The first relates to section 43 which deals with the jurisdiction of the industrial tribunal. As I have said, I welcome the fact that the industrial tribunal will have very wide power to deal with the inequalities which might arise out of discriminations of the sort addressed by this Ordinance. But although the Ordinance rightly brings therefore within the tribunal matters of discrimination dealing with issues of employment, the Ordinance as drafted would not prevent a person of a particular racial or ethnic origin, and I say that in particular because in the sections that I am going to speak of there is only reference to those but it may be that as a result of what the Chief Minister has already said that we are talking about persons of any of the discriminatory classes addressed. From bringing before the industrial tribunal claims arising from breaches out of sections 32, 33, 34 or 35 of the Bill, which deal with the prohibition of discrimination on the grounds of race, in respect of the provisions of goods or services, the disposal or management of premises and in the consenting by a landlord to applications by tenants for assignments or sub-lettings. That is

how I read the Bill as presently drafted. I do not know whether the amendments change that. All of these matters would previously have been justiceable only under the Constitution in the Supreme Court. If the industrial tribunal is to have jurisdiction, acts as justice in respect of those issues will be more accessible but those issues do not relate to employment or occupation in any way and the industrial tribunal is set up to deal principally, in fact at present only, with matters relating to employment and occupation. I would flag up that if that is the case and if that is the intended case then it may be necessary for another amendment to the Employment Ordinance to be effected in relation to the jurisdiction given to the industrial tribunal by that statute which creates it in the amendment which the Chief Minister has foreshadowed he will bring to that Ordinance separately. I will wait to hear what the Chief Minister says about whether that was the intention in any event, or whether the amendments will take those issues back to the Supreme Court. If the industrial tribunal is to have that jurisdiction Mr Speaker, firstly it must have the resources to meet the expanded role and secondly, it may be that there is no need for me to make this point, then the parties subject to discrimination should not be limited simply in those sections to discriminations on the grounds of race and ethnic origins.

Finally some very general points. Mr Speaker section 54(1)(a) trails the creation in Gibraltar of an equal opportunities commission, which will follow shortly, I hope. The commission, in the context of this Bill, will be a very important extra limb for the enforcement of the rules against discrimination before even getting to an industrial tribunal or to a supreme court, and will certainly help to establish even further the principles of equal treatment that I am sure we all believe in without hesitation. I was going to refer to the fact that certain parts of the Bill refer only to one type of discrimination, the list I have without checking it off against the Chief Minister's....

HON CHIEF MINISTER:

If I can just hold the hon Member on this point, obviously he has not had an opportunity or sufficient opportunity to see the phrase race or ethnic origin is excluded from quite a number of places and they are inserted by the amendments. But there are areas where race or ethnic origin do not belong but I cannot think of any right now, though I hesitate to say that there are not any, because race and ethnic discrimination is the widest protected, that applies to almost everything, it is the others that are limited in their scope of application, it is the other strand in equality, sex, sexual orientation, religion or belief, those are the narrow application, but race and ethnicity have the widest scope of application so I would be surprised if there were any that were not in the list that we have corrected through the amendment, but we shall, I do not know if he has got the list we can give it to him but I do not think so.

HON F R PICARDO:

It is a very short list but I will try to make it short by clubbing together those sections which deal with what. Sections 32, 33, 34 and 35 of the Bill are limited only to racial and ethnic discrimination and based on what the Chief Minister has said, it may be that those sections are intended only to do that. Section 23(4) of the Bill omits reference to discrimination on the grounds of religion or belief, although it relates to all the others. Section 20(1) of the Bill fails to refer to discrimination on the grounds of race or ethnicity which on the basis of the what the Chief Minister has said must be an omission which we will undo, because it is supposed to be covered in just about all of them. Section 44, which shifts the burden of proof, at the moment on the basis of what I have said I am not happy with, shifts it only in relation to the issue of sex. All of the directives require the shifting of that burden and that means that that burden must be shifted in relation to the question of discrimination on the grounds of sex, race, et cetera, et cetera et cetera, all of the discriminations must be the subject of the shifting of the burden.

I hope that list might make debate between us in relation to those easier, we may be able to narrow down which are the ones that we need to address and debate if the amendments already tabled deal with a lot of that but there are very few areas where I think Opposition Members will be prepared to agree that a discrimination should be allowed to continue to be an issue, except perhaps in the issue of the specific exemptions for marriage et cetera.

Mr Speaker one of the issues that arises has been addressed by the Chief Minister in his address but we must emphasise that there is no good reason in our view for not moving as soon as possible, and I am glad to hear that we will be doing that even before 2nd December 2006 which is the end of the transitional provision, to make discrimination on the grounds of disability or age as subject to these provisions as all the other discriminations. What good reason as a legislature have we got not to try and bring that about as soon as possible, and I am heartened to hear that we will be doing that even though I am disappointed that we are not already doing it in this Bill. We will be keeping, therefore, a hawkish eye on how soon those amendments to this Ordinance to include those discriminations and those prejudices are brought. Why are we going to urge that urgency upon the Government? Well very simply for this reason. It is a reason the Chief Minister himself accepts when he says that these are new prejudices to our law. There is no protection under the Constitution or under the Convention of Human Rights in respect of discrimination on the grounds of age or disability. Therefore it is important that we move quickly to prevent that any citizen should suffer discrimination on that basis in this land of ours. I am going to say that I have deliberately avoided political point-scoring in relation to this Bill in particular because it is a Bill that really is uncontroversial as to its subject. In fact totally uncontroversial as to its subject and will enjoy no doubt that both, the moral support sorry of both sides of the House. Mr Speaker but we believe that the passing of this legislation will really only mark the end of the beginning in relation to these discriminations. As a legislature we will need to keep also an eye on how the enforcement of this Bill operates

whether any loopholes not spotted by us on either side of the House are spotted, which allow discriminations to occur which should not be occurring and also, we will keep an eye on the fact that the Bill does not come into effect when passed by this House or signed by the Governor but when brought into effect by the Government by legal notice, and I hope that that will happen very shortly after the passing of the Bill in this House. Mr Speaker despite what I have said about the technical issues that arise in relation to this Bill, we will strongly endorse the principles of the Bill and we hope that the Government will consider with pause and with a fair wind, as Mr Cook once said of our constitutional proposals, the suggestions that we are going to make in relation to this draft at a committee stage. I do not think that there is anything else that needs to be said at this stage except that everything we do must be designed to ensure that we quash each of the aspects of the discrimination that are identified, all the strands of discrimination that are identified, as soon as possible, it is a Bill that merits and deserves the support of both sides of the House, although perhaps unnecessarily in quite this form.

HON C A BRUZON:

Mr Speaker, I am also personally disappointed that the questions relating to the disabled and the aged are not being dealt with now. I think it is of paramount importance that we stress the human aspect of this and I believe that it is the weakest in our society who should be given the closest attention, namely the disabled and the aged. I think the Chief Minister has said that the UK will not transpose the European Directives until October this year. I would appeal to him and to his Government to ensure that this happens this year. It is a pity that it is not happening now. I would also remind the Chief Minister that in article 18 under the heading of "implementation", the Council Directive says, "in order to take account of particular conditions Member States may, if necessary, have an additional period of three years from 2nd December 2003." That is to say a total of six years to implement the provisions of this directive on

age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. Now obviously we would not be under that condition or under that obligation of reporting annually if we transpose this EU Directive this year. I would appeal to the hon the Chief Minister to do his best to ensure that this happens this year.

HON J J BOSSANO:

Mr Speaker, since there are 20 odd amendments that have just been circulated, obviously we will need to revisit the text to see when we come to the Committee Stage whether the amendments have now taken care of some of the areas that we want to change, and if not, given that this presumably is the state with the amendments, that the Government think it is sufficient, we shall be if we find that there are other areas that they may have missed out, be moving amendments ourselves for tomorrow morning after going through the ones that have been circulated today. I think on the general principles of the Bill, if I might just follow up the last point my hon Colleague Charles Bruzon has made, in fact it will be interesting to know whether the Member State UK has in fact told the Commission that we have got a problem in meeting the deadline and that we need more time, because the Commission clearly requires under article 18, and when we have been talking about this additional period, the wording of the article seems to me to be indicative that the Commission considers that the additional period should be the exception rather than the rule, because it says that any Member State who chooses to use the additional period must notify the Commission forthwith that they intend to do it. So in fact if the United Kingdom has not informed the Commission forthwith, and I do not know whether forthwith means by the expiry of the deadline on 2nd December or forthwith when the directive came in in the year 2000, but either

of the two dates are now passed so presumably on a strict reading of the text, in order to avail ourselves of the additional time the Commission should have been warned beforehand. I would welcome confirmation that this in fact has been done by the UK Government, presumably it means we have and presumably also on our behalf. It says in order to take account of particular conditions and I am not sure what the particular conditions in our case, I can understand that this might be particularly complicated in a Member State the size of the United Kingdom or any of the other ones but here we actually have a register, we have got information, in the case of disability as to the number of people that presumably the numbers that would be protected against discrimination would be the numbers that are officially recognised as being persons with a disability. If not we would need to have some definition beyond that which exists today to identify that particular group, but it is an identifiable group and I would have thought that although in practice we would expect in our society frankly, that most of our employers, most of our landlords and the vast majority of them would need to do it, it is nevertheless important to have the legislation there in the event that there has to be use made of it.

Another point that occurs to us on the general principles of the Bill is in fact what happens with instances where in the cases where there is no extension beyond 3rd December, that is other than disability and age, where the act complained of may have taken place between the time of commencement of this Bill and 3rd December 2003, given that on a number of occasions it has been said that our failure to transpose a directive can deprive somebody of his EU rights because EU rights flow from EU law and consequently the lack of transposition. In fact it has been suggested that if it were to be a defence on the part of an employer for example, that he did not have to do something or that he could not be accused of discrimination, or that he could not be asked to give compensation because this House or the Government had failed to transpose the thing earlier, then the victim as it were of that act of discrimination would have the ability to take action against the Government for failure to give recourse to their rights within the timescale provided, which was

of course in one case between 1997 and now, and in the other case between the year 2000 and 2003, so we have three years to do much of this and even longer in the case of the burden of proof which was originally only on questions of sex discrimination. So as part of our analysis of the general principles of the Bill I think it is something that we would like to have a reaction from the Government on that point so that people will know what their rights are irrespective of whether this takes a number of weeks or whatever to actually go through the final stages after it is approved by the House to become law and for people to be able to take action. The point raised by my Colleague in terms of the jurisdiction of the Employment Tribunal, as the Hon Fabian Picardo has said, we are not sure, it is clear to me that this is intended to be so because it says jurisdiction of the employment tribunal, so I do not see how it could have been put there by an oversight, it looks as if the intention is that all the cases irrespective of whether they relate to employment or to anything else should go to the industrial tribunal. But if that requires a change to the Employment Ordinance, then presumably that will have to be done very quickly otherwise even after this happens people will have one law telling them they have to complain to the industrial tribunal and the industrial tribunal and then another law may not have the power to admit the complaint, given that from my experience of dealing with unfair dismissal cases the first stage is to get the tribunal to accept that the complaint is a complaint that is admissible under the unfair dismissal provisions of the law and if it fails that test then they cannot even listen to the complaint. So I would have thought that that may need to be addressed independent of the fact that at a later stage the Government intends to introduce into the Employment Ordinance as an amendment to that Ordinance, the provisions that are now contained in clause 55 here, which we think is a good idea because of course it is more complicated to discover the change if it is in another law and I think it is a sound principle to do it that way but if the Industrial Tribunal under the Employment Ordinance is supposed to be in a position to receive complaints as soon as this becomes law, then that I think needs to be checked but that is possible as the law stands at the moment.

In terms of the question of discrimination on grounds of age, well presumably that can be because one is too young or it could be because one is too old. I do not know whether there are Members here that need to declare an interest in that matter, but given that it just says age I suppose that one could argue that it could also be discrimination because one is in the mid 40s or in the mid 50s or any other age. So since everybody has to be of some given age and it does not say here at which age people may feel discriminated against, I would have thought that the discrimination on grounds of age are things that need to be addressed in the context of the fact that today we do see advertisements where people are told only apply if you are under such and such an age and that there is indeed a concern generally I think in many places in Europe in that in a kind of society where the lifelong employment is becoming a less common phenomenon and movement, we are seeing it here, we are seeing it with the figures the Government provides in terms of the number of contracts terminated and vacancies filled in a given year, which is of the order of 6000, it shows the level of movement that there is in employment. Of course that level of movement is fine but when people find themselves over 50, it appears that they have increasing difficulty in getting re-employment. I do not know whether the question of age is intended to tackle that problem but certainly it is a problem that needs addressing and if this is the avenue to address it, then I think it is an important issue for people in that category who today are you know, in that situation in Gibraltar, less than in other places, it is a much bigger problem in other places but it is already happening here as well. So in the context of the general principles of the Bill we are 100% behind what is being intended and therefore any amendments that we seek or any clarification that we seek is merely to make sure that it goes at least as far as the Directives go and whether we are able to go further the Directives clearly say that there is nothing to stop the Member State going further in the direction where it is the political wish of the parliament to do so and where you know the nature of our structure of our economy and our society can take it. That is the context in which we will be looking at it.

HON CHIEF MINISTER:

Well to start with that last point first, the Bill as amended or as to be amended intends only to transpose the requirements of the directive. It does not go further and that is the basis of the legislation. The Hon Mr Picardo finished by saying that he had wanted to avoid political point-scoring, but yes there is nothing wrong with political point scoring and indeed I think it is the Opposition's role, I mean that is what politics is, one tries to score points against ones opponents. My objection and certainly the things that I respond to is not political point-scoring, we all political point-score against each other, that is the nature of politics. What we respond negatively to is where we think there is an attempt being made to score political points unfairly, unreasonably, wrongly or on a false premise. The earlier debate that we had was one based on what we think is an attempt to score political points unjustifiably and that is why we highlight it.

Mr Speaker the hon Member said that the Opposition had been calling for this legislation for some time. I do not have an enormous recollection of having heard too many calls or indeed over a very long period of time but still I suppose he must know what he is referring to. He has also regretted that there has been delay and has said so in relation to the call by the Gay Rights and has said that these things are overdue. Well some of them are overdue but the ones that are based on sexual orientation, which is the one that the gay rights were for obvious reasons most closely interested in, are not long overdue, they are overdue by a few weeks, I think they were due in December. They were due in December and yes they are four or five or six or seven weeks overdue and that I think has got to be viewed in that context and I think in fairness to the Gay Rights Group, even they have acknowledged in expressing their appreciation for the fact that the legislation has been taken, that they do not see this short delay over the deadline, I am sure they would have liked to have seen it in place long before the deadline, [INTERRUPTION] but that the delay over the deadline is understandable and not unduly long given that we have had

general elections and then Christmas and then one thing and another and that this is the first meeting of the House after the end of the deadline. Well, Mr Speaker, I will respond to the hon gentleman on his two points when I have had an opportunity to consider them in more detail but my first reaction to his point is that it does not seem to me, subject to looking at them more closely, that there is a great deal of merit in either of his two main points. Certainly the points that he makes about what he rather dramatically calls a bigot's charter would be true if the section were capable of having the effect on which he bases the view but we do not think at first sight that it is capable of having that view. It is not open to the abuse that the hon Member appears to believe that it is subject to but I will give him a more considered response at Committee stage.

In answer to the point made by the Leader of the Opposition if I could just jump to that for a moment since it comes to mind, it is true that the Bill as drafted gives the Employment Tribunal jurisdiction in all cases and indeed we have had a change of heart on that because the Employment Tribunal is really geared to employment related issues. It is an ad-hoc court, it is a chairman that is appointed from amongst practising lawyers usually although not necessarily limited to that, and that such an industrial tribunal should be dealing in things that have got nothing whatsoever to do with employment issues like health, education, social security, denial of goods and services, landlord and tenant issues, things which have really got nothing whatsoever to do, struck us as being odd. One would have to change the name of the tribunal as it could not continue with the concept of an industrial tribunal bedded in the Employment Ordinance. One would have to create an equal opportunities tribunal or something but it would not be so simple as just to shunt the jurisdiction into the existing industrial tribunal for things that were a tribunal. We did toy with the idea of giving this jurisdiction to the Magistrates' Court as being a court that would at least be cheaper to access than the Supreme Court and may be something that the Government once we have seen how it works in this way and once it transpires, I do not think we would consider changing the legislation at this stage, because I

think that there is not enough time to consider the implications but if certainly the experience of this Bill in operation were that lots of employment related discrimination cases were being pursued, because it could be easily and cheaply pursued through the industrial tribunal but that very few cases were being brought in relation to discrimination in the other areas, we would I think be forced to the conclusion that the only logical reason for that is either that in reality most acts of discrimination actually do relate to employment issues, or alternatively that it is because one was easier to access justice in respect of rather than the other. If we found that to be the case I think there would be a case at some future date that there would be a case to amend the legislation perhaps to either constitute some sort of equal opportunities tribunal more along the lines of the industrial tribunal or perhaps send the jurisdiction downwards towards the Magistrates' Court rather than leaving it in the Supreme Court.

HON F R PICARDO:

I must ask, at present in the Bill is it framed as we suggested, straight to the tribunal and that he is changing that in the amendment which he is giving us but which we have not yet had a chance to see, is that the position?

HON CHIEF MINISTER:

The amendments, when I was considering the draft again and I took this point is it not odd that the industrial tribunal should have jurisdictions in matters of health, I actually called for the UK legislation to see how they did it and the division proposed in the amendments is how the UK separated what we are giving to the industrial tribunal is what the UK give to I think they call it the employment court, and what we are giving to the Supreme Court in the UK is given to the County Court. Now the County Court which used to be more or less equivalent to our Court of First Instance, which was a bit quicker, a bit cheaper and a bit

simpler to access, that is more or less, I do not know if under the Woolf Reforms the distinction has disappeared altogether, but this is something that traditionally in Gibraltar where in the UK they have given things to the County Court in the last 10 or 15 years in Gibraltar they have been given to the Supreme Court. But look this is an issue which the courts can take into account, I understand the Chief Justice is about to make proposals to the Government to amend the Supreme Court Ordinance to give the Woolf Reform fast track, fast track proceeding which is much more the sort of thing that used to be in the County Court and that maybe that would be an opportunity to deal with these issues. So those are my first thoughts on that point which I accept is an important point. I agree in principle with the view that if rights are too difficult or expensive to access then it all looks very nice in print but the effect on the ground is limited.

The hon Member flagged up the possibility of a racial equality commission and he will see that there is an obligation on the Minister to consider that and to pass regulations and before such regulations are passed, there is an obligation on the Minister to designate some interim body to deal with promotion of equal opportunities and the Government have designated and that is about to be notified to the Commission. The Government have designated the Citizens Advice Bureau in the meantime until the regulations are passed creating a more permanent body if indeed we should decide to have a different one. But there is an obligation prior to regulations designating a commission, to designate some other body, some other independent body to take an interest in promotion of equal opportunities issues and we have chosen the Citizens Advice Bureau. The hon Member said that the Opposition would oppose allowing discrimination in any area, well, Mr Speaker the Bill does not eliminate all forms of discrimination in life in all walks of life. There are many forms of discrimination that are not covered by this Bill. This Bill intends to cover all the anti-discrimination obligations required by the existing corpus of EU law except in relation to age and disability where we have already debated the reasons why we are not doing it just now. But of course, if the hon Member is of the view that he wishes to

eliminate all forms of discrimination and wishes to propose an amendment that Chief Minister should not be discriminated against by being paid so obviously less than they are worth, then it is an amendment, that is a form of discrimination which is not covered by this Bill and I suppose there are many others.

HON F R PICARDO:

Or so much more that they deserve.

HON CHIEF MINISTER:

And so much more others. Well the electorate does not seem to think so. Anyway, Mr Speaker the hon Member says he will keep his hawkish eye on the Government. Of course it is entirely, not just his right but his obligation to do so, it is his obligation and right to ensure the Government complies with its international obligations. Of course it is not his right to ensure the Government do as he likes, when it is a matter of domestic policy he can lobby and it may be that he finds himself pushing against an open door but having said that Mr Speaker, I do not know where he was in 1992.....

HON F R PICARDO:

In Oxford.

HON CHIEF MINISTER:

In Oxford, I see. Well had he been then an activist in the GSLP and had his hawkish eye then been trained in this matter of disability discrimination to which he now attaches such importance, rightly so let me say in passing and I say this in half jest, he would have noticed that in 1992 the then government led by the now Leader of the Opposition sitting immediately next to him, introduced an enabling ordinance called the Disabled Persons Ordinance 1992, which was actually a completely

meaningless and toothless piece of enabling legislation which did not even define disability or disabled person, because it required regulations to be passed giving it all its flesh, and since between 1992 and the day that they left office, those regulations were never put in place. Now I think we have got to accept that when we are making what we call social progress in Gibraltar, whether it is catching up with international obligations or whether it is by domestic decision, it is always possible to say, "well we could have done this earlier". Whenever one does something it is always possible to say that this is very good, we should have or could have done it earlier. Any Gibraltar government in the last 50 years could have introduced legislation eliminating discrimination. We did not need to wait for Brussels, none of us, not this government, not the previous government or the one before that. No government of Gibraltar, if something is really a matter of moral conscience, no government of Gibraltar should ever have had to wait for bureaucrats in Brussels to gather in a little cluster to establish what is in effect the lowest common denominator of anti-discrimination provisions. Yet no government has done so and I take the view of these things that society has progressed gradually and as they progress it is really quite childish to look backwards and say, "why has this not been done before?" When it is a matter of an international obligation as one or two of these directives are where Gibraltar is clearly late, then I accept it is legitimate for the hon Member to say, "well look, one thing is not to do it voluntarily as a matter of domestic policy but you have not even responded to an international writ, that is a more legitimate observation". Frankly, until the fuss arose, and this is really one of the problems Gibraltar has, until the fuss arose about the sexual orientation thing, when it first arose earlier last year, I was not even aware that Gibraltar was in arrears of these things. Ministers in the Gibraltar Government do not have in their minds and unfortunately the UK does not provide a list of directives saying, "oh, by the way chaps, there are these 200 directives going back to 1997 that you have not provided". So there is not a sort of consciousness that something is in arrears and there is a sort of conscience decision not to do them, they are just not brought to our attention and therefore one does not

do them. So I hope to be able to accommodate the plea by the Hon Mr Bruzon to do this as quickly as possible. I do not think that his plea was sort of doubting my intentions, I have indicated to the hon members that the legislation is already being drafted and that it is the intention of the Government not to exhaust the deadlines until the very last minute, there is no reason for doing that. Here it has been because we just have not been able to get the legislation drafted more quickly but now that the draftsmen are on the job, the Bill will come to the House when the legislation is ready, not on the expiration of some artificial time period.

I am glad that the Leader of the Opposition himself made the point because it was one of the points that I was going to make, which is that although it is right that we should have the legal protection so that things are a matter of right and not a matter of sort of charity so to speak, but I think we are fortunate in Gibraltar that so many of these pieces of social engineering legislation which are necessary in other countries where there is genuine racial discrimination, where there is genuine discrimination based on ethnic origin, that we are blessed in Gibraltar that we are a community that does not on the whole partake of such behaviour. Which is not to say that there are things in the Disability Ordinance, I do not know what the Disability Directive says I have not yet focused on it, I do not know whether it deals with sort of ageism which is a point that the hon Member was hoping it would deal with, we shall see when we look at it, but I think that it is something that Gibraltar ought to be rightly proud that even without legislation prohibiting it, I think the instances of disability discrimination and the instances of many of the forms of discrimination, age, disability and all the others that we have been discussing today, actually are not right or prevalent. I am sure they may exist and there may be cases of people who are the victims of it and if we help only those people it will be enough but it is not a problem in this society which is as marked as racial discrimination is in others. I do not know whether all societies in Europe think that they do a very good job in this area and that the problem is really with the others and whether we are falling into that trap by sort of the

self-congratulatory statement. But on the whole I think Gibraltar is recognised internationally for the harmony of the coexistences of the various races and things of this sort and I have often thought, even when the local Gay Rights Association lobbies publicly on the question of sexual orientation discrimination, I ask myself is there in Gibraltar an enormous disrespect for peoples' freedom to have the sexual orientation of their choice. Where is the evidence that people are not given jobs because they are gay or because they are not gay or because they are heterosexual and things like that. I have never heard of a case, look they may exist, I am not saying that they do not exist but it is not an issue about what one hears as sort of a hubbub, so anyway that is not to say that things that are required to be legal rights should not be enshrined in law, I think it is right that that should be the case because that accrues to the body of human rights as opposed to things that communities just do voluntarily.

The hon Member asked what happened to cases arising before the time due for transposition. Well as he knows, fixed and well-established and much litigated about rules about the limited circumstances and the very strictly defined circumstances in which individuals are entitled to take legal action against the State for the personal consequences to him of the State's failure to transpose an EU Directive, and these are basically called the Frankovitch principles. There are a series of criteria, it has got to be a very clear personal right, it has got to be for example under a directive that is self-explanatory and requires no more discretion in the transposition of. In other words the legal right has got to be clearly established on the face of the directive. There has got to be financial loss arising from the non-transposition. There are a series of conditions which if met, do entitle people to take action against the State for non-transposition. I do not actually know the answer to the question, whether those principles help once the transposition takes place in respect of acts prior to transposition or whether one has got to bring the action before transposition. Interesting question. I do not know what the answer to that is. In conclusion, I will come back to the hon Members in answer to their more specific points in more detail at Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading be taken at another date.

The Hon the Chief Minister moved the adjournment of the House to Friday 6th February 2004 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.00 pm on Thursday 5th February 2004.

FRIDAY 6TH FEBRUARY 2004

The House resumed at 10.15 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon Dr B A Linares - Minister for Education, Employment
and Training

The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon J J Holliday - Minister for Trade, Industry and Communications
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon R R Rhoda QC – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

IN ATTENDANCE:

P E Martinez – Clerk of the House of Assembly (Ag)

COMMITTEE STAGE

HON CHIEF MINISTER:

I have the honour to move that the House should resolve itself into Committee to consider the following Bills, clause by clause:-
The European Parliamentary Elections Bill 2004 and the Equal Opportunities Bill 2004.

The House recessed at 10.20 am.

The House resumed at 10.30 pm.

THE EUROPEAN PARLIAMENTARY ELECTIONS BILL 2004

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

Clause 2

HON J J BOSSANO:

Mr Chairman, having read overnight the regulations that may or may not have been approved by the United Kingdom Parliament by now, I have to say that we are even less happy than before we read them. I therefore propose to move an amendment to clause 2 in respect of the definition of Gibraltar Register, deleting the words “has the meaning given to it in section 14(1) of the European Parliament Representation Act 2003” and substituting, in fact the definition that exists there. As I mentioned in the general principles of the Bill, as far as we are concerned if we are quoting unnecessarily in our judgement, a meaning given currently in a UK piece of legislation, tomorrow without the House having any involvement, without anybody in Gibraltar knowing it, the meaning can be changed and although it is unlikely to be the case in this particular one, because I do not see what other meaning they could put, nevertheless the principle is reflected here as it is in other instances. Therefore we propose that our law should state what the Gibraltar Register means and reflect what is in the UK Act. That should read, “means a register of European Parliamentary electors in Gibraltar, maintained by the European Electoral Registration Officer for Gibraltar”. And coming to the definition of Registration Officer,

MR CHAIRMAN:

Will you pause for one second. As this is an amendment could you put it in writing for the Clerk.

HON J J BOSSANO:

Yes Mr Speaker. I am explaining what the amendment is and have got a note here.

MR SPEAKER:

All right.

HON J J BOSSANO:

I am mentioning the other one simply because it is in the same clause. I do not know whether we should take a vote on the first amendment to that clause and then a separate vote for the second amendment to the clause.

MR CHAIRMAN:

Yes. I think that would be better.

HON J J BOSSANO:

Okay.

MR CHAIRMAN:

So you move an amendment which reads as.....

HON CHIEF MINISTER:

Mr Chairman, the Government do not accept the Leader of the Opposition's amendment. There is a definition of Gibraltar Register in the Bill, it is whatever the European Parliament Registration Act of 2003 defines to be the Gibraltar Register. That is an essential part of the legislative framework because the nature of the Gibraltar Register has got to be in tune with the nature and the rules relating to the register for the remaining part of the constituencies and therefore the Government do not consider it appropriate or indeed possible to accede to the hon Member's proposed amendment and therefore the Government would be voting against it.

HON J J BOSSANO:

Well Mr Chairman, all I can say is that it is very peculiar since the Chief Minister told us in the general principles of the Bill that he had offered the United Kingdom precisely to do what I am moving, which is to photocopy in Gibraltar what the UK provisions are. Therefore it is clear that as far as we are concerned the responsibility for the fact that this House will have no say in any changes in the definition of the Gibraltar Register, is now a matter of political philosophy and a division within the House where the Government will do that by majority but without the support of the Opposition.

The next amendment I propose to clause 2 is that our legislation should say who our Registration Officer is. Therefore I propose that we replace the definition of Registration Officer with the words "the Registration Officer means the Electoral Registration Officer for Gibraltar" which is already in the Ordinance, delete what follows in brackets and substitute for that "*who shall be the Clerk of the House of Assembly by virtue of his office*". I cannot for the life of me understand why this House cannot decide who should be the Electoral Registration Officer in Gibraltar and the United Kingdom can determine at any time that he shall be somebody else without us having a say in the matter.

HON CHIEF MINISTER:

Well Mr Chairman, if the hon Member wants to decide what should be the law in the United Kingdom, he has to stand for Parliament in the United Kingdom. The Government of the United Kingdom and its Parliament, who have legislative jurisdiction over the Colony of Gibraltar, has decided in its infinite wisdom or in its infinite lack of wisdom, that is a matter we could debate, has decided that its law designates who is the Registration Officer in Gibraltar, and whatever might be his desire or mine, without conceding that I attach any such degree of importance as he appears to attach to the point, is neither here nor there. The law of the United Kingdom, which supersedes the law of this House, as a matter of constitutional necessity which neither he nor I can unilaterally remedy, says that the Registration Officer for Gibraltar is designated in the law of the United Kingdom and that is an inescapable reality for as long as Gibraltar remains a colony of the United Kingdom. Therefore we cannot accept the Leader of the Opposition's amendment and we shall be voting against it.

HON J J BOSSANO:

Well Mr Chairman, not only do not I agree with the Chief Minister's position, I do not agree even with his interpretation of what is the legal and constitutional position between us and the United Kingdom in this particular point. As far as I am concerned we are saying in this House that the Registration Officer means what the UK Act says, and I do not see that there is anything to stop us in this House saying what the Act says in and putting that in our law. That is precisely what he said he had tried to convince the United Kingdom to accept and they did not accept. The fact that they did not accept it does not prevent us from doing it, because there will be nothing in the amendment that I am putting which is in conflict with the provision of the UK Act. I am in fact repeating what the UK Act already says. So in fact the law of Gibraltar and the law of the

United Kingdom would both say that the Registration Officer in the elections due in May would be the Clerk of the House and I do not see that there is any conflict with that or that the colonial relationship would somehow been put in danger. If at a future date the United Kingdom wanted to change the provisions in its Act so that the registration officer would be somebody else, then obviously the fact that the definition that they have is the one in our law would make it necessary for them to contact the Government of Gibraltar on this and seek the support of the Government of Gibraltar for the change. I do not see why the Government should resist that because then the Government of Gibraltar would be able to say yes or no or argue and then if it came to the crunch that it was so important that the United Kingdom insists on imposing it, then it would be something in the public domain and it would be a political issue. So I cannot see that actually repeating what is in the UK Act and putting it in our law in any way has the effect that the hon Member says or is in any way an attempt to declare UDI.

HON CHIEF MINISTER:

Well I do not know Mr Chairman whether the hon Member is just being intentionally disingenuous or whether he really does not understand the nature of this piece of legislation. If Gibraltar wants to participate in European Parliamentary Elections as a part of a combined constituency with the Southwest region of the United Kingdom, which is the only basis upon which it is open to us to participate in those elections, then it has to do so on terms dictated by the United Kingdom Government and its legislative process. That is the inescapable reality of the matter. Now given that that is the starting point, we can have this discussion on every sub-clause if he likes, because every single clause in this Bill, every single one is there because it is required by the United Kingdom as part of the legislative framework that it requires should be in place so that Gibraltar can be combined with its southwest region. That is the reality. I am not going to say give the hon Member this explanation on every single clause, I am going to give it to him on this clause

and then I am not going to repeat it again throughout the whole of the Bill. But he should know that it applies to every single piece of this legislation and I would not have thought it necessary for me to have to explain either that to the hon Member or indeed what I am about to explain to him. Namely, that if the United Kingdom's position is that it must decide who our registration officer is and if its legislation says that the electoral registration officer is the Clerk of the House and we ourselves designate our registration officer by reference to some mechanism other than alluding to the United Nation's own section, then I can see why it would attract the hon Member's sense of mischievousness, but from the United Kingdom's point of view one can see why it would not be acceptable because it would only take a piece of legislation passed in this House for the United Kingdom law to say that the election officer is one person and for the law of Gibraltar to say that it is another person. Then we have a non-resolvable conflict which can only be resolved either by the United Kingdom instructing the Governor to withhold the consent from the legislation, or a Secretary of State denying exercising his constitutional powers of disallowance, or the United Kingdom saying in those circumstances the basis of the enfranchisement has been destroyed and you cannot vote. Frankly, the hon Member may wish to make constitutional points, I who spend much more time than he does in trying to make constitutional points of that sort, think that there is absolutely no constitutional point at stake here of the sort that he is making as is clear by the explanation that I gave to the hon Member yesterday about the circumstances in which we were debating any legislation at all in this House. So the Government are not persuaded by any of the hon Member's arguments and will be voting against the amendment.

HON J J BOSSANO:

Mr Chairman, the fact that the Government have capitulated to the UK pressure does not mean that the Opposition has to do the same. It is complete nonsense to suggest that he understands the UK position because what the UK is worried

about is that at a subsequent meeting of this House we will alter the definition of registration officer in order to have a different person from the one in the UK Act. Well, look that presumably the United Kingdom can only be afraid will happen after the next general election in Gibraltar because given his willingness to do what they want they can hardly expect that he will be introducing legislation to do that, and of course we would only be able to do it by seeking the leave of the House to introduce a Private Members Bill to change the definition, and given the Chief Minister's position that attempt presumably has absolutely no chance of success, if he is not even willing to accept an amendment which repeats what the UK Act says, it is hardly conceivable that he would give leave of the House for a Private Members Bill in order to put somebody different from the UK Act. So if that is what the United Kingdom is afraid of, it can only be because they are afraid that he might do it not afraid that I might do it, because it is a sheer impossibility for the Opposition Members to do it. In addition, the argument that he has put suggests that every single element of this Bill and every single word in it are cast in tablets of stone and that we cannot change a full-stop and a comma, because anything that we seek to change would be unacceptable to the Government because it would be unacceptable to the United Kingdom Government. That is the implication of what he just told us. Well that makes a complete nonsense of our role in this House, what are we debating clause by clause if the clauses are all like the ten commandments in tablets of stone, we cannot alter anything. Well I have to tell him that the argument does not seem to make sense because there are other parts of this Bill where we are doing in our legislation what is also being done in the UK legislation, so why can we do it in some circumstances and not in others. Or is it that it has been overlooked, which is likely to be the most probable result. Therefore I can understand that he may not want to do it, I can understand that he may have told the United Kingdom Government that he would take the Bill through the House in fact but I have to tell him that since what we are doing in this Parliament is what the United Kingdom Parliament is doing in respect of things that would be the laws of Gibraltar, over which we have no control at least in the

Parliament where we have been voted we will say what we think, it will be on the record, it will be in Hansard.

HON CHIEF MINISTER:

Mr Chairman the hon Member's analysis is both factually and argumentatively inaccurate in almost every respect. Firstly I told him yesterday that there were bits of this legislation that were made in the UK for reasons that I explained and that there were bits of this legislation which were made in Gibraltar and I pointed out to him that those were mainly the broadcasting bits and that I would point those areas out to him in Committee Stage. So I do not know why he mounts that assertion which is completely contrary to what he was told yesterday and the hon Member's now traditional debating technique of having a monologue argument whereby he says not only what he wants to say in the argument, but attributes to the other side of the argument, arguments that they have not put so that he can then rebut it himself all without pausing for breath, is hardly I would have thought a productive way of conducting the affairs of this House but the hon Member can of course do that if he wants to.

Mr Chairman, there are bits of this Bill as we explained yesterday which are not changeable and there are bits of this Bill which are, if the Government can be persuaded, the Government may or may not be persuaded, but I should say to the hon Member who appears to think that passing through this House legislation in the terms required by the UK or agreed with the UK, where he tries to paint the picture that somehow that is an unvirile, unmanly, undesirable apologist, weak, constitutionally unsound process, is a view that I do not share. I am delighted, I am delighted in the circumstances of this Bill, in the circumstances that I described yesterday, why it was particularly important that this Bill should be debated in this House and given that the United Kingdom has agreed to allow us that constitutional emblematic role, frankly, to then suggest that when they agree to do that, that we should then not pass the legislation in terms that they can live with, which they could

have guaranteed had they not agreed to let us debate the legislation but to do it themselves, is not a vision of life as there are so many other visions of life that I do not share with the hon Member. Frankly I am delighted and the Government are delighted to bring through this House and use their majority to secure the passage of in terms which does the trick of ensuring (a) that the legislative framework is in place for Gibraltar to be able to vote at the European Elections; and (b) that has given this House a role in that legislative process in the terms that I have described that role yesterday, which was I recognise to a large extent symbolic in the sense that we were only dealing with two or three issues of a legislative framework, which is very wide and extends to many more issues than that, so it is symbolic in the sense that it is only three issues when it could have been three hundred issues, the other 297 being dealt with under UK legislation. That is the Government's position, we are delighted to be able to be here today passing some legislation and frankly I do not agree with the hon Member's attempt. He may have it and I recognise that that is his view, I do not share it, he may record his view as he says he wants to do, opposed to it for Hansard and for the record, at the end of the day the legislation of this House will be carried by the Government majority and that is how it always is when the Opposition and the Government do not agree on legislation.

HON J J BOSSANO:

Yes Mr Chairman, it will be carried with the Government majority and will not be carried with our support because we do not agree with the approach of the Government and we do not agree because in fact the Government are delighted we are now being told that it failed to achieve what it set out to do, because in the general principles of the Bill the hon Member told us that they had actually said to the British Government that they would be willing to go to the length of guaranteeing that the House, using the Government majority they are in a position to guarantee, the House of Assembly would in fact virtually photocopy their provisions and they failed. Well it may be the

philosophy of the Chief Minister that when he fails to achieve what he thinks is best for Gibraltar, he is delighted to achieve second-best. Because that is clear from the statement he has just made and the statement he made in the general principles of the Bill, and he is wrong. He is wrong, he always stands up in this House and prefaces what he says by saying either the hon Member not only read in the last ten minutes, or the hon Member does not understand legislation or he does not know what he is talking about or he switches my arguments around and he puts all these prefaces before, in the knowledge that enough of them will eventually reach some headline and the people of Gibraltar will fail to understand what the issue is. Well the issue is that he is wrong. The issue is that yesterday when he circulated this and I said to him, is it the case that this has been negotiated with the Government, what he told the House was we have not even been consulted let alone having negotiated it. Well, if he has not even been consulted and he is delighted with that position, then I can tell him we are not delighted, and if he had been consulted and we did not agree with what was there, and it was on the basis that the Government of the United Kingdom had consulted the elected Government of Gibraltar and the elected Government of Gibraltar was in favour of what was being done, even if we did not agree, at the very least we would accept that they had been elected by the people of Gibraltar, by 51 per cent of the people of Gibraltar, and therefore they have got a right to move in this House legislation even if we disagree. But when we have a situation where they are moving in the House legislation because the United Kingdom have said to them, "Look this is as far as we are prepared to go and you can take it or leave it, and either you do this or you get nothing". Well look, now the legislation is here and they may have brought it on that basis but we have not been involved in that process and therefore we have not got any inhibitions or constraints on what we can propose in this House and what we can say in the debate in the Committee Stage. And I tell him that when we come to a later clause, which according to the definition he has just repeated is UK manufactured not Gibraltar, perhaps he will explain to the House why in that particular clause we have the same

provisions as there are in these regulations, and what happens if in these regulations that provision is altering the future and there is a conflict between what we have in our law and what is here which at the moment is identical. And whether that will mean that the Secretary of State will have to use the powers or that there will be a collapse of the colonial system, because what I am proposing that we do now is already elsewhere in the law, presumably done by the United Kingdom according to the information he provided in the House, assuming he is telling the House the truth, which I am assuming. Therefore I am afraid he has as little success in persuading me as I seem to have in persuading him.

THE HON DR J J GARCIA:

Mr Chairman, during the second reading of the Bill I flagged the point which I wish to move as an amendment and that is in the definition of combined region, which presently reads "means the electoral region which includes Gibraltar, namely the South West electoral region", to add the words "of the United Kingdom" before the semi-colon at the end. I have that amendment in writing which I can move in writing if necessary.

HON CHIEF MINISTER:

Well, Mr Chairman, the amendment is not strictly necessary because the region with which Gibraltar have been combined is a matter which is established under the law of the United Kingdom, but the Government have no difficulty with adding the words "of the United Kingdom", we do not think it is necessary because the combined region means the electoral region which includes Gibraltar, it could actually stop there. That would be a sufficient definition to identify the combined region given that it is established by the United Kingdom. The words "namely the South West electoral region" are actually superfluous, but look, the superfluous description of the geographical region can be added to by adding the words "of the United Kingdom" if the hon

Member wants, so the Government's position on that is that we do not think the amendment is necessary, but we would not oppose it if the hon Member moves it.

THE HON DR J J GARCIA:

Mr Chairman, I would like to formally move the amendment and the amendment is that the definition of combined region in clause 2, to add the words "of the United Kingdom" after the words "South West electoral region".

Question put. All agreed.

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

Clause 3

HON J J BOSSANO:

We are voting against clause 3.

MR CHAIRMAN:

All right. Stands part of the Bill. There is no amendment before the House, all there is is information that they are voting against, nothing else.

HON J J BOSSANO:

Mr Chairman, are we not voting in favour or against the clauses?

MR CHAIRMAN:

Yes.

HON J J BOSSANO:

Irrespective of whether it is amended or unamended? Presumably if we all voted against a clause it would disappear notwithstanding the fact that there is no amendment.

MR CHAIRMAN:

You have got to put through an amendment that the clause be deleted, which you have not done so far.

HON J J BOSSANO:

In order to be able to take a vote I have to put an amendment saying it should be deleted?

MR CHAIRMAN:

Of course. Well you have been here long enough for that.

HON J J BOSSANO:

I have been here long enough to know that this has not been done before, but am prepared to do it for the first time and create a precedent. I therefore move an amendment that clause 3 be deleted.

MR CHAIRMAN:

Do you want to speak on it?

HON J J BOSSANO:

Yes. Mr Chairman, in clause 3 we have a reference to Schedule 1 which makes Schedule 1, which is in fact a big chunk of the Bill, subject to what is contained in the European Parliamentary Elections Act 2002 and the Representation Act 2003 and any subordinate legislation whenever made. What we are doing by this provision is in fact that when we come to Schedule 1 and we vote the provisions in Schedule 1, we are voting it in the knowledge that anything and everything in it can at any time be altered by the United Kingdom through subsidiary legislation, that is through regulations in the United Kingdom made by the Minister, and we will not even know that it has happened. Presumably the law of Gibraltar unless somebody catches up with it will say one thing and the law of the United Kingdom will have altered the law of Gibraltar. I think that to say here we are in this Parliament being given an opportunity to do something when effectively what we are being given the opportunity to do is to deprive the Parliament of the right it currently enjoys to amend its legislation by votes in this House carried by a majority. So we are now saying that everything in Schedule 1, may tomorrow be deleted by the Secretary of State, by a regulation saying Schedule 1 of the Gibraltar Ordinance no longer applies, and there is nothing we can do. Well it may be that the United Kingdom has that power under the Constitution or under some other provision but it has certainly never been put in as stark a term as that and it has certainly never been put on the basis that we have an opportunity in this House of saying whether we support that or we do not support it, and we do not support it.

Question put.

The House voted.

For the Ayes:

The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Noes:

The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

Clause 3, stood part of the Bill.

Clause 4

HON J J BOSSANO:

Mr Chairman, we are not proposing the deletion of clause 4 because in fact that deals with the Accession States, and obviously we are not in a position to negotiate the position of the Accession States in this House.

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

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

Clause 6

HON J J BOSSANO:

Mr Chairman, in accordance with the guidance that you have provided in order to be able to speak on this, I want to move the deletion of clause 6. I would draw the attention of the House to the provisions that there are in regulation 25 of the Regulations that were circulated yesterday which deals with breach of official duty. Regulation 25 provides that it is a breach of official duty for a person to whom this regulation applies, to be guilty of any act or omission in breach of his official duty and he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale. Now we are making an identical provision in our own legislation, and in fact, the regulations that are being approved by the United Kingdom Parliament state two things. It says that they are of general application to Gibraltar and it includes in the definition of registration officer "the registration officer for Gibraltar who is the Clerk of the House" and therefore, regulation 25 breach of official duty, contains identical a photocopy of the provisions that we are currently debating in this Bill. Now given everything that we have been told that we should not have identical provisions in our Bill and in the United Kingdom Bill, because then if it is changed in the United Kingdom and we do not change it here there is a conflict, which is one of the fundamental arguments used by the Government for not supporting what we have moved, perhaps the Government can explain why in this case it does not matter. Let me take a very simple example. What happens if in the United Kingdom they change the level of fines and we do not? Will they then use their powers to change our law or will the regulations in the United Kingdom override our law? All the things that he says will happen if we provide the same thing here. Well we are providing the same thing here as in the United Kingdom and the hon Member has told us that that is not Gibraltar-driven, that this has been done by UK. So the UK has done what I have tried to do in this House and which the hon Member thinks is so bad. This is what I was telling him before that the argument that he was using was not valid because he

was saying that I was putting words in his mouth when I was telling him that the argument that nothing could be changed did not make sense. I was not putting words in his mouth I was simply referring to what I have read.

So, Mr Chairman, given the position that they have adopted, the inescapable logic of that position is that they should now remove the provisions of clause 6 because they are a repetition of what is in the United Kingdom law and because if the United Kingdom law is changed, ours would need to be changed or there would be a conflict between the two, so he would have to bring an amending Bill to the House to make the same provision here, or we would then have the situation where we would be inviting the Secretary of State to use the reserve powers to legislate for Gibraltar to change an Ordinance of this House. All those arguments that were applicable in respect of the original amendment that the Government defeated, in my judgement and on the basis of my reading of these two pieces of legislation, apply here. If the provision in the United Kingdom regulations are almost identical to the Gibraltar provision but not quite, but in fact leave no doubt that the UK provision applies, so in fact in our case, and uniquely in our case, the only registration of electoral registration officer who would in fact be breaking two laws simultaneously by one act would be ours, in the entire European Elections. If our registration officer in Gibraltar, without reasonable cause commits or is guilty of any act or omission in breach of his official duty, he is liable to a fine under our law not exceeding level 5 and he would also be liable to a fine for the same offence under the United Kingdom law by virtue of the provisions of regulation 25 of the United Kingdom Representation of the People European Parliamentary Elections Regulations 2004. Now, we have no problem with the thing being in both, because we think that that is what we would like to see and we think that is what the Government wanted to see from the beginning, which the Chief Minister told this House he had tried so hard, having innumerable meetings, meeting with the Chancellor he tried to persuade the Chancellor that we should photocopy the provision. Well we have photocopied the provision and presumably they have done the photocopying

because this is not one of the local things that he mentioned which were Gibraltar Government-driven. Perhaps we can find out whether the Government in this case wants to do it and if so, if they can explain to us why in this one and not in the others.

HON CHIEF MINISTER:

Mr Chairman, contrary to what he says, the hon Member's logic is not inescapable. Gibraltar regulation makes provision for the level of fines amongst other things in this regulation, and it mirrors the United Kingdom's provisions. But this may be one of the areas in which the United Kingdom is content, for example, for the level of fines to be different. That the registration officer is then subject to two regulations. As to if we try to change our level of fine, or rather as to whether an amendment in the future to the UK's regulation 25, for example, to use his example, changing the level of the fine, would or would not extend to Gibraltar would depend on the terms of that amendment which might be said not to apply to Gibraltar. So, it would only be until the United Kingdom tried to change the regulation setting a level of fine that we would know whether there is a conflict between ours and theirs. If they simply amended the level of fine and remained silent as to Gibraltar, then there would be a conflict. If on the other hand they amended their regulation and added that the amendment did not apply to Gibraltar, then our regulation would remain valid. Therefore, whilst I understand the point that the hon Member is making as being the one that he identified earlier on in this discussion he would make when it comes to a future section, the Government nevertheless do not accept there is any need to delete this section. Or rather, let me rephrase that, this section could be deleted and our Bill would be one section shorter. If we were to delete this section it would already be covered by the UK legislation and therefore there is nothing to prevent us from deleting the section in this case, but we do not see that that is a good reason for doing it given that we want our legislation to provide for as much as possible. But I agree that in this case, if we wanted to delete it for some

reason, we safely could and then this would just be an item that would not be provided for under the law of Gibraltar.

HON J J BOSSANO:

Well Mr Chairman, then in fact whether he wants to recognise the inescapable logic of the argument or not, it shows that it is possible to have a provision in here which is identical to the one in the United Kingdom and that if we delete it from here, it does not alter anything because the United Kingdom legislation makes exactly the same provision, and therefore the fact obviously is that we can delete it and the United Kingdom cannot argue that we are doing anything wrong because it is already their law. But the argument that they did not want us to have it in our law falls. Well if they did not want the provisions in the United Kingdom legislation to be in our law for all the arguments that have been put, and that is why we have had, although the Chief Minister is over the moon as a result, we have had a minimalist control of the legislation, the bulk of which is drafted by the United Kingdom, that is what we are being told today. Then presumably the United Kingdom has put it here, not him, not the Gibraltar Government.

HON CHIEF MINISTER:

That is because the United Kingdom is content that it should be there. Yes.

HON J J BOSSANO:

Well, all I can tell him Mr Chairman is, that that presumes a degree of knowledge of what they are doing which is not consistent with all the experience that we have had in this House with the United Kingdom telling us what to do with legislation and how to do things, which in nine times out of ten history shows we have been right and they have been wrong. I

put it to the Chief Minister, Mr Chairman, that this is not evidence that the United Kingdom was content that this should be repeated, it is evidence that the United Kingdom overlooked the fact that it was here when they put it in the UK one because in fact the UK one came subsequent to the Gibraltar one. That is what it shows. Therefore what it shows is that it is not such a sacrosanct issue that we should not have it. In fact, the reality of it is that since they had already agreed that it should be in the Gibraltar Ordinance, there is no reason why they should have put it in theirs. And I am sure that this is not the only example. I am sure that this is not the only example, this is one of them, given the time that we have had this available to us, which meant that after finishing last night in the House it has been a question of trying to reconcile what we are voting in the House today with what we know is here, which is very voluminous as well as to all the stuff to which this makes reference which was there previously. I am sure we will find after today that there are inconsistencies between the law of Gibraltar and the United Kingdom Regulations and certainly that we will find that there are repetitions which in fact in our judgement means, that the United Kingdom if they are willing to defend and accept that it is perfectly OK to say that something is an offence in the law of Gibraltar in relation to the conduct of the electoral process, which is already an offence in the law of the United Kingdom extended to Gibraltar, if that is possible then all the other things are possible in our judgement, and we do not accept that we should have simply let the UK decide what can be repeated and what cannot be repeated, or to put things here which are complete nonsense as I will explain when we come to subsequent clauses.

HON F R PICARDO:

There is just a technical issue here that we could have some help with. This clause for the first time in the Bill, the words “European Parliamentary Election” appear, other than in the preamble. Now, a European Parliamentary Election is not defined in this Bill. I cannot find it defined in the Acts and

Regulations referred to in the Bill. Now that may be because as a result of the combination of the different pieces of legislation the definition has fallen away, and therefore, having spotted it there I ask whether perhaps we should include in our clause 2 a definition of “European Parliamentary Election”. It need not be anything other than whatever definition has been adopted by the United Kingdom in whatever piece of legislation the United Kingdom has chosen to adopt that. I am sure that that would be a sufficiently clear, technical definition of what a European Parliamentary Election is.

HON CHIEF MINISTER:

We are debating a motion by the hon Members to delete the clause not to improve it. We have not voted on the motion.

HON F R PICARDO:

Fair enough, let us vote on that then take my point.

MR CHAIRMAN:

All right. Motion for the deletion of the clause.

Question put.	The House voted.

For the Ayes:	The Hon J J Bossano
	The Hon C Bruzon
	The Hon Dr J J Garcia
	The Hon S E Linares
	The Hon Miss M I Montegriffo
	The Hon F R Picardo
	The Hon L A Randall

For the Noes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

HON F R PICARDO:

I am asking first in Committee whether in fact that is an issue which we should be dealing with and whether we should then go back and include the definition in 2.

HON CHIEF MINISTER:

Mr Chairman, the view of the draftsman is that what the phrase European Parliamentary Election means is clear. Look there are lots of words used in this Bill, not every word is defined otherwise one would have to add the Oxford Dictionary to the definition clauses of the Bill. I think everybody understands what European Parliamentary elections are. It is not capable of being confused with any other concept and as the view of the Government's draftsman is that there is no need for the amendment, the Government are not minded to add it.

HON F R PICARDO:

Can I just say that in relation to the way that the Chief Minister has explained that, I think it is unfair to say that I am asking by my interpretation of this that the whole of the Oxford Dictionary

should be added to the definition clauses of the Bill. That is frankly a ridiculous and mischievous way of approaching it. As the Chief Minister knows from his experience and his legal experience, the words European Parliamentary appear capitalised in the text, and capitalised terms in any document usually have a definition. That is why I am raising it not because I want every single word defined.

HON J J BOSSANO:

Mr Chairman, the law which in this clause applies, is that the law of Gibraltar, the law of Gibraltar/UK or is that equally evident or do we need to have the dictionary as well for that?

HON CHIEF MINISTER:

By the Hon Mr Picardo's logic, when we come to debate clause 10, given that the words "the Gibraltar Broadcasting Corporation" are in capital letters, we should add a definition of that too.

HON F R PICARDO:

Certainly not, the Gibraltar Broadcasting Corporation is a statutory body created in the corpus juris of Gibraltar under the Gibraltar Broadcasting Corporation Ordinance. There is absolutely therefore no need whatsoever to do that. That answers that short point.

HON CHIEF MINISTER:

I do not think that answers that short point, I am not saying that the point is a good one, I am saying that in his logic, his justification of the need to define the term, he explained it by saying that it needed explaining because it was in capitalised

letters. Then when I point out that there is another phrase in capitalised letters, he then explains the fact that it is in capitalised letters it does not need to be explained. I think neither his second nor his first point is justified. But my point was simply an attempt to explain that his first point was not justified on the terms that he has chosen to articulate it. Now if he wants to make another argument for the need to define it, which is not dependant on the fact that it is a term that appears in capital letters, then the Government are willing to consider it. The Government are not willing to consider it on the basis that the phrase is in capitalised letters, which is the only argument that he has presented so far.

HON F R PICARDO:

Well Mr Speaker, the question of whether the term is in capitalised letters or not is only relevant in relation to the fact that I moved the original question dealing with whether or not the whole thing required an element of clarity which was not there because the definition was not there. That is what I put on the table and frankly, to deal with the point of the capitalisation by reference to GBC, or even as he could have done, by reference to the Gibraltar Regulatory Authority does not deal with the fact that there is nowhere else in our law, the use of the words European Parliamentary in capitalised letters or otherwise, which we could therefore read as part of this Bill. So the whole point is clarity.

HON CHIEF MINISTER:

That is what I had assumed his original reason to be and then when he added the second one, I had already dealt with the first one. The first one was that to the extent that his view is based on the need for clarity, I think there is sufficient clarity. I do not think that there is anybody that is under any misapprehension about what the phrase European Parliamentary Elections means. It is a phrase that has a normal meaning and therefore

does not need to be defined. He then went on to say, "Ah it needs to be defined because it is in capital letters". I explained to him that I do not agree with that logic either, which I did by reference to the example of GBC. Now we come back to the clarity point and I repeat my original argument. I do not think there is anything unclear about the phrase European Parliamentary Elections, and because we do not think that there is anything unclear in it, we do not feel the need to further define the term. There are lots of words and terms which are not defined because it is thought that the meaning of them is clear, and one only defines words and phrases when one wants to give them a particular meaning or when the meaning may be ambiguous and needs clarification. We do not believe that this is such a case. If there was that degree of lack of clarity then I think that there would be a justification for adding the amendment that he proposes, but honestly we just do not believe that there is any scope for doubting what the phrase European Parliamentary Election means.

HON J J BOSSANO:

Mr Chairman, I want to move then, given that they have had no reaction to what I said before, I want to move the amendment to introduce the word "Gibraltar" before the word "law", in the final sentence so that it would say that the duties to which this clause refers, are those duties which are included, that is to say that it does not apply to duties imposed otherwise than by the Gibraltar law relating to European Parliamentary Elections. Therefore I propose inserting before the word "law" the word "Gibraltar".

HON CHIEF MINISTER:

No, Mr Chairman, whilst I understand the point that the hon Member is trying to make, I do not think it is a point well made and I hope to be able to persuade him that it is not in any event sensible. Firstly, when he says the law of Gibraltar, he is interpreting the phrase the law of Gibraltar as the law made in

Gibraltar. Well the law of Gibraltar is not just the law that we make here, whilst we remain a colony the law of Gibraltar also means the law made for Gibraltar by the United Kingdom Parliament. I mean there are lots, not lots but some United Kingdom Acts that apply to Gibraltar, and they create law for Gibraltar and indeed for other Overseas Territories. So the laws, the provisions let us just call it, the provisions of the UK Acts and the UK Regulations to the extent that they have been applied to Gibraltar by those Acts and Regulations, are law of Gibraltar. They have not been made by him and me but they are law of Gibraltar. And in addition to that, if the House were to accept the hon Member's amendment, it would have the effect that if there was a breach by a Gibraltar official of the law of Gibraltar, which is this and the UK legislation which is also law of Gibraltar, he could not be tried by, there would be a question whether it would then be in the jurisdiction of the Gibraltar Courts or whether he would have to be carted off to the United Kingdom to be tried there. Now, even if we had the amendment that the hon Member has proposed, I am certain it would not mean what he hopes and thinks and would like it to mean, that we would thereby be excluding the provisions of the United Kingdom legislation. Because to the extent that that had been extended to Gibraltar, it could be included in his phrase laws of Gibraltar, and that therefore the amendment would not have the effect that I understand the hon Member wants it to have, and that is that we should be providing a sanction here only for breaches of this as opposed to, but he would not be achieving it by that formula of words. I am not sure it would be desirable to try to achieve it for the second reason that I have given, for the full validity of which I would need to think more carefully but that is the first reaction. In any case the formula of words he proposes does not achieve even his intentions. I beg his pardon, for his formula, for his amendment to have the intention that he moves, it would not have to say breaches of duties under the laws of Gibraltar, he would have to say breaches of duties under this Ordinance. That perhaps would have the effect that he wants.

HON J J BOSSANO:

Then the answer to my original question, Mr Chairman, the point of the amendment is that as it stands now we are saying by the phrase "otherwise than by duties imposed by the law relating to European Parliamentary Elections" we mean which law? The law of Gibraltar and the law of the United Kingdom or what? That was my starting position.

HON CHIEF MINISTER:

No, it would mean that this section sanctions only breaches of his duties arising from legislation regulating Parliamentary Elections. So, for example, this section does not apply to the registration officer's duties under the House of Assembly Ordinance and elections relating to the House of Assembly. In other words, that the duties referred to in this breach of official duty section, are only duties related to European Elections and not duties related to any other form of elections.

HON J J BOSSANO:

Yes, but my question Mr Chairman is, that it is duties imposed, it excludes duties otherwise than those imposed by the law relating to the European Parliamentary Elections. Now presumably our absent Clerk who is caught by this section, needs to know which are the laws that impose duties on him if he is to avoid finding himself before the courts and fined at level 5. Now, I would like to know whether what we are about to vote, which creates an offence is triggered off by duties imposed by the law relating to European Parliamentary Elections found in the UK legislation and in Gibraltar. What about if there is law which is EU law. For example, would that also be EU Regulation imposing duty. Because I have never come across something being defined. I think there are lots of new words in the Ordinance on this occasion because of the peculiarity of the situation and I do not recall having seen a reference to an

offence being described as being an offence against a law without saying where the law is coming from.

HON CHIEF MINISTER:

Mr Chairman, there is no EU directly-applicable law. There are no EU regulations. All the law relating to European Elections is national law. So that aspect of the hon Member's point does not arise. But the first part of it does. In other words the law of Gibraltar relating to European Parliamentary Elections, which imposes duty not just on the absent Clerk but indeed on his present deputy, which is also covered by it, is also covered by the Bill, is to be contained in some Gibraltar legislation and some United Kingdom legislation which becomes part of Gibraltar law because it has been extended to Gibraltar by the United Kingdom Parliament. And those are all his duties and those are the ones that he has got to be familiar with and those are the ones under which he can incur breaches of duty. Absolutely right. It would not be the first time that officials in Gibraltar need to have regard to laws of the United Kingdom in order to know what their duties are. It happens frequently with Orders in Council. Orders in Council, which are UK sources of Gibraltar law, have exactly that effect and when they are laws of the United Kingdom which have direct applicability to Gibraltar, which admittedly is not as frequently the case now as it used to be much more historically, that was then the case and still is the case in respect of those UK Statutes which continue to apply to Gibraltar. There are lots of Statutes. I only give this one as an example because it was the last one that I had to research when we were considering whether to give a discount to fleet arrests, remember when we were giving that discount, there are lots of UK bits of legislation relating to the Admiralty jurisdiction of the Supreme Court which are still provided for in Gibraltar in a UK Act of Parliament. It is nothing new. It is certainly true that it is quite some time since it has happened before this Bill. But there are lots of UK Acts of Parliament that create body of law which officials in Gibraltar then have to administer.

HON L A RANDALL:

In his explanation the Chief Minister said that there was not need to define European Parliamentary Elections, or for that matter Gibraltar Broadcasting Corporation. Would the Chief Minister then explain why they have felt a need to define the Gibraltar Regulatory Authority. Is this not obvious as well?

HON CHIEF MINISTER:

No it is not obvious. One is an entity and the other is a phrase with a common meaning in the English language. The Gibraltar Regulatory Authority is a creature of statute.

HON L A RANDALL:

So is GBC.

HON CHIEF MINISTER:

Well, true but this is a creature of statute that has jurisdictions in areas which we are giving it by this Bill. In other words, the Gibraltar Regulatory Authority Ordinance does not give the Gibraltar Regulatory Authority jurisdiction in this area or in any other area. And because we are by this Ordinance giving the Gibraltar Regulatory Authority specific statutory authority in an area of life, namely broadcasting, it is important to make absolutely clear the authority that it is that we are giving this authority to.

MR CHAIRMAN:

Well, clause 6. There are two amendments.

HON CHIEF MINISTER:

If I could persuade the Leader of the Opposition to withdraw that amendment but I do not know if I have or not.

HON J J BOSSANO:

Well yes, if the introduction of the words laws of Gibraltar will not change what it means without the words laws of Gibraltar then we would all be agreed to the proposed amendment, yes.

MR CHAIRMAN:

So you would be quite happy if I said clause 6 stands part of the Bill.

HON J J BOSSANO:

Actually Mr Chairman you are absolutely right. We all are quite happy because I moved the deletion only in order to be able to proceed with the explanation that I gave but in fact, on this occasion we are replicating the UK provisions and risking the edifice of the empire collapsing. So we are quite happy.

Clause 6 – was agreed to and stood part of the Bill.

Clause 7

HON CHIEF MINISTER:

Mr Chairman in clause 7 I have an amendment of which I have given the House written notice, and it relates to the reference in the penultimate line of the clause, that is in sub-clause 5, where it says “for the purposes of this Ordinance broadcaster means

the broadcaster of television and radio service”, I would like that to read “television or radio service or both”. In other words one is not caught by this only if one provides both television and radio but one is caught if one provides television or radio or both. That is the note of the amendment that I move.

HON J J BOSSANO:

Yes, we will support that amendment, we see the logic of it. Am I correct in thinking that in fact in the absence of that amendment, the only broadcaster would have been GBC? And as a result of the amendment it now applies to GBC and BFBS.

HON CHIEF MINISTER:

Yes, for the purposes of this particular sub-clause that would be the effect of it. Given that BFBS does not provide television stations but does provide radio. I just have an eye to sub-clause 10 which specifies GBC, that is because BFBS is not expected to provide party political broadcasts.

HON F R PICARDO:

What would be the position once broadcasting liberalisation comes and we have our independent television stations, are they to be expected to follow suit with the provision of party political broadcasts et cetera? I note that in the United Kingdom I believe the BBC has certain obligations which the independent television stations do not have but I think the independent television stations do have to provide the political broadcasting space, so for that reason we may want to look again at section 10.

HON CHIEF MINISTER:

Indeed we are not at section 10, absolutely. We are aware that when there is liberalisation and when there are more broadcasters, clause 10 will have to be amended. In fact there was a proposal from the drafting office to bring an amendment at this stage in anticipation of the broadcasting liberalisation directive but it came too late for the Government to consider it, and in any event we thought no harm would be done by awaiting the debate on the broadcasting directive to ensure that the definition that is inserted here is compatible with whatever definition of broadcaster emerges from this House as a debate of that directive's legislation in due course. We could of course have gone, and this was in fact the proposal that came too late in the day to be incorporated into this debate, but we could of course have just taken the language directly from the directive and shoved it here and then I could have tried to persuade the House that that was the language of the broadcasting directive. We did toy with the idea of anticipating to that extent a directive which has not yet come before this House but on balance, we thought it would be better just to leave it to reflect the current position as to political broadcasts.

HON F R PICARDO:

So if we had a broadcaster with a broadcasting licence in Gibraltar or from Gibraltar who is not broadcasting for Gibraltar, I do not know whether that is envisaged to happen, what would their obligations be? Say for example somebody who is broadcasting from Gibraltar but selling reception cards in the former Soviet Union or in Finland where our party political broadcast is not relevant, we should of course be careful to ensure that we do not oblige them in the English language to feature us giving our particular views of who should be voted for.

HON CHIEF MINISTER:

That is why clause 7 is based around the concept of radio or television services which is made available for reception by the public here in Gibraltar.

HON F R PICARDO:

Then we might well have to say in Gibraltar or the South West region because the public is not defined in the Interpretation and General Clauses Ordinance, the definitions are of public holiday, public officer, public place and public seal but there is no definition of public.

HON CHIEF MINISTER:

Yes I think that when a piece of Gibraltar law refers to the public, we have got to assume that it means the public in Gibraltar but I also accept that no harm is done and the possibility for ambiguity is eliminated, by adding the words "in Gibraltar" after the words "by the public". There are lots of Ordinances of Gibraltar that just refer to the public and it is assumed that the public means the public in Gibraltar. But if the House prefers on this occasion not to leave it to its usual, fine, it does no harm to add there in Gibraltar.

HON F R PICARDO:

I would have taken the view the Chief Minister takes of the definition of public until he told me last time in the meeting of the House that we are now legislating extra-territorially. Something which I believe we could not do but which he now tells me we can do. So for that reason I would be happier with it but I think it has to be in Gibraltar or the South West region. Certainly people in the South West region would be covered and a

broadcaster in Gibraltar who transmitted to the South West region.....

HON CHIEF MINISTER:

It would be covered by the UK legislation.

HON F R PICARDO:

But he would be in breach of UK legislation but he would be in Gibraltar. So one could have Sky Southwest in Gibraltar transmitting to the South West from Gibraltar, subject to rules of what he can transmit to the public in Gibraltar but not subject to rules that he can transmit to the public in the South West, except for the rules in the South West which would not catch them here.

HON CHIEF MINISTER:

I am not prepared to go that far. The amendment that I am accepting in Gibraltar is in a sense also unnecessary because section 7(1) talks about television and radio services in Gibraltar, and I am going along with the fact that adding the words "in Gibraltar" where he is proposing it, adds something to the language because I suppose it is possible to have a broadcaster in Gibraltar broadcasting for out of Gibraltar but not for in Gibraltar. But that would be covered by the UK Parliamentary legislation for the South West. We do not have to legislate in Gibraltar for broadcasting into the South West there may be French television stations that can be received in the south, I do not know in England that is a matter for the South West, but I am happy to go along with an amendment that adds the words "by the public in Gibraltar" in sub-clause 5.

HON F R PICARDO:

In that case I formally move that amendment. Of course if we had included "and the South West" that would have been an obvious and excellent example of extra-territorial jurisdiction of this House, but so be it.

HON CHIEF MINISTER:

I think with respect it would have been more than that. It would have been usurping the power of legislature for the South West of England.

Clause 7, as amended, was agreed to and stood part of the Bill.

Clause 8

HON J J BOSSANO:

In clause 8 is the wording of that clause something that has been taken from the United Kingdom or is this something that is Gibraltar?

HON CHIEF MINISTER:

Yes it is taken from the United Kingdom legislation, I am just checking the particular legislation. I think it is the legislation that regulates independent television that is called the Communications Act.

HON J J BOSSANO:

Is it that in the Communications Act there is a specific provision relating to European Parliamentary Elections and that is what we are copying, or is it that that is in the Communications Act in respect of other elections.

HON CHIEF MINISTER:

It is in the Communications Act generally in relation to political broadcasts for political elections in the UK and under UK legislation covers also the European Parliamentary Election, but not limited in the UK to the European Parliamentary Election. This is a provision that in the UK would also apply to national parliamentary elections, and which, when we have to make alternative arrangements for our own political broadcasts for our own elections, one of the consequences of the television liberalisation directive is that much of the stuff that is presently in the GBC Ordinance, has got to come out and be put in a piece of legislation that applies to GBC and others, and we may wish to copy these provisions as well for our own House of Assembly election party political broadcasts in due course. At the moment the hon Member knows this is regulated by half GBC Ordinance, half Governor's Directions that sort of thing.

Clause 8 – was agreed to and stood part of the Bill.

Clause 9

HON J J BOSSANO:

What are we actually doing in clause 9 is that we are deciding the parameters within which they have to do and that this is not a matter that the Regulatory Authority can.....

HON CHIEF MINISTER:

We are defining due impartiality and undue prominence and how it should be measured.

HON F R PICARDO:

On 9, the matters listed in 9(1) in my view, should be read disjunctively but there is an "and" after 9(1)(b) which I think should be an "or". Otherwise something is of a political nature or is an object of a political end, only if it is designed to influence the outcome of a European Parliamentary Election, and influence public opinion on a matter which in Gibraltar is a question of public controversy, so it has to be also a question of public controversy, and promotes the interests of a party or other political groups of persons organising Gibraltar or else for political ends. So all those have to be present for it to be a matter of political nature and political end. Now unless we are going to take as read that any issue in a European Parliamentary Election is an issue of public controversy in Gibraltar, I think that should be an "or" rather than "and".

HON CHIEF MINISTER:

I do not agree. What there is is a list and when my wife is making the shopping list she says she wants to buy milk, sugar and tea, it does not mean that she can only buy the tea if she has also bought the milk and the sugar. I do not think it is a case where the hon Member is right as he was in the Bill that we discussed last month.

HON F R PICARDO:

I do not think I am going to persuade him, it is just that when my partner makes the list for the shopping and she includes an "and", she is very disappointed if I do not bring it all back, but I

do not think that we can reduce this particular list to that level of frivolity.

HON CHIEF MINISTER:

English grammar.

HON F R PICARDO:

And the question of English grammar is particularly relevant because I see that the Chief Minister seems to have made up his mind on this but I think there is a conflict in using the word “include” and the word “and”. If it is ‘include any of these,’ it is or, I think it is a very simple grammatical point. Usually we have differences on issues of politics and law but if it is with such a simple grammatical point, if it says include and it is any one of the following, it has got to be or, otherwise it has to include them all. It is that simple.

HON CHIEF MINISTER:

No, Mr Chairman, and the Government do not agree. The Government agree that if it read or it would mean it would be OK to, but the Government do not agree that the fact that it is “and” in that context means that they all have to be present. We just do not agree, he is making assertions as to the natural and inescapable meaning of the presence of the word “and” and we believe he is mistaken.

HON F R PICARDO:

Well, fair enough, at least they want to show that not all of these have to be included despite the use of the word “and”.

HON J J BOSSANO:

I am not clear what the provision that is in this clause is intended to achieve when it says influencing public opinion on a matter which in Gibraltar is a matter of public controversy. Because if we are told that these are all alternatives then in fact, (b) does not have to be something that as a consequence influences the outcome of a European Parliamentary election. Now, this is in relation to the responsibility given to the Gibraltar Regulatory Authority under 7(2)(b). So what are we saying, that there cannot be advertising carried by GBC which expresses a public opinion on a controversial matter, and that the Regulatory Authority will instruct GBC not to accept such an advertisement?

HON CHIEF MINISTER:

Well, it has got to be read in conjunction with 7(1), the code of standards has got to be limited in relation to European Parliamentary elections, and then 9 says that the advertising, the issues upon which advertisements are not permitted during a European Parliamentary election campaign include things influencing public opinion on a matter which in Gibraltar is a matter of public controversy. For example, I suppose, during the European Parliamentary Elections campaign it would be a breach of the code of standards for an advertisement, this is not for somebody to make points, remember this is paid advertisements, for somebody to place an advertisement just to use a different newspaper to the one that we always cite in this House as an example, for somebody to place in the Panorama an advertisement marked “sovereignty of Gibraltar, remember which party opposed joint sovereignty and which party did not”, that would be a matter which is a matter of public controversy in Gibraltar about which there could not be a paid advertisement in breach of the code of standards. On television and radio so, for example, the Panorama no doubt in due course they will open a television station when there is liberalisation, but at the moment it is only television and radio yes.

HON J J BOSSANO:

Mr Chairman, then the words in 7(1) in relation to the European Parliamentary Elections mean in fact during the European Election campaign, is that the case?

HON CHIEF MINISTER:

This is the sort of thing that would be specified in the code. I believe there is an official date when the campaign begins across Europe. I think it is February, I think it is 10th February when there is a.....

HON J J BOSSANO:

If that is the case what the Chief Minister is saying is that this would apply from that date.

Clause 9 – was agreed to and stood part of the Bill.

Clause 10

HON J J BOSSANO:

Mr Chairman the Chief Minister has told us that the Government were considering altering this clause 10. It seems to me peculiar that we should be saying in 7(1) that the Regulatory Authority can set this code of conduct for all the broadcasters in Gibraltar, and then in section 10 we tell GBC what it has to include in its radio and television services, political broadcasts but we do not say it in respect of any other broadcaster.

HON CHIEF MINISTER:

I made this point to the hon Member that the justification for that is that clause 10 deals with party political broadcasts, which traditionally have not been carried in Gibraltar on BFBS. If 10 were not limited to GBC, then BFBS would have to carry the party political broadcasts on its radio station. Now, we could do that if we wanted to. I told the hon Member that in the area of broadcasting, it was an area that we did have greater degree of flexibility than in other parts of the Bill, we can make it compulsory for BFBS to carry party political broadcasts in Gibraltar. The Government have not proposed to do it because traditionally BFBS does not participate in the local political process. For example, we never ask BFBS to carry party political broadcasts for our own House of Assembly elections, but there is nothing to stop the law of Gibraltar requiring BFBS to carry on its radio station party political broadcasts. We can do that if we want to.

HON J J BOSSANO:

Well one of the things of course that we have got in this legislation is the concept of service voters, no, which we do not have in our elections, which presumably would be the audience that BFBS broadcasts to.

HON CHIEF MINISTER:

There is the concept in this Bill, in fact, that if one needed a justification for including BFBS, that was it. BFBS I do not know whether they broadcast particularly to one or the other but if it is the case that their principal audience is the local military personnel and their families, MOD civilian personnel, some of those are not eligible to vote in our House of Assembly elections. They would all be entitled to vote in the European Elections. If one needed a reason to force BFBS to carry party political broadcasts, that would be a perfectly good one. I think

we could do it without a reason but if we wanted a reason, I think that would be a perfectly logical one.

HON J J BOSSANO:

Well then I move that we amend this so that in fact we replace the Gibraltar Broadcasting Corporation by saying “any broadcaster shall include in its radio or.”

HON CHIEF MINISTER:

We do not have to do that, we can just refer to the definition of broadcaster in clause 7(5). May I just use the word broadcaster, clause 7(5) says for the purposes of this Ordinance, broadcaster means. So instead of GBC it could just say any broadcaster in Gibraltar. It has to be consistent with 7(1). Any broadcaster in Gibraltar. In other words we are not catching for example, we are not purported to catch La Linea radio. What is the Algeciras television channel? Telesur, actually purports to broadcast for Gibraltar, it is part of what they regard as their footprint. Well we are not here suggesting that they would be required to carry party political broadcasts, it has got to be broadcaster in Gibraltar and we would have to change No. 7 to support that amendment the hon Member wishes. The amendment in clause 10 is delete the words ‘the Gibraltar Broadcasting Corporation’, and insert ‘any broadcaster in Gibraltar’.

Clause 10 – as amended, was agreed to and stood part of the Bill.

Clause 11

HON J J BOSSANO:

Just before we do clause 11, I take it that what the Regulatory Authority has to do in terms of determining in respect of each

candidate and each political party, the length and frequency of the broadcasts, this follows what they do in the UK, is it?

HON CHIEF MINISTER:

Yes, I have not focussed on this code of conduct although I know that work has already started in Gibraltar for a draft drawing heavily on the UK equivalent code of conduct. I have skimmed through it, it is not a matter for the Government it is a matter for the GRA, but I have seen an early draft and it raises the concept of parties choosing different lengths of broadcast, because what it raises are issues of cost. As one has got a certain limit of expenditure one might want a two minute broadcast or a four minute broadcast or want a six minute broadcast. I seem to recall, in the UK for example, one can choose, the Regulatory Authority in the UK has designated three broadcasts of three durations. Two point something minutes, three point something minutes, four or five minutes or whatever, and one can choose, because otherwise one would be saddled with a broadcast of a length that one does not want to pay for because one would rather spend the extra cost on something else. But it is a matter for the GRA and the GRA does not need to follow those UK slots, he can decide well I want three slots, I want two sizes of slots and I want them to be three minutes and five minutes or five minutes and eight minutes. This will be a matter for the GRA.

Clause 11 – was agreed to and stood part of the Bill.

Clauses 12 to 14 – were agreed to and stood part of the Bill.

Clause 1 of Schedule 1, Part 1. Stands part of the Bill.

Schedule 1 – Part 1

Paragraph 1

HON J J BOSSANO:

In the definition of “candidate” it says that this has the same meaning as in Part 2 of the 2004 Regulations. In the 2004 Regulations the provision is in page 25 of the Regulation and it is paragraph 31(1) and (2). It says, “a candidate shall be construed in accordance with paragraph (2) below”, and then there is a paragraph (2) below which says, “a person becomes a candidate at an election (a) in the case of a person included in the list of candidates of a registered party to accompany his nomination for the election on the day on which the list is submitted by the party; or (b) in the case of a person not included in the list of candidates of a registered party, to accompany his nomination for election (i) on the last day for publication of the notice of the election if or on before that day he is declared by himself or by others to be a candidate in the election; and (ii) otherwise on the day in which he is so declared by himself or by others or which he is nominated as a candidate for the election whichever is earlier”. I am proposing the amendment of the provisions currently shown in the Schedule by deleting the reference to the meaning in Part 2 of the 2004 Regulations and in fact incorporating an identical provision in our own legislation, namely, that it should say in the definition of a candidate, it should have the words “shall be construed in accordance with sub-paragraph (2)” and that we should add at the end of paragraph (1) sub-paragraph (2) containing the same wording as I have just read out. That is the amendment I propose. So that we have in our own law what a candidate means and therefore persons in Gibraltar who are interested in finding out what it requires to be a candidate, should not have to go and look for the UK legislation to find out. He should be able to get it in the legislation that is available in Gibraltar.

HON CHIEF MINISTER:

The Government do not accept the amendment because Gibraltar’s law does contain a definition of a candidate. The 2004 Regulations is the law of Gibraltar, will be the law of Gibraltar when it is adopted.

HON J J BOSSANO:

Mr Chairman, in respect of the declaration of local connection, where in the interpretation it says has the meaning given to it in paragraph 12 of Schedule 4 of the 2004 Regulations. I know the Chief Minister says this is the law of Gibraltar and therefore presumably since it is the law of Gibraltar which we are legislating as if it was in fact something we are doing in incorporating it into this Ordinance, I take it that we are able to get explanations of everything that is here because what we are doing is legislating this now as the law of Gibraltar according to the last answer we have had.

HON CHIEF MINISTER:

No that is not true.

HON J J BOSSANO:

Well if that is not true I do not know what it is that we are doing here when we are voting saying the declaration has the meaning given in paragraph 12 of Schedule 4 to the 2004 Regulations. It seems to me that if the Chief Minister has just defeated the amendment, for example, to candidate and then voted to say that candidate has the meaning that I have read out, which is on page 25 of the Regulation, they have just by their vote made that meaning a part of this Ordinance, because that is what we are voting. Therefore if they vote in favour of the declaration having the meaning in paragraph 12 of Schedule 4,

then I imagine it is because they have read paragraph 12 of Schedule 4 and they agree with it and that is what they want it to mean. Now, I can only find a reference to declaration of local connections in one area in the actual thing but it may be somewhere else, which is towards the end where it says in paragraph 10(7)(c) that sub-paragraphs (4) or (5) do not apply in relation to declarations of local connections. Declarations of local connections, as far as I can make out from the very lengthy explanation that is contained in paragraph 12 of Schedule 4, appears to deal with people who are in mental institutions, in mental hospitals. I would have thought it was important that we should be able to debate in this House what it is that we are doing in relation to our patients who are mentally ill, in terms of their being able to vote in the European Elections, and it is not enough to say what we were doing in connection with them is whatever it happens to be in paragraph 12 of Schedule 4 of the Regulations. So therefore I think we will have to proceed on the basis that we are now legislating this as if this was in fact written down in here, in the Schedule, which is the Schedule that deals specifically with Gibraltar.

Schedule 4 deals with entitlement to registration and legal incapacity to vote in Gibraltar. Paragraph 12 of Schedule 4 says notional residence declarations of local connections and therefore, on the basis of the interpretation clause included here, I take it therefore that in order to discover what the declaration of local connection is, one has to go through paragraph 12 which is divided into seven sub-paragraphs, and thirdly which then talks of the effect of a declaration of local connections. The opening of paragraph 12 says a declaration under this sub-paragraph may be made only by the person to whom this paragraph applies. And then sub-paragraph (2) says this paragraph applies to any person who on the date when he makes a declaration is a person to whom paragraph 10 applies. Then we have to go to paragraph 10 to find out who are these people who can make this notional residence declarations. And in paragraph 10 we are told this paragraph applies to a person who is a patient in a mental hospital in Gibraltar. Quite extraordinary that here we are, the elected representatives of

the people of Gibraltar in the House of Assembly, making provisions which apply to mental patients in our hospital, we have to go through a maze of directions in UK Regulations to discover what is the position of our mental patients to vote in the European Elections in Gibraltar in May of this year. And the Chief Minister tells the House that this is the law of Gibraltar and that is it, on a technical view of reality even though one can hardly expect a mental patient, or even somebody who is not a mental patient, to be able to discover what it is that he is entitled under the new law to do or prohibited from doing. Because in fact this deals with the right of people to vote, the right of people in Gibraltar, the right for which we have fought, the right for which he says we tend to take the credit when the credit belongs to him. The entitlement and the legal incapacity to vote in Gibraltar is what we are supposed to be voting here and we do not know what we are doing. We do not know what we are doing because nobody on the Government side, I am sure, has read this and it has taken me many hours to try and read it, I am not sure I understand it all in the time that it has been available to us. And they just vote because they are told by the British Government that that is the way that they have to vote, and therefore, I believe we have no choice in the circumstances in which we have been placed but to debate what is here on the basis that what we are voting by voting in favour or against the interpretation clause, is the same as if we were voting in favour or against the regulation that I have just quoted. In this provision the patient to whom this applies we are told, as I have just explained, in paragraph 12, we are told two things in paragraph 12. That they can only be made by a person to whom the paragraph applies and that the paragraphs applies to somebody to whom paragraph 10 applies. When we go to paragraph 10 we find that the person to whom it applies is a patient in a mental hospital who is not a person to whom paragraph 12 or paragraph 11 applies. So, here we are in our legislation we are told declaration of a local connection has the meaning given in paragraph 12, we get the United Kingdom Rules and we go to paragraph 12. In paragraph 12 we are told it only applies to somebody that is specifically identified in this paragraph. We go to the next sub-paragraph and this tells us

that in order to find out who we are talking about we go to paragraph 10. We get to paragraph 10 and we are told he has to be a patient in a mental hospital provided he is not a person to whom paragraph 4 or paragraph 11 applies. We have already read hundreds of things, hundreds of words and we are still no wiser as to who it is that is going to be able to exercise the right to vote for the European Parliament so far. In paragraph 4 it says legal incapacity to vote of offenders detained in mental hospital, so therefore, if the person in the mental hospital is a person who is a legal offender then that removes him from the entitlement to make a declaration of a local connection. Then we go to 11 and we find that if a person who is in a mental hospital is somebody who has been detained on remand without being convicted, he is also eliminated from the possibility. So by a process of elimination I believe, although I stand to be corrected by the Government that is responsible for this, that we are now saying that as long as the patients in KGV are neither persons who are there because they have been taken there from a prison or there because they have been taken there from being remanded in custody without being convicted, they will be able to make this declaration and that will enable them to vote, if I have understood what the declaration is all about before I proposed the deletion of the declaration, since to propose the amendment would require that I spend half an hour writing it out, given the length of what is in the UK legislation and the references to many others, so presumably it is impossible to incorporate this without, I mean it would take more than incorporating it in as part of the interpretation clause, given the voluminous explanations that there are in the regulations. I therefore propose the deletion on the basis of giving the Government an opportunity to explain to the House exactly what it is that we are making provision for in our law and who it is that can exercise this new right of making a declaration of local connection.

HON CHIEF MINISTER:

Since I have already explained the matter to the hon Member three or four times, and I do not believe that it is possible for him to be as intellectually obtuse as he is in determined to be repeatedly, I can only come to the conclusion that he is trying to string out the debate on this Bill for as long as possible. Fine. I have cleared my diary for the rest of the day, I do not mind being here until midnight. We are not here today debating the virtue or lack of virtue of the content of the 2004 Regulation or the content of the 2003 Act or the content of the Combined Region Political Contribution Regulations or of the 2002 Act or of the 2000 Act. That is legislation of the United Kingdom which his colonial master and mine have decided to exercise their lawful right to legislate on our behalf. Now if he likes I can explain this to him every 45 minutes from now until the debate on this Bill has finished. That is the reality of the matter. The United Kingdom has exercised its lawful right in the special circumstances of this combined region, to legislate for the South West of England and for the territory of Gibraltar, as it is entitled to do under United Kingdom primary legislation. That is the reality. So that is the law of the land, not just of the United Kingdom but of Gibraltar as well. And the fact that our Bill here contains cross-references to the United Kingdom legislation which is not just law in the United Kingdom but also law in Gibraltar, as much as anything that we might pass in this House might be law of Gibraltar, the fact that there are those cross-references does not entitle us to debate the UK legislation as if we were free to change it. We are not. It is UK legislation, it has the effect that it has whether he likes it or not, whether he understands it or not, or whether he has read it or not. What he can say is, is it necessary for us to cross-refer to that piece of legislation, but that is not a debate on the UK legislation which is not up for debate. What is up for debate here is this green paper. That is what is up for debate here.

Now, if the United Kingdom legislation is to quote the hon Member's words "a maze", it is the same maze as homeless people in the United Kingdom have to navigate. Whether the

maze is contained in a piece of legislation that applies to Gibraltar that we pass in this House or whether the maze is contained in a piece of legislation which is law of Gibraltar but passed in another place, does not derive from whether we have debated it here or not, from whether we have written it here or not, it is the law as much for us as it is for locally connected persons in the United Kingdom. The hon Member may wish to paint a picture of a very complicated, unintelligible piece of legislation, frankly, it does not seem unduly complicated to me, but whatever may be the levels of its complication, it is the same for the citizens of Gibraltar as it is for the citizens of the United Kingdom, and the suggestion that somehow the citizens of Gibraltar are at some disadvantage to the citizens of the South West region in understanding their rights, or in accessing their rights, or in finding out what their rights are, or in working out whether they are entitled to vote or not, is a figment of the hon Member's imagination. They are in exactly the same position here as the citizens are in the United Kingdom. This is not, to quote the hon Member, a technicality of the reality of life, it is the reality of life in its glorious technicolour, in full, not a technicality. These are not laws of the United Kingdom, these are laws of Gibraltar made by the United Kingdom and once made are laws of Gibraltar. We can have a debate on some other occasion whether we enjoy the fact that that should be possible or not, but that is a whole different debate. But at the moment, with the constitutional status that we enjoy and with the constitutional relationship and legal relationship that we enjoy with the United Kingdom, those are not the technical realities of life, those are the realities of life, which the United Kingdom Government to their credit never exercise, except on this occasion when it has been necessary to exercise it because of the unique nature of the circumstances of a territorially combined region comprising the territory of Gibraltar and part of the territory of the United Kingdom. It seems to me that the hon Member is, for reasons which I cannot fathom, I can fathom them because I know him, but which others will not be able to fathom, seems to be determined not to make due allowance and to assimilate due understanding of both the legal and constitutional realities of the situation, and the uniqueness of the factual realities of the

situation, given that we are dealing with laws that do not apply to Gibraltar in isolation or to the South West of the United Kingdom in isolation but which apply to the whole territory as if they were one. If the hon Member is not willing to acknowledge that that situation throws up unique legislative circumstances which are being dealt with appropriately, then all I have to say to the hon Member as I have said to him four or five times already, is that I disagree and he can stand up on each and every clause in this Bill and make the same philosophical analysis, mistaken in law and fact but nevertheless philosophical analysis, he is wrong. He is wrong on the merits, he is wrong on the analysis but he is free to make it. He is not going to persuade the Government, the Government is not going to accept any amendment that the hon Member moves, based on that analysis of the situation. This is not what the debate in this House is about, the debate in this House is about this particular Bill. So the hon Member can move in this respect whatever amendment he likes, it will be defeated by the Government majority.

HON J J BOSSANO:

Well, Mr Chairman, it will be defeated on the basis of the explanation the Chief Minister has been given by the colonial power, who happens to have a tame government in the colony. That is obvious. Because that Government have spent, according to the Chief Minister, countless meetings including with the Chancellor, trying to persuade them to accept the philosophy which he castigates me for and which he said in an earlier part of this debate he shared. Having shared the debate he has not succeeded and therefore we are stuck with this. I am not disputing that, I was not making any philosophical points, except one, which is not philosophical and that is what is it that we are doing in the House. Now, in this House now Mr Chairman, in this Committee what are we doing? We are being asked to put our hands up and vote that the declaration of local connection has the meaning given to it in paragraph 12 of Schedule 4 to the 2004 Regulations. Right. What is the meaning, nobody knows what the meaning is in this House. So

we are all being asked here to act like complete idiots as if we were in the Victorian empire where the white man tells the natives what to do. Because at the very least if he is so proud of his work, and he is so proud that this is something that is to the United Kingdom's credit because of the uniqueness of the situation, at least he ought to be able to give me the answer to the question that I put to him. I did not put to him on this occasion the question of why are we doing it. We know they are doing it, he has already given that explanation in the general principles of the Bill. I am asking him, given the fact that he provided us with this, which incidentally is not law unless he knows it has already been passed by Parliament, we are talking about what this says is in reality, not technically but in full technicolour as he likes to put it, what this says is declaration of local connection with the approval of the elected Parliament of Gibraltar has the meaning that may or may not be given to it, to vote in favour of what is here, without amendment or amended.

So we are at the stage where we are accepting the meaning for something which we assume, because those are his words, we assume, are likely to be changed but may be changed here or there. Well, assuming that it is not changed, if I am asked by the Government that is bringing this Bill to the House to either support or vote against a provision, then I am entitled to seek what it is that I am casting my vote for or against. I am entitled to have that information in this House. Whether the people that represent the rest of the south west region do it or do not, that is their business, but as far as I am concerned the people who have voted us here, expect us to know what it is we are doing when we are voting laws. The Chief Minister may say, "well look, this will apply to the people of Gibraltar even if we have no reference to it because the colonial power can do it", well fine. But if the colonial power passes in Parliament tomorrow, in the House of Commons and the House of Lords, regulations affecting the patients in KGV and we have had nothing to do with it, well then there is nothing we can do about it. But if we are here saying a local declaration in Gibraltar made in the context of the elections that are going to take place in the next few months means what they are legislating in Parliament in the

United Kingdom, then the very least is that we should know what it is that it means. And what I have asked is for an explanation of what it means. And what he telling me? That it is because he knows who I am, the people may not understand it, well look I hope that everybody who is listening on the radio understands what it is. We are being asked to vote something that affects KGV patients and provides how they may vote and he says that the provision is the same here, whether one is homeless in the South West region or homeless in Gibraltar. Well I have not come across in what I have read, the declaration being about people who are homeless. What I have read is that this declaration is about people who are in a mental hospital in Gibraltar. The reference in the declaration of local connection says it has the meaning in paragraph 12 and paragraph 12 Gibraltar and Gibraltar alone. Nobody else. We are not making any reference here to anything that happens anywhere in the South West region. Paragraph 12 is in the fourth Schedule and is about the right to vote in Gibraltar, and we are making references in our law about entitlement to registration and the legal incapacity to vote. I think that to take it as a wonderful achievement that we should be here voting and quoting the UK law that will become the Gibraltar law and will determine who may vote and who may not vote, without knowing what it is, and that that is a great achievement seems an incredible thing. I think it is the most uninformed debate on any law in Gibraltar in the 32 years that I have been here, because normally the Government move Bills here and if they do not know why a clause is there, the very least is that they are able to say well look we will get the people in the Legislation Unit to give us an explanation so that the Opposition Members know what it is that it is doing. And if they find that in fact what it is seeking to do does not appear to be what is actually written down, this Parliament is able to make amendments. Now why should the Government want to deny us in this House the right to know what it is we are being asked to cast our vote for or against. Why? Because we are a colony. What has that got to do with it? Therefore I find it incredible. I think that the Chief Minister should have had the decency to say to the House well look, I do not know what the explanation is and I do not know exactly what

the implications for this are for patients in KGV, because that seems to be the real reason, that he does not know and that he cannot give me an explanation.

HON CHIEF MINISTER:

Mr Chairman, none of what the hon Member has just said in the last 20 minutes is true or accurate or consistent with the legal analysis of what we are doing here, which I have now explained to him five times and which I will not explain to him again. The hon Member may continue to distort and to describe in a false fashion for the benefit of the people listening on the radio who may not have heard my previous explanations. We are not, for the last time, we are not here legislating. This Bill is not a Bill which gives or does not give, or determines how or they do not have or do not have, anybody has voting rights whether they are in KGV or anywhere else. All those voting right entitlements including the regime applicable to locally connected persons and to service persons and to overseas electors, and all the other regimes that the hon Member can read for himself about in Schedule 4 of proposed, the fourth schedule of the proposed 2004 Regulations, all that will be laws made by the United Kingdom for Gibraltar. There is nothing in this Bill which we are voting on here today, which justifies the 20 minute sermon that the hon Member has just given about not understanding what he is being called upon to vote for. There is nothing in this Bill which determines the voting rights or the voting entitlements, or the registration entitlements of anybody. So, nothing that he is voting for or not voting for, understanding or not understanding, determines whether somebody in KGV can or cannot vote. All of that is to be found in the laws made by the United Kingdom, for both itself and for Gibraltar, some of which has already been made and some of which, which has not yet been made and which he has in draft in front of him. That is the correct analysis of the situation. I explained it to him during the debate on the Second Reading. I have explained it to him on numerous occasions on the debate in this Committee at the Committee

Stage, either he does not, cannot or will not comprehend the simple analysis of the situation that I am making out for him.

When we were debating the principles of the Bill, which was the Second Reading, I explained to him what we were doing. It seemed to me, given the views that he is now expressing at the Committee Stage, that what he ought to have done was to vote against the principles of the Bill, not the nitty gritty of the detail in Committee, because it is clear for all to hear that assuming that he understands the nature of the arguments that he is fielding, and assuming that he genuinely believes the spirit that underlies the arguments that he is articulating, assuming both of those facts, what his actual position really is, is that he objects as a matter of principle that we should be playing this robotic role in the legislative process for the European Elections. In which case, if that were his position, what he should have done is to have voted against the Bill on principles at the Second Reading. But he did not. He voted in favour of the principles of the Bill, he voted in favour of the principles that we should legislate in Gibraltar in a way that refers to laws made or to be made in the United Kingdom. He has accepted that principle, yesterday by his vote. So why all of a sudden, why all of a sudden this Government is such a tame colonial poodleish government when it is no more tame, no more colonial and no more poodleish than he was roughly at this time yesterday when he voted in favour of the principles of this Bill at Second Reading. That is the inescapable reality of the situation. So the hon Member, as far as the Government are concerned, the debate on this point is over. If the hon Member has an amendment to put, let him put it and let us put it to the vote. And if he has not, let us move on to the next clause.

HON J J BOSSANO:

Well Mr Chairman, fortunately for the Opposition it is still not a matter for the Chief Minister to decide when the debate is finished. Fortunately for the Opposition.

HON CHIEF MINISTER:

As far as the Government are concerned. The hon Member can carry on debating for as long as the Speaker wants.

HON J J BOSSANO:

I see. He sounded Mr Chairman as if he thought he could give us orders the way he gives orders to the people on that side of the House when he said it is finished and we can now put it to the vote. That is what he said. Apart from all the arguments that he keeps on repeating, the point is that he obviously cannot give me an answer to my question because he does not know the answer. Having had the benefit of reading overnight what he provided yesterday after we had debated the general principles, I must say that it became clear that the situation was even worse than he had explained when he opened. In fact that was reflected in his closing remarks on the general principles when he actually described the position as merely a token one, having originally gone much further in defending it. He has fluctuated quite a number of times as the record will show, from admitting that what else could we do given that we are dealing with a colonial power, to saying what a wonderful job he has done in getting as much as he has done. But that is not the point. The point is that we are being asked to vote for or against a statement in our law, forget what the law of the United Kingdom is doing for Gibraltar which will become the law of Gibraltar because Gibraltar is a colony, in our law we are being asked to say the declaration of local connection has the meaning given in paragraph 12 of Schedule 4. The question I put to the Government that is introducing this Bill to the House is, what is that meaning? What is that meaning? In order to discover it I have taken advantage of the fact that they have been good enough with the permission of the colonial power, to give us a copy of the Bill that has not yet been passed, or the Regulation that has not yet been approved by the Houses of Parliament, and I have read out for the benefit of the House, since it seems to me that few other Government Members have

bothered to read what it is that they are voting for, I have read out what regulation 12 tells me, to try and establish what is this meaning that is given here. Now all I know is that when I read it out the initial reaction of the Chief Minister was that well, look, it does not matter what it says there because the rights of patients in the KGV are no different to the homeless in the South West region. Well, in fact, regulation 12 is just about Gibraltar, not about the South West region, it is just about Gibraltar. It is unique to Gibraltar. There may be another regulation somewhere else that says the same thing, I do not know. I have just looked at the one that refers to Gibraltar. There is a point of principle which I have already raised, which he appears to agree with but does not consider that it is a great loss if we are not able to do it, which is that why cannot we have what it says in regulation 12 in our laws. The answer is because the UK does not want it. Then I ask why is it that in other cases we have it. The answer is because it is what the UK wants. Well look, if the Government of Gibraltar brings a law to this House and whenever one asks them for an explanation they say that the explanation is that that is what the UK wants, it may not be evidence of how tame they are but I can see a more inoffensive way of describing it. All the explanations we have ever had as to why it is somewhere and why it is not somewhere is because that is the preference of the United Kingdom Government. Well, is it that the Government of Gibraltar themselves have no views on this? Have not expressed any preferences?

The question that I am putting to the Government for the third time is what is the implication of this that we have here. If I am being told in the law of Gibraltar, the declaration of local connection has the meaning given to it in paragraph 12. If tomorrow one of our citizens, who believes he may be entitled to make such a declaration, comes to us as his elected representative to be advised what it is, how it is that he discovers whether he can make a declaration or not, what do we do? Do we get this and say, "well look you go to regulation 12 and when you get there you will find that it tells you to go to regulation 10 and when you get to regulation 10 you will find it tells you to go to regulation 4". Well that is as far as I have been

able to get in the time I have had this. Obviously we will continue to look at this UK legislation so that we are able to answer peoples' questions when the time comes and the election takes place. I think it is the responsible thing to do in this House of Assembly. If we do not have the power to do it ourselves, which I think we should, and if the Government of Gibraltar tried and regrettably was not successful in persuading Her Majesty's Government that there was no reason why we should not mirror image their provisions and have it in our own law, is this not the same principle that the Chief Minister defended earlier when he said he was not going to put the provisions in the law on the Equal Opportunities of amending the Employment Ordinance, because of the difficulties that citizens have and lawyers have of having to find out in the Employment Ordinance that what the Employment Ordinance says is not correct, because they have to find another Ordinance that has changed the Employment Ordinance. Well this is even worse. They have to find regulations, running to hundreds of pages, in order to find out what it is that the law of Gibraltar intends them to do, because we have a reference to it here. The hon Member may say that even if the reference was not there this would still be the law, and I agree, I am not disputing that that is true. But if the reference was not here we would have no need to debate and we would have no need to vote. I think it is completely irresponsible to be voting things without knowing what it is we are voting, even if whether we vote or we do not we cannot change it. At the very least if we cannot persuade the British Government, at the very least we ought to have a level of information as to what it is that these things mean, which is simply not here today. Therefore, it seems to me that whether he likes it or not I can only assume that he himself has not been briefed on the meaning of this local connection in the context of the four different paragraphs in the UK Regulation. The UK Regulation on my limited, initial reading of this over lunch today and yesterday evening, appears to be saying that this provision of local connection is for residents in mental hospitals who are not detained offenders or on remand. Fine if that is what we are talking about, then that is the meaning of a declaration of local connection but is that the meaning or

does it have any other meaning? Now, why should the Government be so upset that they should be asked that question they are responsible for bringing the law here and we are entitled to ask for explanations before we vote.

HON CHIEF MINISTER:

Mr Chairman, the Government have not brought any such law to this House. If anyone should approach the hon Member as to whether he is or is not entitled to vote and he has by then not worked out for himself what the law means, then since he asked me the question what he should do with such a person, what I suggest he does with such a person is either refer him to a lawyer or refer him to somebody who does understand what the law is. The Government will be happy to help, or much more likely, the Registration Officer and the Election Officer whose job it is, will make sure that people have explained to them what the laws of eligibility and registerability are. This House is not debating these laws and frankly the idea that a debate on the Committee Stage of a Bill in Gibraltar is the place where the Government analyses the UK legislation which is not being legislated as a result of the Bill under debate in the House, so that the hon Member has a sufficient understanding of it so that he can advise people who go to their offices seeking that is not the purpose of the debate in this House today. We are debating whether this Bill, which the Government have brought to the House, the House approves of or does not approve of. The hon Member is free to approve, disapprove or to propose amendments, that is what he is entitled to do. Frankly, I am very surprised that the hon Member should now say the things he is now saying. Yesterday his lawyer colleague, the Hon Mr Picardo told this House and I quote, "enfranchisement of Gibraltar is long overdue and this Bill would find no enemy in this House". That is what they said about the Bill yesterday, and today, just 24 hours later, apparently on a line by line basis, they do not know what it means and they do not see why they should vote. Well Mr Chairman, we have been now in this House for what an hour and twenty minutes, we have not progressed

beyond the first clause, and I now move that this clause be put to the vote in this House.

HON F R PICARDO:

Can I just clarify one thing because the Chief Minister has quoted selectively. I know that the Hon Mr Vinet very helpfully found the quote in the report in the Chronicle to what I had said. I must reaffirm that this Bill finds no enemy in this House because as we said yesterday and despite our differences on the history of this, that we all believe that the enfranchisement of Gibraltarians was overdue. I recall also that I did say to the House at one stage, there will nonetheless be some issues both technical and substantive, both technical and substantive that we shall have to raise at Committee Stage in relation to the draft Bill before this House.

HON J J BOSSANO:

Mr Chairman, we are debating in Committee the Bill clause by clause and therefore I do not know what he means "we now move". He has already moved that the Bill should be voted in Committee.

HON CHIEF MINISTER:

The hon Member seems to think that this is Question Time.

HON J J BOSSANO:

No, it is not that I think it is Question Time, it is that I think and that I know that it has been the normal standard practice in this House that if there is a piece of legislation before the House, the Government are unable to give an explanation of the meaning of words in this law. Not in the UK law. We have no choice but to

go to the UK law because the way that it is drafted is that unlike any other legislation that I have seen before, the interpretation requires us to go to the UK law to understand what it means in the Gibraltar law. What we are saying here in this Schedule, Mr Chairman, is declaration of local connection in the law of Gibraltar which is passed by the House, not in the United Kingdom. Forget what the United Kingdom has passed. In the law of Gibraltar which is the one that the House of Assembly passes, what do the words declaration of local connection mean?

HON CHIEF MINISTER:

In the laws of Gibraltar the words declaration of local connection mean what they say, what is said they mean in paragraph 12 of the Schedule 4 to the 2004 Regulations. Now which of those nine words does the hon Member not understand the meaning of and I will be happy to explain them to him.

HON J J BOSSANO:

Yes, I will tell the Chief Minister because it seems that his ability to understand the ordinary English language deteriorates the longer the day lasts in this House. All those words do not tell me what the declaration is. In order to find out what the meaning is, I have to look to paragraph 12 and I have just read out to him paragraph 12. Therefore having read out paragraph 12, if I take paragraph 12 and I substitute the words the meaning given in paragraph 12 by the text of paragraph 12, I am not able to decipher what is the meaning of that declaration. Presumably they know. If they have brought the Bill to the House on the basis that the meaning is self-evident from paragraph 12, I would expect them to know. If he does not know, I can guarantee that none of the rest know. Now they might be quite happy to vote in favour without knowing what it is that they are voting, we are not.

HON CHIEF MINISTER:

Mr Chairman, I tend to wonder what it means but I am not going to fall into the trap that the hon Member is quite clearly laying, of the device that he thinks he has invented, of getting us to debate line by line the UK legislation by means of debating it because it is referred to. I am perfectly well aware of the contents of the fourth Schedule of the 2004 Regulations and all the references to Gibraltar in all the other pieces of legislation, and the fact of the matter is that we are not debating that here today. We are debating a Bill which says that a declaration of local connection is what the UK has said it means, and we are not free to change that. So a debate on whether the hon Member understands it or does not understand it, or wants to understand it or does not want to understand it, is not a debate on this Bill. The hon Member can say I vote against because I am not just accepting the UK making laws for me. But there is no debate on a Bill when we are not at liberty to alter the content of the Bill even if he disagrees with the content. Even if I disagree with the content. The consequences of this House disagreeing with the content of this Bill, at least in areas such as this unlike the broadcasting areas where I have given him an indication there is more leeway, is that we cannot take part in the European Parliamentary Elections. Because the position of the United Kingdom is, these are the terms upon which Gibraltar has been enfranchised. The United Kingdom has not said, hang on, would Mr Caruana and Mr Bossano please tell me what they, the legislature of Gibraltar would like the law to be in order for them to vote. The hon Member knows this, I am not telling him something he does not already know but if he wants to go through the theatre of having this debate for the benefit then I am perfectly happy to have it. I said at the First and Second Readings that this was the case and that is the position, and therefore, it is now clear to the hon Member that the Government are not going to debate with him, at the Committee Stage of this Bill, the content of United Kingdom-made laws for Gibraltar, which we are not making in this House today, which nothing that we are voting for in this House today can influence as to whether it becomes or does not become the law of

Gibraltar and which is not law of Gibraltar or not law of Gibraltar by reference to anything contained or not contained in this Bill. That is the debate that the Government are not willing to have with the hon Member on the consideration of this Bill. If the hon Member wants to have with the Government, which I am perfectly happy to have with him, a debate about the merits or lack of merits, the virtue or lack of virtue of the electoral law affecting Gibraltar generally, in relation to the European Parliamentary Elections, he is perfectly free to move a motion on that subject, which I will then happily debate with him but I am not going to allow him to convert a debate on these 62 pages of local legislation into a debate on laws that will apply to Gibraltar, not by virtue of what we are doing in this House today or some other day, but by virtue of the legislative process of the United Kingdom for Gibraltar.

HON J J BOSSANO:

Mr Chairman I find it very odd that the hon Member should say that he knows what it means and then he simply reads out the words that say that in order to find out what it means we have to go to the United Kingdom legislation. He says he has read it all, he understand it all, but is not willing to tell the House what it means. I find that quite extraordinary and I have to say without calling him a liar because that would be unparliamentary language, that I have great difficulty in believing him when he tells us that he knows. I do not believe he knows. If he were to say to me, "look I have only seen this twenty-four hours before you did and I have not really had the time to look into it and digest it", I will understand him. But the truth of the matter is that we are saying here in our law that the declaration of local connection has the meaning given in paragraph 12, this will now be passed by the Government, the words declaration of local connection will be part of the law of Gibraltar, and what it means, the people who have passed it do not know. That is a reality other than by going to the United Kingdom Government, or going to the United Kingdom Regulations and deciphering what it means. The only reference that I have been able to

make out is that it seems to be about patients in a mental hospital in Gibraltar, period. Now if it is not just that, if there is more, because I remember the Chief Minister talking previously about people being homeless being the ones who make the declaration of a local connection. In fact, in the earlier part of this debate on the actual clause, he said the people homeless in Gibraltar were no different from the people homeless in the South West region. This definition is exclusive to Gibraltar and therefore we cannot support and vote in favour of something when in fact the Government claim that they know exactly what it means, but that it refuses to share the information with us in the House. My amendment therefore would be to delete the declaration.

HON CHIEF MINISTER:

Mr Chairman, the hon Member can think entirely what he likes about what he thinks that the Government know or do not know. I can tell him that he is completely mistaken.

HON J J BOSSANO:

Well, I wish he would explain it.

HON CHIEF MINISTER:

Well let me just give him a little titbit. Let me just tease him a little bit in a way that might persuade even him that I am much more familiar with the content of the fourth Schedule than he thinks. He has now said three times, I let the first two pass, he has now said three times, "and the Chief Minister said in his second speech address that this related to homeless people and it does not relate to homeless people it relates to people in mental homes". So where does he get this reference to homeless people from. Well look, I suggest that he reads clause 12 that he has been quoting liberally, I suggest that he

reads paragraph 12 sub-section (2)(c) of the clause that he says that I am ignorant as to the provisions of and he will see that it refers to a person who does not fall within paragraph (a) or (b) and is not otherwise in legal custody and who is not for the purposes of section 16(1) resident at any address in Gibraltar, namely "a homeless person". This is just a small teasing indication for him that the Chief Minister is much more familiar with the provisions of the Schedule than he seems to give me credit for.

HON J J BOSSANO:

Well, then I regret that if the Chief Minister is much more familiar, he allows debate in this House to continue unnecessarily because he refuses to share the information with the rest of us. I am sorry.

HON CHIEF MINISTER:

No Mr Chairman, because I am not willing because having done it once I would be obliged to do it in every line. It is quite clear, it is now quite clear what the hon Member's animus is towards this Bill and towards this process, and having allowed him to lure me once into a wholly inappropriate debate which does not arise on this legislation, I would then have to do it on every line thereafter that he subsequently chooses to provide, and I am not willing to submit to that process.

HON J J BOSSANO:

Mr Chairman, I doubt if the Chief Minister submits to any process except perhaps when he is up against the Foreign Office. I think in Gibraltar he never does anything he does not want to do, it is everybody else that has to do what he wants. We all know that, so I do not think he runs any risks that because he may be tricked, although I thought he was teasing

me and not the other way round, he has just been tricked by me he says, by me into giving an explanation he is going to have to do it with every other line. Maybe I will be able to persuade him or provoke him into doing it occasionally sometimes and not others. But certainly I do not think that he should assume that there are all these sinister motives. I really believe we ought to be given explanations if he has information that we do not have and I regret that he does not feel he needs to do it.

MR CHAIRMAN:

Would it be all right if I said to now vote on this. It is up to you.

HON CHIEF MINISTER:

Let us ask the Opposition to decide.

HON C A BRUZON:

Vote on what, on that particular sentence?

MR CHAIRMAN:

Vote to delete the meaning of declaration. Those in favour of the amendment.

Question put.

For the Ayes: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

For the Noes:

The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

HON C A BRUZON:

Mr Chairman, I would like to say to the Chief Minister that I cannot afford to have a lawyer to explain to me all the aspects of the law. In this House I have a duty to perform and as far as my capabilities allow me, to understand as far as is reasonably possible what we are legislating on. So I would request the Chief Minister and his Legislation Unit to explain to me in the simplest possible terminology what is the meaning of full register, because like my hon Colleague the Hon Mr Bossano has explained, it is indeed, and I am just talking not about the UK law but about what is contained in the green papers that have been given to us for discussion concerning this Bill.

HON CHIEF MINISTER:

I am perfectly happy to answer the hon Member's question which arises entirely.....

HON C A BRUZON:

I have not finished, but what I would like to suggest is that if the Legislation Unit were to give us a simple explanation under the section interpretation, because as I move, full register has the meaning given in paragraph 41, section 45(1). If I read what it

says there section 45(1), at the time when the Registration Officer publishes a version of the register under paragraph 11, so section 11 paragraph (1) or (3) above, and in brackets it says full register, he shall also publish a version of the register under this paragraph, in brackets the edited register. So we have two concepts there, edited register and the full register, which as far as I am concerned does not give me an explanation. Mr Chairman, I think it is important that the elected Members not only have the chance to be given explanations, but if we have to vote on this it is important that we use the simplest possible terminology, so that the humble members of the House who are not lawyers will understand it and will be able to vote on something that makes sense to them.

HON CHIEF MINISTER:

Well Mr Chairman, I am sorry, I really cannot think of simpler terminology in the words full register. I am perfectly happy to explain it to the hon Member again, because I explained it at the time of the Second Reading, but as it clearly is an issue that arises from the legislation that we are debating, it is a perfectly, perfectly reasonable issue for the hon Members to raise, although I have to say, Mr Chairman, it is not for the Government to explain. The Government have to explain the principles of the Bill and it is usually the Opposition that reads the Bills and forms a view as to whether they support the Bill, do not support the Bill, want to move amendments, the idea that it is the Government's job in the floor of parliament to explain to the Opposition what ordinary simple words in the English language mean, is not a process that I have ever experienced in this House before but I am perfectly happy, without wishing to set any new precedent that might last another 300 years, I am perfectly happy to explain again to the hon Member the concept of the full and edited register. The hon Member will I am sure recall as soon as I start with the explanation that I said this at the debate yesterday. I gave this explanation yesterday.

The full register is the register which contains the names of everybody that has been put in it, and one can get on it by responding to the canvas when the Registration Officer does a canvas or by some of the other means of alteration of the register at different times other than canvas time, which are provided for, that is everybody's name, everybody that gets onto the register, that is the full register. The edited register is, as I explained yesterday, the full register minus those people who on the canvas form have opted to be excluded from the publishable register. Remember I explained to him about data protection. In other words, one of the rights that the data protection legislation gives us all as citizens is the right that information about us, except in circumstances set out in the Data Protection Ordinance, that information about us should not be published in documents by otherwise. The fact that I have got a list with his name and address on it, which is what the registration list would be, does not entitle me to publish that and give copies of it to all and sundry because that document that I am publishing that has details about him, name, address, et cetera, is information that he is entitled to decide whether the State should publish or not publish. So when eventually as he will get very soon, he gets his canvas form from the Registration Officer in his household, he will see that one of the questions that he is asked to answer on it is do you want this information, this might not be the way the question is formed, but the question to the effect of whether he wishes to consent or withhold his consent to this information being published, his name, his address, whatever gets into the register. If he says I consent or if he does not tick the box that is the withholding of consent, his name can go into the full register, the name goes into the full register but if he says no I do not consent, I do not want my name published in any list, then he will be left out of the edited register, and the only register that the Returning Officer may publish at large is the edited register. So the edited register is the full register minus all those citizens who exercise their right to choose not to have their names published by the Returning Officer. When one goes to vote one can vote because the full register is not published, it is made available to the people listed in the Ordinance that we debated yesterday and no doubt we shall come to again later today, but

it is not published to anybody who wants one. The edited register which only contains the names of those people who do not mind their names being published, that edited register is published willy nilly at large, and that is the difference between the full register and the edited register. One is a free publishable version and the other is the full non-publishable version and the difference between the two is the choice made by the individual citizen as to whether he wants his name published or not. I hope that that explanation is clear to the hon Member.

HON C A BRUZON:

Of course I understand the meaning of full register. When I started to get into trouble is when I started going into the different sections of the Bill. It might have been better just simply not to have put it in there because we all know what full register means as far as the English language is concerned. What started to worry me was having to go through different sections of the Bill but I thank the Chief Minister for his explanation.

HON DR J J GARCIA:

Mr Chairman, I want to elaborate on the point made by my Colleague Charles Bruzon. This is one of the points that I flagged during the Second Reading of the Bill. There is a two-step process before one gets to what the definition actually means. I think my hon Friend has also made the point that it might be better to actually have the definition of full register where all the other definitions are in the first paragraph of the Schedule and suggested amendment, which I flagged in Committee Stage, was that perhaps where it says full register it could say full register means a version of the register published by the Registration Officer under paragraph 11(1) or (3) of this Schedule.

HON CHIEF MINISTER:

It would clarify nothing, Mr Chairman, one would still have to read the whole of the sections to understand what the full register is. There are some things in life that are a little bit complicated and cannot be reduced into two or three words, there are lots of laws in Gibraltar that are not easily understandable by the average citizen. The comment that the Hon Mr Bruzon makes that he is only a layman and not a lawyer and cannot easily navigate his way around the laws with immediate understanding, frankly is something that could be said of 95 per cent of the citizens about 95 per cent of the laws. That is the reality of the nature of legislation. Most of them are not drafted, some might say regrettably, are not drafted in a way that are necessarily most easily understood. There is an organisation known as the campaign for Plain English which firmly believes that no one with a legal background should ever be allowed to draft any document at all that anybody else might ever be required to read and understand. There may be some virtue, it may result in a significant loss of income for some people who dedicate themselves but that is not unique to this Bill. This Bill actually is relatively straightforward, that to understand a particular aspect of it one has got to read more than one clause does not make the Bill complicated or badly drafted or anything of that sort, I think that is inherent in the concept of legislation. I just say to the hon Member that we do not intend to accept his amendment to have a full definition in the definition section and the only reason why we are not agreeing to his amendment is that it would have to contain more or less what it contains in the sections that they say is too complicated. There is no simple way of saying what the full register is.

HON F R PICARDO:

I think the proposed amendment is actually much more straightforward than the Chief Minister suggests. It is just that the definition clause should say full register has the meaning

given in paragraph 11(1) and (3) below and that the definition should be there instead of 45, which then bounces one back to 11. So one goes to the definitions section, section 45 back to 11 and rather than do that we should just say, full register has the meaning given to it in 11(1) and (3), there should be there the brackets and then the comma before register, and then 45 gets amended to simply say, when he publishes the full register he shall also publish the edited register, and there we find a further definition of edited register. It could be just so that we do not have to do ping pong across the Ordinance to get the definition.

HON CHIEF MINISTER:

Yes Mr Chairman, it really is perfectly possible to do what the hon Member suggests. This law is not going to be read by people short of three seconds, which is all that they will save by the amendment proposed by the hon Member, which is of course perfectly viable, saves somebody three seconds, in other words, the definition section refers to section 45 then turn to section 45, it immediately says refers to section 11. Of course one can eliminate one of those two steps and go straight to section 11 and one saves three seconds. Well, fine, I am not sure it is worth spending 30 minutes debating a point which is designed to save just three seconds. I would be perfectly happy to accept that amendment with the caveat that the Government do not think actually that it is necessary but because it does no harm we will accept it. It really is quite simple, the reference to paragraph 45(1) should simply read paragraph 11.

HON F R PICARDO:

The definition of elector is I think in the wrong place, it needs to move up one space to just under the definition of election, that would put it in the right place alphabetically. That definition is going to be added to by the Schedule so the whole definition will actually include the words after the word “age” “or subject to

16(1)(A) of the 2003 Act, those shown in the register as a relevant citizen of an Accession State for the date fixed in the poll”. Now I cannot find in the edition of the 2003 Act that I have, a (1)(A). I am using the Butterworth Edition of the Act, otherwise there may be a problem, I am just bringing to the attention of the draftsman the fact that I think there is a problem with the cross-referencing there.

HON CHIEF MINISTER:

Mr Chairman can we return to that one just a little bit later.

HON J J BOSSANO:

Mr Chairman, on the question of the overseas elector and the Overseas Elector Declaration, the overseas electors refers to the provisions of the principal Ordinance in section 16(2) of the 2003 Act, which deals with who may vote in Gibraltar. As I read what is in the UK law and what is in the Gibraltar law that we have got before us, this overseas list is supposed to be the list of Commonwealth citizens who are not currently in Gibraltar but who had been included in previous registers to vote in previous European Elections. None of which exist of course. I cannot see why we have to make all these provisions in our law, certainly none of this will apply in the current election. Given that we are talking about legislating as we are with a deadline, do we really need to be putting all these things at this stage in the laws of Gibraltar, where we are saying, for example, if one goes to page 24 and we have overseas elector and service voter, we are laying down all the information that has to be provided by people who presumably do not exist. If I have read the UK provision correctly, we are talking about people who have been registered in previous registers in the 15 years ending with the date of the new register. If the new register comes up in say April, we were supposed to be going back 15 years from April and seeing who was a Commonwealth citizen who was in Gibraltar in those 15 years and voted in EU

Elections or had the right to vote, and has lost that right, and that is what the overseas list has become, if I have correctly interpreted this. Well of course we know that that is not possible, none of that can happen. There are no previous elections and no previous registers. If that is not what these provisions are for then perhaps the Government can inform us what it is that this is for. I am raising it at this stage simply because, although we shall want to say other things about that when we come to the particular provisions in the law, this is the first reference to it and I do not know whether we ought to be doing something to remove the references now. I know that in the UK Act it says it, but in fact nothing is going to be done, nothing can be done. So before we propose the removal of these things we would like to know whether in fact the interpretation is correct or not.

HON CHIEF MINISTER:

Well the hon Member is right in that there is nobody who is going to be able to avail themselves of this on this occasion but we are advised that it should remain in the law because this will be the corpus of law going forward and over the period of time this may be so. In other words, between now and the next 15 years as these registers are updated and renewed, there will be people that will fall into the provisions of that regime.

HON J J BOSSANO:

Well the people that might fall into the provisions I will agree that in Gibraltar's case would be Commonwealth citizens, not other EU nationals. Commonwealth citizens who would have left Gibraltar after these elections will continue to be able to vote in the Gibraltar EU elections by post and they will become the overseas voters.

HON CHIEF MINISTER:

The regime as to overseas electors and what that regime is for and who can avail itself of it, is set out in paragraph 14 of the 2004 Regulations. It is the law. There is nothing that we can change about that however much he and I may debate it. He is right in saying that it is of no practical use now for the 2004 Elections but by the next elections in 2008 it will be. There will by then already be a register, there will be four years during which people will have been able to accrue the right to be, this is not just for people who were here 15 years ago, it is a period up to 15 years. So by the time of the next register there will be people who may fall to avail themselves of these provisions. The only occasion in which it does not arise is on the occasion of compiling the first register.

HON J J BOSSANO:

Yes I am aware of that, that is why I am saying, given that it is not going to happen for the next four years in the time we have had available to us there is a limit to what we can say then. It is all very well for the Chief Minister to say well look but there is nothing we can change anyway, because it is the same argument. That presupposes that everything here is word perfect.

HON CHIEF MINISTER:

But it is not here Mr Chairman, this is what I cannot get the hon Member to understand. The regime for overseas elector is not in here. It will be when it eventually is promulgated in the 2004 Regulations and regardless of whether we postpone here or whether we do not postpone here, it will be available to people in relation to Gibraltar by virtue of the 2004 Regulations. This Bill is not implementing the overseas electors regime for Gibraltar.

HON J J BOSSANO:

Well I hear what he says but of course this Bill actually says, on page 24, contents of overseas elector's declaration, and it lays down things that have to be done in addition to what is in the UK Regulation, which we are deciding here.

HON CHIEF MINISTER:

No, it is not in addition.

HON J J BOSSANO:

Ah, no? Well that is what it says here. It says in addition to the information required by paragraph 15(3) and (4) of Schedule 4. Well if addition does not mean in addition then we need to have an amendment and say what it means. On page 24, the top of the page 14(1).

HON CHIEF MINISTER:

No, it is not necessary to delete it just because it is not going to arise between now and June. That is what the hon Member is saying, to the extent that he is not saying that it is just a repetition of the debate on locally connected persons which he knows I am not going to have with him. The only new dimension to his point here is that it does not arise on the occasion of this first election.

HON J J BOSSANO:

That is one new element, the other point that I made which he answered incorrectly before was that he said in any case it is irrelevant because it is the same argument again. We cannot change here because here we are not providing anything, it is

all provided in the UK Regulations. I then stood up and said to him no that is not correct because it says in addition to what is provided in the UK Regulations we are providing things here. Now if we are doing something here in addition to the UK Regulations then presumably we are free to do it or not do it or do something different. Otherwise it is not in addition. Now if it is in addition and it does not apply in this election, why are we legislating to do something in addition that will apply in four years time. Is it not better to look at it in slower time and bring, if necessary, in a few months time an amending piece of legislation which will give us more time to look at this, given the fact that we have had very little time to look at something that we would like to have, we have understood the argument that the Government have put as to why we find ourselves in this position. They waited until the last possible minute, they have been waiting for the United Kingdom to do its bit of the legislation, the bit of the legislation has come so late that even now it is not UK law and we are doing things in anticipation of it becoming UK law, but it has to be done by today because if it is not done by today, the Registration Officer has got a problem of doing the register in time for this year's election. We understand all those arguments but none of those arguments apply to the overseas list because there is not going to be an overseas list this year. So I do not see why we cannot, in the case of the overseas list, have more time to look at it and we may find that we are happy with the way it is but it seems to me given that all those arguments that explain the need to do the job that we are doing in the timescale that we are doing it, which we cannot dispute because look it is just a physical impossibility for the Registration Officer to have everything in place for the elections in May if he does not start next week, then obviously we have to make sure that the law is there to give him the power to start next week. There is no getting away from that, but this is the one thing he is not going to do. It will not alter everything the United Kingdom says can be done, except that all that the UK says can be done cannot be done anyway, even if the law is there, because there is nobody that meets the criteria that enables them to avail themselves of it.

HON CHIEF MINISTER:

No Mr Chairman, the Government are not willing to delete for that or any other reason, it is not willing to delete this provision from the Bill.

HON J J BOSSANO:

For that or any other reason, I suppose the other reason is sufficient that I should suggest it so that it should be deleted. There is another one which is the question of service voter, which means a person who has made a service declaration pursuant to paragraph 17 of Schedule 4 to the 2004 Regulations and is registered or entitled to be registered in pursuance of it. I move the deletion of the brackets and the words in it and the words in pursuance of it in the final line of that. I mean it does not alter the fact that that is in the UK legislation but I do not see why there is a need for us to say it. If we say a service voter means a person who has made a service declaration and is registered or entitled to be registered, it seems in our law what we are saying is something which does not need gratuitously to include the reference that it is being done pursuant to paragraph 17.

HON CHIEF MINISTER:

No Mr Chairman, the Government would not support any such amendment.

HON J J BOSSANO:

I take it the Government accept that that will not change the position if we do that amendment. It will just mean that we are not in fact condoning it.

HON CHIEF MINISTER:

No the hon Gentleman is not entitled to cross-examine me as to the reasons why Government make their voting decisions. The Government will not support the amendment that the hon Member has proposed.

HON J J BOSSANO:

Well, I was not cross-examining, it is not a skill that I have developed, probably the Chief Minister is thinking of his experience in court. All that I was doing was in fact questioning whether this was the explanation, given that on other occasions, when he has accepted amendments, he has said he is accepting the amendment even though the Government feel that the amendment does not alter the position. The amendment he has accepted so far he has actually volunteered that that was the explanation, that it did not change anything. So I thought maybe if he realised that this did not change anything either, he might be persuaded.

HON CHIEF MINISTER:

Can I just before we move on clear the answer that I owe to the Hon Mr Picardo about the alteration of the definition of elector for the purposes of the second Schedule. Section 16(1)(a) of the 2003 Act, which he says he cannot find a reference to 16(1)(a) in the Act itself, the reason for that is that it is introduced by Schedule 5 of the 2004 Regulations. Or will be introduced when they adopt it. I think I remember saying to the hon Members at the Second Reading that the UK had had to do this too in the Order that was approved in the House of Lords the other week. They had to approve a reference to the European Parliamentary Elections Ordinance 2004 even though we had not yet taken it and it was still not in existence.

Paragraph 1, was agreed to and stood part of the Bill.

Paragraphs 2 to 5 – were agreed to and stood part of the Bill..

Paragraph 6

HON CHIEF MINISTER:

Mr Chairman, the hon Member overlooked to point it out to me and I have overlooked to raise it, but I have given written notice to you. The Hon Dr Garcia may recall that at the Second Reading in the definition of 2004 Regulations, he suggested that they be sort of domiciled in the UK by adding the words “made or to be made” in other words that it should be clear that they were Regulations of the United Kingdom. Does he remember making that point? I would be quite happy to agree, we would be quite happy to agree to what he proposed by adding the words of which I have given written notice. In other words, by adding at the end “made or to be made under the European Parliamentary Elections Act 2002 and the 2003 Act”. Sorry I should have raised that before we moved on from clause 1. If the hon Member does not want to proceed with the amendment I am perfectly happy. I am advised it is not strictly necessary, but if he wants to maintain the amendment we are happy to support it.

HON DR J J GARCIA:

I think what I suggested was that originally when the Opposition was looking through the Bill we were not sure whether the Regulations were Gibraltar regulations or UK regulations. But it was not something we requested an amendment as such, if I remember correctly.

HON CHIEF MINISTER:

I fear his recollection is letting him down. He clearly made the suggestion. But fine, I am perfectly happy to drop it. I would not have made a note of it otherwise, I made a note from his speech on the Second Reading. The point that he made was that it says “2004 Regulations” means the European Parliamentary Elections Regulations 2004 and somebody might think that means regulations to be made in Gibraltar under this Ordinance by the Minister.

HON DR J J GARCIA:

We thought so.

HON CHIEF MINISTER:

No, no, but they do not exist yet. So the point that the hon Member was saying is, should we not make it clear, this is the point that I thought he was making, should we not make it clear that when they do emerge that they are UK regulations and not Gibraltar regulations.

HON DR J J GARCIA:

No Mr Chairman, it was in the context of our looking at the Bill and wondering whether these were going to be local regulations made under this Ordinance or UK regulations and that was the confusion we had when we were looking at the Bill. But at the time we had not received the amendments.

HON CHIEF MINISTER:

I have given notice of the amendment and we will proceed with it.

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

Paragraph 7

HON J J BOSSANO:

Mr Chairman is there a particular reason why 7 says a fine not exceeding £1,000 given that everywhere now it has got levels?

HON CHIEF MINISTER:

Only because that is the level of fine that there is in the UK which we wanted to replicate and none of our levels correspond to £1,000. None of the standard levels.

Paragraph 7, was agreed to and stood part of the Bill.

Part 2

Paragraph 8 – was agreed to and stood part of the Bill.

Paragraph 9

HON DR J J GARCIA:

Mr Chairman, also on the Second Reading I remember querying the use of the word “general” in European Parliamentary General Election in 9(2)(b). And I remember them saying they would get back to us on that.

HON CHIEF MINISTER:

Yes, I think that the point that the hon Member was making was that there could not be any by-elections. I am advised, although it had not occurred to me at the time he made the point, I am advised of course that there can be a by-election. There can be a by-election when seats are won by candidates whose list is not long enough to fill the vacancy, or when an independent candidate wins the seat. Therefore, although I do not think it has ever happened, and although it is certainly very rare even if it has happened, it is theoretically possible for there to be a need for a by-election for the European Parliament.

HON J J BOSSANO:

Is there a particular reason why in the first line, it says the Registration Officer shall conduct a canvas in relation to the area for which he acts. I think that kind of wording appears to be lifted out of the UK where in the region there are different areas. I mean it almost suggests that there are bits of Gibraltar for which he does not act.

HON CHIEF MINISTER:

On this occasion I think I agree. That is lifted obviously from the UK where there are different registration officers for different areas and here we have just one registration officer. So there we could just have the Registration Officer which is the only one we have, and I think we can safely delete the words “in relation to the area for which he acts” and add Gibraltar.

Paragraph 9, as amended, was agreed to and stood part of the Bill.

Paragraph 10

HON J J BOSSANO:

Mr Chairman the registration officer is required by paragraph 10 to determine all the applications that are made to him in accordance with the requirement of this Schedule in our legislation or by virtue of paragraph 6 of Schedule 4 and this says that where in connection with a canvas under paragraph 9 of Schedule 1 to the European Parliamentary Ordinance 2004, our law, this is the UK Regulation talking about us, the form completed in respect of any address specifies any person as a person entitled, who is entitled to be registered and that person is not for the time being registered in respect of that position shall be deemed as having made on the canvas date within the meaning of the Ordinance, in question an application for registration in the register in respect of that address. I do not know why this is being done in such a complicated way. Because what we have here is a situation where the duty of the Registration Officer is triggered by this Schedule or by virtue of paragraph 6, and paragraph 6 sends the person to our Ordinance and tells him to look at paragraph 9 of this Schedule.

HON CHIEF MINISTER:

That is the reverse of what the hon Member has been complaining about all day.

HON J J BOSSANO:

I know. I know it is the reverse, but it does not make it any better, because we send the guy off to London.

HON CHIEF MINISTER:

The reverse must be better

HON J J BOSSANO:

No because what we are doing and I am asking for an explanation, is that we are saying that the Chief Minister might be right that it is the reverse, but what we are saying is if one wants to know whether one is entitled under (b) one goes to the UK law and then the UK law says go to the Gibraltar law to find out. Now why do we not send him to the relevant paragraph ourselves?

HON CHIEF MINISTER:

I suspect that it is because it relates to people who are treated as having made an application by the 2004 Regulations.

HON J J BOSSANO:

No, it says where the person in connection with the canvas under paragraph 9 of Schedule 1 of the European Parliamentary Elections Ordinance, ours. The person that is treated by virtue of section 6, one goes to paragraph 6 to find out who is this person, and paragraph 6 tells circumstances in which an application for registration in Gibraltar in the Gibraltar register may be treated as having been made. It says "where the person has completed the form, in accordance with paragraph 9 of Schedule 1". And paragraph 9 of Schedule 1 is a paragraph which has voted. The maintenance of the Gibraltar register canvas. So I am really totally mystified why it is we have to have a reference here to the United Kingdom legislation and the United Kingdom legislation refers us back to the paragraph we have just finished voting, the one before, where we turn and it tells us to come back to 9. Why cannot (b) say what the UK

Regulation says. In this case when all the regulation says in this case in the United Kingdom is that if the guy fills the form under the provisions that we have made in 9, and he is not in the register and he can show that he has filled the form, presumably because there has been an oversight, then he ought to be treated as if he was in the register. At least that is my reading of it. He shall be treated as having made on the canvas date within the meaning of that Ordinance, that is this Ordinance the Gibraltar law, an application for registration in respect of that address.

HON CHIEF MINISTER:

This is another example, our Bill does not establish who has a right to be registered. This is a change of address provision basically. The provisions of paragraph 6 of the fourth Schedule is part of the definition of eligibility for registration. Our provisions are about the maintenance of the register but our provisions do not contain the entitlement to register. The entitlement to register is contained in the UK legislation and therefore, what (b) is saying is the Registration Officer shall determine all applications for registration which are made to him in accordance with the requirements of this Schedule, or treated as made to him pursuant to paragraph 6. In other words, or which arise from an entitlement to registration set out in paragraph 6, ours not having the entitlements for registration. Paragraph 6 of Schedule 4 is an entitlement to registration. Our Bill does not contain any entitlement to registration even for him and me.

HON J J BOSSANO:

Well that is not how it reads to me because in fact if that were indeed the case, why is it that in the case of (a) the Registration Officer is able to put in the people who meet the requirements of this Schedule.

HON CHIEF MINISTER:

Well, because in this Schedule the requirements of this Schedule are to put in people who are entitled under the provisions of the 2004 Regulations. That is what the rest of the Schedule goes out to say. So the entitlement to get onto the Gibraltar register is always to be found in the 2004 Regulation. What our Bill does is provide for the maintenance of the Gibraltar register and the administration of the Gibraltar register, in favour and in respect of people whose entitlement arises under the 2004 Regulation.

HON J J BOSSANO:

Yes but the entitlement of that person here is that the person has in fact filled in the form in the canvas. When one reads paragraph 6 it says "where in connection with the canvas under paragraph 9", which is the paragraph we have just approved, the form completed in respect of any address specifies any person as a person who is entitled to be registered, that is the form is what specifies him as a person to be entitled according to this, our form, and the person is not for the time being registered in the register in respect of that address, he shall be treated as having made on the canvas date within the meaning of our Ordinance, an application in the register in respect of that address. Now is the Chief Minister saying that if that text was in our provisions in (b) the person would not be able to be registered?

HON CHIEF MINISTER:

Yes, because people in the circumstances described in 6 would not fit, would not be entitled for registration under the other eligibility provisions of the 2004 Regulations, which are invoked by our Schedule. In other words this is a modification by way of widening of registration eligibility. In other words, even though one is not resident at the address that appears on the canvas,

the individual shall be entitled because he shall be deemed to have applied for registration in respect of that other address. So this is a change of address provision which widens.....

HON J J BOSSANO:

The word “resident” does not appear. The Chief Minister said even though we are not resident in that address.

HON CHIEF MINISTER:

No I am not saying that. I am saying that these provisions for what happens when a form is completed in respect of any address in respect of a person who is entitled to be registered in the register, and that person is not for the time being registered in the register in respect of that address, in the circumstances described in (a) or (b), but for this paragraph 6 he would not be entitled to be registered.

HON J J BOSSANO:

Well he would not be entitled to be registered if we do not give him the right.

HON CHIEF MINISTER:

But all the rights are here.

HON J J BOSSANO:

No, no but Mr Chairman, 6 in the UK Regulation says, “in connection with a canvas under paragraph 9” which is the canvas that our Registration Officer has to carry out by the beginning of next week, right. The form completed in respect of

any address specifies any person as a person who is entitled to be registered, so we have got somebody who is included in the form as being entitled to be registered not, and that entitlement at that point does not flow from paragraph 6. Paragraph 6 is simply describing somebody who has filled in the form in accordance with 9 in our law. That is all it needs to say. And then it says, “and the person is not for the time being registered in the register in respect of that address”. To be quite frank Mr Chairman, I am not quite clear what (b) does to remove the person from the register in (a), because it has nothing to do with being resident and there is no mention of residence, and there is no mention of eligibility. The person is deemed to be entitled under (a) because he fills up the form.

HON CHIEF MINISTER:

No, the hon Member is not reading the paragraph, he is not reading the paragraph properly. Let us just illustrate it by reference to an example in the conduct of the canvas. Remember that (b) is a person who is not for the time being registered in the register. So this does not arise in the first registration, this cannot arise in the first register. So let me give an example, canvas forms are not sent to individuals, they are sent to properties, that is the way that the canvas is done for European Elections. It is sent to property holders. The property holder then has to fill up the canvas in respect of anybody resident in the property to which the canvas form relates. The form comes back, let us use me as an example, 10/3 Irish Town, I fill in the canvas form that says my oldest daughter Georgina Caruana in respect of 10/3 Irish Town, let us say that this is the second register, there has got to be a register in existence so it cannot be the first one. When it comes to my sending in the canvas form, I am declaring her for the second time round so to speak as being resident at 10 Irish Town because she is now living with me. But when the first register was done, in the previous register she is under some address or not at that address. This is a change of address provision because at the time she found herself a flat in Ocean Heights or

something. She was not then, this is in respect of people who are entitled to be registered, that is (a), but who are not in the existing register shown as being in that address. So when I send in the canvas form showing a person living with me at home who in the last register was registered under some other address, then under this, that person the person who has now moved in with me but who was at the time of the last register registered under some other address, that person shall be treated as having made on the canvas date, an application for registration in the register in respect of that address. That is what it means.

HON J J BOSSANO:

That presumably applies not just to people who change addresses but to everybody who enters the register for the first time after the first one. Because everybody who appears in the second register, we had an example in the referendum, where 3000 people appeared who were not there in the previous elections in 1999.

HON CHIEF MINISTER:

It is a deeming provision, in other words, when a canvas form comes back with new information on it, with a new address for somebody who is already on the register in a different address shown under a different address, that shall be deemed to be an application for registration in the register under that new address.

HON J J BOSSANO:

Yes but the eligibility surely does not flow from this deeming provision. What we have here is having just voted how the Registration Officer shall conduct the canvas under section 9, what do we have? We have a situation where he conducts the

canvas the day after this provision comes into force. So it means that in fact the moment this law comes in.

HON CHIEF MINISTER:

There is nobody caught by this first time.

HON J J BOSSANO:

There is nobody caught by this no. The first time round.

HON CHIEF MINISTER:

One cannot be in the previous register under a different address, there is no previous address.

HON J J BOSSANO:

Well, I do not think it says in the previous register under a different address. It says that the person is not for the time being registered in the register in respect of that address, the present one. That does not mean that he is in a different one. He might not have been there at all.

HON CHIEF MINISTER:

But there is not a register for any of us to have been on at all. Until the first canvas is done there is no first register.

HON J J BOSSANO:

Well assuming that the provision in (b) which is that the person is not for the time being registered in that register, does not apply to anyone because there is no register. What I am saying, this is not that it is deemed to be there because he has changed address because it does not say anything about changing address. It seems to me what this would mean is that in the second canvas right at any time after the first register there are going to be additions to the register made or amendments to the register made. The amendments will be the people who have shifted and the additions will be the people who are here for the first time. The people who appear for the first time will be in a form and they will not be with that address in the existing register because they are appearing for the first time. So it is not just a question of people changing. It is a question of people either attaining the age when they can be entered or coming to Gibraltar from outside and acquiring that right as EU nationals, for example. So anybody that takes up residence in Gibraltar between one canvas and another canvas will appear in the second one, in the second register. Now I cannot understand why his eligibility to be there is somehow undermined by the fact that he was not there the last time round, and therefore requires a provision deeming him to be entitled. I do not see anything here that gives him an entitlement that he did not have already. Therefore if the whole argument is that the reason why we are referring to the United Kingdom law is because entitlement flows from the UK law and not the Gibraltar one, then I am afraid that I do not think that that is a possible interpretation of this. Here we have the situation where we say the Registration Officer immediately after we pass this, will hold a canvas and produce a register for these elections. Then at some time in the future he will hold another canvas whenever he sees fit, or before or in October in four years' time before the next EU general election. When that happens and he gets the forms back he will find that there are people in those forms who are not in the register produced in 2004, that is a perfectly normal thing. Why is it that in order to be able to include them in the register he needs to have this provision in the UK Regulations which our law sends

him to and their law sends him back to us. I mean, if the person's right to fill in the form, nothing that I have read either here or in the UK says one cannot fill in the form unless one has filled it in the last time. No, and therefore why do we say if he fills in the form and he did not fill it the last time we deem him to be at that address. Why should we not deem him to be at that address. That is where the guy is and that is what we are doing.

HON CHIEF MINISTER:

No it is not. We are not deeming him to be at that address,

HON J J BOSSANO:

He shall be treated as having made on the canvas day, within the meaning of the Gibraltar Ordinance an application for registration in the register in respect of that address.

HON CHIEF MINISTER:

In other words the new address, the address in the latest canvas.

HON J J BOSSANO:

The latest canvas.

HON CHIEF MINISTER:

Absolutely. In those circumstances the Registration Officer has a registration application in front of him and the United Kingdom has chosen to regard the definition of the circumstances in which there is a registration in front of the Registration Officer as part of the eligibility requirement and has wanted to anchor them

in the United Kingdom legislation. The law refers you to the UK and the UK law then refers you back but as far as they are concerned the definition of when a registration application is a registration application is contained in their law.

HON J J BOSSANO:

But the point that I really fail to understand is if an EU national comes to Gibraltar, takes up residence in Gibraltar, meets the criteria for voting and fills up the form, what on earth does it matter in terms of accepting him to be in the register, that he was not there the last time.

HON CHIEF MINISTER:

But all that is provided for under the UK law.

HON J J BOSSANO:

Well not in anything I have seen. I mean this is what I am saying. I think we must not fall into the trap of thinking that these things are being done correctly and that therefore when we are questioning it and we are questioning the way we are doing things in our legislation, we cannot question anything they have done in the United Kingdom because they know what they are doing, when we come to the service voter I will point to the hon Members that there, there are some very odd things as well. Certainly we do not see any logic at all and we see no reason why we should not say, we do not even think there is a need for this frankly but if there is a need for this we do not see why the Registration Officer cannot be told in our Ordinance, "when you have done what you are being asked to do by section 9, in section 10 you accept the guy's application notwithstanding the fact that he was not there the last time round", Because this is all it seems to say. I do not see anything that would make the Registration Officer reject the person without this provision.

That is to say, the implication of this is that without this safety net, the Registration Officer would not have to accept a new addition to the register after the first one. Well look then the first one would be the only one because nobody could join it, because everybody that joins the second register is not going to be there in the first, and the people who join in the third will not be there in the second. In my laymans knowledge, it does not seem to be good legislation. I really believe that if there was a need for it there is absolutely nothing stopping us telling the Registration Officer to accept such an application but I cannot see that he would have any choice. We are talking about somebody, this is not widening anything. This is not treating somebody who is not residing in Gibraltar with a right to be here. This is simply saying the only difference between (a) and (b) is that (b) is the guy that is not there in the first register that we will be doing next week. Well so what. The implication of this is that in the four years time the Registration Officer would have to produce a register which would not include anybody new, but for the provision in (b). That cannot possibly be right.

HON F R PICARDO:

Still on the same paragraph, in sub-paragraph (8) I note to an extent I am going to be delving into the arguments that have been running across the House, but only very simply. Over the page on page 20 the word "resident" appears and says "resident means resident for the purposes of 16(1)(a) of the 2003 Act", which having I think personally that one needs to delete the inverted comma after the word "at", but having checked the Act what the Act says in 16(1)(a) is resident in Gibraltar. I wonder whether we could not just say there, resident means resident in Gibraltar, I think that would be much easier in that particular instance. I do not think it raises any of the issues of having to seek HMG's pleasure to enable us to do that, I think it is a very straightforward and unnecessary cross-referencing exercise there. So I move the amendment that that sentence be amended to say resident means resident of Gibraltar.

HON CHIEF MINISTER:

No the Government are not willing to consider applications for amendments of which notice might have been given but has not been given and I do not know whether the amendment has the innocence or the lack of read-across elsewhere that the hon Member is asserting. It is not worth taking the risk for something which as the hon Member himself admits, is just to avoid one step of cross-referencing. In other words, for the sake of introducing a small degree of ease, I am not willing to make a legislative change without having a proper opportunity to consider whether it has other implications that I may not be able to think of here on the spur of the moment or which the hon Member may not for the same reason have been able to think of. As it is not an amendment that is necessary in order to secure the effects of the Bill the Government would not accept it.

HON F R PICARDO:

In that case I will have to lump it but move the amendment that the inverted comma at the end of the sentence be deleted.

HON CHIEF MINISTER:

It is not necessary to move amendments to remove unnecessary punctuation marks. There is a convention in this House that liberates the draftspeople from doing that before Bills are published as Ordinances.

HON F R PICARDO:

Yes I appreciate it, it is just that I am pointing it out in any way.

HON J J BOSSANO:

In sub-paragraph (4) we have got a provision that the person remains on the register, at page 18 and 19 which is paragraph (4), when the name of a person is entered in the register in respect of any address the elector is entitled to remain registered in the register in respect of that address until such time as the Registration Officer determines on the conclusion of a canvas under paragraph 9 above, that the elector was not resident at that address on that canvas date.

HON CHIEF MINISTER:

Yes on that same paper there is a (d) continuation of entitlement unless the Registration Officer discovers to the contrary. In other words the register is not invalid because it has people on it who actually do not know the address that they declare. The entry remains valid until such time as the Returning Officer positively discovers that the information is inaccurate as to address.

HON J J BOSSANO:

I see. So it means that unlike the elections for this House.....

HON CHIEF MINISTER:

The hon Member has got to recall that this is a rolling register. This is not a new register at every elections. The purpose of the canvas is to update the register not to establish a new one. So anything that is in the register, is in the register.

HON J J BOSSANO:

Therefore as long as people are not removed from the register they can exercise what, a postal vote or come back and vote here?

HON CHIEF MINISTER:

Until they are removed from the register by the Registration Officer, pursuant to one of the provisions entitling him to remove people, they remain with the entitlement that the existing entry gives them, whatever that entitlement might be. If they are in, certainly postal vote yes. Because everybody gets the right to postal vote.

Paragraph 10, as amended, was agreed to and stood part of the Bill.

Paragraph 11 – was agreed to and stood part of the Bill.

The House recessed at 6.25 pm.

The House resumed at 6.55 pm.

Paragraph 12

HON CHIEF MINISTER:

In paragraph 12 I have given notice of an amendment just to eliminate some superfluous language that has crept in there. Delete the words “regulations made under” in the two places where those words appear, once in (a) and once in (b) of paragraph 12(1).

Paragraph 12, as amended, was agreed to and stood part of the Bill.

Paragraphs 13 to 18 – were agreed to and stood part of the Bill.

Paragraph 19

HON J J BOSSANO:

In paragraph 19 we have got the service voters. Here it says that where the declarant in 19(2), the declarant claims a service qualification on the grounds that he is a member of the Royal Gibraltar Regiment, or the spouse of such a member, the service declaration shall state the rank or rating of that member and the service number of that member. My reading of that is that it is possible to make a declaration where the declarant is claiming a service qualification on grounds other than that he is a member of the Royal Gibraltar Regiment. If that is the case then the information required in (a) and (b) does not apply. Now I find that most peculiar because in fact in page 142, it says that the service declaration can only be made by somebody who is in the Gibraltar Regiment. How can you say where the declarant claims the qualification on the grounds that he is a member of the Royal Gibraltar Regiment when there is no other ground.

HON CHIEF MINISTER:

The service declaration procedure is in fact under paragraph 16 of the 2004 proposed Regulations, limited only in the context of the Royal Gibraltar Regiment. So the language where the declarant claims a service qualification on the grounds that he is a member of the Royal Gibraltar Regiment is just helpfully excessive language in that it reminds us that it is for a member, but it would be equally effective if it just stopped after the word “qualification”. It will be just as effective if it read “where the declarant claims a service qualification the service declaration shall state”, because the words in between are surplus wordage.

HON J J BOSSANO:

The point that I am making is that not only are they surplus but in normal English

HON CHIEF MINISTER:

No I do not accept that they imply the contrary.

HON J J BOSSANO:

I see. So if in normal English one says where a person does it on such a ground he has to do the following, does not suggest that where a person does it on a different ground he does not have to do it, even though there are no other grounds.

HON CHIEF MINISTER:

No it is reciting those grounds. Unnecessarily recites the ground upon which the service provision can be exercised. I accept it is unnecessary but I do not accept that it has the implication of suggesting that there are other parties other than the Royal Gibraltar Regiment who can, other grounds.

HON J J BOSSANO:

Although still in paragraph I am pointing out that in 20 it says the service declaration made by a member of the Royal Gibraltar Regiment as if it could be made by anybody else, although the Chief Minister says it does not say that. I would say that non-lawyers reading this would say well, a service declaration made by a member shall be transmitted to the Registration Officer. What about if he is not a member? The answer is well if he is not a member he cannot make a service declaration at all.

HON CHIEF MINISTER:

Mr Chairman, I accept the hon Member's analysis that the words are to the extent that the analysis takes us to the point where the language adds nothing to the phrase service declaration or Gibraltar Regiment. But I do not agree with him that the consequence of that correct analysis is the one that he draws. Namely, that somehow this might give somebody else rights that they are not intended to have or even to imply that there may be somebody else that has those rights.

HON J J BOSSANO:

Well it cannot give the rights because as the Chief Minister has pointed out this gives no rights to anybody anyway. The rights are given here. But it appears to be laying down conditions for a category of people, and by implication it suggests that that.....

HON CHIEF MINISTER:

I doubt that is the implication that is given. It is an analysis but not the consequence which he deduces by implication.

HON J J BOSSANO:

Well, we think it would be preferable to delete the words given that certainly some people can read it like that, because I read it like that, so it is quite obvious.

HON CHIEF MINISTER:

But so what if the hon Member has read it that way.

HON J J BOSSANO:

The point is that given that we have got this peculiar situation that reading the law of Gibraltar does not tell us much unless we also get hold of the UK law in fact.....

HON CHIEF MINISTER:

The laws were made in the UK.

HON J J BOSSANO:

Until I went to this which was given to us yesterday, when I saw that at the beginning I thought well look, it is quite obvious that the guys that are service voters from the Gibraltar Regiment have to put their rank and rating, and my original question would have been, what does that mean. Does it mean that if there is, for example, a service voter in Gibraltar who is somebody from another regiment, he does not have to, that was my initial reaction.

HON CHIEF MINISTER:

It is not discrimination against the Royal Gibraltar Regiment.

HON J J BOSSANO:

No, but that is how it looked originally. Until I got hold of this yesterday when the Government provided it to me and when I started going through it, I discovered that the definition of a service voter is a voter who is in the Gibraltar Regiment. So what we have is a situation where our law says if a person who is in the Gibraltar Regiment claims a service qualification on the grounds that he is a member of the Gibraltar Regiment, as if there was any other grounds on which he could claim it, or as if

there was any other person that could claim it, then he has to state the rank and rating and the service number. Well we think the law would be better drafted if it did not say that, if it just said where a declarant claims a service qualification the service qualification shall state the rank and rating of that member.

HON CHIEF MINISTER:

No, I would accept the hon Member's proposed amendment if leaving the words in had some unintended effect of altering the meaning or purport of the Bill. It does not do that. I accept that the section would mean the same if the words that he wants to delete were not there. I accept that, but leaving the words in do not alter the sense of the Bill except that somebody might draw the conclusion that he drew until he reads the 2004 Regulations, but it does not alter the sense of the Bill. The Government would prefer not to delete this language which relates to one of the sections that is agreed with the UK.

HON J J BOSSANO:

Whilst looking at the provisions on page 142 and 143 for service voters, I was somewhat surprised to learn that the arrangements for securing that everybody who has a service qualification shall be able to exercise this opportunity, shall be made by the Gibraltar Ministry of Defence.

HON CHIEF MINISTER:

Yes so was I. But as it sounded good I did not challenge it.

HON J J BOSSANO:

I see. But that is now, given that this is UK law and that the colony can no longer do anything to influence the colonial

power, we can in future refer to them as the Gibraltar Ministry of Defence.

HON CHIEF MINISTER:

It is still a draft.

HON J J BOSSANO:

Can I ask what is the position of UK servicemen in Gibraltar then, do they vote in the constituency from which they came?

HON CHIEF MINISTER:

This replicates the provisions in the UK where it is much more likely that servicemen will be moving around away from home, away from barracks, perhaps posted abroad. That is how it works there. A UK serviceman that is resident in Gibraltar, is entitled to be on the register just like everybody else just as a Gibraltar Regiment person who is resident in Gibraltar does not need this to get on the register. Only needs this if he is not in Gibraltar, or if Gibraltar were a bigger place not in Gibraltar at his address. In the UK it is possible to be deployed within the United Kingdom. Absent from Gibraltar is possible I suppose some of our people have been posted elsewhere.

HON J J BOSSANO:

So in fact the UK based workers in the MOD and servicemen would be included in our register.

HON CHIEF MINISTER:

Absolutely, yes. Just as other EU nationals.

Paragraph 19, as amended, was agreed to and stood part of the Bill.

Paragraphs 20 to 31 – were agreed to and stood part of the Bill.

Paragraph 32

HON DR J J GARCIA:

Mr Chairman, there was a point which I raised during the Second Reading of the Bill in relation to the definitions given in paragraph 32(5) of the Schedule, and that was the definition of the word “relative”, which means the husband, wife, parent, grandparent, brother, sister, child or grandchild. The suggestion that I made then was qualifying that by saying of voting age otherwise a child under the age of 18 could carry out the requirements of that particular sub-paragraph. They will remember that he was going to come back with some views on that.

HON CHIEF MINISTER:

Again this is an amendment which the Government do not believe to be strictly necessary but one that can be made for the sake of clarity. The way that we would propose to cover the point is after the words “grandparent” put the words “or (provided they are at least 16 years of age) a brother, sister, child or grandchild”. It does not apply just to the child or grandchild, the brother or a sister could also be underage. We have taken the view that 16, which is the age one can go to war, is old enough to sensibly do the things that this applies to, as opposed to voting age which is 18 years.

HON DR J J GARCIA:

We would be quite happy with that amendment.

Paragraph 32, as amended, was agreed to and stood part of the Bill.

Paragraphs 33 and 34 – were agreed to and stood part of the Bill.

Paragraph 35

HON DR J J GARCIA:

Again this was another point raised here during the Second Reading of the Bill in relation to the notices which need to be published, publicising that a revised edition of the register is going to be produced and the suggestion was to add a small (d) in 35(1) where it says (a), (b) and (c) and to include the local media, so that the relevant notices are also published in the local media as it is rather unlikely that people would read the Gazette or go and see where there is a copy posted on a notice board. That was a suggestion that I also made during the Second Reading and has the Chief Minister had a chance to think about that.

HON CHIEF MINISTER:

Yes, we do not intend to accept any amendment on the grounds that these are minimum requirements. The Registration Officer has an overriding obligation to ensure that there is publication of electoral related information. He is free, as I am sure he would, as he does in general elections which do not require him, to use the newspapers. He does and I suppose that it is up to the Registration Officer to decide what publicity a particular notice

he feels needs. This does not prevent him from using the press, just as he is not prevented from using the press but not obliged to use the press for the existing Regulation. So I have no doubt that the Registration Officer will do precisely what the hon Member is suggesting as he does now for full notices that are so relevant, and will use the press and will use notice boards as he uses now. I do not think it is appropriate to put in an obligation in specifics, because the moment he does that then he has got to say well, in which newspapers, in every newspaper, in every edition of every newspaper. Then one gets into all sorts of difficulty about what is a newspaper. There are lots of things that get distributed to peoples houses full of lies which are not really newspapers, there is one particular one called The Key which I suspect is not a million miles removed from the party which the hon Members sit in. But still, nevertheless it really would be quite invidious for the editor of The Key to feel that he is being left out of. I know who it is and he is going to discover soon I know who he is.

Paragraph 35, was agreed to and stood part of the Bill.

Paragraphs 36 to 43 – were agreed to and stood part of the Bill.

Part 3

Paragraphs 44 to 47 – were agreed to and stood part of the Bill.

HON DR J J GARCIA:

There were a number of points made during the Second Reading also in relation to paragraph 48. That was the general point as to whether by adopting the paragraph as it is there we

were actually legislating for what can happen in the British Library in the United Kingdom, and that I do not know if the Chief Minister had a chance to think about that.

HON CHIEF MINISTER:

About 48?

HON DR J J GARCIA:

Yes the general point as to whether we actually legislated for what can happen in the British Library in the United Kingdom.

HON CHIEF MINISTER:

Well we are legislating as to whether what happens in the British Library is a breach of the laws of Gibraltar, given that it is Gibraltar-owned information.

HON DR J J GARCIA:

I made the point that Opposition Members do not really have a problem with that but I just wanted to establish that this was the case.

Paragraph 48 - was agreed to and stood part of the Bill.

Paragraph 49

HON DR J J GARCIA:

In relation to paragraph 49(2) in sub-paragraph (1) the duty to supply is a duty to supply in data form unless prior to the publication the office has requested in writing a printed copy instead. Basically is it referring to the Statistics Office in Gibraltar or the National Office of Statistics in the United Kingdom? The question is why they cannot have both. Is there a reason for that? The use of the word “instead” means they can either have a data copy or have a printed copy but not both and we want to know what the rationale behind that was.

HON CHIEF MINISTER:

We did think about this proposed amendment carefully. We do not think it is necessary because it relates to the duty to supply, it does not mean that they cannot have both. It means that they are not entitled as a matter of right to both. But the Registration Officer can provide both if he wants to. Given that this only affects official bodies so to speak and does not affect any of the other, this formula is not repeated in the sections affecting political parties and all that. We really do not see a problem but it does not mean that they cannot have both. It means that they are not entitled as a statutory right to receive both.

Paragraph 49 – was agreed to and stood part of the Bill,

Paragraphs 50 to 53 – were agreed to and stood part of the Bill.

Paragraph 54

HON DR J J GARCIA:

There was one point I made during the Second Reading and that was in relation to the provision, these clauses in the Bill that we are going through now make provision for the supply of the full register to different parties, the Electoral Commission, local constituency parties, to the National Office of Statistics et cetera. Now that particular paragraph, paragraph 51 is for the supply of the full register to registered political parties. Our reading of the paragraph is that this means registered political parties in the United Kingdom. I would like confirmation that that is the case, because that is what we think it says. And is it not possible then for parties in Gibraltar to obtain a copy of the full register, and if so if it is not under the law, could an amendment be introduced as a point (c) in 54(1) which allows political parties that have contested the general election in Gibraltar to receive a copy of the register.

HON CHIEF MINISTER:

No we are in the same position as political parties in the UK. In other words, we are entitled to a copy of the full register in connection with an election for which you have to register, and if he and I, his party or my party wanted to contest these elections, we would have to register. That register is maintained in the UK. So I am not sure whether it would say registered in the UK that might be correct, but register under the Regulations made by the UK which apply both to the UK and to Gibraltar. So we would require to register under what would be law of Gibraltar or for Gibraltar, and only when we have so registered are we entitled to receive a copy of the register, just as to obtain copies as a candidate we must also register to be a candidate in the UK. There is no provision here or in the UK for that matter, for any old political party, I mean I do not know if there was something called the Penzance Liberal Party or the Penzance National Party, they could not get a copy of the full register either unless they were registered. So it is the same regime for

us all except that the register is 1,500 miles further away from us than it is from them.

Paragraph 54 – was agreed to and stood part of the Bill.

Paragraph 55

HON DR J J GARCIA:

There was a point at 55(3)(b) and that was that we thought it was rather odd that information supplied by potential electors for inclusion in the register can then be used for the vetting of employees and applicants for employment, where such vetting is required pursuant to any enactment, whether that is part of the UK legislation or perhaps can explain why that is there.

HON CHIEF MINISTER:

No it is part of the UK legislation and that is what the UK does, it uses these registers when it has a statutory duty to vet people. This is not just vetting, not vetting in any old circumstances, it has got to be vetting where vetting is required pursuant to any enactment. So it is statutory vetting and that is what they do so this is a complete replication. A replica of the UK provision.

Paragraph 55 – was agreed to and stood part of the Bill.

Paragraphs 56 to 58 – were agreed to and stood part of the Bill.

Appendix

HON DR J J GARCIA:

In the Appendix there was one point that I made during the Second Reading of the Bill, and this was a similar point to that

just made in relation to vetting. On page 62 under the heading the full register, in line 7 it mentions that the information supplied by persons who are included in the register can then be used for other purposes such as the prevention and detection of crime and for checking ones identity.

HON CHIEF MINISTER:

The Government agree with the hon Member's point.

HON DR J J GARCIA:

When one applies for credits. We thought that looked very odd.

HON CHIEF MINISTER:

It is used for that purpose in the UK and what has happened is that the UK's form has just been replicated here. But we do not use our forms for that matter, so we are going to delete that. It is only in the guidelines for the forms but that can be deleted. I propose that we delete the whole of that sentence beginning with the words "the main use of" and ending with the words "for credit".

The Appendix – was agreed to and stood part of the Bill.

HON S E LINARES:

Mr Speaker on page 65 I presume that we are going to do exactly as we have just done on the amendment, removing the main use of "for credit" in one of the two versions of the register. Would that be possible?

HON CHIEF MINISTER:

The hon Member is quite right. If we are going to delete it from page 62 we must also delete it from page 65 where it appears right in the middle of that long paragraph there. The same sentence the main use of the full register down to the word for credit. Exactly the same sentence appears because this is just a different version of the same form.

Schedule 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 EQUAL OPPORTUNITIES ORDINANCE, 2004

Clause 1

HON CHIEF MINISTER:

Just before we start this process, attached to the letter of amendments was a schedule with the amendments on it. Although we shall be conducting this exercise by reference to the annotated version, there are three changes to the schedule, are the hon Members with me? In the letter of amendments, there was a schedule attached with my proposed amendments. I am now going to circulate a new schedule with just three changes on it and I will point those out as we get to them.

HON F R PICARDO:

In the marked up copy that has been passed round I note the one passed round to me and I think to Miss Montegriffo and I imagine all the others, we start at 203. Have we only been given the pages that have changes?

HON CHIEF MINISTER:

Yes.

HON F R PICARDO:

Right. In that case Government Members will also have received from me a letter with a schedule setting out a list of proposed amendments for ease of reference. In fact really there is in some of them that I have put in, they are repetitive throughout the Bill, so once we have debated one of the amendments we get rid of quite a few. I seek an element of guidance because the first amendment that I will move is in relation to the preamble to the Ordinance, although I note that the Clerk starts with Clause 1. The amendment to the preamble is consequential to the amendment which is the last amendment of the Chief Minister which deletes the whole of section 55, which requires consequential amendment in the preamble to delete the reference to also amending the Employment Ordinance by this Ordinance.

HON CHIEF MINISTER:

Yes it is an obvious consequential amendment to the amendment of which I have given notice. It will no longer be amending the Employment Ordinance.

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

Clause 2

HON F R PICARDO:

Before the definition of “detriment” Mr Chairman, there is a definition of “collective agreement”, and I think that there I have given notice that one of the references to employer should be a

reference to employers, s apostrophe. That is in amendment No. 2 in the schedule to my letter.

HON CHIEF MINISTER:

Yes I think we have established and at some stage the hon Member will accept, that punctuation marks are not, I am grateful to him for pointing it out but it does not require a formal amendment.

HON F R PICARDO:

In that case where it is just a punctuation mark, I just leave the fact that it is on notice in the schedule that I provided which brings it to the attention of the draftsman.

HON CHIEF MINISTER:

The definition of ‘detriment’ according to the present definition does not include harassment within the meaning of section 8, and that should be sections 5, 8 or 10.

MR CHAIRMAN:

5, 8 or 10. Have you got anything on clause 2?

HON F R PICARDO:

I agree, because note 3 in my schedule is that in the definition of civil definition connected agreement, there is a paragraph (f) which talks about official trade unions. I think in our law the reference is to registered trade unions, registered under the Trade Unions Dispute Ordinance, so I move that we change the word official for registered there.

HON CHIEF MINISTER:

Delete the word “official” for consistency with the third reference in the second line of the definition of collective agreement.

HON F R PICARDO:

Yes, I am quite happy with that, because all the other references in the Ordinance are just reference to trade union, so I am quite happy with that.

HON CHIEF MINISTER:

I have given notice in my letter to delete the definition of “Member”. The entire thing should be deleted.

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

Clause 3

HON CHIEF MINISTER:

I have moved an amendment which the hon Members can see marked up in page 205 of the loose pages they have. To add the words “equal treatment between persons irrespective of racial or ethnic origin pursuant to Council Directive 2000/43/EC” to be inserted there in the place indicated. In other words, this is one of the places where two of the equality strands have been left out, by omission of the reference to the Second Directive. In sub-clause (3), I have given notice of amendment to delete the words “this Ordinance shall apply to people making harassment and victimisation calls in relation to employment on grounds of” and replace with the words “subject to sub-sections (1) and (2) this Ordinance shall apply to discrimination, harassment and victimisation caused on the ground of”.

HON F R PICARDO:

I am moving an amendment in relation to sub-clause (4) of clause 3, where there is a reference to “third country nationals”. I think really what we are talking about there is non-EU nationals and stateless persons, so I move the amendment that the words “third country nationals” become “non-EU nationals”.

HON CHIEF MINISTER:

I cannot accept the hon Member’s amendment. Third country nationals is the language used in the directive. The Bill applies to whomever it says it applies on its face and does not apply to these people, that is third country nationals and stateless persons in Gibraltar, relating to entry into and residence of third country nationals and stateless persons. I think the point that the hon Member is alluding to is that EU nationals have a right of entry and residence. Therefore if they have a right of entry and residence it is not possible to discriminate against them because it is not possible, there is no need to exercise any decision. Well, that is not strictly true, the right of entry and residence of EU nationals is not unconditional. EU nationals do not have an unrestricted right of entry or residence and therefore there are circumstances in which an EU national may well be a third country national for the purposes of this legislation. Indeed the hon Member, it may help dissuade him, if I tell him, that the directive itself uses the phrase third country national.

HON F R PICARDO:

I am aware of that, It is just that I am concerned that the directive is a directive of the European Union which is dealing with the rights and obligations of all the Member States of the Union, to its nationals and the citizens of all the other Member States of the Union. When it is talking of third country nationals it is talking of non-EU nationals. When our legislation is talking

of third country nationals it is not clear who we are referring to as presently drafted because there is no definition of third country national. Now, if what we are saying is that a third country national is a citizen not of a Member State, or a citizen of a Member State who is illegally in Gibraltar, or in Gibraltar not within his rights under the European Communities Ordinance, would that be a third country national? I do not think it would. I do not think it would make that person a third country national. It would simply make that person an individual not entitled to certain rights under the Ordinance. But certainly not a third country national. There is no second country to speak of.

HON CHIEF MINISTER:

I can see some logic to the hon Member's argument but the way that I can accommodate his point in a way which is neutral in the sense if he is right it covers it, and if he is not right then I have not caused any damage to the Bill, is to say third country is to say where it says here third country national in sub-clause (4), to add the words "third country nationals and stateless persons within the meaning of the directives". In other words, the phrase third country national and stateless persons means whatever it means within the directive, and then if he is right in saying that the directive does not apply to EU nationals and the court so interprets it, then our Bill will be consistent with that.

HON F R PICARDO:

Yes. I have no problem with that. I think that if one actually reads the paragraph which makes the reference to third party nationals in the Journal, it seems to be talking about non-EU nationals. But I have no problem with your suggestion.

HON CHIEF MINISTER:

It is reading the paragraph that has persuaded me that there may be some logic with the hon Member's point.

HON F R PICARDO:

I am quite happy with the compromise amendment. There is no definition of 'directives' in the Ordinance so we would either now have to insert the definition of directives which refers to both, or refer to the relevant or both directives.

HON CHIEF MINISTER:

What we would need to insert there after the words "third country nationals and stateless persons", after the word "persons" open brackets within the meaning of Council Directive 2000/43/EC or Council Directive 2000/78/EC, which are both signed terms, close brackets.

HON CHIEF MINISTER:

Yes I think it is arguable both ways it depends whether we take the contents of the Ordinance are for or that the Ordinance itself is singular. The third word in the second line there could be 'is' rather than 'are'. This Ordinance is without prejudice.

HON F R PICARDO:

Yes, I agree. I think it cannot be read both ways. I think it can only be read with an 'is'.

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

Clause 4

HON CHIEF MINISTER:

In clause 4 the hon Members will see that in both sub-section (1) and sub-section (2) I have given notice of basically just moving the words “on racial or ethnic grounds”, from one part of the sub-clause to the other to give it its intended meaning. At present it reads “the person discriminates against another person on the grounds of racial or ethnic origin in any circumstances relevant for the purposes of any matter”. That is not true. The discrimination is discrimination if on the grounds of racial or ethnic origin that person treats somebody different. And there is the separation of the words “on the grounds of racial or ethnic origin” from the words “that person treats” presently drafted, changes the sense of the two sub-sections.

HON F R PICARDO:

In 4(2), I made this point on a number of occasions, it does not relate to a comma. It is just that the draftsman has used the words “can not” on a number of occasions throughout the text. In my schedule I think I have spotted them all and I say that the word should be “cannot”, one word.

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

Clause 5

HON CHIEF MINISTER:

In clause 5 I have given notice that sub-clause (3) should be deleted. In fact it was inserted in error, there is no need for the hon Member, it is just redundant language that should not have been there. It is a drafting error.

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

Clause 6

HON F R PICARDO:

I have an amendment to move in relation to clause 6(1). Clause 6(1) and in other instances throughout the text we see the words used “he can not show” forget the “can not”. The whole phrase “he can not show” appears on a number of occasions throughout the text in very similar circumstances to references also throughout the text to cannot be shown to which is sort of androgynous reference, as this is particularly a Bill relating to non-discrimination et cetera and this particular section deals with discrimination on the grounds of sex, and we could be dealing with discriminations in either direction. I think it is a lot more sensible to use the form that is used almost everywhere else in the text and delete the words “he can not show” and replace it with the words “cannot be shown to”.

HON CHIEF MINISTER:

I am almost certain the hon Member is not correct. It has got to be shown by him so cannot be shown would have to read cannot be shown by him. It seems an entirely semantic point. I do not think there is the slightest difference in meaning between the two terms. Well no there is, he cannot show as opposed to cannot be shown by him to be is just more words to say the same thing. Is it not?

HON F R PICARDO:

Well no, because I think that logically there are four potential instances of discrimination. A man discriminating against a woman, a woman discriminating against a man, a man discriminating against a man because he is a man and a woman

discriminating against a woman because she is a woman. The first sub-paragraph of section 6 deals with discriminations against women and because it is a gender-loaded section, I think the neatest way of doing it is to do that. There is no other reference and no earlier reference in that sub-clause to “he”, anywhere in that clause. So it is not a question of him having to prove anything.

HON CHIEF MINISTER:

Wherever you use the phrase “shown” the word “shown”, one has got to go on and say by him or her. Then it is exactly the same problem. I think that the point that the hon Member is trying to make is that if we say “which he cannot show” well that does not accommodate the fact when the showing has to be done by a woman when she is the perpetrator of the alleged discrimination. But under the Interpretation and General Clauses Ordinance, he means her when the context so requires. Therefore in the case where the perpetrator of the possible discrimination is a woman, that sentence would be read “which she cannot show”.

HON F R PICARDO:

Let me have one final attempt at persuading the Chief Minister which is to say that the first words of that clause are “a person discriminates against a woman” which is gender neutral and perhaps we could reach a compromise to the effect that the amendment should be “which cannot be shown by that person” to be justifiable irrespective of the sex of the person to whom it is applied.

HON CHIEF MINISTER:

Mr Chairman much as I would like to accommodate the hon Member, not every point can be compromised. I really do believe that there is, on this occasion, no merit to his point. If

there was I think I have shown him willingness to amend when I think there is. I just do not think it is worth it. In clause 6, in sub-section (2) the hon Member I am surprised, with his legal eye, has not noticed that the reference to sub-regulation which of course is not a sub-division of a sub-section the word “sub-regulation” in sub-clause (2) of 6 should read sub-section. Also in sub-clause (6) of 6, shall we say for consistency, the word “female” to read “woman”. In other words, if it says “in this section man includes a male of any age” and then it says “and female includes a female”, so the equivalent of man is woman. So it is man and male and woman and female.

HON F R PICARDO:

Not only that, there is no references to “female” anywhere else in the section. There are only references to “woman” so it would only make sense to have it if one has the amendment.

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 F R PICARDO:

I noted when reviewing the Bill that the only aspect of discriminations in respect of which we have no clause relating to harassment is in relation to prejudice on the grounds of sex. So I am proposing to deal with that. We have a section relating to discrimination on sex but not a section in relation to harassment on sex. So I am proposing to deal with that, not by proposing the inclusion of a new section, but by simply adding the word “sex or” in front of the words “sexual orientation”. So section 8

would then provide for harassments on the grounds of sex or sexual orientation.

HON CHIEF MINISTER:

The directive requires the harassment provisions to apply only to sexual orientation. Now I cannot say or explain the logic or rationale of that, but that is the case.

HON F R PICARDO:

I think I might have a view on the rationale of that. It must be that the directive deals only with sexual orientation. The issues relating to sex having been dealt with in the older directives which are in the United Kingdom in the Sexual Discrimination Act, which we do not have replicated in our law, as I understand it. Therefore we have provisions in relation to discrimination on the grounds of sex but not in relation to the grounds of harassment. So what I would ask the House to do because I cannot imagine that anyone sitting round the Table of the Committee who would wish there to be freedom to harass people on the grounds of sex not already dealt with in the same way that we have already dealt with all the other discriminations, that we should simply agree the amendment.

HON CHIEF MINISTER:

I am told that there is another directive in the pipeline which is not being transposed by these Bills, and which is not yet due, which will deal with harassment on the grounds of sex as opposed to sexual orientation. So the ill is about to be eliminated but the directive has not yet fallen due.

HON F R PICARDO:

I appreciate that and I sincerely do thank the Chief Minister for that information, but I will formally move the amendment in relation to this. I would rather we do it, take a vote and in fact a division on that.

HON CHIEF MINISTER:

Well, we are not going to vote in favour, not because we oppose the legislating out of harassment on the grounds of sex, but because having given notice that there is a directive that will require to be transposed dealing with it, we want to be sure that when we do it, we do it on terms which complies with the directive and not in any old terms. For example, just by adding sex here. So the Government will deal with the question of sex harassment in the terms of the directive when it comes to transpose that particular directive. That is much more sensible than doing it now here in terms which may not be proper transposition of that directive, with which I have to admit I am not familiar. I could not express a view as to whether the amendment does or does not comply.

HON F R PICARDO:

I am not suggesting that the amendment would comply potentially with the directive which I have not seen, because if the Chief Minister is not aware of its provisions I was not even aware of its existence. I must confess that. But I do not think that the inclusion of the word "sex" we must be dissuaded against simply on the basis that it might be slapdash incorporation, because it is obviously not slapdash, a lot of thought has gone into the way that we have prevented harassment in relation to all the other discriminations. All we are doing is including the reference to "sex", and the amendment is to include the word "sex or" after the words "ground of".

Question put. The House voted.

For the Ayes: The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Noes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

Clause 8 - stood part of the Bill.

Clause 9

HON F R PICARDO:

In 9(2) the reference to religion or belief is in sub-section (1), it is not in sub-section (1)(a) so the cross-referencing is wrong and it just needs to be corrected.

HON CHIEF MINISTER:

Yes that is correct. There is an error in cross-reference.

Clause 9, as amended, was agreed to and stood part of the Bill.

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

Clause 11

HON F R PICARDO:

There is no formal amendment to move in relation to this part or to this section but I want to say something about the way that the sections that follow in this part have been transposed. Now as I said at the First Reading it is obvious that the framework for the transposition of these directives has been the UK's laws on sexual orientation discrimination in the workplace which has very similar provisions, almost identical provisions in relation to the definitions of "victimisation" et cetera. The way they do it there in order to get round the very convoluted language that we have had to have resort to here, is by reference to a person A discriminating against a person B and then they go on within the section to say A does this against B and B does this against A et cetera et cetera. We have not adopted that which makes for very very convoluted language where we are talking about that person and this person et cetera et cetera to such an extent that by the time we get to the end of the clause, I think we end up having to draw a diagram to work out who is who in the discrimination. I flag it because I think it adds to clarity and the Chief Minister may want to consider whether that is something that should be changed perhaps in the future because I do not think we should delay this Bill any longer, whether there is perhaps legislative time to do that. Because it really would make things clearer. Now I am not trying to do either of us out

of a job when we finish our terms in this House, any of the three of us, but I think it really is much clearer in the UK source-code where there are references to A and B. I am not formally moving an amendment.

Clause 11 – was agreed to and stood part of the Bill.

Clause 12

HON F R PICARDO:

Amendment 17 which I have proposed, deals with subparagraph (3) at the very end of it, where there is an error, no sorry where there is a reference to employment for the purposes of private household. Now, I do not think that makes sense. I think that what we are trying to say there is post of employment as home-help or household assistance in private homes. But that is really just conjecture on my part because I cannot find anything in the source which deals with this but I think if that is what we are trying to do then we need to change the language. Because the language which is there at the moment does not really do anything, I think.

HON CHIEF MINISTER:

If the hon Member is not careful, not only is he going to want to do the job of the Gibraltar draftsmen but also the job of the United Kingdom draftsmen and perhaps teach us all how to speak English. This is the language of the UK Race Relations Act. I am only a colonial, I only speak English in my capacity as a colonial citizen and I would therefore, with only insufficient authority, have challenged him in his view that the phrase “for the purposes of household employment” means nothing which is what he said. I would have disagreed with him on that and am glad to say that the draftsman of the UK Race Relations Act and

the 730 Members of Parliament that legislated that Act, also would disagree with him.

HON F R PICARDO:

I am not deterred. As I told him when I spoke on the principles of the Bill, I said that I realised that on some instances I was not just taking on the local draftsmen but also the draftsmen in the UK. I had not found in what I had thought was the source for this, that reference. But I am still concerned that “do not apply to employment for the purposes of a private household” is a phrase that I find difficult to understand. I would invite the Chief Minister to accept the amendment because I think it simply makes it clearer. Perhaps the 73 Members of the Commons were more concerned with Mr Hutton and his whitewash rather than whoever was being employed to whitewash somebody’s private home at that time.

HON CHIEF MINISTER:

I will not accept the amendment for the reasons that I have given. We do not accept that the phrase is meaningless like the hon Member seems to think. The phrase is perfectly clear to us and our view would appear to be the preferable view given that it is exactly the same phrase that appears in the UK legislation where no one thinks it is meaningless either. So we will not accept the amendment, no.

HON F R PICARDO:

The attitude of slavish following of the United Kingdom code which has been the hallmark of today is to continue in that case.

HON CHIEF MINISTER:

No, the fact that it is to be found in the UK legislation is corroboration for the first ground which has nothing to do with being a slave, but rather that the meaning of the phrase which he thinks is meaningless is perfectly clear to us all in this House and the preferable view which seems to be ours, given that our view is supported by an Act of the United Kingdom Parliament which has survived the test of time since 1976, and his view is just his unsupported assertion. So it has got nothing to do with being anybody's slave. Look it is possible to disagree with the hon Member's grammatical pedantry without being a slave of anybody.

HON F R PICARDO:

This is not an item of grammatical pedantry. I am just simply not as persuaded as the Chief Minister is that simply because Westminster has done it we must do it in the same way. I believe that although the Chief Minister derives comfort from the fact that the phrase makes some sense, and may even have persuaded me that it does not make no sense, certainly I am not persuaded that the proposed amendment does not in fact make it clearer. Although like he, unfortunately, I am still a colonial but I hope that the progress of the constitutional reform proposals within this Parliament will ensure that that is no longer the case.

Question put. The House voted.

For the Ayes:	The Hon J J Bossano
	The Hon C Bruzon
	The Hon Dr J J Garcia
	The Hon S E Linares
	The Hon Miss M I Montegriffo
	The Hon F R Picardo
	The Hon L A Randall

For the Noes:	The Hon C Beltran

The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

HON F R PICARDO:

I have not looked at the Race Relations Act in relation to this issue so I do not know whether in fact the sources are the same as what we now have in the Bill, but I am moving the amendment that the words "the appointment", because there is no definition anywhere what the appointment is, no reference to appointment, should be replaced by "persons employment" I think on a number of occasions where that appears.

HON CHIEF MINISTER:

It is perfectly obvious that the phrase "termination of the appointment" is a reference to termination of the employment. Technically, the hon Member wants to draw a technical distinction between an employee and an appointee. We do not believe that that amendment is required. I accept that the legislation could easily have said what the hon Member has suggested and that would make sense too. But the fact that one can say something in more than one way does not make either of the ways right or wrong. I am willing to introduce amendments, I am willing to accept amendments required in order to make the legislation mean what the Government intends it to mean. I am not prepared to accept amendments simply to introduce language that the hon Member prefers to the

language that has been used, when both have the same meaning. Now that is a perfectly reasonable attitude. Most of the language in this Ordinance could be phrased differently by a different draftsman. That does not say that it is wrong, even if there is a better way to say it, it does not make the way that it has been said wrong. The definition or right of wrong is, is it effective for the purposes of the Government's intention, for the legislation's intention, and if the answer is yes, then the fact that the hon Member may suggest a better way of saying it is not a reason for amending the legislation. Not least because every time that he proposes an amendment we have got to consider whether it has horizontal consequences elsewhere which he may not have considered and we are putting ourselves under the pressure. So for that reason we only contemplate essential, so to speak, amendments.

HON F R PICARDO:

Would not the Chief Minister accept that there are appointments which are not employments and there are employments which are not appointments and therefore as this Ordinance is dealing with discriminations principally in relation to employment, that is why I think that we should use the word "employment". Now if the source for this is the Race Relations Act, then that is not just dealing with employment whilst this Bill, well at least certainly this part of this Bill is dealing principally only with employment, and that is why I seek to persuade him to reconsider his view and to use the clearer employment because I think it is, in this instance, not just preferable but necessary.

HON CHIEF MINISTER:

Well the Government disagree. Yesterday the hon Member said that judges are people who think that a reasonable man buys his Chronicle in the kiosk downstairs. Well judges are also people of common sense and they interpret statutory provisions in the context in which they are to be found. In the context of

sub-section (6) the only possible thing that sub-section (6) could be referring to is to what has been provided in the previous sub-sections of that section, which is employment, it does not speak about appointments. Therefore we do not accept that the appointment is necessary.

Question put. The House voted.

For the Ayes:	The Hon J J Bossano
	The Hon C Bruzon
	The Hon Dr J J Garcia
	The Hon S E Linares
	The Hon Miss M I Montegriffo
	The Hon F R Picardo
	The Hon L A Randall

For the Noes:	The Hon C Beltran
	The Hon Lt Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto
	The Hon F Vinet
	The Hon R R Rhoda
	The Hon T J Bristow

The amendment was defeated.

Clause 12 – stood part of the Bill.

Clause 13

HON CHIEF MINISTER:

In clause 13 sub-clause (2)(c) in the third line the word “or” has cracked in when it should be “of”.

HON F R PICARDO:

In clause 13(6) I certainly seek to persuade the Chief Minister that this proposed amendment, which is my proposed amendment 20, where the words which include that one appear I propose that we instead insert the words “as the woman is employed”, because I must confess I have been trying to get my head round what the section means with the present wording and I find it very, very difficult to do so whether or not the source is an unchallenged, accepted Act of Parliament, which include that one to become as the woman is employed.

HON CHIEF MINISTER:

Well, on this occasion I am content to accept the hon Member’s proposal because although we can see that the words are capable of meaning what they are intending to mean, it is not by virtue of a normal interpretation, I accept it requires a strained reading in order that it should have that effect. Therefore this is a section that could do with more clarity and I agree that the words proposed by the hon Member make the section easier to follow.

HON F R PICARDO:

May I just enquire whether this is sourced out of the English Sex Discrimination Act. I think there is an indication, I think the indication is yes.

HON CHIEF MINISTER:

The official are here for me and not for him.

HON F R PICARDO:

So be it. I am very grateful that he has decided to assist the House.

HON CHIEF MINISTER:

No he is not here to assist the House, he is here to support the Minister not the House.

HON F R PICARDO:

He has assisted the House anyway, I am grateful because that obviously deals with the point about the slavish colonials never getting it better than the 730 Members of Parliament.

HON CHIEF MINISTER:

Mr Chairman if the hon Member prefers I shall accept none of his amendments on that ground.

HON F R PICARDO:

For once I think that at eight o’clock in the evening on a Friday one should be allowed.....

HON CHIEF MINISTER:

I am giving the hon Member the benefit of a repeat performance in respect of his public statements after the last meeting of the House, where if accepting the hon Member's amendments means that he then puts out public statements saying look how many amendments I introduced, the hon Member can get away with that once or twice. If he continues in that vein by far the easiest and safest course for the Government is not to accept any amendments that he proposes, which would be a pity because on occasions he proposes some very good amendments.

HON F R PICARDO:

I will not be deterred from making public statements although I stand duly chastised at this time on a Friday.

HON CHIEF MINISTER:

No he is not being duly chastised, duly or otherwise. I am not chastising him. I am saying that he cannot have it both ways. He cannot in this House pretend to seduce the Government into accepting your amendments in order to make it more clear and to be constructive and then the moment the House is finished, go out and slag the Government for having had to accept his amendments, because if that is the approach that he takes to his contribution to legislation in this House, then it follows without chastisement, it follows that by far the safest course for the Government is to accept as few amendments as possible, so that the stick with which he subsequently beats the Government in public, is as thin, short, narrow and painless as possible. That is not to chastise him, it is simply to explain to him the facts of life.

HON F R PICARDO:

Sufficient be that I should have a short stick with which to beat them, that is quite enough for me. But the amendments will continue to be put whether or not I decide to issue the statements thereafter because I shall take my own counsel in that respect.

HON J J BOSSANO:

In terms of this concept of work of equal value, would the ETB in looking at the registration of contracts itself do anything? Because I know that in the United Kingdom when the concept came in, it expanded enormously the areas which were challenged on sex discrimination grounds on the basis of the concept that there were areas where the vast majority were women mainly, it was mainly in the direction of lower paid jobs being done predominantly by women and I know many of those were challenged.

HON CHIEF MINISTER:

Absolutely but that is how it would need to happen. It requires a complaint, a ruling by an industrial tribunal which then sets a judicial precedent. So presumably then other employers learn the lesson and other employees do not have to follow the same route. Once the employment tribunal has made a ruling on when two jobs are of equal weight then and to challenge that is the law as to equality. But the ETB would not at an administrative level do that, it would require the complaint to be lodged, followed through either to the Industrial Tribunal, yes being in employment. The example that he has chosen it would be the Industrial Tribunal.

HON J J BOSSANO:

And even then I mean, if that were to happen, which I think is bound to happen sooner or later once this gets established, would then the ETB as a matter of course in monitoring, like they do with the minimum wage in monitoring registration of contracts, would they bear that ruling in mind or not?

HON CHIEF MINISTER:

Well I am not sure that this arises from the debate on the Bill. No, the Government have not addressed its mind to it. It may be something that the Conditions of Employment Board takes an interest in but it is not something that we have addressed our minds to as to what degree of interest is the administration going to take in creating a database of rulings and things of this sort is not something that I have given any, I do not suppose that anybody in the Government has, but I suppose they will at some stage.

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

Clause 14

HON F R PICARDO:

In two places in paragraph 14(4) I would make an amendment. The first word should be "paragraphs" not "paragraph" and that therefore the words after the little reference to sub-section (2) should be "do" and not "does".

HON CHIEF MINISTER:

No, I think the hon Member is completely wrong. It is "or", so it is paragraph singular, (a), (b), (c), (d), (f) or (h). Were it to be plural it would have to be "and" not "or".

HON F R PICARDO:

Well we have a grammatical debate because I care about the legislation that I am being asked to pass and will continue to have it if you insist. But.....

HON CHIEF MINISTER:

No but he is wrong.

HON F R PICARDO:

No I am just thinking about it, I am trying to factor into my mind. First the sly reference about having a grammatical debate and second what he said. So if he will give me a few minutes without snide remarks, I am prepared to accept what he says.

HON CHIEF MINISTER:

It is generous of the hon Member but there is not really any other possibility. The use of the word "or" makes it perfectly clear in the English language that they have been listed individually, and therefore it can only be that, whether he accepts it or not.

HON F R PICARDO:

Well look, this morning, or this afternoon actually, I thought that the example he came up with the shopping list for could only be read one way but he used his majority to ensure that we read it another. I actually still am of the view that it is probably better to read it as paragraphs and do even if there needs to be applied individually. So be it. He can continue to use his majority of one, I will not press this because it is a very minor amendment. My next amendment would have done the same in relation to clause 15(4), I will not pursue it.

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

Clause 15

HON CHIEF MINISTER:

As I have given notice in clause 15(1) to add the words “and in case of where the provisions of section 16” so as to the part of related to such grounds does not apply. Adding those words after the word “origin” where it first appears in sub-clause (1). So, in other words, it is clawing out the cases to which section 16 apply from that. And consequentially on this if we could go to the very first page of the index of sections, arrangement of clauses, although it is not part of the legislation. In item 16 where it says “clause 16”, it should be exceptions in the plural not exception in the singular, because the section actually deals with more than one exception. That is in the index, arrangement of clauses at the very front. ‘Exceptions’ plural it should be.

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

Clause 16

HON CHIEF MINISTER:

In clause 16 the same point arises in the heading which should be “exceptions” in the heading. Then in sub-section (2) of clause 16 we have let out two of the six strands of equality, religion or belief, and they should be added after the words “ethnic origin,”. So the words “religion or belief” should be added there in the third line of sub-clause (2). Then a new sub-section (5) is to be added which means that it is for example not a breach of the discrimination provisions for the Roman Catholic Church to refuse to employ a woman as priest, or those Jewish communities that are more orthodox, would not have a woman rabbi. In other words that they are allowed to discriminate in employment when it is to comply with doctrines of the religion or avoiding offending the religious susceptibility of a significant number of its followers. So that is where the employer, it refers to employment for the purpose of an organised religion, so the employer has got to be for the purposes of the organised religion. It does not allow an ordinary employer to invoke his own religious beliefs to justify the employer. It is where the employer is a religious organisation like a church or something like that.

Clause 16 as amended, was agreed to and stood part of the Bill.

Clauses 17 to 19 – were agreed to and stood part of the Bill.

Clause 20

HON CHIEF MINISTER:

In clause 20 I have given notice that in sub-section (1) and (2) the race and sex strands have got to be added in the two places where we have indicated. At page 225 which the hon Members have to follow, that is in the fifth line of sub-section (1) after the

words “ground of” insert the words “race, sex” and in the third line of sub-section (2) again after the words “ground of” add the words “race, sex”.

HON F R PICARDO:

I proposed my own amendments in relation to 21, 22, but I have done it assuming that the Chief Minister’s proposed amendment would already pass or has already passed, which is also to include the words “ethnic origin” which would be the only one of the six then left out. I do not know whether that was left out for a particular reason because if we now include the references suggested by the Chief Minister we have got the five strands missing only the sixth strand of ethnicity, which we are habitually dealing with together throughout the Bill.

HON CHIEF MINISTER:

We will check that by reference to the language in the directives and perhaps we could come back to clause 20 and move on whilst the draftsman is checking that point. The clause should stand with our amendments and we will revisit it in the context of the hon Member’s amendments when we have just checked the source document. Also in sub-section (6) the word “employer” needs to be added after the words “deferred Member”.

HON F R PICARDO:

I think it has actually got to be inserted in quotation marks,

HON CHIEF MINISTER:

Yes it is.

HON F R PICARDO:

No he has moved it as he has moved all the others to insert the word “employer” in quotation marks. If he wants it in quotation marks in the text, then he should have moved the amendment with double quotation marks. Just saying that for the purposes of the draftsman, do not just include the word in quotation marks there.

HON CHIEF MINISTER:

The hon Member will have noticed that in the marked up version it appears in quotation marks. Suggestion for an amendment in sub (1) and (2). The Government are minded to agree to it if he moves it although for reasons that, although the directive does not actually on terms require it, nor is it clear from the language of the directive that it is specifically not intended to cover it. Therefore it would not be as far as the Government are concerned going beyond the clear terms of the directive’s requirements. In other words, the Government would be happy that this particular section should be extended to ethnic origin, it already extends to race after the Government’s own amendment, so to extend it to ethnic origin as well it is fine. Not quite sure I understand the difference between the two anyway.

HON F R PICARDO:

I do not either but there are six strands and we were doing it here for five so I will formally move an amendment in relation to sub-clauses 20(1) and 20(2).

HON CHIEF MINISTER:

That would be achieved by adding the words “ethnic origin” after the word “race” where they will now appear following my

amendment. So cut between the column and in between “race” and “sex”.

Clause 20, as amended, was agreed to and stood part of the Bill.

Clause 21

HON CHIEF MINISTER:

In sub-clause (8) of clause 21 there is an amendment there to recognise the fact that it is not the Government who approve all and sundry but the Minister or indeed the Governor who could be the maker or approver of a post or office.

Clause 21, as amended, was agreed to and stood part of the Bill.

Clause 22, was agreed to and stood part of the Bill.

Clause 23

HON CHIEF MINISTER:

In clause 23 the hon Members will see that I am proposing to delete sub-clauses (4), (5), (6) and (7) which were there by way of drafting error in the sense that they add nothing to sub-clauses (1), (2) and (3). It is really covering the same ground, it is duplication. In consequence of that, if that amendment is carried, then the existing sub-clause (8) could be renumbered (4) and so on. The consequential renumberings, consequential on the deletion of the existing sub-clauses (4), (5), (6) and (7).

Clause 23, as amended, was agreed to and stood part of the Bill.

Clause 24, was agreed to and stood part of the Bill.

Clause 25

HON F R PICARDO:

This is a section which deals with barristers and in parts mentions chambers. I think there are three amendments to move in relation to this section. They are my amendments Nos. 26, 27 and 28. The first is to include the words “or firm” after the word “chambers” because obviously there are some barristers in Gibraltar that because of our profession practise in the firms and the organisations are not necessarily changes, and in clause 25(5) because pupillage in Gibraltar is not a term identifiable as it is in the UK, just where the words “pupil” and “pupillage” appear, I think because there are now barristers and solicitors rules under the Supreme Court Ordinance which do deal with that concept of pupil and pupillage. The definition is not at large as it is in the United Kingdom in the context of barristers practising in independent practice that the words “and as more particularly provided for under the Supreme Court Ordinance” should be inserted just at the very end of that.

HON CHIEF MINISTER:

No I am hoping to persuade the hon Member that his amendments are not necessary because he may have asked himself, indeed I did when I first read the Bill, why are there separate provisions for barristers? The answer is that solicitors unlike barristers are organised into firms, partnerships and partnerships are covered separately. So, for example, why is there not a separate section dealing with accountants because they practise in firms. So there is no need to make any provision for any profession that practises in firms because there is partnerships separately covered. Barristers are a breed unto themselves because they do not practise in firms. The fused profession point which the hon Member made works in the opposite direction. That is to say because our professions are fused, barristers in Gibraltar are partners or can be partners

in firms and then they are covered by the partnership provisions. We have a separate section on barristers to accommodate barristers organised in chambers, I do not know there are any in Gibraltar. I do not know actually if there is a set of chambers which is not a partner. There used to be one when I first started in practice I am not sure it still exists. They may by now have changed their status. But anyway that is the explanation. If barristers were to get together in the sense of a chambers they would be subject to this regime and not to what he and I would have been subject to under our previous firms in both our cases now, which would have been the partnership provisions.

HON F R PICARDO:

Right, let me just work that one through. Barristers arranged as partners will be covered by the partnership provisions so there is no need for the inclusion of the word "firm". Barristers not arranged as partners I assume, would not have to register with anyone except with the Supreme Court and would not be registered under the Partnership Ordinance and therefore would be covered under this section.

HON CHIEF MINISTER:

Yes and they could be two things, they could be employees or members of the set. If they are employees they are employees and are caught by the general provisions. If they are members of the set or aspirant members of the set being denied membership of the set, then they are protected by these provisions. It is not because one is a barrister that this covers us, it is when one is a barrister not in a partnership or not in employment. Because of course a barrister that is employed by a company is not covered by these particular rules.

HON F R PICARDO:

Right so what of a barrister who is an associate in a firm?

HON CHIEF MINISTER:

He is an employee.

HON F R PICARDO:

In the Chief Minister's.

HON CHIEF MINISTER:

Well there is nothing else he can be. Of a firm one is either a partner or an employee or one is as the hon Member now is a consultant.

HON F R PICARDO:

No let me just add a nuance to that. I think he will recall from his own practice that, well certainly in the practice that I was involved in before, associates were not employees of the partnership, they were self-employed individuals.

HON CHIEF MINISTER:

Then they were not covered by this anyway.

HON F R PICARDO:

Yes I am just trying to work it out.

HON CHIEF MINISTER:

This is discrimination in employment and partnerships and barristers. If an individual is a self-employed person offering ones services as opposed to ones service to somebody else, one is not in the realms of the Equal Opportunities Ordinance at all.

HON F R PICARDO:

No I am satisfied because an associate who works self-employed but contracted to a firm, essentially what we think of as employed lawyers in firms, who discriminated against a secretary, the secretary would have recourse against the partners of the firm because of the vicarious liability

HON CHIEF MINISTER:

Or it is the case of the associates employing.

HON F R PICARDO:

Okay I am satisfied in relation to my first two proposed amendments there. But I refer the Chief Minister to my amendment No. 28 which deals with the definition of pupil and pupillage.

HON CHIEF MINISTER:

I have to confess that I do not understand the meaning or effect of his proposed amendment. This is a definition of pupil or pupillage. Where is he proposing that the words "and as more particularly provided for under the Supreme Court Ordinance", what is more particularly provided for under the Supreme Court Ordinance?

HON F R PICARDO:

The definitions of pupil and pupillage because the Barristers and Solicitors Rules of the Supreme Court Ordinance have provided a definition of pupil and pupillage.

HON CHIEF MINISTER:

But that is not part of the statutory definition. No this is the definition of pupillage.

HON F R PICARDO:

This is now a definition of pupillage.

HON CHIEF MINISTER:

No, no, for the purposes of this Bill generally, not for the purposes of the Supreme Court Barristers and Solicitors Rules.

HON F R PICARDO:

But what I am saying there could be in our statute books two different definitions of pupil and pupillage when really we are dealing with exactly the same scenario.

HON CHIEF MINISTER:

But I do not know whether it is true or not that pupil and pupillage has been more particularly provided for under the Supreme Court Ordinance. I do not know that one way or the other, but if it were so, so what. Why is it necessary to say it here?

HON F R PICARDO:

I just think it makes it neater to do so because the reference here is a reference to those terms almost being at large, it says commonly associated with their use. Whilst there has already been a definition of those as to who can and cannot be a pupil and in pupillage. Because of the differences in Gibraltar with the UK about whether one does the vocational course or so one does not do the vocational course.

HON CHIEF MINISTER:

I do not think it is appropriate to introduce, the Government would not support the amendment. If the hon Member is right in saying, and I have no reason to doubt him it is just that I do not know, but if the hon Member is right in saying that in order to be a pupil in Gibraltar and to be therefore in pupillage in Gibraltar, there are certain rules to comply with under the Supreme Court Ordinance, then so be it. That remains so. Then in order to be employed as a pupil in Gibraltar one has got to comply with those rules and this Ordinance does not come into effect until one is a pupil. So if an individual cannot become a pupil until one has complied with the rules of the Supreme Court, then one must necessarily have complied with the rules of the Supreme Court before this Ordinance can apply. I do not see how this widens or narrows the definition of pupil.

HON F R PICARDO:

If the Chief Minister looks at the definition that there is in the Bill already it says, "pupil and pupillage have the meaning commonly associated with their use in the context of barristers practising in independent practice", which seems to ignore the fact that there is already a statutory definition of it. But if the Chief Minister thinks that that is sufficient then I am simply asking for the addition of words for clarity.

HON CHIEF MINISTER:

I do believe that it is sufficient, not least without wishing to be accused again of being anybody's slave, because in the UK where the pupillage is also subject to rules, different rules and regulations, this is the definition of pupil and pupillage in their Race Relations Act. So they share our view, which in fact is the other way round given that we have borrowed their language, that for the purposes of the Equal Opportunities Ordinance it is not necessary to list, it is like saying when one talks about doctors, every time one says a doctor meaning and then go on to describe the qualifications that a doctor has, well if one cannot be a doctor unless one has got certain qualifications, when we say a doctor practising in Gibraltar we do not then have to go and say doctor practising in Gibraltar that is registered under the Medical and Registration Ordinance, because one cannot practise as a doctor unless one is registered under the Medical Professions Ordinance. So it is just an unnecessary identifying description which is unnecessary. So if the hon Member will not press it we do not need to discuss it.

HON F R PICARDO:

No I will not press it but the last example that he gave is perhaps not the best because I think he will find in most Ordinances where we refer to doctor or to pharmacist or anything like that, they will include a reference for them being registered under the Medical Registration.

HON CHIEF MINISTER:

Doctor practising in Gibraltar not doctor.

HON F R PICARDO:

There is usually a cross-reference to their registration. But in any event look, at the end of the day there are more important things to concern ourselves with to debate.

HON J J BOSSANO:

Can I just say something about the previous one, clause 4. In the last line of that there is a definition of police officer meaning any Member of the Royal Gibraltar Police. I do not quite understand how it is that in clause 4 we say sections (1) to (3) applies to the GSP as they apply to the RGP. In such case the Commissioner shall be read as the person or body responsible for the management and control when in clause (1) to (3) it applies to police officers and in the definition in the last line to be a police officer one has to be a Member of the RGP.

HON CHIEF MINISTER:

I do not think the point which the hon Member is making which I think I understand is a valid one because sub-clause (4) does not refer to police officer. It says sub-sections (1) to (3) apply to the Gibraltar Services Police as they apply to the Royal Gibraltar Police and in such a case the Commissioner, in other words instead of the Commissioner of Police who is deemed to be the employer of policemen in the RGP, shall be read as I think Superintendent is the title that they have, or body responsible for the management and control of the Gibraltar Services Police because the status of the Superintendent in relation to the Services Police is not equivalent to the Superintendent. The Superintendent is subject to the instructions for example of the Commander British Forces and the Military Command, whereas the Commissioner of Police is not responsible to anybody. In other words the Commissioner of Police has nobody above him.

HON J J BOSSANO:

No, that has nothing to do with it. The point I am making is if I take sub-section (5) and it says in this section police officer means any Member of the Royal Gibraltar Police.

HON CHIEF MINISTER:

Oh I see the point he is making.

HON J J BOSSANO:

Then it would mean in (1) it says the holding of the office of a police officer that is any Member of the Royal Gibraltar Police shall be treated as employment by.....

HON CHIEF MINISTER:

I see the point the hon Member makes.

HON J J BOSSANO:

Yes the body or person responsible for the management and control of the GSP.

HON CHIEF MINISTER:

No, we can amend, I see the point that he is making. We could add after "Royal Gibraltar Police" "or Gibraltar Services Police as the case may be". In other words if we define police officer as necessarily being a member of the Royal Gibraltar Police then how does one read sub-sections (1) to (3) as applying to security policemen. We could correct that by adding it to the

definition of police officer, the words “means any Member of the Royal Gibraltar Police or Gibraltar Services Police as the case may be”.

HON F R PICARDO:

And we have got to add a definition of “Gibraltar Services Police” because there is a definition of “Royal Gibraltar Police” in the Ordinance.

HON CHIEF MINISTER:

There is no way of defining it. The Royal Gibraltar Police is established by Ordinance and the Ordinance establishes a corp of men which it then says shall be known as the Royal Gibraltar Police. The Gibraltar Services Police is not subject to any such incorporation so to speak, it is just a more employees of the Ministry of Defence who are dressed in uniform as opposed to sitting behind desks. See what I mean, it is not capable of definition and therefore it is just a phrase understood to be the Gibraltar Services Police.

HON F R PICARDO:

We have had ding dongs about whether bodies established by Ordinance should be defined or not but he is right to say that it is not a body established by an Ordinance but it is mentioned in other Ordinances is it not. It is mentioned for example in the Criminal Offences Ordinance, sorry the Criminal Procedure Ordinance, given the same powers as the police are they not.

HON CHIEF MINISTER:

Well there is no specific definition of it. There we can see the amendment is not necessary.

HON F R PICARDO:

Well in fact I think there is a specific definition of them there, or of the Gibraltar Police anyway.

HON CHIEF MINISTER:

I think the Ordinance is clear, in Gibraltar everybody knows what the Gibraltar Services Police is.

Clause 25, as amended, was agreed to and stood part of the Bill.

Clause 26

HON CHIEF MINISTER:

In sub-section (2) of 26 I have added as the hon Members will see from their marked up copies, on any ground with respect to which this Ordinance applies. It used to read that subject to harassment without making it clear what were the strands of equality to which harassment applied and it applies to all of them.

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

Clause 27 – was agreed to and stood part of the Bill.

Clause 28

HON CHIEF MINISTER:

In sub-clause (2) again it is the same amendment, adding after the word “harassment” “on any ground in respect to which this

Ordinance applies” to make it clear that it applies to all strands of equality.

Clause 28, as amended, was agreed to and stood part of the Bill.

Clause 29

HON CHIEF MINISTER:

In clause 29 in sub-clause (2) we have moved an amendment to delete the words “paragraphs (a) and (b) of sub-section (1)” and replaced with the words “this Ordinance so far as they relate to sex discrimination”. So it will now read, “the provisions of this Ordinance, not just the provisions of just paragraphs (a) and (b) of sub-section (1), so the provisions of this Ordinance so far as they relate to sex discrimination do not apply to the admission of pupils to any establishment”. In other words, the ability to discriminate on the grounds of sex when one is a single-sex establishment is not limited to the provisions of paragraphs (a) and (b) of sub-section (1) but rather to the whole Ordinance, that is the effect of the amendment. That of course is single-sex education as such. In 29(2)(b) there is the word “a” has been omitted in front of the word “particular”. And in sub-clause (4) the definition of responsible body which appears in the published Bill should be replaced with the shorter definition set out there in the marked up copy, namely responsible body includes a person or body who is responsible for education and establishment in Gibraltar. I suppose that should be who or which. The amendment is OK I am assured by the hon Member’s previous answer but it makes perfect sense.

HON F R PICARDO:

Then it must be right.

HON S E LINARES:

Last time I mentioned this I was ostracised by the Chief Minister because I did not know or was ignorant of the English language.

HON CHIEF MINISTER:

The hon Member is not a headmaster, previous or otherwise.

HON S E LINARES:

No but I was right. My headmaster was right and so am I.

Clause 29, as amended, was agreed to and stood part of the Bill.

Clause 30

HON CHIEF MINISTER:

In clause 30 we are deleting the word in sub-section (2), the first line, the word “to” is to be deleted on the second occasion that it appears on the first line. Just in front of the words “a person” it is to be deleted. In sub-clause (3) the word “certain” should be replaced with the word “some”. I think the word “certain” is capable of meaning what it is supposed to mean but I think the word “some” makes it much clearer. In this section public authority includes any person “some” of whose functions are functionable of a public nature as opposed to includes any person “certain” of whose functions are functionable of a public nature. It is not an enormous change but I feel that it is needed, and in sub-section (5) we are deleting the reference to sub-section (2)(a) and that should be instead a reference to sub-

section (3). Sub-section three in brackets that is. I do not know why the word sub-section has been deleted only to be replaced, we might just have done deleting the (2)(a) and replaced the (2)(a) with (3), but still.

HON F R PICARDO:

That is one of the differences between the original schedule and this schedule.

HON CHIEF MINISTER:

Yes, I beg his pardon, it is indeed. That is the first the other point is that one can read them at point 21 and point 23 in my schedule are the other two, where the amended schedule is consistent with the original. That is one of them.

Clause 30, as amended, was agreed to and stood part of the Bill.

Clause 31 – was agreed to and stood part of the Bill.

Clause 32

HON F R PICARDO:

I am going to make a point in relation to this clause which covers my points 29 to 36 and I will not move them all together but they really are essentially the same point. The reason that I make them is because from clause 32 through clause 33 and 35, clause 34 is only a clause dealing with exceptions not

dealing with the creation of new rights, we are dealing only and I think I should also say clause 30 which I did not spot last night when I was preparing these, we are dealing only with the strands of discrimination of race and ethnic origin. Now, I do not think that we should do that. I think that we should move on to include, as we have in other places in the Bill, all the discriminations covered by the Bill by saying “discrimination on the grounds in respect of which this Ordinance applies”. Now, I foreshadow the reply that will come from the other side which is that Directive 2000/43 which is the one that deals with race or ethnic origin, has a scope clause which includes, and the scope clause is Article 3, little sub-paragraphs (a) to (d) which are identical to those in Article 3 of Directive 2000/78/EC which deals with the framework and deals with all the areas in respect of which we have to prevent discriminations and then it has an extra four sub-paragraphs.

So this Directive which deals with implementing the principles of equal treatment between persons irrespective of racial or ethnic origin, has eight limbs, eight areas of scope, where we have to prevent discrimination. The other directive which is the directive that deals with the framework for all discriminations has only the first four of these eight and none of the other four. What we have done in our Ordinance is therefore what the directive requires us to do in relation to racial and ethnic discrimination, which is to deal with all eight and what we have done is to, in compliance with the obligations under the framework only deal with the four. Now because there is no dispute between us that all the discriminations in the whole framework of the directive are odious, I would move that we immediately cover all the discriminations with those parts of sections 30, 32, 33 and 35 that we are going to deal with. Just for the purposes of the debate being clearer, those which are the ones that deal with the limbs in the directive on social protection including social security and health care, social advantage, education and access to and supply of goods and services which are available to the public including housing, are dealt with in our Ordinance in the transposition in relation to public authorities in part, to the provision of goods, facilities and services under section 32 to

the disposal of management premises and to the consent for assignment or sub-letting. Now why is this important because frankly why would we wish to allow the provisions of goods, facilities or services to be open to discrimination on the grounds of sex, sexual orientation, religion or belief. Why should somebody when deciding to whom to rent premises be able to discriminate on the grounds of sex, sexual orientation, religion or belief, and why should somebody acting as a landlord just consenting to the right of the tenants to assign his tenancy, which is what section 35 deals with be able to allow that decision to be infected with discrimination on the grounds of sex, sexual orientation, religion or belief. If there is a good reason for it I might be persuaded but at the moment I really think that we should be making the amendments in that way, because although we take the view in this House that where there is a cost to our community or our society in relation to the transposition of directives which we feel we cannot meet, we should certainly go down the route of limiting ourselves to the transposition that we are obliged to make. But when we are dealing with policies of social issues such as this, I see no reason why we should not immediately move to make those amendments to the clauses.

HON CHIEF MINISTER:

No Mr Chairman, I regret to say that the Government will not be supporting the hon Member's amendment. I made it clear to the hon Member at the debate on the Second Reading that the Government were not willing to move beyond the requirements of the various framework directives. The Government simply have not given sufficient consideration to the implications throughout the community, both positive and negative, of extending the strands of equality to the other strands of equality beyond these two in this section to all the goods and services. In other words, to outlaw discrimination on all the six strands for all goods and services premises issues when most of Europe has not done so and certainly the United Kingdom has not done so, and to expect us in the context of this debate in this House,

to do all the thinking about what the implications of that is, I do not think Gibraltar can be at the forefront of social engineering on this broad brush wide scale basis and if Europe and the United Kingdom that so much believe that they are at the forefront of politically correct social engineering have not yet done so, it must be for some rational reason which I am not about to fall foul of in one hasty moment at half past nine on a Friday night in the context.

I said to the hon Member at the Second Reading that there are types of discrimination in respect of certain strands of equality that are not covered by the Bill because they were not a requirement of the directive, this Bill is about complying with the directive obligations. It is not about wider or deeper social engineering of a domestic voluntary policy kind. So for all those reasons the Government will not extend at this time and in these circumstances the effects of this legislation to all the strands in respect of all the discriminations and harassments which is (a) not a requirement of the European Union, (b) is not even the law in the United Kingdom, which is a more sort of open and advanced society in that respect than Gibraltar is, and (c) because the Government have simply not had an opportunity to consider the consequences and implications, either for themselves or for others in the private sector, of doing what we would be doing if we accepted the hon Member's amendments. So for all those reasons I do not think it would be responsible for the Government to simply write in such a large broad brush stroke, what the hon Member has suggested in the form of six words I think he will acknowledge, is a massively wide and broad piece of social engineering and that cannot be responsibly done at the stroke of a pen without careful consideration of the ramifications and implications of doing so. So we will not support the amendment.

HON F R PICARDO:

Frankly I impute to all the Government Members as I impute to all Opposition Members without question the fact that all of us

have taken the small not massive step forward of considering all the discriminations that we are dealing with odious in any event and none of us I think would accept that any employer or anybody else should perpetuate any of these discriminations against anybody in any other area. I am imputing that belief to all of us.

HON CHIEF MINISTER:

No, the hon Member should speak for himself. Not all discrimination is necessarily odious. Certain types of discrimination may be odious in respect of certain activities but less odious in respect of others. For example, the hon Member has invited the Government to make it the law of the land that one cannot discriminate against somebody on matters of letting property on the grounds of the proposed tenants sexual orientation. Well that is a very bold brush stroke because if one lives upstairs and wants to rent the flat downstairs, one may not fancy the idea of having gay relationships going on downstairs. It is just an example. It is something that we might do but it is something that has to be considered and has to be done more slowly. It is not frankly as odious to everybody, it is not as odious to everybody to discriminate on those grounds in those circumstances as it might be for example, to discriminate against somebody in his employment simply because of the colour of his skin. Different people have different moral positions when it comes to this vexed question of discrimination and what tends to be the case is that the laws of countries tend to reflect the lowest common denominator or perhaps the highest common denominator that consensus has reached. In that exercise Gibraltar normally is a bit further behind rather than in front of the sort of Scandinavian countries which tend to be the ones who trail blaze on this, followed usually by Holland and then some time later by the United Kingdom and then eventually by the Southern European countries always hold out for longer on, I do not know on what grounds, cultural grounds sometimes. That requires, before something can be made a legal requirement, I think there has to be a process of cultural

assimilation which is takes place in much slower order than the hon Member does with his pen in the context of this amendment. All I am saying really is that how odious a discrimination is in relation to the different situations in life and the different strands of equality vary between strands, between situations and between people. Though there is not a common denominator of view that would entitle him to say that everybody in this room finds odious, all the forms of discrimination described in this Bill apply to all six strands of discrimination. I think there would have to be a broader process of social consultation, a broader debate in a different context, I think with more notice than can be had with the notice of amendment that we have had in this. It would simply not be right and we will pass this first opportunity to be as socially bold as the hon Member has invited us to be. But I have no doubt that at some stage we shall all find ourselves debating these issues here again.

HON F R PICARDO:

Well, I gave way because the Chief Minister rightly wanted to come in on something which I had attributed to the Government. I do not know that he said that his side of the House does not believe it particular odious to discriminate as regards sexual orientation, I think he has just said that to an extent that our society may not generally consider that odious. We have different views perhaps in that respect because I actually.....

HON CHIEF MINISTER:

No Mr Speaker I am perfectly happy to make my own views known. Look I do not find peoples' sexual orientation in the least bit of interest or concern to me and I certainly do not find it odious. I have friends that are gays I will hope to continue to have friends that are gays, I find it in no way offensive. But that is not to say that somebody having a preference not to have this in their own property, that that is not necessarily odious

discrimination. The fact that I have a view about whether homosexuality and sexual orientation does not put people who do not have my view, liberalish views on that issue, in the same category as people who are racially bigoted. The question of sexual orientation has not yet acquired that depth and breadth of social acceptability that racial discrimination has obtained, or that sex discrimination has obtained and all these various different strands of equality are at different stages of social acceptability. That is all that I am saying and it is not possible to deal with them all in one broad brush stroke. I have no doubt that at some stage in the future sexual orientation will be as entrenched and as established and as accepted as today is racial or sex discrimination. But that is not yet the case today. That is the only point I am making.

HON F R PICARDO:

I do equate discrimination on any of the six strands in whatever context with odium, but I think it is important to say the Government are not being asked simply to broad brush make this legislation in relation to the other issue which is what the social cost could be. It is clear from the Bill and from the directives in particular, that nothing we do in relation to these six strands affects the right to have rules in place which relate, for example, to nationality. That is why although there is a reference to a freedom for discrimination on the grounds of social security for example, I do not think we have a problem in doing it which is going to cost us money, because the rules in social security are based already on issues of nationality. But I would ask the Chief Minister two things having accepted, I would ask him to turn his mind to two things. First of all in relation to these sections that I am speaking about, we are not just excluding sexual orientation which is the particular example that he has chosen, but we are also excluding from discrimination or from the protection from discrimination one of the areas which he himself has just said does enjoy general approval in relation to its non observance which is sex, discrimination on the grounds of sex. At the moment, as the

sections are drafted, they only apply to prevent discrimination in relation to race or ethnicity. Could he at least turn his mind to the six strands, and though he might tell me that he is not prepared to proceed in relation to sexual orientation, would he tell me that he is prepared to include references to sex, religion or belief? Because I frankly cannot understand why somebody would not want to have somebody in their building who is not of a particular sex. That seems to me as ridiculous as not to employ subject to the exceptions, somebody because of a particular sex. In any event whatever he does today, will he undertake to review whether these inclusions should be made sooner rather than later, perhaps in the exercise of the obligation under the directive which does not require transposition but is an obligation under the directives to continue a dialogue with social groups that represent the minorities.

HON CHIEF MINISTER:

I will neither accept the amendment now nor will I undertake to prioritise a review of the extensions. The Government will do no such thing. The Government will introduce such legislation as and when we decide it is politically and socially opportune to do so and appropriate to do so and not in response to any invocation by the hon Member that we should do so. This is not an area in which we have a manifesto commitment, I am not sure that even they accepted a manifesto commitment to in this area, I seem to recall they had a manifesto commitment to introduce the directives, which is what we are doing today. I do not remember reading in their manifesto that they had a commitment to do what they are inviting me to do today. So I will neither do it at such short notice, for the reasons I have already explained to him at length and will not repeat, nor will I undertake to make this a Government policy priority by looking into it with a view to reviewing it but as I said before to him earlier, I have no doubt that all of these issues at some stage in the future will arise but I will not accept any stricture to accelerate that process simply because the hon Member believes that all discrimination is odious.

HON F R PICARDO:

The Chief Minister started his intervention this time by saying that he will do it when it is socially and politically opportune, which tells me that being politically opportunistic is not necessarily of his agenda. Now, yes we did not have any specific commitment in our manifesto in relation to this, he is absolutely right, but like he, when we ask him questions about his manifesto, we are not answerable in this House to our manifesto. He has not answered one of the issues which I put to him which was this. Will he nonetheless maintain in the review which he says he will not do, at least the dialogue which the directive requires him to maintain with the special interest groups referred to, to keep this issue at least under the review. Let me give notice that even though the Chief Minister has indicated that he is not going to accept the clause, on these clauses because of their importance, certainly in my view and in the view of Opposition Members and because these discriminations whether their prohibition be prescribed by directive or otherwise, are odious and there is absolutely no other way to put it in my view, we should at least go to the vote and the Government should use their majority to defeat these amendments.

HON CHIEF MINISTER:

The Government will happily use their majority to defeat the amendment. I do not know why he thinks that putting it to the vote is somehow something uncomfortable for the Government but I have spent three quarters of an hour explaining that the Government will use their vote to defeat the majority. He has asked me for a personal assurance that I will continue a dialogue with anybody, I am not familiar with the terms of the directive that he quotes as requiring a dialogue, I will certainly not give a personal assurance to begin or to continue a dialogue with anybody. What I can do is give him an assurance on behalf of the Government that the Government will comply with any obligation that it may have under any directive to conduct a

dialogue with whoever it is obliged to conduct a dialogue with. In other words, we conduct dialogues with many people voluntarily but if the hon Member is referring me to a legal obligation, the Government will comply with that legal obligation but not necessarily me personally. I doubt very much that the directive says that the Chief Minister must personally conduct the dialogue. The hon Member asked me for a personal undertaking that I would conduct the dialogue and the Government will. I think the Government does. I am not aware of the directive, I shall make it a point in finding out what directives.

HON F R PICARDO:

Articles 13 and 14 of the Directive 2000/78/EC.

HON CHIEF MINISTER:

Well if there are legal requirements for some arm of Government to conduct dialogue with some party, then certainly the Government will comply with them.

HON F R PICARDO:

I move the amendments in the terms of my proposed amendment No. 29 to amend clause 32(1) in the third line deleting the words "on the ground of race or ethnic origin" and inserting therefore the words "any grounds in respect to which this Ordinance applies".

Question put. The House Voted.

For the Ayes:	The Hon J J Bossano
	The Hon C Bruzon
	The Hon Dr J J Garcia
	The Hon S E Linares

The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Noes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

Clause 32, stood part of the Bill.

Clause 33

HON F R PICARDO:

In clause 33(2) delete the words “on the ground of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The house voted.

For the Ayes: The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Noes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

HON F R PICARDO:

In clause 33(3) delete the words “on the ground of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The House voted.

For the Ayes: The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Noes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares

The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

The amendment was defeated.

Clause 33, stood part of the Bill.

Clause 34, stood part of the Bill.

Clause 34

Clause 35

HON F R PICARDO:

HON F R PICARDO:

In clause 34(1) delete the words “on the grounds of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

In clause 35(1)(a) delete the words “on the ground of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The House voted.

Question put. The House voted.

For the Ayes:
The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Ayes:
The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Noes:
The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet

For the Noes:
The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet

The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

HON F R PICARDO:

In clause 35(1)(b) delete the words “on the ground of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The House voted.

For the Ayes: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

For the Noes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

The amendment was defeated.

HON F R PICARDO:

And finally, in clause 35(2) delete the words “the grounds of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The House voted.

For the Ayes: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

For the Noes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

The amendment was defeated.

Clause 35, stood part of the Bill.

Clause 36 – was agreed to and stood part of the Bill.

Clause 37

HON CHIEF MINISTER:

In clause 37 a small amendment at sub-clause (2) to delete a superfluous word. The word “applies” after the word “Ordinance” makes no sense in its meaning and has found its way there.

Clause 37 – as amended, was agreed to and stood part of the Bill.

Clause 38 – was agreed to and stood part of the Bill.

Clause 39

HON CHIEF MINISTER:

In clause 39 I have proposed an amendment to delete the section as it currently stands which is headed “Exception for national security” and replace it with a section that is headed “Exception for public security” and which covers wider grounds. It now reads, “This Ordinance shall be without prejudice to any statutory provision or rule of law relating to public security, the maintenance of public order, the prevention of criminal offences, the protection of health or the protection” of the rights and freedoms of others”.

HON F R PICARDO:

I would like to make a simple point that certainly I will not be voting in favour of this clause because I do not understand why we need to make the exceptions wider and I think that applies, no for me to support this would fly in the face of my earlier

amendments. So I take the view that the exceptions should be as narrow and limited as they possibly can be.

HON CHIEF MINISTER:

The hon Member misunderstands the animus, the sentiment behind the amendment. The sentiment behind the amendment is not too widen the exemptions so as to narrow the protection against discrimination. The animus, the sentiment of the amendment which incidentally follows the language of the directives, is that these are genuinely issues which need to be saved. In other words one cannot allow the rules against discrimination to result in the commission of criminal offences, or to prejudice public security, or to result in breaches of public order, or to put at risk public health. These are not things that the Government say well let us see how we can narrow the protections. He may still not wish to support the amendment but I just wanted to explain to him that the sentiment of the amendment is not to carve out as much ground as possible from the terrain of the anti-discrimination regime but rather to replicate in the Bill what the directive itself says. This language is drawn directly from the directives.

HON F R PICARDO:

The problem is that the Chief Minister himself started moving the amendment by saying that it made the exemptions wider. Now I cannot for the life of me understand, I mean I can understand issues like even public order, prevention of criminal offences I did not think was covered in any event before, and protection of public health and the rights and feelings of others. I do not know how we need to limit the protection against discrimination for the purposes of public security but certainly this language which is being proposed now is more directive language than the language of national security, so I am not imputing it to him to want to extend the ambit of his ability, but I frankly prefer the wording of national security because I think that is much narrower. So this amendment does not enjoy this.

HON CHIEF MINISTER:

Fine but the hon Member should not think that the directive refers to national security which I have chosen to define in this wide way.

HON F R PICARDO:

No, I accept that it is the language of the directive.

HON CHIEF MINISTER:

The language of the Bill is in Article 2 of the directive.

Clause 39, as amended, was agreed to and stood part of the Bill.

Clause 40 – was agreed to stood part of the Bill.

Clause 41

HON CHIEF MINISTER:

Clause 41 is the section where throughout it there has been an omission of a reference to race or ethnic origin and it is inserted in all that multitude of places.

The amendment was agreed to.

HON F R PICARDO:

In clause 41(1), delete the words “reasonably appears to the person doing the act that it prevents or compensates” and inserting therefore the words “is reasonable to prevent or

compensate”. Ditto my amendment in relation to clause 41(2) and ditto my amendment in relation to clause 41(3), and that has the effect of imputing the views of the man who buys his Chronicle at the Piazza.

HON CHIEF MINISTER:

Well one advantage of retired judges is that their rulings no longer bind. Well their current rulings no longer bind. Mr Chairman, we have considered this particular proposal of the hon Member at some length because were the words capable of meaning what he asserted that they meant but frankly we do not believe that they are capable of meaning that, still less do we think they are capable of resulting in a bigot's charter which I think were the words that he used in describing them. And the reasons why Mr Chairman we do not share his views are the following. First of all positive action, and I think he would accept this I am just adding it to the explanation for the purposes of completeness not because I do not think he acknowledges it. First of all positive action is necessarily a matter of judgement initially for the actor. I mean any regime that allows for positive action necessarily is something that has to be judged on in the first instance by the actor. Secondly, it is not subjective, and this was his first and most serious criticism of the matter, it is not subjective. The appearance has to be reasonably held by the actor, by the person. It says “where it reasonably appears to the person”. That is objective not subjective. In other words, it has got the appearance to the person doing the act that it prevents or compensates, that has got to be a reasonably held view, not a subjectively unreasonably held view. Therefore we do not accept the hon Member's under basic premise that this places the definition of reasonableness in the control of the actor, because the reference to where it reasonably appears to the person is to be assessed by somebody who is adjudicating on a complaint, because of course, that is the third limb why we do not think his amendments are necessary. Somebody who is the victim of this alleged bigot that the hon Member fears is going to crawl out of the woodwork, can complain, and then either the

Industrial Tribunal or the Supreme Court judge whether it was reasonably held by an objective standard not by a subjective standard. So we do not accept that it is subjective. In addition to those three reasons, which we think are themselves definitive, we are very reluctant to depart from the UK's language in an area of law which is bound to be much litigated about because then we lose the benefit of the body of UK common law and jurisprudence in interpreting these words. So for those four reasons which I hope the hon Member will recognise even if he does not agree with them, at least show that we have taken his observation seriously and thought about it. We do not believe that the amendments are necessary not because they would not be necessary if the hon Member's interpretation of the language were right, if the hon Member's interpretation of the language were right then the amendment would be necessary. But we feel that his interpretation, his judgement of the need for these amendments are based on a false premise. Namely, the view that this is subjective rather than objective as to reasonableness. It is not subjective it is objective and it is to be tested by the court and it is a subject matter on which there is already established Case Law.

HON F R PICARDO:

Let me start with his last point first because it was the one really that concerned me in raising the issue. I am not one to slavishly follow the UK code when we are transposing the directives but I do recognise the benefit of having a code that uses the same wording when we are dealing with issues that are going to be broadly litigated, and that was one issue that concerned me also when I was raising this. I did not have time to research whether there was any case law which established this and I was dealing with it simply on the face of the Bill. I will say this, I do not think that the point is dealt with by saying that the reasonably imputes the objectivity because I think there is still too much about the mind of the individual. I think we have done enough by raising it and debating it to show that the intention of this Parliament is

that the issue be dealt with objectively by the tribunal and that the tribunal be free to impute the standard of reasonableness.

HON CHIEF MINISTER:

This would be a worse than meaningless provision if it were purely subjective.

HON F R PICARDO:

That is why I was concerned. I was concerned that it could be given that interpretation but we agreed that it must be objectively determined whether the discrimination is reasonable.

HON CHIEF MINISTER:

Like everything else covered by this Bill somebody engages in behaviour. No one can stop the behaviour, somebody can then complain about the behaviour and then the tribunal or the court judges whether the behaviour was or was not unlawful under the terms of the Bill. Section 41(3) reads as follows, "*Nothing in this Ordinance shall render unlawful any act done by a trade organisation within the meaning of section 18 in or in connection with encouraging only persons of a particular religion or belief or sexual orientation to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to religion or belief or sexual orientation suffered by persons of that religion or belief or sexual orientation who are, or are eligible to become, members.*" It is therefore, I think, intentionally limited although the point has been researched. It is therefore I think intentionally limited to those strands of equality where there are lobbies for it. Do you see what I mean? It is saying.....

HON F R PICARDO:

Yes but cannot reach a social conclusion on whether there is a lobby for the others.

HON CHIEF MINISTER:

Adding acceding to the hon Member's request is to add to the permissible forms of discrimination.

HON F R PICARDO:

Positive discrimination by a trade union to bring about.

HON CHIEF MINISTER:

Well positive or negative it is discrimination.

HON F R PICARDO:

Trade organisation.

HON CHIEF MINISTER:

It is discrimination

HON F R PICARDO:

This is to promote, this is an inclusive.

HON CHIEF MINISTER:

To see how all discrimination is not odious.

HON F R PICARDO:

Absolutely. It is odious that he does not want to include it here because it is for a positive inclusion in a membership that the discrimination is positive here. That is why I think it should cover all. The equivalent is regulation 26 of the Sexual Orientation Regulations in the UK, which just deals with sexual orientation.

HON CHIEF MINISTER:

This is the problem that we have. That the reason why this paragraph is limited to religion or belief or sexual orientation, is that it is only in the UK law dealing with those two strands of inequality that this provision exists. In the UK law dealing with the other strands of inequality, race, ethnic origin, it does not exist. It is not a requirement of the directive, it does not exist in UK law except in relation to religion, belief or sexual orientation. I can see a certain logic to that. I cannot frankly right now think of any harm of extending it to other things but it would not follow anything that exists anywhere else, in effect what we are talking about is trade organisations. Trade organisations saying, come and join our gay section. Well I suppose one can add, come and join our women or men's section, come and join our ethnic but we are not supposed to be encouraging ethnic division of society into its racial origin, there is no point.

HON F R PICARDO:

The Government are supposed to be encouraging it to prevent or compensate for disadvantages linked to it.

HON CHIEF MINISTER:

Yes, I am being advised that if we added for example “race” to this or “ethnic origin”, one could have organisations inviting people to come and join their white section or their black section.

HON F R PICARDO:

No but that, frankly with respect, is what we are doing in the whole Bill in relation to everything. We are not saying anywhere what the races are that are to benefit or not to benefit, what the ethnic groups are that are to benefit or not to benefit. One assumes that they must be those races or groups which are in minority.

HON CHIEF MINISTER:

No, no, the positive discrimination provisions in this Bill do not permit positive discrimination in favour of the majority as an indirect means of discriminating against the minority. It is precisely the point that he made yesterday.

HON F R PICARDO:

Therefore the argument that the Chief Minister has just put about driving the coach and horses over, with respect to whoever it was that advised him it is absolutely erroneous, because this is a section on positive discrimination and therefore it can only be to the advantage of the minorities’ respect.

HON CHIEF MINISTER;

Well, Mr Chairman, it is not a requirement of the directive. I am just trying to assess the extent to which it is safe at such short notice to, well to consider it. I am not sure it does make sense but because it has got to be again, it is the same argument I used against him the other time which I am now using for him, where it reasonably appears to the organisation that introduces objectivity which can be assessed by a court or a tribunal, which would have to consider whether it could objectively, that is reasonably, does compensate or prevent for disadvantages linked for those. On that basis it cannot be abused. It is not a requirement of the directive.

HON F R PICARDO:

Can the Chief Minister see why it could be, it is a positive.....

HON CHIEF MINISTER:

No I do not. I do not. I do not see that, I see the symmetric logic but I do not see the social logic. I can see the social logic of these two but not of the others. But fine, the fact that I do not see the social logic of it is not, it does no harm, I do not think it does any harm. So fine, we have no difficulty. The hon Member wants to propose an amendment to extend that to all the grounds of harassment to which the Ordinance applies, the Government would not object. What has he actually proposed?

HON F R PICARDO:

I am quite happy for the Chief Minister to propose where he has proposed to say.....

HON CHIEF MINISTER:

No, but we are only talking about sub-section (3).

HON F R PICARDO:

Yes but he has proposed an amendment to sub-section (3).

HON CHIEF MINISTER:

Oh yes, just to add the words "sexual orientation". Mine would become irrelevant.

HON F R PICARDO:

Well no, because I did mine thinking his was in. So it is really just, if his is passed then mine should say.....

HON CHIEF MINISTER:

No his should say "all the grounds to which this Ordinance applies".

HON F R PICARDO:

Right and then we just get rid of, yes. So in that case I will amend my amendment so that it reads as follows: in clause 41(3), insert the words "on any of the grounds to which....."

HON CHIEF MINISTER:

No, in fact it does not work.

HON F R PICARDO:

It does not work, it has got to be specific, right.

HON CHIEF MINISTER:

I have incorporated the words "all the grounds on which" to that phraseology.

HON F R PICARDO:

So insert the words "sex, sexual orientation" which will deal with his.

HON CHIEF MINISTER:

"Race or ethnic origin, religion or belief, sex or sexual orientation." Right?

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

The list would then read "of a particular race or ethnic origin, religion or belief, sex or sexual orientation".

HON F R PICARDO:

In place of?

HON CHIEF MINISTER:

In place of nothing.

HON F R PICARDO:

Well yes, because there is already words there religion or belief.

HON CHIEF MINISTER:

No, it is analogy inserted. Between the word “religion” one has got to insert the words “race or ethnic origin,”.

HON F R PICARDO:

The Chief Minister has left out the word “sex” there.

HON CHIEF MINISTER:

No, no it has nothing to do with it there. After the word “belief” it is far too late for sex [laughter], after the word “belief” we have got to add comma sex. And that deals with it. We then end up with race or ethnic origin, religion or belief, sex or sexual orientation, so the six strands.

HON F R PICARDO:

The amendment happens three times in that clause.

HON CHIEF MINISTER:

In what clause?

HON F R PICARDO:

In that clause it happens three times because the strands are mentioned on three separate occasions.

HON CHIEF MINISTER:

So that the act prevents or compensates for disadvantages linked to race or ethnic origin, religion or belief, sex or sexual orientation suffered by a person of that race or ethnic origin, religion or belief, sex or sexual orientation. So it is the same amendment in the three places where they are presently. Is that clear?

HON F R PICARDO:

Yes.

Clause 41, as amended, was agreed to and stood part of the Bill.

Clause 42 – was agreed to and stood part of the Bill.

Clause 43

HON CHIEF MINISTER:

The amendments to clause 43 is the second instance where the schedule has been amended. The schedule of amendments.

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

I shall explain to the hon Members what effect these amendments have. These amendments by deleting part 2 and part 3 together, are all the areas to which the strands of discrimination are applied, employment, health et cetera et cetera, landlord and tenant that sort of thing. By deleting the reference to part 2 and part 3 and replacing it with a list of section numbers and doing the same in the Supreme Court jurisdiction clause a bit later on, we are distributing what we discussed yesterday, we are distributing between the jurisdiction of the two courts, Industrial Tribunal for employment related issues and Supreme Court for non employment related issues. That is the effect of the amendment. So the amendment is in sub-section (2) to delete the reference to the words "Part 3" and replace it with the words "sections 13, 17, 18, 20, 22, 23 or 27", to delete sub-clause (2)(b) and renumber existing sub-clause (c) as sub-clause (b). All that is more properly explained in the amended schedule that we handed and is set out in the marked up copies that the hon Members have.

HON F R PICARDO:

Yes I think the Chief Minister will agree that in his original schedule there was some typo which made the whole thing unintelligible so we only really have the benefit of the correct amendment now.

HON CHIEF MINISTER:

The consequential on that is something which we have missed. In sub-section (3) consequential to that and something that is cross-reference, in sub-section (3) the reference should now not be to (2)(c) but to (2)(b). 2(c) no longer exists. It has now become (2)(b). With me? I have not given written notice of that so hon Members had better make a note of that. In sub-clause

(3) of clause 43 there, it says in sub-section (2)(c) that should be sub-section (2)(b).

HON F R PICARDO:

My welcome to the fact that the industrial tribunal was to have jurisdiction in matters unrelated to employment but which were the province of discrimination and prejudice is not long-lived because the tribunal is not to have that jurisdiction. We were concerned that a tribunal that was dealing with employment issues should have that jurisdiction, whilst we welcomed it, and we said that we welcomed it and wanted the jurisdiction of the tribunal to be extended beyond employment in the enabling statute and for it to have the resources to deal with that. In fact the Chief Minister has said there will be potentially in the future another type of tribunal, not the Supreme Court, which will be able to deal with these issues if we feel there is a need for it. We do feel there is a need for it so that there is quick and easy and cheap access to justice in relation to these issues and we would therefore have liked to have seen the industrial tribunal continue to have that jurisdiction and we will not be supporting the amendments for that reason. We certainly hope though that although these amendments will surely pass, that the review which he referred us to of the level of litigation coming in relation to issues of employment and issues not of employment, is one which is kept very much at the forefront of Government business so that we see soon, as we expect we should, a tribunal specific to these issues which can deal with them quickly, cheaply and effectively.

HON CHIEF MINISTER:

He wants to have it both ways, he is voting against and also asking for an undertaking. I mean if at least he supported the amendment it might be easier to give him the undertaking that he seeks. I think to vote against and ask for the undertaking is asking too much.

HON F R PICARDO:

A slightly mischievous way of putting what I am saying. What I am saying is that because I do not support the amendment, I would at the very least expect an undertaking.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

For the Noes: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

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

Clause 44

HON CHIEF MINISTER:

In clause 44 there is a reference, there is an amendment to sub-clause (2)(a) to delete the words which involve discrimination on the grounds of sex and to replace those words by the words "to which section 43 applies".

HON F R PICARDO:

The amendments I am moving in relation to 44 I also foreshadowed in my original address in relation to the Bill, which was that the Bill does not use the directive language, it uses the language of the English Acts, where it replaces the use of the words "established facts" for the word proves and it uses the word "conclude" for the word "presume". So we are purporting or attempting to go back to the directive language by putting those words in place of proves and concludes in the terms of my proposed amendments 43 and 44.

HON CHIEF MINISTER:

Mr Chairman this is another area that we might as well, he might as well present them all because it is all the same argument.

HON F R PICARDO:

By which he means my amendments 47 and 48 which do the same thing in relation to the Supreme Court.

HON CHIEF MINISTER:

Yes.

HON F R PICARDO:

Yes, and I formally move them in relation to the provisions of section 47(2) where the words “proves” and “establish” should also be interchanged and the words “conclude” and “presume” should also be interchanged. They relate to the standard and burden of proof shifting in either, in the first instance in 44 the Industrial Tribunal, and in the second instance to the Supreme Court.

HON CHIEF MINISTER:

Well the Government do not propose to support these amendments. We have carefully studied the language and we think this is an entirely semantic point. The Bill in common with UK legislation uses the words “where on the hearing of the complaint the complainant proves facts from which the tribunal could conclude” in the absence of an adequate explanation that. The words of the directive are “establish facts from which it may be presumed”, and we have not been able to come to the conclusion that the words “prove facts from which it can be concluded” in the absence of an adequate explanation, are any different to “establish facts from which it may be presumed”. We think it means entirely the same. We think there is absolutely no difference in burden or onus, we think that they are entirely synonymous terms and we see no justification to depart from the language used in the Bills.

HON F R PICARDO:

Can I at least, I think there is little between establish and prove, little but something. But I sort of think there is more between conclude and presume.

HON CHIEF MINISTER:

No, that is the mistake he is making. That is the mistake he is making. He must not compare the word “conclude” from which the tribunal could conclude in the absence of an adequate explanation with “presume”. Rather that is what he must do. What he must not just do is compare “conclude” and “presume”. Of course conclude and presume are not the same but that is a false comparison. Because presume, which is the single word of the directive, is in the Bill conclude in the absence of an adequate explanation, which is exactly what presume means. So it is not that presume and conclude mean the same, of course they do not. But conclude in the absence of an adequate explanation is the same as presume.

HON F R PICARDO:

Attractive though that argument may seem, when we go to Article 10 of the Directive 2000/78, the word “presume” is followed by a caveat, from which it may be presumed that there has been direct discrimination it shall be for the respondent to prove that there has been no breach of the principle of equal treatment, which is what happens when we impute the words “in the absence of an adequate explanation from the respondent”. So in the directive one presumes when one shifts the burden, in the Bill, as I read it, one concludes before one shifts the burden.

HON CHIEF MINISTER:

One concludes in the absence of a reasonable explanation and if you do not provide a reasonable explanation, then the presumption sets and the burden shifts. In both the Bill and in the directive there is a sort of, loosely speaking, a prima facie test. If the prima facie test is not met, the burden shifts and that is the effect both of the directive and of the Bill.

HON F R PICARDO:

No if the prima facie test is met the burden shifts. That is how it works.

HON CHIEF MINISTER:

In both.

HON F R PICARDO:

Yes. Yes that is what we set out to do. That is what the directive requires us to do.

HON CHIEF MINISTER:

And that is what we believe the Bill does.

HON F R PICARDO:

Right. And I said when I introduced this, that I recognised that that was the language of the UK and that the UK transposition had not been challenged. Right.

HON CHIEF MINISTER:

We believe rightly so.

HON F R PICARDO:

Well but I believe that a presumption is a much lower hurdle than a conclusion and that they are both subject to the caveat of the explanation. We could argue until the cows come home and

they are very likely to come home soon, so I suppose I shall leave it at that but I am not persuaded.

HON CHIEF MINISTER:

No of course he is not persuaded, and of course it is becoming increasingly clear that there is not a sufficient body of authority capable of persuading the hon Member once he gets a thought into his head, unless he now wants to add to the ranks of the British Government's colonial slaves the legal services of the European Commission, who in all these years have not challenged the United Kingdom language which the hon Member assumes is because they are dilatory and indolent and which actually I think is because they do not believe that it has the weakness that the hon Member uniquely thinks that it has. So the United Kingdom Government thinks that it does not have that defect, the United Kingdom Parliament thinks that it does not have that defect, the United Kingdom Racial Equality Commission does not think that it has that defect, the European Commission does not think it has that defect, we do not think it has that defect, our draftsman does not think it has that defect. Yet notwithstanding all that the hon Member is still not persuaded on the basis of his sole interpretation. Now if against that threshold of requirement to persuade the hon Member it is not possible to comply with that threshold of requirement. I can understand that if he was asserting one thing and I, or even I and the British Government were asserting one thing, then there is still scope for believing that we are both wrong and he is right. But everybody, the UK Government, the UK Parliament, the Racial Equality Commission, the European Commission legal services, there comes a point which the hon Member surely must be willing to accept that his view is probably on balance not correct, given the weight of opposition to it. Now I do not set myself the task of persuading him, I express my view as persuasively as possible in the hope of persuading him. But look, if I do not persuade him I do not persuade him, and he shall vote one way and I will vote another.

HON F R PICARDO:

I am persuadable but I believe that simply by asserting the fact that this has been done a certain way somewhere else I will not be persuaded. The Chief Minister has imputed to me an allegation against the employees of the European institutions of them being dilatory and ignorant, which I certainly, indolent sorry.

HON CHIEF MINISTER:

I have never classed them as ignorant.

HON F R PICARDO:

Oh no, I am sensitive to most of the things he says for reasons that are surely politically obvious, but I have not said that. I have actually prefaced all my interventions in relation to this clause in the First Reading and now, by saying that I recognise that this has been done already in that way in the UK and has not been challenged. He must at least recognise that. But I am still not persuaded and I believe, and I know I am going to open myself up now for the Government Members to have a bit of a laugh, but I believe myself to be a fairly reasonable man, I am just not persuaded that the word “conclude” has the same meaning as the word “presume”. Now at the end of the day I am going to have to live with the fact that this is going to go as it is presently drafted and I am comforted by the fact that the UK Act contains this wording and that the people in charge of the Equal Opportunities Commission in the UK appear not to have had a problem with it, well, at the end of the day I am not privy to what discussions they may have had in consultation with the British Government but I will be comforted by the fact that this is the way it is done in UK. At the end of the day I am still not persuaded, I hope it does not have the effect I think it has because that would mean that before the burden is shifting the

standards to be met would be higher than was originally intended in the European Directive, but so be it.

Clause 44, as amended, was agreed to and stood part of the Bill.

Clause 45

HON F R PICARDO:

I have got something on 45(1) and the Chief Minister has something on 45(7). My amendment in relation to 45(1) is that we have there wording in relation to what happens when the Industrial Tribunal decides that something is well-founded. I think really what we are saying there is when the Tribunal finds in favour of a complainant rather than simply deciding that something is well-founded. I think what the Tribunal has traditionally done is found in favour of a complainant. I would urge that we make that amendment. There is not a similar clause in relation to the Supreme Court, it is only a clause which applies to the Industrial Tribunal.

HON CHIEF MINISTER:

No Mr Chairman, this is again complete semantics. Look, if the Tribunal finds that the complaint is well-founded then it rules in favour of the complainant. If the Tribunal finds that the complaint is not well-founded then it rules in favour of the person complained against and the hon Member has just suggested a second formula of words to achieve the same result. I could suggest six or seven other formulas of words that would have the same meaning but the same is true of every line of this Bill. The fact that there are other ways of saying the same thing is not a sufficient reason for changing the way that it is said in the Bill, so we will not support the amendment.

HON F R PICARDO:

He knows as well as I that when tribunals reach conclusions that it is not just that they have decided that something is well-founded, they are making a ruling, that is why it is not just the Tribunal deciding if something is well-founded or not, it is that the Tribunal reaches determination when it makes a finding, that is why I thought we should use the words “rules in favour of the complainant”.

Question put. The House voted.

For the Ayes: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

For the Noes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

The amendment was defeated.

HON CHIEF MINISTER:

Mr Chairman, we have an amendment which hopefully will fare better than that one, to sub-clause (7) which is simply to add the

word “into” in front of the word “operation”, which is really just to make sense of it.

Clause 45, as amended, stood part of the Bill.

Clause 46

HON CHIEF MINISTER:

Clause 46 in sub-clause (4) deletes little (a) and replace it with little (a) section 21, 25, 26, 28 as set out there. So delete the language in the present little (a) which is not very much, it is only the words “section 28” and the semi-colon and the or, well only to be re-provided. So little (a) should now read “section 21, 25, 26, 28, 29, 30, 32, 33, 35 or 36; or”. Those are the sections which constitute the jurisdiction of the Supreme Court, the matters dealt within those sections.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

For the Noes: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo

The Hon F R Picardo
The Hon L A Randall

Clause 46, as amended, stood part of the Bill.

Clause 47

HON CHIEF MINISTER:

In clause 47 in sub-clause (2)(a) I have given notice of amendment to delete the words “which involves discrimination on the grounds of sex” and replaced them as I did earlier on with the words “to which section 46 applies”. That is a repetition of the amendment which they are going to be reminded of they voted in favour in the equivalent provision of the Industrial Tribunal. This is not about jurisdiction or burden shifting.

Clause 47, as amended, was agreed to and stood part of the Bill.

Clauses 48 to 50 – were agreed to and stood part of the Bill.

Clause 51

HON CHIEF MINISTER:

In clause 51 I have given notice of amendment in sub-clause (1) the second line. Where there is a reference to 52 it should be a reference to 54 so that it reads “section 54(1)(a)” not “section 52(1)(a)”. So we have just replaced 52 with 54.

Clause 51, as amended, was agreed to and stood part of the Bill.

Clause 52

HON F R PICARDO:

I have given notice of an amendment in relation to 52(8)(a). All that I propose in it is that we include the word “is” after “he” where they appear in that sub-paragraph. Although it is a small amendment it has a large effect. When we insert it there are three potential parties affected. It means that the person is then not a relevant independent advisor for the purposes of sub-section (6) of this same section. If he is, is employed by or is acting in the matter for another party or person who is connected with the other party. That, I will now avail myself in this respect of the argument which the Chief Minister deployed against me, which is that this is actually, what I am proposing is actually the wording in the United Kingdom, which has those three instances, so I think this has been a slip in copying in the UK source document.

HON CHIEF MINISTER:

I do not understand the hon Member’s point. There is a word “he” already.

HON F R PICARDO:

Yes but it does not have “is” comma.

HON CHIEF MINISTER:

So he just wants to remove the comma then.

HON F R PICARDO:

No that would be a grammatical point which I would not dare move at this time of night. I am including an extra “is”. If he is, is employed by or is acting, and that is what the UK section

says. He has just missed out an “is” in his transposition. I think it is regulation 35.

HON CHIEF MINISTER:

No, If he is comma is employed by or is acting in the matter.

HON F R PICARDO:

That is what the UK source says, I think it is Schedule 4, Part 1.

HON CHIEF MINISTER:

Yes it is here, the hon Member is right. I have it in front of me.

Clause 52, as amended, was agreed to and stood part of the Bill.

Clauses 53 and 54 – were agreed to and stood part of the Bill.

Clause 55

HON CHIEF MINISTER:

We are deleting for the reasons that I explained to the hon Member that I would be representing it in a separate Bill so that it is a more findable law. In fact I tried to find a way of whether I could create a Bill to put before the House, but I do not think we can. There is a statutory requirement to give notice, I am not sure whether that is notice that can be waived in the House.

HON J J BOSSANO:

It can only be done by suspension of Standing Orders. If we are talking about really for example a small Bill amending the Employment Ordinance and basically containing something of which we had already had sight, it is not that we require time. If the Chief Minister wanted to include it during this session or in an adjourned meeting, then we would be glad to see it coming in even if the seven days' notice were not there.

Clause 55, as amended, was agreed to and stood part of the Bill.

The Schedule

HON CHIEF MINISTER:

In the Schedule there is a small point on page 270 of the Bill where there is a reference to the Equal Opportunities Ordinance 2003, which is of course 2004 because it was taken in the new year.

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Equal Opportunities Bill, 2004 and the European Parliamentary Elections Bill 2004 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 Equal Opportunities Bill, 2004 and the European Parliamentary Elections Bill 2004 were agreed to and read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 26th February 2004 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 11.00 pm on Friday 6th February 2004.

THURSDAY 26TH FEBRUARY 2004

The House resumed at 10.30 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training

The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon S E Linares

IN ATTENDANCE:

P E Martinez – Clerk of the House of Assembly (Ag)

OATH OF ALLEGIANCE

The Hon A Trinidad took the Oath of Allegiance.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Home Purchase (Special Deduction) Rules 2004.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INSURANCE COMPANIES (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker this is a short Bill which completes the transposition of those parts of the Solvency I directive as it is known, the remainder of which has been achieved by Regulations already published in the Gazette on 5th February 2004, and these are the bits of those directives which required principal legislation. The so-called Solvency I directives which are directives 2002/12 and 2003/13, one dealing with life assurance companies undertakings and the other dealing with non-life insurance undertakings are directives that deal mainly

with the solvency margins. In other words, provisions in the law to ensure that insurance companies maintain a margin of solvency designed to protect policy-holders from the financial failure of companies that are providing them with insurance cover. The vast bulk of that transposition is done in that set of three regulations. So this is really standing by itself a very technical and a very small bit of what is a very much larger legislative enactment.

In clause 2, the hon Members will see that there is the introduction into section 52 of the principal Ordinance, that being the Insurance Companies Ordinance, a section which in effect creates a one-off filing requirement. The hon Member will see that Part B sub-section (2)(b) lists a series of forms and documents and information and then sub-section (a) says "an insurer shall in respect of any financial year ending from 31st December 2003 to 30th December 2004 inclusive, submit in addition to the documents in sub-section (1), the documents and information in paragraph (b) which it then goes out to list in paragraph (b). Therefore, this amendment only creates a one-off obligation to submit these forms in respect of the financial year, which can only be one, ending in the 12 months period from 31st December 2003 to 30th December 2004. The purpose of this is to provide the Financial Services Commissioner with that information to enable him to make a first assessment of current solvency, and thereafter, the continuation of the provision of the information is provided for in the forms attached to the three Regulations that I have alluded to a moment or two ago. So in short and to summarise, clause 2 creates an information submission requirement but on a one-off basis. Sub-clause (2) introduces a new section 60 into the principal Ordinance dealing with financial recovery plans. Now financial recovery plans are something introduced by the two directives that we are transposing today, to enable the Financial Services Commission or the Regulator, to protect the interests of shareholders when he sees a company's finances deteriorating but before it has actually breached the solvency margins. In other words, whereas previously there were solvency margins and a regulator might be seeing a company's financial health

deteriorating but could not act until the solvency margin had been breached, by which time it might be too late to protect the policyholders, this regime allows the Financial Services Commission, and it is a requirement of this new directive, when he sees that there is a deterioration towards the minimum solvency margin he can, by way of early warning protection say to the company, your financial health is deteriorating, give me a financial recovery plan. In other words submit to me financial proposals to arrest the apparent inexorable deterioration in their solvency margins. Section 60 introduces that requirement, or that power, in our Insurance Companies Ordinance.

Clause 4 amends three parts of the Insurance Companies Ordinance, again in transposition of the requirements of these two directives, so that when an insurance company is the subject of a request from the regulator of one of these financial recovery plans, when the regulator says to a company, "although you have not yet breached your margins, your solvency margins, I believe that your financial health is deteriorating, please give me a financial recovery plan", when a company is subject to that regime its rights to passport into the EEA is temporarily suspended so that we are not exporting into other markets an insurer whose financial health is deteriorating. What the amendments to section 92 and to Schedule 14 of the Ordinance do, is to say that in those circumstances the Financial Services Commissioner is not obliged to notify to his fellow regulator in another European Union country that that particular Gibraltar insurer wants to passport. Hon Members may recall from when we have discussed passporting in the past, that the way it works is that if a Gibraltar licensed entity, whether it is a bank, an insurance company or now an investment services manager, wishes to exercise his passporting rights, in other words his right to do business in any of the European Union markets, on the basis of his Gibraltar supervision and licence and without being subject to further supervision or licensing in say France, Spain or Germany or wherever he wants to do business, the procedure is that the local company writes to the local regulator, the FSC, says I want to exercise my rights to do business in France, the Gibraltar

supervisor then sends a notification to his French counterpart saying, company ABC limited who I have licensed in Gibraltar and which I am regulating in Gibraltar has notified me that it is going to business in your territory. That is just a notification. Well this amendment in transposition of the latest directives says that when the company is subject to a financial recovery plan, the local Financial Services Commissioner is not obliged to issue that notification that I have just described in the example that I gave. These amendments and indeed all the transposition of these directives reflected also in the three sets of Regulations, have been the subject of a full and written consultation with the insurance industry in Gibraltar and the insurance industry in Gibraltar has raised no issue that has not been taken into consideration. In fact they raise no issue at all. First of all they thought that the amendments were sensible, secondly they recognised that in any event they were obligatory requirements on us and there was no choice and therefore the industry is content.

At Committee Stage I will be moving an amendment, two small amendments. One is, hon Members will notice that in the Long Title it simply says "an Ordinance to amend the Insurance Companies Ordinance". The draftsman of this Bill overlooked the fact that there is actually a requirement of European Union law that when national law is transposing a European Union directive, the national law must say on its face that it is a law to transpose a European directive. So there is actually a requirement to say an Ordinance to amend the Insurance Companies Ordinance and the amendment that I am going to be moving is to partly implement Council Directives 2002/12/EC and 2002/13/EC on solvency margins for life assurance undertakings and non-life insurance undertakings. In other words we have got to refer to the particular European Union laws that we are transposing in our national law. The second amendment that I will move is to correct a typographical error in clause 5(b) of the Bill, where it says by inserting after paragraph 4(7) that should read paragraph 5(7), and so the amendments of which I have given written notice would correct that typographical error. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill

HON F R PICARDO:

Mr Speaker, this Bill transposes into our law, as the Chief Minister has indicated, by way of amendment of the Insurance Companies Ordinance, two separate directives. The first is the directive 2002/12/EC which deals with solvency margins in life assurance undertakings. I do not think the Chief Minister focused it in this way. The second is 2002/13 which deals with solvency margins in non-life insurance business. Essentially the directives are designed to provide greater protection for investors and enable the Financial Services Commissioner to put in place financial recovery plans, as the Chief Minister has indicated, and it is a good thing that the Financial Services Commissioner should have that power if there are concerns which he considers are sufficient to require him to raise the capital adequacy required of an insurance undertaking.

Mr Speaker, I agree that the second amendment to be moved by the Chief Minister in Committee is necessary because I have been working with the Insurance Companies Ordinance on the website of the FSC, which I understand is the most up-to-date and it made no sense to amend clause 5(b) with the figure 4 there, because the whole section did not read. This Bill gives an opportunity to raise an important issue of principle. It is important to note that we welcome the implementation of directives or of national legislation which are designed to protect investors but the transposition of legislation to that effect is simply not enough. It is not enough for our Financial Services legislation to be state of the art and up to date if they are not enforced with political or administrative or professional vigour. I am conscious of the fact that that is not a matter for the Government but for the Financial Services Commission which is an independent statutory body. We have a very stringent legislative code which affords very high levels of investor

protection but which is not vigorously policed and enforced and that can be very bad for business and very bad in particular for Gibraltar's Finance Centre business. Why, because that would present Gibraltar and its Finance Centre with the worst of both worlds, in this sense, if the code is too strict we could lose business because people go somewhere else where the codes are slacker and we might be seen as being over-regulated. Now that is not a bad thing if the regulations are designed to ensure investor protection or to ensure that those who come to Gibraltar are bona fide players in whichever part of the financial services industry they want to operate but if the regulations are not properly enforced, then we can find ourselves with investors losing money because the protections put in place do not work and they end up finding themselves out of pocket when an investment company or an insurance company in this case, goes to the wall. I have to say that I fear that we may already have had a number of cases in this year alone which have suffered from just the position of very tight regulation but not very tight enforcement of the relevant regulations.

I think it is appropriate at this stage to recall the questions I asked in relation to the TEP plans at the Question Time session of this House. In particular in relation to those TEP plans the Opposition can see what appears to be a slowly unveiling disaster which has affected a very large number of people and which is causing many of them very real hardship. Indeed I and my colleagues have already had representations made to us by a very large number of people who say that they may have lost all their life savings as a result of these TEP plans, and as a result in particular of the way that certain TEP plans have been advertised and sold. I am not advancing in that way an argument for laxer regulations, far from it. The regulations have to be there and they have to be tight if investors are to be at all protected. But the question of policing regulations, in particular regulations which are designed for investor compensation or investor protection, has to be very, very clear as well. I want to comment on a recent and on-going liquidation, which is that of Rock Financial Services Limited, in respect of which I have to declare I am myself professionally involved, and I represent a

number of creditors and investors and I want to highlight that because there again, and I am talking now about two cases, there are regulatory safeguards which are designed to protect investors which appear to have failed and there in that particular case, we find ourselves dealing with small, medium and large investors all of whom may have lost money. Mr Speaker indeed both in relation to the TEPS and the RFS cases which I have dealt with, there appears to be a serious issue relating to the effectiveness and currency respectively, of the professional indemnity cover which these companies had in place and which may or may not effectively provide payments to the investors. In both cases it appears that there may be a problem, and if there is a problem in both cases and in the long term if the Investor Compensation Scheme is determined to be obliged to pay, the question to be asked is, who will foot the bill sent to the Investor Compensation Scheme if it is sent? Will it be the other financial institutions who make up the scheme or will it have to be the Government of Gibraltar? In both cases I am sure on both sides of the House we will take the view that it would be thoroughly unfair for either the Government or the members of the Investor Compensation Scheme to have to meet that bill, if they have to, because regulation has not worked as it should because the regulations have not been enforced as they should. That, Mr Speaker, I want to make abundantly clear is not something for which I lay responsibility, blame or otherwise at the foot of the Government, because the Government are only responsible for bringing the regulations not for policing them. But it is something which I think is worth highlighting and it is important to highlight and which we must take very, very seriously. I just want to round off by saying that the market in financial services in Gibraltar, I am sure the Chief Minister will agree, is increasingly sophisticated and it is increasingly highly regarded internationally and we must do everything we can on both sides of the House to ensure that Gibraltar and its financial services market does not let down either national or international investors. That would not be fair to them and it would not be fair to the professionals in the industry who work very hard to ensure that the service they provide is first class. For that reason we welcome the provisions of this Bill because they will

provide greater protection to investors but we flag the fact that policing and enforcement of this type of provision is as important as bringing the legislation to this House.

HON CHIEF MINISTER:

I had almost forgotten that we were discussing a Bill to transpose amendments to the Insurance Companies Ordinance which has absolutely nothing to do with anything that the hon Member has just said. I have to say that I am truly astonished by the hon Member's remarks. I suppose that he thinks that by saying I am about to stand on a soapbox for the clients of my legal practice, that that makes it OK for him to use this House as a soapbox.

HON F R PICARDO:

Mr Speaker the rules of the House say that if I am going to mention something in respect of which I have a professional involvement, I have an obligation to declare that professional involvement. I have declared that professional involvement and I have made clear that that is something that I am dealing with professionally. I have not stood on a soapbox. The fact that I am professionally involved does not mean that there are serious political issues which I cannot bring to this House.

HON CHIEF MINISTER:

Well, I do not know whether the hon Member seeks to interrupt me simply to repeat what he already said before and to pretend that I have said something that I have not said. I am recognising that he has declared the interest and what I am saying is that declaring the interest does not justify saying what one likes and using this House as a branch of the courtroom for his clients. The hon Member speaks in this House in a way that can only be music to the ears of those who constantly allege

that Gibraltar's regulatory regime is deficient and the hon Member seems intent, presumably because he is being paid a fee by those people who have a claim, to pretend that Gibraltar's financial regulatory system.....

HON F R PICARDO:

On a point of order Mr Speaker, that is outside the rules of the House. The Chief Minister cannot stand up in this House and suggest that I have taken a fee for something that I am saying in this House or that I am saying something in this House in order to take a fee. Mr Speaker I would ask you to require him to take it back because otherwise Mr Speaker, we would have to start talking about all the times he was sitting in this House as a partner of another law firm in Gibraltar, which was pursuing a case against the Government of Gibraltar and in respect of which he was making statements in this House Mr Speaker. So I would ask him Mr Speaker to take back any insinuation or allegation that I have made a statement in this House for which I have taken a fee because that Mr Speaker is an insult and I will not have it.

HON CHIEF MINISTER:

Mr Speaker what I ought to say to the hon Member is that the things that he is threatening me with is exactly what the Leader of the Opposition, when he was Chief Minister used to do to me. Or does the hon Member not remember the extent to which the Hon Mr Bossano, his new found leader, used to hold me personally and politically responsible for the fact that my law firm was daring to act for the Spanish pensioners. So it is not a threat. He need not worry about raising the issue. The issue has long since been used by the party of which he is now a member in exactly the same way as he is now complaining. For goodness sake, the hon Member has got to take responsibility for the things that he says and does in this House.

HON J J BOSSANO:

Point of order Mr Speaker. The hon Member is not telling the truth. I have never accused him of taking a fee from Spanish lawyers and raising matters in this House on behalf of those Spanish pensioners. What I told him was that he was part of the firm that took the decision and he acknowledged that by resigning from the firm to distance himself politically from the decision.

HON CHIEF MINISTER:

Mr Speaker let us get the chronology of facts right. The hon Member on a debate on a Bill that has nothing whatsoever to do with TEPS, nothing whatsoever to do with the case in which local investors may have lost money in an investment with a local financial services company. On the debate in Parliament, on a Bill that has nothing whatsoever to do with that issue, stands up, gives a speech on that issue and says that he represents in civil actions and in his capacity as a lawyer the people whose fate he is lamenting. Now, unless the hon Member is not charging a professional fee for that, for representing those people, then it is an inescapable fact that he is raising in this House issues on an occasion in which they do not normally arise, on behalf of people whom he is representing professionally, for a fee. Now the hon Member may wish to convert that into his thinking

HON F R PICARDO:

On a point of order Mr Speaker. He has got it wrong because I am not representing anybody who has a TEP plan. I have spoken about TEP plans in this House during Question Time what I have said is another related matter which has been reported in the press already, which I said has an impact on this which relates also to the issue of investor protection in the legislation and the Ordinance that he has brought deals with that

and I have said it is very good that he should do that but there is the question of policing. Mr Speaker he is wrong to say that I have taken a professional fee in relation to the issue of TEPS. I have not, I do not represent anyone in that legally.

HON CHIEF MINISTER:

Well the hon Member finds that if it is not in relation to TEPS it is in relation to the other matter. Look, I do not know who the hon Member acts for. I am just going on what he has said in this House this morning. He has said in this House that he declares an interest because these issues that he is raising, arise in a case in which he is professionally involved on behalf of the investors. But he has said that. Why he now finds himself so threatened simply because I comment on the very things that he himself has not been worried about raising and commenting, is extraordinarily suspicious. Now the fact of the matter is that that is the position. That here we are debating an amendment to the Insurance Companies Ordinance and the hon Member has gone off on a tangent about other things. Now the hon Member is right in saying that regulation is a good thing and that regulation is not just legislation, it has also got to be implemented but why does he proceed on the assumption, which is of course what his clients might need to prove in due course, why does he proceed on the assumption that his clients' loss has been the result of regulatory failure because this is what the hon Member is signalling to everybody, in Gibraltar and outside Gibraltar. No the hon Member must sit down, I will not give way.

MR SPEAKER:

Order, order. If he does not give way, he does not give way.

HON CHIEF MINISTER:

The hon Member surely cannot just stand up and blurt out what he likes. The hon Member must understand that what he has done in this House today, that what he has done in this House today is nothing short of scandalous. He has rightly said, without needing to say it because it is such a banal, obvious thing to do, that it is hardly worth uttering the words, that legislation by itself is not enough. The legislation then has to be implemented. By the way, that is what Spain is always complaining about, that Gibraltar implements legislation but then pays lip service to its actual enforcement. The hon Member has got to understand that he cannot just shout down his opponents in Parliament in a nervous attempt to prevent them from getting their say and if he carries on interrupting me in this childish fashion it is going to be much more than five minutes because I only have two or three points to make. The sooner he lets me make them, the sooner we can move on to other business. But if he keeps on interrupting me then he just adds the amount of time that he has to sit there suffering the discomfort in which he obviously presently is. I realise it does not make good listening for the hon Member but the hon Member should have thought of that before unnecessarily, and having declared his conflict of interest, making the insinuations that he has made. The insinuations that the hon Member has made as the inescapable meaning, purport and intention of the words that he has used, is that he has prejudged the very fact that his clients are interested in establishing. Namely, that their regrettable and unfortunate failure, loss of money, is the result of insufficient application or insufficient rigour in the implementation of regulatory legislation. That is the inescapable purport of what the hon Member has said and it is certainly very far from being established. In fact, the hon Member if he is acting in the case that he says he is acting must know that the position of the Financial Services Commission is that there has been no failure of the regulatory mechanism.

One has not got to be a lawyer to know that there are things that can result in people losing money, like for example theft on the

part of the directors, fraud on the part of the directors, embezzlement of any form or other, there are things which the regulatory system is not intended to be able to detect in time, and cannot detect in time and that these are not necessarily, in fact would not be regulatory failures. Regulatory failures is when, as there are many cases in the United Kingdom, when despite regulatory supervision a noticeable financial deterioration is not detected and is allowed, that is regulatory failure. The hon Member can say that implementation is as important as legislation and I would agree with him. Where I have to take, and I am duty-bound, I do not see this as a political issue, I do not see this as a matter of political, I am duty-bound as he would be duty-bound if he were able to find himself sitting on the Government side, to uphold the right of publicly funded institutions in Gibraltar not to have their legal interest prejudged and prejudiced in Parliament by people making unsubstantiated assertions that the loss that his clients have suffered are due to the regulatory failure. The hon Member says that the regulations need to be enforced with political vigour and then when he realises the nonsense that he has just said he says, oh well no, no, no, but it is not the responsibility of the Government. So why does he say that regulations need to be enforced with political vigour when he knows, because it is the very next thing that he says, that the Government simply have no role in the enforcement of the regulatory mechanism. No role whatsoever. Which he then hastens to immediately recognise himself. Or is he suggesting, let us just leave out the word political, let us just assume that it was a slip of the tongue which he immediately corrected. It is still left with the statement that the regulations need to be enforced with vigour, ergo they are not being enforced with vigour which is why the clients that he represents find themselves in the unfortunate predicament that they do. That is the speech that he has made in this House today and I have to tell him that it is a regrettable, unfortunate and wholly unjust prejudgement of issues in a matter in which he himself has thought it proper to declare a professional interest.

If the hon Member thinks that the financial regulatory authority, who incidentally are about to be audited, and I have to say that they have passed all previous audits with flying colours and since they last passed an audit with flying colours, their resources have increased enormously, so I would expect them to pass their current audit with flying colours, but certainly in this moment in time when our Financial Services Commission is about to be audited, when the hon Member knows that there is a politically motivated campaign in Brussels to undermine our finance centre which he must know lies at the root of much of the difficulties to provide that sort of home-grown ammunition seems to me to be extraordinary. I am not suggesting for one moment that when there are things in Gibraltar which are demonstrably wrong and deserving of being criticised that we should all gag ourselves and not criticise them for fear of arming anybody else. I think that that would be wholly wrong. That is not what I am suggesting to the hon Member. What I am suggesting to the hon Member is that to do it without it being justified, to do it without it being established on the facts, to do it on an entirely speculative basis, which is the basis upon which he has chosen to do it, is wrong. It is speculative because these issues have not been established. These issues are going before the courts in due course, or does the hon Member think that from his pew in the House of Assembly he is entitled to pre-empt and prejudge the proper judicial determination of the rights and responsibilities of the various parties involved here.

HON F R PICARDO:

No Mr Speaker, I will clarify. I certainly do not for one moment think that I am able to do that nor would I allege that I am able to do that. Of course I understand that, I have not tried to do that nor should it be suggested that I have. I respect the independence of the judiciary a hell of a lot more than most Mr Speaker.

HON CHIEF MINISTER:

The hon Member obviously thinks that he is, I know he has only been in this House for two or three months, but as he is already lecturing us all about how we should conduct the business of the House, one assumes that he is willing to comply with the rules of the House himself. He knows that he is not at liberty just to stand up whenever he likes and just say whatever he wants but this is what he is doing. Does he not understand that what you are demonstrating is an inability to respect the rules of the House and to just sit there whilst I have my say, just as I sat here without interrupting him when he was exercising his right to have his say. There appears to be no way of just calming him down and realising that this is not a barrack room court, that he cannot insist on having the last word by hook or by crook. There are times when procedures of the House give us the last word, there are times when the procedures of the House give them the last word, it depends. If he thinks that the regulatory system in Gibraltar is deficient he can bring a motion in this House so that we can debate the adequacy or inadequacy of Gibraltar's financial services regulatory mechanism. If he does that, he will find that he has the first word, we have the second word, but he will have the last word, so that is the way that he can do this by having the last word. The statement because I think it is more than just an insinuation, the statement by the hon Member that this Bill provides the House with an opportunity to note that implementation of the regulations needs to be enforced vigorously to protect investors and then go on to mention a couple of cases is, as I have said to pre-judge the issues and to pre-judge the issues in a most unhelpful way. Time, although we do not believe that it will, time, due process, which is fair and timely may prove him right. But certainly the fact that time and due process may or may not prove him right does not displace any of the remarks that I have made, which is that to simply assert from this House, as he has done, that there is lack of vigorous enforcement by the Financial Services Commission of Gibraltar's regulatory legislation, is incorrect, undemonstrated, prejudicial to the outcome of the two cases that he involves, and severely prejudicial to the interests of

Gibraltar and its Finance Centre of which he professes to be an advocate, and he is wrong also flowing from the fact that he spent much of the time chatting to his colleague, he is wrong also in saying that I did not focus this on the basis that this was a life and a non-life directive. I specifically said that one of the directives was life and the other directive and was non-life and I said it in exactly the same terms as him, so if I did not focus it he did not focus it either. I used almost the exact words that the hon Member used and prefixed them by saying that the hon Chief Minister had not said this but of course as he was busy chatting and giggling with the hon Member sitting next to him, I suppose it is understandable that he may not have heard them. Therefore I will move those two amendments at the Committee Stage and say that the Government have every confidence in the vigour, the professionalism and the effectiveness with which the Financial Services Commission implements Gibraltar's regulatory regime, which is not to say that there cannot be regulatory failures, there are regulatory failures in all European countries, that is not evidence of dilatoriness or lack of vigour or worse still careless attitude on the part of the regulator. I believe that this House does the Financial Services Commission a disservice if without proper cause, it casts insinuations to the contrary.

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.

THE TOWN PLANNING (AMENDMENT) ORDINANCE 2003.

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Town Planning 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 extends the provision of the Town Planning Ordinance to cover the sea and seabed of Gibraltar in addition to the land. Up until now the Ordinance has only applied up to and not beyond the lower watermark. It therefore follows that it would be arguable that certain types of projects, such as the siting of a fish farm, would fall outside the ambit of this Ordinance. It is desirable that any plans that include development on the sea or seabed around Gibraltar should come under the ambit of the Town Planning Ordinance. This matter acquires even greater significance in that the environmental impact assessment legislation in Gibraltar is made under the Town Planning Ordinance. Projects which are intended to be sited on the seabed or in the sea in Gibraltar waters could have an environmental impact and it is desirable that there should be powers to require an environmental impact assessment in respect of such projects. This amendment to the Ordinance will allow for this. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker when we raised this issue during Question Time I believe the Minister said that it was an EU requirement and that was why this amendment to the Ordinance was being introduced. I remember raising it in the context of the development at Sheppard's Marina where the dredging of the sea was one of the things that they had been advertising and I asked at the time whether that was in relation to that particular project. The Minister has mentioned that it is in relation to projects but I was wondering firstly whether it was that one in particular or if he can mention which projects they are. Secondly, whether he can say whether this is in fact an EU requirement or not? It was the indication that we had at Question Time in January.

The Opposition will obviously be supporting the Bill but we have a comment to make in relation to the way in which it has been drafted. That is to say, our view is that there is no need to include the scope laws which is what is being done by the first amendment and that that may actually have the effect of limiting the scope rather than extending it and that changing the definition of the term "land" to include the term "sea and seabed" where the context so admits, is probably enough to achieve what the Government are setting out to achieve. In fact it may even be unnecessary and counterproductive to have this done in this kind of double way which he has set out to do it. In brief, the second amendment which includes the sea and seabed in the definition of land is what we support and how we would like to see the Bill go forward, however, it is not enough to justify voting against the Bill the fact that they are also doing it in the first amendment as well. But if the Minister can clarify the points which I have raised we would be very grateful.

HON J J BOSSANO:

In relation to the point that has been made about this being EU-driven, if it is not EU-driven then we would like to know why the

Government have taken a policy decision on the need to do this given that we have had lots of seafront developments before and we have had the requirement to do environmental impact studies before and it was thought to be sufficiently adequate as drafted. I think we were told that somehow they thought that we had failed to transpose correctly everything that we were required to do and that this amendment was sort of filling a gap, that is the impression I have from my recollection of the explanation the last time.

HON CHIEF MINISTER:

The hon Members will recall that it was I who said I think it was at Question Time or at some other stage that it was EU-driven, and it is EU-driven in the sense that when we transposed the European Union directive relating to environmental impact assessment requirements, that was done under the Town Planning (Environmental Impact Assessment) Regulations Gibraltar 2000. Of course as with all other implementations that was notified to the Commission who look at it and then form a view as to whether we have properly transposed the EU requirement. The EU then issued an Article 226 letter against the UK dealing generally with their, the UK's transposition of various environmental things. Included in that letter as an item was the view that the Commission believed that the directive requiring environmental impact assessment studies was not limited to land, to dry land if I can call it that, and the fact that our Town Planning Ordinance did not purport to regulate building permissions on the sea, did not mean that we were exempted from complying with the environmental assessment requirements which extended to the seabed. Therefore they formed the view that our transposition was deficient in that we had limited the requirement of environmental impact assessments to things that needed planning permission which did not include the seabed. So the way we have chosen to do it, which is in a sense there is an element of policy in it although extending the requirement for an environmental impact assessment study to the seabed and the sea, that is a

requirement. But of course it might have been possible with a degree of drafting ingenuity to have limited the extension to the sea in Gibraltar only to the environmental impact assessment and not to planning requirement, but we thought it rather odd that to do a development in the sea or on the seabed one should need an environmental impact study but that the Gibraltar planning authorities then did not have the ability to express a planning view on the matter. So we decided to deal with it by simply extending the Town Planning Ordinance in all its respects to the seabed. Now if somebody wants to do a development for example this island development that is I do not know at what stage of fruition, that is a development on the seabed so that is now subject to full planning permission. That is how it arises.

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.

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 Insurance Companies (Amendment) Bill 2004; and
2. The Town Planning (Amendment) Bill 2003.

THE INSURANCE COMPANIES (AMENDMENT) BILL 2004

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

Clause 5

HON CHIEF MINISTER:

In clause 5 I have given notice of amendment that in clause (b) the reference to paragraph 4 should be a reference to paragraph 5 so that it should read “paragraph 5(7)” rather than “4(7)” as it presently reads.

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

The Long Title

HON CHIEF MINISTER:

I have given notice that the Long Title should be amended as appears in the letter of notice by adding the words “to partly implement Council Directives 2002/12/EC and 2002/13/EC on solvency margins for life assurance undertakings and non-life insurance undertakings.”

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

THE TOWN PLANNING (AMENDMENT) BILL

Clause 1

HON J J BOSSANO:

Mr Chairman in clause 1 I think the point that was made by my Colleague which we have not had a reply is that looking at this it seemed to us that if the amendment that is being proposed says “this Ordinance applies to land, sea and seabed of Gibraltar” and then in the second part it says “land includes sea and seabed”, then we appear to be saying this Ordinance applies to land, which includes sea and seabed, plus sea and seabed. That is where the point that was being made that we thought the second amendment was sufficient to achieve the objective and the first one did not seem to make a lot of sense, given that we are including sea and seabed in the definition of land already why do we need to add it as well behind it?

HON CHIEF MINISTER:

Only to avoid a position where one has a definition of land that includes the sea and the seabed in an Ordinance which somewhere else has a statement that says this Ordinance applies only to land. Now I accept that we could use any word there so long as we define it. We could put there this Ordinance applies to a, b, c, d, e, f. If we then define a, b, c, d, e, f, as meaning land, sea and seabed it does the trick but it is really only almost a semantic thing so that on a reading of the Bill there is not just a reference to land, but I accept that it is unnecessary. It is unnecessary, in other words, it does not add anything, it is not required for the effectiveness of the Bill, it is just so that there is not a statement at the beginning where it says this Ordinance applies to, and then only when one gets to the definitions does one discover that actually it also applies to the sea and the seabed. But it could be, I do not think we ought

to, but it could be struck out with no effect which is I think the point that the hon Members are making.

HON J J BOSSANO:

It does not say only. If it said this Ordinance applies only to land, which is what the Chief Minister has quoted, it does not say only to land.

HON CHIEF MINISTER:

I agree.

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that (1) the Insurance Companies (Amendment) Bill 2004 and (2) the Town Planning (Amendment) Bill 2003 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 Insurance Companies (Amendment) Bill 2004 and the Town Planning (Amendment) Bill 2003, were agreed to and read a third time and passed.

MOTIONS

HON CHIEF MINISTER:

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

“This House-

1. Recalls the unanimous Report dated 23rd January 2002 of the Select Committee on Constitutional Reform (“the Report”) and the Motion adopted unanimously in the House on the 27th February 2002, noting, approving and adopting the Report;
2. Reaffirms the motion of 27th February 2002 noting, approving and adopting this Report following the General Elections held in Gibraltar on 27th November 2003”.

Mr Speaker unless the Opposition Members wish to introduce some other dimension to the debate I need only say that the purpose of moving this Report is so that it should be known internationally and amongst whatever institutions we may lobby, and indeed we may have to negotiate with on this issue, that the Constitutional reform proposals continue to enjoy the unanimous support of the current Parliament, and not allow anyone even to mischievously argue that the approval somehow is now less valid because it was by a differently constituted parliament. That is the principal reason to move this debate. I think when we start our discussions and our negotiations with the UK on this and as we go to the United Nations and elsewhere, I think it is useful to be able to say that the proposals enjoy the unanimous support of the House of Assembly. In a sense all I am seeking to do here is to refresh so to speak, the currency of the original motion in words which replicate the original ones. The hon Members will recall that the motion of 27th February noted, approved and adopted the Report and that is where we left it.

Now, I have invited the hon Member to the cup of tea that I promised him at Question Time and he has written to me and I will not refer to the content of the letter, because really I do not need to in the sense that the content of the letter is more or less replicated in the press release that they, or at least the sentiment of the letter is more or less replicated in a press release. I would hope to persuade the hon Member in due course that the position that he has taken both publicly and privately in relation to the cup of tea, is based on a misunderstanding by him of the position. It is precisely because the Gibraltar Government have to tee up with the British Government at least what the negotiating process is going to be and how it is going to be structured, and whether it is going to be here or in London and set up the logistics of how this is going to take place, but I had hoped before meeting the Foreign Secretary to have made decisions on that so that I could go to London and say this is how Gibraltar wants to do it. I had hoped to have been able to consult with the Leader of the Opposition and others about how they thought Gibraltar should want to do it, and the Leader of the Opposition has taken a different view, so I am hoping either during the course of today's debate or if not when I respond to his letter, to persuade him that actually the chronology that I have set up is really the only one that works, in the sense that it is not possible to do it in any other way. The Government is the Government and the Government have got to at least (a) make the decision about how the proposal is to be taken forward, and in talks between Government to Government, establish the agreement that that is how they are going to be done. Now what the Government can do, said it would do and has tried to do, is to consult locally with opposition parties before forming its own governmental view about how that should be done, so that we could then have input from other people before we went to the United Kingdom. That is the chronology, that is the reason, and I think it is frankly still important that we should meet and if I need to improve the offer from a cup of tea to something more enticing, I am happy to do so. But I am hoping that the hon Member will reconsider his rushed judgement that this was somehow an attempt to exclude him from the process although we are always, in

whatever process is eventually established, of course there is always going to be a Government and there is always going to be an Opposition, and whilst I suppose it is natural for oppositions to want to sort of maximise their influence, the Government will always wish to establish or for it to be reflected that even in joint initiatives, even in joint initiatives there are aspects of the role which are inevitably governmental and that delegations might be constituted in a particular way, indeed one of the things that I was hoping I would have consulted the Leader of the Opposition about if we had met so far, indeed I still hope to have the opportunity to consult him about it, is indeed whether the circle should or should not be thrown open more widely than just politicians represented in this House. So, that is the spirit as far as we were concerned. The invitation to the hon Member to visit me so that we could have a discussion on all of these things responded to not only my commitment but also my view that that is the correct way to do it, that we should try to do this together and that I would consult the Opposition before making a decision about how Gibraltar was, given that presumably we do not want it to happen the way it happened last time. Namely that there was a local constitutional conference in effect orchestrated by London and that times have moved on and presumably both sides of the House would like to do it in a different way, or not. But that would have been the opportunity. So I am still hoping that we shall be able to have that conversation at the earliest possible opportunity. If the hon Member maintains the position that he would rather that were after I have met with the Foreign Secretary rather than before I meet with the Foreign Secretary, then so be it but I have to tell him that if he sticks by that position it will make the meeting with the Foreign Secretary less able to be based on a Government position which has been taken with the benefit of the Opposition's views, and therefore trying to the greatest possible degree, compatible with the Government's own position, to accommodate the Opposition's view. I commend the Motion to the House.

Question proposed.

HON L A RANDALL:

Mr Speaker, as a recently elected Member of this prestigious House I welcome the opportunity to make my first contribution on the subject of the reform of the Constitution of our country. Allow me to start by stating that the negotiation of a new constitution for our country must be exclusively a matter for Gibraltar and the United Kingdom without any reference to or input from Spain. This position has in fact been endorsed by Mr Cook, the previous Foreign Minister, who reportedly told the Government of Gibraltar that Spain has no say on changes in our constitution and they do not require to be consulted and that they do not require giving their consent. Also His Excellency the Governor in his address this year at the dinner of the GFSB said dialogue on Gibraltar's proposal for constitutional reform was a matter for two parties – Gibraltar and Britain. Additionally, Mr Hain told the British Parliament that short of independence we are entitled to self-determination and that the British Government accepts this. If the aforesaid was not sufficient, as recently as the 11th of this month the Secretary-General of the United Nations, Kofi Annan, in opening the 2004 session of the Special Committee on Decolonisation described colonialism as an anachronism in the 21st century. He went on to add that he hoped that in the year ahead all administering powers, and for the avoidance of doubt as far as I am concerned, the administering power for our country is the United Kingdom and the United Kingdom alone, would work with the Special Committee and with the people in the territories under their administration to seek ways to further the decolonisation process. Furthermore, in his opening statement, the newly elected chairman of the Special Committee, Robert Assisi, called colonialism a relic of the past. He also said that in order to meet the deadline of 2010 the Special Committee must make its work more proactive and seek to constructively engage the administering powers and the people of the territories. Finally, the Government of the United Kingdom recently took a policy decision to participate fully in the activities of the Committees and endorse the pronouncement made by Kofi Annan and Robert Assisi. As the proposed constitution does not aim to

achieve independence, the British Government should have no qualms in agreeing to all of our proposals. Therefore the negotiations which I trust will commence in the immediate future between representatives of Gibraltar and the Government of the United Kingdom, should result in the parties agreeing that the new version of the Constitution achieves the decolonisation of our country. The agreement should be used as a precursor to our country's exclusion from the United Nations list of non self-governing territories. This year we celebrate our 300th anniversary as a people. After 300 years we deserve, and indeed are entitled to, be emancipated from the shackles and vestiges of colonialism by the British Government once and for all. A modern constitution that does not achieve the decolonisation of our country is just not good enough. Over the last 300 years we have developed into a really mature society and it is right and proper that we should aspire and achieve being decolonised. I fervently believe that the majority of the people of Gibraltar want this House to present a united front at each and every stage of the negotiation process, including the meeting that the hon the Chief Minister asked the British Foreign Minister for on the 22nd December. I would remind the hon Chief Minister that united we stand and divided we fall. More so as the British Foreign Office are consecrated masters at successfully employing the policy of divide and conquer when dealing with their colonies. Mr Speaker, in concluding I would call on the hon Chief Minister as a fellow devout believer in Jesus Christ of whom there is only one, to employ humility to ensure that this House delivers to the people of Gibraltar the united front that they want and indeed are entitled to. Thank you.

HON C A BRUZON:

Mr Speaker, I warmly welcome this motion. Having belonged to a pressure group since 1996 advocating the right of Gibraltarians, the process of decolonisation is something very dear to my heart. So let me say that I warmly welcome this motion now as an elected Member, having occasionally been

accused in the past when I belonged to a pressure group of not having a mandate, that was a wrong accusation because anybody can express views in a democracy, write to the Chronicle and organise demonstrations, within the law. However, because I am an elected Member this is particularly important to me and I warmly welcome the motion and I hope as my hon Colleague said that this will lead to a process of full decolonisation and that modernisation will not be sufficiently modern if it does not include decolonisation for Gibraltar. Thank you very much.

HON F R PICARDO:

Mr Speaker, I take the view that for many if not all Gibraltarians our political views are really quite conditioned by the international status of our people and of our territory, and I think that the international dimension is the issue that interests all Gibraltarians in politics, the new answers of our international, legal and political status and of the language used by the United Kingdom and others in that respect. In fact I think that it is fair to say that from the classrooms of the Comprehensive School in Gibraltar to the benches in front of this House, Gibraltar's international status and our joint endeavour to achieve decolonisation is the issue that vexes most of our minds most of the time when we are dealing with the issue of politics and decolonisation on our chosen fourth option is the route that I think almost to a man, all of us would hope to see we pursue. It is in that context that now I join the Hon Mr Bruzon in saying that it is a proud moment to rise to speak on this motion and to support the Select Committee's recommendations as a Member of this House. But I must highlight that although I will be agreeing and wholeheartedly supporting the report of the Select Committee I have to advertise that I will be marking differences between the way that the Opposition would like to see this matter handled and the way that the Government are presently proceeding on that basis. None of that should in any way be seen as affecting my unhesitatingly categorical support for the report of the Select Committee and I think Mr Speaker it is

important to go to what the Committee has proposed, and it has proposed that the language of the United Nations Covenant on Civil and Political Rights should be part of the preamble of our Constitution and that will say the following, "All peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, and may for their own ends freely dispose of their national wealth and resources without prejudice to any obligations arising out of international economic cooperation based upon the principle of mutual benefit in international law, and the realisation of the right to self-determination must be promoted and respected in conformity with the provisions with the Charter of the United Nations." Mr Speaker that language and its application to Gibraltar is surely jurisprudentially internationally unimpeachable, and to challenge that language Mr Speaker, or its application to our territory amounts in fact Mr Speaker to a challenge to the United Nations Convention and to the Charter. Mr Speaker the relevance of that language of course is that it is the achievement of the maximum possible level of self-government that will mark in an exercise of self-determination when chosen by the people, full compliance with the fourth option of the United Nations and the removal of Gibraltar from the UN list of colonies which Mr Randall has already referred us to. Mr Speaker that is overwhelmingly the best reason to seek an amendment to our existing constitutional arrangements Mr Speaker. In fact Mr Speaker I think it is fair to say, and it is important to remark at this stage, that our existing constitution has served us well in all the years that we have relied on it, especially the preamble and especially the chapter on fundamental rights and freedoms. Let us look at those chapters Mr Speaker, the non-political chapters. We have been able to enjoy a chapter of fundamental rights and freedom for many decades before citizens of the United Kingdom were able to do so and that in itself must be a source of pride. The United Kingdom now has its Human Rights Act but many of its colonies still do not have a chapter on fundamental rights and freedoms in their constitutions and that must be a source for common pride across the floor of this House. It is in the context of placing Gibraltar's international

status on a much more solid footing in terms of progress to decolonisation in keeping with the UN fourth option, that we see that the real benefits in constitutional reform is to be had, and that is where the real importance of our next constitutional step lies. That is why there may be those who might be satisfied with modernising our existing constitution and there are those of us, certainly all Opposition Members, who see real political value only in a constitution that effectively decolonises Gibraltar – a decolonising constitution. We can modernise our constitution all we want but to what use if the relationship of the United Kingdom is going to continue to be colonial in nature and that is simply unacceptable in the globalised world in which we live today and in the EU of today which we have not left despite rumours that there might be consideration of that in the long term. We clearly hold our own as citizens of the European Union, we have nothing to envy our fellow European citizens in the organisation of our social and political affairs, nothing at all Mr Speaker. We are a mature people self-sufficient and very, very healthily autocritical. In fact I dare say that despite the fact that we criticise ourselves internally so much, there are lots of things that we could teach other nations. In that context, in the world in which we live today, and in the world in which Britain operates today, she rightly derives pride from delivering her Overseas Territories to the maximum level of self-government achievable in each of them. The same must be true of her treatment of Gibraltar and of the pride that we in Gibraltar take in celebrating now 300 years of our association with Britain. In this 300th year marking our constitutional evolution would be a crowning achievement of those celebrations and of this Parliament and in that respect I think all of us agree that our sights must be held high. At the end of the day there is no use in modernising and in changing protocols, it does not matter who arrives first at the reception, whether it is the Governor or the Chief Minister, it does not matter who leaves first whether it is the Governor or the Chief Minister. I think across the floor of this House there must be agreement that those are not the issues that matter in taking our next constitutional step which must not be a faltering one. In analysing the Chief Minister's address on the motion of 27th February 2002, which was the

original motion that welcomed the report of the Select Committee, I must say that I add my voice to support this motion now before the House but accentuate that my instinct, as I have said, is fully engaged in favour of pursuing a decolonising constitutional step and nothing else. I agree with the Chief Minister that we must not for one moment pretend to any party external to this House, or pretend to allow any party external to this House, and when I say party I mean not a political party I mean body, person or individual, that there is anything between us in terms of support for the proposals made by the Constitutional Select Committee, because we are entirely united across the floor of this House on the substance of the report and the draft proposed new Constitution that we must ensure we progress and advance together. The fact that we are dealing with this motion today on the very face of it serves to highlight that it has taken over two years since the previous Parliament welcomed the report of the Select Committee for us to take in Gibraltar any steps or for the Government to take any steps forward with that Constitution and I am pleased to see that the Chief Minister and his Government now appear to have plucked up the courage to submit the proposals to the Foreign Secretary. We must press on with the negotiations and with pursuing constitutional reform united and together and the Chief Minister and his Government must pursue together with the Opposition this course so that undeniably together we remain stronger on this course. The Chief Minister represents the people of Gibraltar, of course that is true, that is the protocol, but it is undeniably true that its acting together with the Leader of the Opposition that the Chief Minister can then boast that all of Gibraltar is united as this Government has been re-elected by a whisker over half the popular vote. So in pledging my categorical and unqualified support for the new Constitution I must emphasize Mr Speaker that we must end up at the end of the day with a truly decolonising document if we are to get anywhere. It is unfortunate that it appears that the Chief Minister has decided, at least to take the first faltering step that his Government takes in presenting the new Constitution on his own, by having sought to meet the Foreign Secretary on his own. At least initially, despite his now famous invitation to the

Leader of the Opposition to tea, I believe that the Chief Minister will fail us all if he tries to go it alone. His decision I believe, to go it alone, even if only to this first meeting, may weaken our hand. So I urge the Chief Minister to reconsider that because I believe if he goes it alone for partisan greed, his selfishness will become his historical stigmata for ever. So I would ask that the Chief Minister reconsider and pursue all aspects of the negotiation, including the issue of the first meeting, and that he should attend all of those with the Leader of the Opposition and that apart from the delay, is my deepest dispute with the Chief Minister on this issue. On constitutional issues in particular in relation to this the Opposition brings a lot more to the table than just tea and biscuits, and Joe Bossano in my view, brings a lot which the Chief Minister would do well to harm us in pursuing negotiations with the United Kingdom but I uncategorically support the report of the Select Committee.

HON MISS M I MONTEGRIFFO:

Mr Speaker, I have always considered the future status of my country to be one of the most important issues since I became a Member of this House in 1984. It is therefore a privilege and an honour for me to be able to make a contribution to this debate. The Opposition Mr Speaker, has always been consistent throughout in putting forward their policy and that is that Gibraltar must be decolonised. The Select Committee was constituted on 7th July 1999 by this House, its report was dated 23rd January 2002 and therefore what we now ought to be doing is to agree with the United Kingdom a timetable and let the negotiations start once and for all. We do not accept a more modern colonial status for Gibraltar as opposed to an old-fashioned one. This is not what Gibraltar needs in order to be able to counteract Spain's claim internationally that Gibraltar is still a colony, which cannot be tolerated in today's day and age. Whenever Spain uses this argument she wins support. Gibraltar therefore must necessarily be decolonised in accordance with the principle of the maximum possible attainable level of self-government, taking into account our

circumstances and with the majority of our people accepting it, in a self-determination referendum. The UK requires to accept it and it has an obligation to decolonise us with our freely and democratically expressed wishes. The responsibility for reforming the United Nations also rests with the United Kingdom as the administering power. As long as we and the UK agree that our relationship is no longer a colonial one, we can then conduct our external relations on that basis. Anything less than this means that Gibraltar will be stuck forever in a colonial status with Spain having the upper hand internationally over us.

We are talking about our future, a future that can only mean that we the Gibraltarians will be masters in our own homeland, a human right that cannot be denied only to us. We also strongly consider that the negotiation of a new Constitution for Gibraltar is exclusively a matter for this House and the United Kingdom. Spain is not entitled to have an input. We and only we are entitled to have a say when we are talking about our future, that is what democracy is all about. The UN is aiming to eradicate colonialism by the year 2010 and we are committed to the same timetable. Therefore what we are telling the Government of Gibraltar is clearly and simply the following. Let us get on with it and let us learn from the past, let us learn from what we have already been able to achieve as a people when we are united in one single cause. If we are united on this issue I am convinced that Gibraltar will at last win its battle against any form of feud by our neighbours. Gibraltar is our homeland and we have every right to be given the same treatment as other colonies that have achieved decolonisation, and others that are looking also to attain it. We are no different to them, democracy applies to all. Thank you.

HON DR J J GARCIA:

Mr Speaker, as a Member of the original Select Committee that produced the reports, and as a Member of the House that ratified them on 27th February 2002, it is a pleasure to be able to reaffirm the original motion adopted at that time, once more in

this new House. Having said that what is a matter for regret is the extraordinary length of time that it has taken Gibraltar to get to where we are today. There has to be a renewed sense of urgency to find a permanent, secure and decolonised status for Gibraltar. We have waited long enough. Colonial constitutional developments should be an on-going process, with increasing levels of self-government being bestowed on the territory until it is ready to be decolonised. Gibraltar has long been ready. Time is of the essence for not only is this an important matter as regards the future of our people, there is also another agenda of which we are all aware, that proceeds parallel to that of this House and which aims to take us in a completely different direction. There can be no doubts that the best way to forestall those unacceptable agendas is to aggressively pursue our own.

The House will recall that recent debates on our political and constitutional future date back to 1997. It was in that year that the Self Determination for Gibraltar Group organised a seminar in the John Mackintosh Hall that was addressed by the Chief Minister, by the Leader of the Opposition and by myself as Liberal Party leader, on the subject of the Channel Islands option. There was a broad consensus at the time on the general political framework based on a status similar to that of the Channel Islands which are British but not colonies, as a way forward for Gibraltar. It was not until 1999 the Select Committee was set up, and even then it did not meet for nearly six months until December of that year. The deliberations dragged on against a background of the Anglo-Spanish plan to share the sovereignty of Gibraltar. The report was finally completed in January 2002 and approved by the House the following month. Even then it was not until December of 2003 that the report was formally submitted by the Gibraltar Government to the United Kingdom Government. This presented an additional delay of 21 months. The Government have explained the reasons for the delay. We do not share the thinking behind the explanation given. It remains our view that the report should have been submitted formally earlier. The present constitutional process has therefore spanned three parliaments. It was born in the 1996/2000 Session when the Committee was set up, it reported

in the 2000/2003 Session when the whole House adopted its recommendations, it now moves on to the negotiating phase in a third new parliamentary session. This is the first time in the modern political history of Gibraltar that a constitutional process of this kind has taken so long.

Moving on now to another point, I have to say that I do not agree with recent public comments made regarding the nature and the timescale of such reform. First it needs to be understood by all concerned that we will not be satisfied with some minor tinkering to the Constitution of Gibraltar which some choose to call modernisation, that ends up with Gibraltar remaining as a colony. Secondly a timetable for the decolonisation of Gibraltar, as my colleagues have already indicated, has to be agreed with the United Kingdom. From the moment that we joined the Select Committee it was made abundantly clear that as far as the Opposition was concerned, the decolonisation of Gibraltar was the central objective of this process. This objective is as important to us now in 2004 as it was then in 1999. It is an objective that is presumably shared by both sides of the House given that it is the centrepiece of the document that this House is reaffirming today. The point is that it should not be diluted in any shape or form. Mr Speaker in my view it would be a serious error to agree to some minor tinkering with the Constitution now which does not address the central issue of our status. Minor changes now would only be used to deny us further reform and decolonisation for another 35 years. That would be unforgivable. The United Kingdom has faced the decolonisation of Gibraltar in the same way as this House faced the issue when it adopted a report against the backdrop of the Anglo-Spanish negotiations in 2002. We did not shirk away from the responsibilities to the people of Gibraltar and the United Kingdom cannot be allowed to shirk away from theirs either. Mr Speaker there are 16 colonies left in the world, ten of which are British. We ask only to be treated in the same way as those colonial territories that remain and as those that have gone before us. That is to say, that the guiding principle must be that the future of Gibraltar must be freely and democratically decided by the people of Gibraltar in exercise of our right to self-

determination and decolonisation. The only timescale that is important to us is the timescale of the United Nations. The UN has set a deadline of the end of this decade for the eradication of colonialism from the planet. We agree with that deadline and we want to see Gibraltar decolonised well before that deadline expires. That is why our central objective is to get the UN involved in our decolonisation as an active participant in the same way as is happening elsewhere. We want a visiting mission from the Committee of 24 to come here and to see for themselves. As this House knows well there are four options available for the decolonisation of Gibraltar. The first three are independence, free association and integration. The fourth option allows for a tailor-made solution for the colonial territories that remain on the list, and because of this, has the benefit of taking on board the best parts of the other three. Mr Speaker the 1969 Constitution followed the 1967 Referendum. It was supposed to decolonise Gibraltar and it did not. The term City of Gibraltar replaced the term Colony of Gibraltar but only the label changed and our international status as a colony remained the same. We missed a historical opportunity to settle our future status while General Franco was still alive. The next time round we put forward proposals, after Franco's death, it was already too late. The proposals of the House of Assembly that were tabled with the British Government in the summer of 1976 led to the Hattersley memorandum as the official British Government response. This document ruled out constitutional changes except a committee system of government and pointed Gibraltar in the direction of Spain. The decolonisation of Gibraltar is a matter for Gibraltar and London alone. We reject all notions of the Spanish dimension and the Spanish key that have been floated in recent years. We reject the notion of sharing our sovereignty with Spain in any shape or form and we reject the very discussion of our sovereignty with a foreign country. There are therefore two routes open for our decolonisation. The first is the route marked out by the Select Committee Report which sets out the basis for a bilateral process between this House, Government and Opposition, and the British Government alone. The second route is the route of the Anglo-Spanish negotiations

under the Brussels Agreement of 1984. It remains the view of the Opposition that these two routes are incompatible.

As hon Members know well there was a second referendum in 2002. The onus is now on this House to ensure that this time a referendum in Gibraltar is followed by a decolonisation constitution along the lines already agreed, which can then be put to the people for approval at the end of the negotiating process with London. This would be the first time in the political and constitutional development of Gibraltar that a new constitution is put to the people in a referendum before being implemented. In a long and turbulent constitutional history nothing has ever been easy. Every step in the road to constitutional reform in the past was first met by a loud no from the colonial power. We won through in the end by standing up for what we believe and by not taking no for an answer. We must follow in the footsteps of previous generations of Gibraltarians and learn well the lesson that history has taught us. We too must send out the message that we in this House will never take no for an answer either. I support the motion Mr Speaker.

HON J J BOSSANO:

Mr Speaker, we welcome the decision of the Government to bring this motion to the House so that we can reaffirm in the House that has new Members, the unanimity that there is in the recommendations of the Select Committee Report. In his opening remarks the Chief Minister said he hoped to persuade me either in the course of this debate or subsequently about the desirability of my attending a meeting in which he would offer me a cup of tea. I can tell him that changing the content of the liquid in the cup is not going to make a major difference to my decision on whether I attend or not so he should not waste time and energy in giving thought to that particular route. In fact having cups of tea in relation to constitutional issues has not got a very good history because in fact, when the entire process from which we are still suffering was launched by Dr David

Owen with the talks with Sr Oreja at Strassbourg, it was as a result we were informed in this House at the time, of Sir Joshua Hassan having a cup of tea with him. So cups of tea do not have a good record. I suggested to Sir Joshua Hassan at the time that he might have done better to have drunk whisky rather than tea and we might not have finished with the Strassbourg process.

When the hon Member answered the question that I put to him on whether the Government had taken a decision and my question which was No. 499 of 2004, which was answered very recently, was whether the Government had now taken a policy decision on how they intended to proceed and the question was in fact tabled two years after we had been told by the Government in this House, when previously approving the Select Committee's recommendation, that they had not made up their mind what to do. So we were not actually harassing the Government for a decision given that it was two years between being told in this House by the Chief Minister that they had not made up their mind as to what the next step might be, because as the House will recall, when the motion was last brought to the House to support the recommendations it initially read, "This House notes, approves and adopts the Report of the Select Committee and calls on the Government to initiate the appropriate discussion with Her Majesty's Government", and we said we could not support that because we were not in favour of calling upon the Government to initiate the discussions. Well, the Government removed the words with which we could not agree and we were able to carry the motion unanimously. But of course they told us that the removal of the words did not mean that they might not decide to do that, which was to initiate the discussion with Her Majesty's Government. Now my question obviously was asking them whether they had taken a decision precisely to do that, to initiate the discussions with the British Government, because that was the thing we were told in 2002. That they were removing the words, that they had not made up their mind but they might well decide to initiate discussion with the British Government or they might decide to suggest a joint approach from Government and Opposition, or

they might decide to set up a constitutional conference, but that they had not made up their mind on any of them. Therefore when I asked in Question No. 499 of 2004 whether a decision had now been taken, given that it was on the basis of the last piece of information recorded in this House, the answer that I was given was no and I think that was a wrong answer and the answer should have been yes. The answer to Question No. 499 of 2004 by the Chief Minister should have been yes, the Government has taken a decision and the decision that has been taken has been to initiate discussion with Her Majesty's Government and I have written to the Foreign Secretary on 22nd December suggesting this to him, but I have not had an answer. Then he could have gone on and said to me there and then, and what I suggest is that if he accepts my proposal and invites me to go and see him that before that happens I should discuss with the Chief Minister any ideas he may have. But in fact the impression given by the answer that they gave me was that there had been no initiative at all taken by the Government, because precisely what we want to discuss is ahead of the Government making a decision. Well it was not ahead, the decision had been made before 22nd December and that is why I declined his invitation because had he asked me what I thought before he had written to the Foreign Secretary, I would have said to him that I was against the idea of him putting to the Foreign Secretary that they should have a meeting, a meeting by the way which had been made public by him after he got the reply, on the basis that the meeting is to discuss both the proposals and the procedure. That is what the Government press release says. Well look, if he is going to go to discuss the proposals and the procedure, I think it is far more useful for us to know after he comes back whether the answer he gets from Jack Straw was the answer that he got in 1998 from Robin Cook, which was that to make any move on constitutional decolonisation would make Spain go ballistic. Then maybe we need to decide on the basis of a possible ballistic Spain, what do we do next.

I would have thought it would have been more useful to know whether the scenario is that that is the reaction in London today

as it was in 1998, because in fact the Chief Minister will remember no doubt, that he put his constitutional proposals to London, as he is entitled to do, and as he said he intended to do, in the Mackintosh Hall when the three of us addressed a meeting of the Self Determination Group, initially as a government and then following the initial reaction from the British Government, there will be a wider consultation and the possibility of a select committee. That is precisely what he said he was going to do and that is what happened. As he knows, it was the wish of the Government that we should follow a procedure which was lengthy and very detailed, of going through the Constitution word by word and clause by clause. That is why it took as long as it did. Now having done all that, we have now reached the stage where it seems to me we are now going back to where we were in 1997/1998. Of course in 1997 Sr Matutes made absolutely clear in the Brussels process that what the Chief Minister was attempting to do with Robin Cook was in the eyes of Spain something that would involve, if United Kingdom agreed to go down that route with us or with the Government alone as it was at the time, would involve in Spain's eyes the United Kingdom being in breach of the position that they jointly adopt in the Fourth Committee in the UN. When we debated this motion two years ago the Chief Minister reminded the House that the objectives which were reflected in the draft Constitution and which we shared was that it should represent, the new Constitution that we achieve, should represent the maximum level of self-government to Gibraltar, which he told us, he reminded us was the language of the United Nations decolonisation proposals that would enable the United Nations to take the view that Gibraltar had been decolonised in accordance with its own criteria to that effect. That it is to the effect of achieving maximum possible self-government. But he said the Government's publicly stated position is that that is one of the objectives of the proposals but not exclusively the only objective.

The Government also attached, which was not to suggest that the Opposition did not, that there should also be modernisation of our domestic institutions. In my reply then I confirmed that we

attach importance to the two objectives but it appeared to me that the difference between us was that we were not interested in pursuing the second objective if the British Government were not willing to move on the first. Now if indeed the objective is to get us delisted and decolonised and in the process a decolonised Gibraltar should have its institutions changed so that we remove elements that have been symptomatic and associated with the colonial constitution, then it means that in the process and as a result of decolonisation, modernisation follows. But we do not agree that modernisation per se equates to decolonisation or necessarily brings us any closer to it, because in fact, in 1968 when we were having our constitutional conference here, Bermuda was having one and in the Bermuda Constitution of 1968 the leader of the government is called a premier and there is no financial secretary and there is a minister for finance. When Kofi Anan told the Committee of 24 that colonialism and the existence of colonies was an anachronism in this century, he was including in the label of an anachronism the modernised constitution of Bermuda of 1968. So if we were to finish in the year 2005 with a minister for finance and a premier, which they have had since 1968, we would be still an anachronism albeit as modern an anachronism as they were in 1968, and we are just a more old-fashioned anachronism than they are at the moment. Well we are not prepared to have gone through the process of debating the future of our country since 1997 as we have been doing, simply to be more modern an anachronism than we were when we started on the process.

In 1964 when the United Kingdom agreed the constitution of 1964 which created the Legislative Council and created Government ministers for the first time, which was introduced on 10th September 1964, the Legislative Council that took office after the elections of 10th September clearly understood from the British Government that that was the final step before decolonisation which was expected by the then elected members to happen within the five year life of the legislative council elected in 1964. It is obvious that the reason why that did not materialise was because the United Kingdom misjudged

the support that Spain would get in the United Nations and the referendum which they were expecting would be taken, as was natural to expect, as the colonial power, the administering power doing the correct thing and establishing the wishes of the people of the colony was in fact rejected by the United Nations. That is when things changed against us and that is when British Government policy changed against us and that is when suddenly the British Government started talking for the first time about some constraint on our right to self-determination, which until then they had argued, as we continue to argue today, and as the elected members of those days argued, was absolutely clear-cut and in fact we had no doubts at all as to our right to proceed down the decolonisation route, which led in the 1960s to the creation of the Commonwealth and the independence of so many other British colonies and their emergence as sovereign nation states.

So, given that in the answer to the question the Chief Minister said that the result of our meeting would be that at the very least I would come out of it richer by a cup of tea or coffee, but for the rest it depended on whether my expectations were realistic, in his judgement, well it does not suggest to me that the way he has explained today the intention of the meeting was the way he was explaining it in answer to my Question No. 499 of 2004, because I can only assume that if my expectations are deemed by him not to be realistic, it is only because my expectation is that what we are trying to do is to decolonise Gibraltar. Now if that is not the expectation he is referring to, I do not know what other expectation he was referring to. That is the only expectation that we have. We feel that the Government would have a better chance if we went together to fight that corner than if they went on their own. But it is their prerogative. If they prefer to do it on their own it is their right to do it. Certainly the last time Gibraltar went with constitutional proposals to the United Kingdom, as the House will recall and as has been mentioned by my Colleague, was when Sir Joshua Hassan and Maurice Xiberras went with proposals to Roy Hattersley. Those proposals did not have the unanimous support of this House because I did not support them, and I did not support them

precisely because they were proposals that did not seek to achieve decolonisation. The position of the GSLP then was that to go to the United Kingdom with proposals to change elements of the Constitution and leave us as a colony would leave the Spanish argument in tact in terms of what they constantly parade every time they talk, which is to say that the doctrine that we can only be decolonised by being integrated with Spain is not the doctrine of Spain but the doctrine of the UN. Now we all know that if we are able to get the United Kingdom's agreement to a constitution that decolonises Gibraltar and we were then able to get the United Kingdom with us to argue the case in the UN and get the UN's agreement that we are successfully decolonised and de-listed, then that would not make Spain's claim to Gibraltar disappear. But they will certainly not be able to say that it is not Spanish doctrine, that it is the doctrine of the United Nations. It would then be Spain's doctrine and only Spain's doctrine and it would then be no different to any other territorial claim in any other non-colonial situation. As the hon Member himself has said in the United Nations on innumerable occasions, the question of having a territorial claim is not a matter that should have ever been permitted to have entered the debate at the level of the Committee of 24 or the Fourth Committee or the decolonisation process, because those Committees are not the institutions that exist to consider territorial claims between sovereign states. This is why Spain argues that Ceuta and Melilla are not and should not be and were never put on the list of territories that require decolonisation notwithstanding the fact that there are territorial claims from Morocco. That indeed was the position that the ambassador for Papua New Guinea took in the United Nations in support of Gibraltar, arguing that as far as the Committee of 24 was concerned, they only had to look at the right of the people of the colony to exercise self-determination and the question of the territorial dispute was a separate issue which was for a different forum, not for the Decolonisation Forum.

So, it is not that we are saying the end of our problems with our neighbour are in sight because we resolve our relationship with the United Kingdom in a manner that is consistent with the

aspirations that every elected Member in every House of Assembly has expressed in exactly the same terms, but what we are saying is it would undoubtedly weaken Spain's case enormously, and they know it. That is why they go to the lengths that they do to try and persuade us or intimidate us not to pursue that route and why they do the same thing with the UK, and they seem to be more successful in intimidating the UK than they do us. Therefore I think that I am willing to listen to any arguments that the Chief Minister may put to me which are new, but I have to tell him that on the basis of the answer that he gave me, certainly maybe I misread the answer, but I read it as meaning, "well look, if what you want is to try and get the Government committed that it is either decolonisation or we do not support changes to the Constitution", that will be trying to get the Government to adopt the policy of the Opposition. Because he has often on other issues, on Brussels on other issues, said and we have tried to bounce him into the position that we have as policy. Well look it is not that we are trying to bounce him there, it is that that is our policy and he may not have the same policy and he has got to respect ours the same as we respect his. At the end of the day if we cannot persuade him, he has a majority, there is nothing we can do about it. But that does not mean we should stop trying to persuade him. We have got an obligation to keep on trying to persuade him and therefore, if we are able to go down a particular route together, to the degree that we can we will and then when the point comes that when we feel we cannot go together any more, then I am afraid we will have to part ways. But certainly we are convinced, and my own experience in eight years was, that there were innumerable meetings with the United Kingdom where the constitutional changes were on the agenda, and there were other items, and they kept on dangling the constitutional changes in order to persuade me to attend to the meetings but we never got to that item on the agenda. We never got there. There were always other things that they wanted to sort out first before we got to the Constitution, whether it was the Financial Services Commission, or it was the money laundering, there was always something that end that made sure the agenda item constitutional changes was never reached. Now, they are quite

capable of doing that with the Government and with the Government and with the Opposition, but I think if we actually get the United Kingdom to formally accept that it is entering into a bilateral scenario, a bilateral Gibraltar/UK forum, whether that forum is British Government/Gibraltar Government, whether that forum is British Government/joint representation from both sides of House or whether that forum is a wider one, at the end of the day the most important thing in our judgement is to get the forum going. [Interruption] Well Mr Speaker I wish he had said it two years ago. I wish he had said it in 2002 because in fact let me remind the Chief Minister that the last time we had a cup of tea in his office was on the eve of the referendum, when he said "do not get me wrong Joe, it is not that I am reluctant to go ahead with this, as soon as the referendum is over we will approach the British Government", and that did not happen in November 2002 and then it did not happen because, before it was because he did not want it to be hijacked by Jack Straw and included in the bilateral negotiating process with Spain, and then it was because Jack Straw was so upset by the rejection of the referendum that he wanted Jack Straw to cool down. Well fine, I am not saying that they were just excuses, those are the things he believes were important which kept on delaying the process but I am afraid that for us the most significant the most difficult step will be to get the United Kingdom actually to sit down in a formal session irrespective of who is on the other side, we would prefer that it should be both sides of the House, and as we have already said if it is widened to a bigger forum, which we think is a good idea and which the Government at one stage was suggesting, we think there should be representatives there as well from the Integration with Britain Movement so that they can put their arguments and they can listen to the counter-arguments without saying you know, we are not accurately reflecting what is possible or what the British Government is prepared to accept. But in any case, given that the decision has already been taken to have a preliminary discussion on the proposals themselves, and on the procedure that the British Government might want, then unless we hear some very compelling arguments to the contrary, our view is that we would rather get a feedback from the Government as to what has been

the reaction, I almost said the rejection, the reaction of Jack Straw and then we will have to see what options really exist, where we go next and how we go next and if we can agree to do it together all the better, and if we cannot well so be it. But certainly given that the House has got an opportunity I think it is important to have on the record precisely what our position is and has been said by other speakers, that indeed not only does this in no way undermine our commitment, in fact our commitment is that we wish we had started on this as soon as the Committee reported its findings and indeed we believe it would have been even better to have had a shorter period of the Select Committee and gone with a less detailed proposal to the UK. Because the real litmus test of the genuineness of the British Government's willingness to do the correct thing by Gibraltar, will only be really tested when they cannot wriggle out of having to say yes or no to us on the basis that they know that the objective that we have set ourselves, and the objective we have got a mandate to pursue from our electorate, is the one that the United Nations has already told them is going to be the one for the rest of the colonies. It is interesting Mr Chairman that in the last report of the Foreign Office to the House of Commons it says that during the course of this year, within the next couple of months, two of the other British colonies are going to have proposals that will modernise their constitutions given to them and nobody suggests that those modernised constitutions will lead to their de-listing, and that another six are going to have it in 2005. There is no indication there that those six will be de-listed, and that the only two that are not mentioned for modernisation in either 2004 or 2005, are ourselves and Pitcairn Islands. Now we know that the indications from the Committee of 24 is that they were the first British colony they were setting their sights on was Pitcairn Islands and what they were planning to do. American Samoa and Pitcairn Islands as the first two territories would have specific action taken and a work study group set up to look at their decolonisation and their new constitution. So it is against that background that we wholeheartedly welcome and support the motion and certainly we hope that in this forthcoming meeting between the Chief Minister and Jack Straw, he will come back with not a

decolonised Gibraltar in his pocket but a commitment that the British Government will enter into a genuine, serious and open debate on our constitutional proposals on the basis that whatever else they may want to change, the one thing they will not seek to change is the end result which should be a decolonised Gibraltar.

MR SPEAKER:

If no other Member wishes to speak I will call on the mover to reply.

HON CHIEF MINISTER:

Mr Speaker, first of all can I congratulate as is not only the parliamentary tradition but indeed something which I do with personal pleasure, the Hon Mr Randall for what he declared to be his maiden speech in this House. Congratulations to him. I do not extend the congratulations to the other new Member the Hon Mr Bruzon (a) because he did not declare his speech to be maiden but also because I think he has made interventions before, but that is not to say that I am not wishing to indicate to him that I do not agree with what he said, in fact there are less areas of disagreement between us in what he said than there actually is in what the Hon Mr Randall said even though I agree with much of what he said too. So anyway, congratulations. I have to say that I do not understand all that we have heard about substance. No, no, and certainly I could not have congratulated the Hon Mr Picardo for his maiden speech, because in his case it is almost certainly incapable of being described as maiden, nor could I find myself agreeing with much of what he said. But anyway, as I was saying, I am somewhat surprised that all that we have heard today about the substance of the Constitutional reform proposal and all the sort of questions that have been rhetorically asked, and all the doubts that have been rhetorically sown as far as we are concerned we have agreement between ourselves. The hon Members can, I

suspect it is because they think that the Government's heart is not really in it, that they are constantly on the edge of their chairs wondering whether the Government really believes what they have signed up to or not. Well look, the hon Members should not do that because the constitutional reform proposals were the Government's policy not the Opposition's policy. We were delighted that we were able through the mechanism of the Select Committee to come to a common position on the proposals. The policy of seeking our decolonisation through the mechanism of alterations to our Constitution was a GSD manifesto commitment at two general elections, not a GSLP policy to which the Government were reluctantly dragged. This is our policy which we put up in our 1996 and 2000 manifesto at a time when other political parties were proposing free association and things of all other kinds.

The Hon Mr Randall said that there ought to be no problem for the UK Government accepting all our proposals and then the Hon Dr Garcia said that it would be "unforgivable if there was any dilution in any shape or form of our constitutional proposals". Well I am not quite sure what they mean by that but if they mean that only acceptance by the British Government of each and every one of our proposals in the form that we have asked for that only that is acceptable and that nothing else is acceptable and that any departure from the text that we have proposed either in quantity or in quality is unforgivable, then look if we are going to be honest we should not invite the British Government to join us in the negotiating process. In a negotiating process it is understood that what may emerge is not what either party proposed. So if the hon Member's view is that only the whole of what we have asked for will do and any dilution of it would be unforgivable and that if any part of it, to quote the Hon Mr Randall is not acceptable to the British Government, that therefore this is an unforgivable disgrace, then we are not inviting the British Government to join us in the negotiation. There is no need for either of us to go to London. We can just send it to him in the post and say look this is what we want take it or leave it. The suggestion that unless we get everything that we have asked for there is somehow a failure of

the process and that it is a disgrace or unforgivable, depending on the colourful adjective that the various Opposition Members have used, I think is a wholly unrealistic expectation and I think it is a wholly unrealistic description of the process which is involved.

The Hon Dr Garcia quite realistically, in my opinion, said in another part of his address that decolonisation and constitutional advancement should come in stages. It may be that he thinks we are now at the penultimate stage, that is a different point but that is much more sensible. Now this does not mean that we will settle only for decolonisation and that there is somehow some Government view that modernisation by itself, meaning who arrives at a cocktail party first, is the point of the exercise, of course it is not the point of the exercise. The Government's policy, as it has been from the moment that it was our policy and nobody else's to go down this route, is that the mechanism of constitutional form was for the purposes of resulting in a modernised constitutional relationship with the United Kingdom, which was not colonial in nature, and by dint of it not being colonial in nature, we would have been decolonised, and we could then go to the United Nations and say, we are still British sovereignty, we still have a constitutional relationship with the United Kingdom but because our relationship is no longer colonial in nature, we are no longer a colony and therefore take us off the list of colonies, put us on some other list but take us off the list of colonies. This is the whole essence of the Government's policy but we cannot be sure at the outset that we are going to succeed, as I have said publicly on many occasions, we cannot know whether we are going to succeed at all, in other words whether the British Government may simply not be willing to even seriously address those aspects of the matter, or whether if they are we are going to achieve enough to get us through the threshold, the gateway, of what would enable us to say that the relationship on the other side at the end of the negotiation is or is not colonial in nature and therefore whether or not it serves that purpose. That has to be seen in the negotiation. Time will tell. We may succeed sufficiently for those purposes or we may succeed insufficiently

for that purpose or not at all in the sense that we, if there are ten litmus tests for that, we might not succeed in any of them, let alone in five or six. This requires to be established but that does not invalidate the process. That does not entitle anybody to say it is not worth entering into the process unless that that is what one is going to get. What sort of negotiating process is that? One has got to accept the possibility that we might fail in the negotiating process and that we might fail therefore to achieve the purpose for which the process is intended. It seems to me that that is simply the laws of life and that time will tell, there are many people in Gibraltar who think that we are on a hiding to nothing. There are many people in Gibraltar who think that this is wishful thinking by politicians that have lost touch with reality. Those views are perfectly tenable views, they are not views that can be disqualified in a democracy but certainly they are not views which lead one not even to suck the bloody gobstopper to see if one can succeed.

I mean that is the reality of the matter. Those prophets of doom and gloom may be right. Time may prove them correct but that is not a reason for (a) asserting the right, and (b) attempting to achieve what one tries to achieve. We have got to accept the possibility that we do not achieve what we want to accept because others that have to play the game to give it to us may not give it.

The Hon Mr Randall also spoke, he spoke of the shackles and vestiges of colonialism. I agree with the reference to vestiges of colonialism. I have to say that I have never felt shackles, I have felt that because of what they call the Spanish dimension, Britain has been party to a denial to the people of Gibraltar of our democratic political rights as a colonial people to self-determination. That is true. But I do not think that whilst we have been a colony, well in recent decades whilst we have been a colony, I do not think we can speak of the United Kingdom's position in Gibraltar as amounting to colonial shackles. There have been colonies in the past in other eras who have laboured under genuine colonial shackles, ours is a colonial status coupled with, in my opinion, an inexplicable and a self-serving

unwillingness on Britain's part to allow us to enjoy the same political rights to exercise as we please. To exercise as we please perhaps to exercise by saying no, we think it is in our interests not to go down the self-determination road because we do not want to face the Spanish dimension. But that would be a choice for the people of Gibraltar and that is very different to being told that because of the Spanish claim one cannot have the right even to make that judgement for oneself. That is the difference between those people who think that we are wasting our time and those of us who think that we are not wasting our time even if we do not succeed in the objective. The Hon Mr Randall asked me to employ humility by not going to see the Foreign Secretary alone and he also invoked references to God and religion which is a matter for him. I have to say that I have been as humble as a government can be expected to be. We have formulated Gibraltar's constitutional proposals in a process, which even though we were in a majority, but I hope Opposition Members who were in the minority will accept that except on one or two issues, very few of them came to a vote, and therefore the Government sought consensus rather than that the document should reflect our view on the basis that it had three votes against two in the Committee. Now I am not sure that I can remember any vote although there may have been one or two. So we formulate the position in relation to a consensus approach with the Opposition, including inviting submissions from the public at large, and then we do not say, "well thank you for your help in formulating it, now I am going to go off and do all this by myself". We said "no, we have not yet decided how we are going to do it, but our view is that this is not something that a government of the day should do by itself". We have not yet decided the formula for inclusion, the formula but we are convinced that this is something the Government should not do by themselves. I believe therefore that the Opposition party and ours, and we have not decided and actually still have not decided, that issue. That is what the cup of tea meeting would have been designed to take forward, so that the Government could have crystallised that decision. But humility, which is what the hon Member tried to pretend I would be lacking if I did not collapse to the position that they were

demanding, humility, *[Interruption]* it is a strange way to seek unity with the Government to make remarks of that sort. I know very well what humility is. I do not know actually if the hon Member knows what it means because humility is not what he is seeking from me, because humility cannot extend to pretending that in a democracy there is not a government with a role as a government and a duty to lead as the government and something separate and different called an Opposition, with its own different roles and duties. One thing is for the Government to say I am going to do something in consensus or jointly or together with the Opposition and a wholly different thing is for the Opposition to expect that that means that the Government ceases to be a government, and that somehow the Opposition becomes half the Government and the Government becomes half the Opposition. That does not call for humility, that calls for an abrogation by the Government of their rights, powers and responsibility to steer issues and to demonstrate leadership and to undertake the role of government. That is not humility. If the Government ceased to do those things they would be abrogating the responsibility that the electorate, in their majority, have deposited in the Government. The suggestion that it requires an absence of humility or in the words of the Hon Mr Picardo, political greed, or in the words of one of the other Opposition Members a sabotage, although the word was not used but the sentiment meaning that if the Chief Minister went to see the Foreign Secretary, he would be undermining unity and that this would be his long lasting epitaph in policy, the suggestion that the Chief Minister of Gibraltar is not at liberty, never mind that he has the responsibility to do so, the suggestion that the Chief Minister of Gibraltar is not at liberty, according to the hon Members, unless it is by an act of gross lack of humility, that he is not at liberty to raise the issue of constitutional reform with the Foreign Secretary of the Government of the United Kingdom, is in my view a wholly unsustainable proposition. The suggestion that it should be improper somehow or unhelpful that I should raise with the Foreign Secretary in what I had described publicly as an informal discussion to agree the way forward, how can I take a Gibraltar delegation to the British Government unless I have

discussed with the British Government how these negotiations are physically going to take place. I would not have to take just the hon Member, I would have to take the hon Member and the whole of the rest of the delegation, all the other people that I am thinking of inviting to form part of the delegation and why have we all got to go together just so that we knock on the door and say here we are for our constitutional negotiation. *"Well, I am sorry Chief Minister we have just not provided a table big enough for all of you people, and here we thought there were only three of you coming so you know there are not enough sandwiches on the table."* The suggestion that the Gibraltar Government discussing these issues with the British Government is somehow an act of political greed, or somehow an act of lack of humility, is actually extraordinary as a proposition and certainly one that the Government rejects and one with which we think the Opposition is not entitled, because the Opposition should not assume that it is they and us who are going to go together. So when the hon Member said that I should not speak to the Foreign Secretary by myself, what he was actually saying is that when I next speak, when I next mention the word constitutional reform to the Foreign Secretary, I have to be surrounded by all the people that we might conclude should be there. Well I have to say it is a completely unrealistic and self-serving, wholly self-serving analysis of the situation by the Opposition Members and the Government will pre-negotiation commencement discuss these issues with the British Government freely and frequently. How can I set up a negotiating process with the British Government if I do not discuss the negotiating process with them. It is just ridiculous, a wholly ridiculous proposition. It may very well be true that the person who does not know what humility means is the Opposition Member and not I. I should like to say also, well Mr Speaker look, the hon Member mutters that I am wrong, then let us just agree on this. If humility means that I abrogate to him my responsibilities as Chief Minister of Gibraltar then by that definition of humility I hope that no Chief Minister of Gibraltar is ever that humble.

I ought also to say that in reference to this business about whether the British Government, whether we can expect to achieve everything that we ask for or not in the context of a realistic negotiation, of course we are going to end up, even if we succeed, we are going to end up with a situation where we remain having British sovereignty and in a constitutional relationship with the United Kingdom. It is unrealistic in the extreme to think that the United Kingdom is going to give us a de facto independent constitution whilst they retain international responsibility for Gibraltar in terms of our sovereignty and in terms of our constitutional status. Therefore, as indeed the constitutional proposals themselves accommodate and recognise, there have to be mechanisms in those proposals which reflect the United Kingdom's continuing role but they have to be non-colonial in nature. I think we are all agreed across the floor of the House on this but I just want to take this opportunity to make a point, which I have made recently in public, and which responds to sort of typical UK ministerial comments on the scope and parameters of constitutional reform proposals. The United Kingdom's perhaps legitimate rights to ensure that constitutions do not allow them with contingent, leave them saddled with contingent financial liabilities which they cannot influence, or which may give them a legitimate right to ensure good governance, that those cannot be used as pretexts, covers or excuses to continue to prevail over a colonial situation. In other words, in my view the good governance of the Government of Gibraltar is something which in a democratic Gibraltar is a judgement for the people of Gibraltar at the polls, politically, and then for the courts of Gibraltar in between elections if the Government of Gibraltar is doing something which is contrary to the law. The idea that we need a colonial constitution in order to ensure that the Government of Gibraltar practises good governance is a denial of basic democratic principles to the people of Gibraltar. We are no more or less in need of that mechanism to ensure good governance than the British Government itself is. What makes them think that we need a mechanism to deliver, to ensure good governance by the democratically elected Government of Gibraltar that they do not think they need to ensure good governance by them in the

United Kingdom. It is wholly patronising and a completely unnecessary mechanism which would, in my opinion, fall into the categories of some of the things that the hon Members said that they would not approve of. Genuine understandable proper mechanisms to give the United Kingdom the powers that it will continue to need to look after its genuine and continuing role and responsibilities yes. But a pretext of good governance to continue to enjoy colonial rights and powers which are not actually needed for proper reasons but just used as a pretext, that would be wholly unacceptable to the Government.

The hon Members have lamented in various forms of language and in various degrees of aggression that it has taken us two years to come here, and I suppose if we emerge from this debate with unanimity and unity, it will be I think despite the Hon Mr Picardo and not because of the Hon Mr Picardo. Because frankly to say that the Government have now plucked up the courage to proceed with this. Look, first of all the Government does not need to pluck up courage to do things that it puts in their manifesto and stands for election for. The Government on the other hand do not put their brain before brawn. In other words the fact that the Government proceed cautiously and in accordance with their assessment of what is in the wider interests of Gibraltar does not mean that we do not have courage, it means that in addition to having courage we also have brains. Because courage without brains may be a virtue in a street fighter but it is not a virtue in a good Chief Minister of Gibraltar. Right, and therefore the Government will continue to proceed on the basis of paced timing. I know that the hon Members think that the most sensible thing to do from their point of view or even from the point of view of Gibraltar as they see it, would have been to have rushed. The Government whose policy it was took a different view. We took a different view as the hon Members know. We think that these things are important. Very important. I said this in my last television interview on this matter. We think that this policy is important, very important. We do not think that it is urgent. We think actually that there are more important things for Gibraltar also to say at the same time. Like achieving this in a way which

maximises rather than minimises our economic stability. Doing this in a way which maximises rather than minimises the prospects of success of the initiative. These things require judgements and they require judgements as to timing and pacing, and those are judgements that the Government are elected to exercise and the Government exercises them, even in respect of something which is our policy. That does not mean that we have not previously plucked up the courage. It means that we had not previously judged that it was in Gibraltar's interest to proceed, and it is not true that I said to the Leader of the Opposition at our last meeting that we would get on with it as soon as the referendum was over. What I told the hon Member was that we would proceed with it when the time was right following the effect of the referendum and the political campaign on joint sovereignty, because we did not want it to fall on grounds that would be necessarily infertile by virtue of the animus that the Foreign Secretary was then in, because that is what I said to him. *[Interruption]* Well fine, then we have to agree to differ. That is what I said to him. Now, the hon Member may think there is a difference between those two points. I do not think there is a difference.

HON J J BOSSANO:

We have different recollections of what took place.

HON CHIEF MINISTER:

Fine, we will have to leave it at that. The idea that I might have said to the hon Member that as soon as the referendum was over we would do it, when what I was saying actually was, if anybody in Gibraltar thinks that the day after we have thrown sand into the eyes of Spain and Britain, with the Foreign Secretary barely willing to speak to the Chief Minister of Gibraltar let alone negotiate with him, that that is the apposite moment to pull this document out and say, *"well it is not enough that we have quipped your pit with Spain on joint sovereignty,*

now here you are, now take this before you have had time to recover. Now take this as well, see if we can actually get you to declare war with Spain all in one week", We have to leave it on the basis that we have different recollections but it sounds something completely incompatible with what I was saying both privately and publicly about how Gibraltar needed to behave in the immediate aftermath of the referendum. It is a matter for judgement for the Opposition Members, one or two of them have said it has got to be a decolonising constitution or nothing else. Well that is a matter for judgement by them. Certainly our joint objective is a decolonising constitution which let us be specific, means a constitution which allows us honestly to say to the people of Gibraltar – we remain of British sovereignty, we remain in a constitutional relationship of political dependency of the United Kingdom but it is not colonial in nature and therefore it is decolonisation and therefore we can ask the United Nations to take us off the list. That is the objective, whether if we do not achieve it, it is therefore not worth taking whatever other advancement may be available to us but which nevertheless falls short of that objective, that is a matter of judgement which in other words, if one cannot have enough whether one does not want anything at all, one cannot have three sweets and if one cannot get the three sweets and one can only get two, whether one takes the two sweets or turns ones nose up at them, that is a matter of judgement but certainly there is no difference between us on the objective of the proposal. When the hon Members complain that this has now gone three terms, can I in the most amicable and unified and unity seeking way possible, remind them that however slow, laborious and ponderous they may think our stewardship of constitutional reform has been, during the eight years that they were in office there actually was no specific constitutional initiative.

I recognise that the hon Members majored in articulating the sort of the self-determination argument of the self-determination politics, but there was no structured specific constitutional initiative to lead to decolonisation. There was the general cry for self-determination, which I recognise contributed to the advancement of Gibraltar's political articulation, there was one

election in which they stood with no particular constitutional model for carrying that forward, there was one election in which they stood arguing for free association and then another, fine, so they may want to take the view that eight years of GSD Government has not seen enough progress. It has seen certainly no less progress than the eight years of GSLP government and we think, possibly in terms of the structured pinning down of a particular route forward, I think it has shown actually more progress, though we may not succeed in obtaining the results, but in the attempt to receive a structured result we think it actually shows more progress than they made. The hon Member who then asks me not to be politically greedy and who asks me not to be politically unhumble, the Hon Mr Picardo then says that of course this Government that has been elected by *"a whisker over half the vote"*. Well I know it is part of the hon Member's frantic and frenetic political rehabilitation process to pretend that they only just lost the election by a whisper and to pretend that on another day they might have won as if they were a football team that just had a bad day. Well can I remind the hon Member that our election victory this time round, by a margin of more than 11 per cent over them, in any self-respecting democracy is regarded as a landslide. In Spain the current government are wetting themselves with excitement because they are six points ahead in the opinion polls. In Britain one government in the last 45 years has been elected with more than 50 per cent of the vote, this whisker that he refers to. This whisker that we just squeezed through the door, this whisker and this gap that we just managed to squeeze on because they were all having a bad day, is actually 12 per cent of the electorate which in any other democracy does not have the loser trying to denigrate the democratic validity of the Government's mandate. It actually calls for a little bit of humility, electoral humility on their part and to recognise that by any sensible, conventional democratic measure their margin of loss was democratically significant. Very democratically significant. When he is categorising our third electoral victory as sort of a mathematical tight squeeze can I ask him to remember that this Government, who he thinks are only just arithmetically entitled to pretend that they are a government, because after all we

have only by a whisker of more than 50 per cent won the election, can I ask him to remember that this party and this Government is firstly the first party ever in the history of Gibraltar to win three consecutive general elections with more than 50 per cent of the vote on each of the three occasions and with their eight candidates winning the first eight places in the ballot box on all three occasions, a feat never before attained by any Government of Gibraltar. Now this is the Government that he wishes to dismiss as having squeezed into government by what he called a whisker of a majority over 50 per cent. Mr Speaker I think that the hon Member's opposite attempt to re-invent themselves politically is laudable and in a democracy to be welcomed. But they should stick to doing it through credible, factual means rather than through these contorted, distorted mental somersaults that they try, not only to do themselves but actually to sell to the people of Gibraltar who are not quite as slow of mind as they would need to be for those sorts of arguments to carry any weight. The hon Member wants me to move on, I do not blame him.

Mr Speaker, but still despite all these provocative statements to which the hon Member subjects us to, we continue to agree with him that unity is the purpose. Except that when I ask somebody to unite with me I try if I am really sincere about the call for unity, I try to use language which is just a bit less provocative than the language that he chose. But never mind, never mind, he must conduct his political unity seeking in whatever language he thinks is most likely to enjoy success. What he cannot do is to say that if we do not have unity it will be my political epitaph and then ask for it in terms of language which include the phrase political greed if the Chief Minister has the audacity to go to speak to the Foreign Secretary by himself and without the Leader of the Opposition. I have to tell the hon Members that I take a considerable amount of comfort from the fact that the Leader of the Opposition in explaining his reasons for wanting to postpone his meeting with me until after I have met with the Foreign Secretary, which whilst a position that I do not agree with because I think it is based on a completely misreading by him of both the proprietary and the purpose of that meeting, but

at least it is a reasonable position, reasonably articulated. I did not hear the Leader of the Opposition declare that if I dared to see the Foreign Secretary without him I would be a politically greedy person or that I would be a person lacking in humility. What I heard him say was that if I was going to see the Foreign Secretary then we might as well wait until I can bring him the news of that meeting before we meet to discuss the matter. Well that seems to me a much more reasonable and defensible position than the more colourful points made by his Colleagues before him. So the hon Member can relax now, I am going to move on. The hon Member is constantly urging me to move on.

Mr Speaker, the Hon Dr Garcia said that decolonisation must be an on-going process with increasing levels of self-government. I agree with him and because that is precisely correct one of the things that we shall have to judge in due course is if we do not get enough for our common purpose of being able to say that this is no longer a colonial constitution, do we say well we then do not want anything or do we say we have failed in our principal mission, we shall have to live to fight another day and in the meantime we will take what is available which may amount to an on-going process with increasing levels of self-government. It is not a question that either he or I could answer now, it depends on (a) what is offered, and (b) whether we judge it is worth accepting or not. But a judgement will have to be made at that stage to the point that I was making before whether if we are offered things which are not enough for our primary purpose, whether we then reject what is available or whether we grab it on the basis that at least it is a progress of a self-government type, although not perhaps of a decolonising in the international sense. It is a matter for judgement in due course and I think it would be pointless to speculate in advance if we do not know. I agree with him and I said this in a television interview I gave on GBC several weeks ago, that the most important point of this is not the speed at which it happens but the fact that it should be happening at all, because by having our own agenda and our own process, he has used the word forestalled, I used the words on that occasion, fill the vacuum, as to the way forward for our future which others might

otherwise seek to fill with proposals that will not be to our liking. So I have to say to the Leader of the Opposition that I reject all that he has said implying or suggesting or insinuating that somehow I have departed from what I have said in the past. What I have always told him in the past is that the Government were committed not to doing this alone but had not yet decided how they would not do it alone. That actually is still the position today and my invitation to him, which he has declined until I return from my meeting with Mr Straw, but my invitation to him to come and see me so that we can have a discussion was precisely a discussion about his views and my views about how the matter should be taken forward. Discussions let me hasten to add to him I would not be having only with him, but that I would be having with leaders of other political parties and other organisations who maybe organisations that the Government might wish to bring along as well. It is only when the Government have spoken to all these organisations and all these political parties, that the Government can then take into account to the greatest possible extent the views that they have heard, then make their decision as Government, not whether the Government are going to go it alone or not, the Government have already said they are not going to go it alone, but rather on the particular model for more inclusive participation of Gibraltar. That was the purpose of the meeting and whilst I from a position of disagreement with him, respect the assessment and the view that he has made, I do believe that it is a wrong assessment, I do believe that it is based on a complete misreading (a) of the purpose of my meeting with him, and (b) of the purpose of my meeting with the Foreign Secretary, which is an inevitable and inescapable necessity in advance of, not as part of, in advance of whatever negotiating mechanism is eventually set up for this to be done through a mechanism more widely than just the Government. Now, I believe that far from being an unhumble position, that is a wholly proper, measured, well thought out and reasonable position by the Government. What the Government are not going to do is in the name of unity abrogate their functions as Government, just as the Government do not in the name of unity ever expect or ask the Opposition to stop being an opposition. It is very easy for the Government in many areas

to say well join us in, there is a role for Government and there is a role for the Opposition. We can do things together in the interests of Gibraltar on many issues but that does not detract from the fact that together we are still one a Government and the other an Opposition. That is not an obstacle to unity, it is a realisation that even in unity the parties still each have their different political constitutional and indeed legal roles. In fact if the Government's position will be my enduring political epitaph it is one of which I shall be proud because it is one which is of a Government seeking to include on proper terms as many people as it is appropriate to include in this important issue for Gibraltar.

HON J J BOSSANO:

Can I just ask the Chief Minister to look at page 14 of the Hansard of the debate on this motion two years ago and there he will find that indeed my recollection of the position is accurate and his is not. Because there he said in answer to the point that we were making that the text of the motion was that the Government would be going it alone. He said it is a matter whether it is done by the Government or done by the Government with the Opposition, or done by the Government and the Opposition and others, it is a matter on which the Government have to take a decision. Right. Well therefore, that is the position as he left it, that the Government had not yet made up their minds which of the three it was. He has just told me that the first of the three was never under consideration, no?

HON CHIEF MINISTER:

What I have said is that the Government are committed, we have made public statements, I have made statements inside this House and publicly to the media in Gibraltar outside of this House, that the Government do not consider that any constitutional reform proposals should be done only by the Government of the day, and that the position that the Government might do this entirely by themselves, look we might

have to do it by ourselves if nobody else wants to do it with us, but it is not the Government's choice to do it by themselves and what is outstanding is the mechanism by which others would participate. But of course, whatever mechanism is chosen for others to participate will not detract from the fact that we will still be the Government, and that the Government will have a role to play in that effort which will reflect the fact that it is the Government. Look, as an example, if the Gibraltar Government invite as well as the Opposition and others the Integration with Britain Movement, I mean surely the hon Member is not suggesting that the Gibraltar Government and the Integration with Britain Movement should have the same status, and that I should have the same status in the constitutional negotiations as my namesake Joe Caruana. So however the delegation is constituted there is still going to be a Government and a Chief Minister and other Ministers, and there is going to be an elected Opposition with a Leader of the elected Opposition and there may be other political parties without parliamentary representation, there may be NGOs. But they will not all have the same status, that is just unrealistic. But these are the things that I was going to discuss with the hon Member and I hope still to discuss with him when in due course we meet. To suggest that the purpose of the meeting was just to offer him a cup of tea, I mean I thought he was just using telegraphic language in order to avoid having to explain much more things. But he knows from the letter that I sent to him what the purpose of the meeting was for. I would like him to meet with me before I meet with the Foreign Secretary but if he decides to meet after it does not matter, except that my meeting with the Foreign Secretary then necessarily cannot go as far in my articulating the way that Gibraltar wants to play this, unless I do it on the basis of the Government's own judgement and on the basis of the Government's judgement based on other people that might be willing to consult with me before I go to see the Foreign Secretary. But if the Leader of the Opposition declines to meet with me until after I have met the Foreign Secretary then as a matter of inescapable logic I only have two choices. Either I do not raise the question of structure of the negotiation with the Foreign Secretary, or I raise it without the benefit of the Leader

of the Opposition's views, but with the benefit of the views of such other parties and individuals as may have been able to meet with me before, and the choice really is entirely his. I would urge him to meet with me before I meet with the Foreign Secretary on the grounds and on the basis that the decision that he has made being based on the belief that this represented a resilement by the Government from their position of not going it alone, is an incorrect assessment on his part and in no way reflects either the position of the Government generally on that question, or specifically given that these are things that necessarily have to be done between Government and Government until the process is launched. These are pre-launch of process housekeeping work that necessarily has to be done. What I cannot say to the hon Member is that in addition to that I will decline to mention constitutional reform proposals to the Foreign Secretary. I am afraid I cannot agree to the hon Member that I will not, except in his company, before the launch of the process have any contact, conversation, even if he raises it, with the Foreign Secretary. I think it is an unreasonable request but it does not detract from the jointness of the process once the process begins. I cannot offer the hon Member any more help than that if indeed he wants help. I cannot offer him any more help than that in coming to have a cup of tea with me before I meet the Foreign Secretary. I commend the motion to the House but I recognise that nothing either of us have said in any case addresses the fact of the motion because the hon Members have indicated that they would be supporting the motion from the very outset of it.

Question put. The motion was carried unanimously.

HON CHIEF MINISTER:

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

"This House-

resolves that the following Members should be nominated to the Permanent Select Committee on Members' Interests:-

The Hon Lt Col E M Britto OBE, ED;
The Hon J Netto;
The Hon S E Linares; and
The Hon L Randall."

Mr Speaker, Standing Orders requires that the House should have a Select Committee on Members' Interests. I do not think there is any need for me to say anything in support of this motion. These are the Members that each side of the House has nominated and therefore I assume that the motion will be supported by all sides.

Question proposed.

HON J J BOSSANO:

Mr Speaker, this is standard procedure after a general election and we support the motion.

Question put. The motion was carried unanimously.

HON CHIEF MINISTER:

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

"This House-

resolves that the Honorary Freedom of the City of Gibraltar be conferred upon the Royal Navy in recognition of its close association with Gibraltar over the past 300 years, as an expression of the regard, esteem and friendship in which the

Royal Navy is held by the people of Gibraltar and in commemoration of the role that the Royal Navy has played in the social and economic development of Gibraltar and its people.”

Mr Speaker, as the hon Members know the Freedom of the City of Gibraltar is the highest civic award or recognition that this House or for that matter anybody else in Gibraltar can bestow. Perhaps no other institution has a relationship in and with Gibraltar that goes back the entirety of the 300 years, right to the very first day. Given that it was the Royal Navy with a considerable loss of life in the process, who captured Gibraltar in 1704 at the head of a force which was joint as between the United Kingdom and Holland, and that since then Gibraltar has been at the heart of the Navy's operation and the Navy has been central to almost every aspect of life in Gibraltar. The Navy were instrumental not just in initiating British sovereignty over Gibraltar through its capture in 1704, but indeed also instrumental in ensuring that Gibraltar was able subsequently to survive and sustain many of the great sieges to which it was subjected, not just by relieving Gibraltar and its defenders more than once just in the nick of time but also in ensuring that the seas nearby and around Gibraltar were kept free of enemy shipping and therefore minimise the military force that could be brought to bear upon the defenders of Gibraltar.

Gibraltar owes, I think, a debt which deserves to be commemorated to the Royal Navy, not only in war, not only in the military sphere but also in peace, since I think it is true to say that the two great historical impetuses, economic impetuses to Gibraltar, have had links with the Royal Navy. The first period of great economic prosperity for Gibraltar came during the French Revolution and the Napoleonic Wars, when Gibraltar became an important base and the efforts and the commercial activity by many local businessmen to keep the Royal Navy supplied and fighting fit led to a number of them making large fortunes. Indeed it was his business as supplier of fresh beef in those days essential to keeping the fighting ships free of scurvy that made Aaron Cardoso's fortune with which he built the

imposing house across the square which is now our City Hall. The Royal Navy's complete command of the sea after the memorable victory at Trafalgar, with which Gibraltar can also claim some historical connection, allowed Gibraltar to become a centre for supplying Southern Europe with British goods through the blockade of trade in British goods that Napoleon had imposed in respect of any French possession or territories. These allowed Britain to finance a costly war and provided her with much of the wealth it required to campaign to finance Wellington's campaign during the Peninsular War. This and the number of captured ships and their cargoes, which as some hon Members might know, all the prizes seized by the Navy in the Mediterranean were brought to Gibraltar and auctioned in what was the origin of our present Admiralty Court jurisdiction, in the open in the public square that subsequently became the John Mackintosh Square. Right underneath where we are standing now. That indeed this activity itself contributed enormously to the prosperity of Gibraltar at that time, and indeed it was the wealth created by that activity particularly which resulted in the construction by Gibraltar merchants of the sumptuous library which is now which is the very building in which we are now meeting as this House of Assembly today.

There was an even greater impetus that the Royal Navy gave to the economic prosperity of Gibraltar and indeed something upon which the entire economic viability and therefore social viability and therefore political viability of Gibraltar is based and that is the decision to build the Royal Navy Dockyards in Gibraltar at the end of the nineteenth century. This has been perhaps the most vital event for the economic prosperity of our City. It provided business for our local merchants and by local standards, well remunerated and reliable work for the working people in Gibraltar. This led in turn not just to economic prosperity but to the proper organisation of trade unions and to the beginning of political organisations in Gibraltar which were to bring about the beginning of self-government in Gibraltar, our present Constitution and in the wake of it all our present identity and political aspirations as a people. I think it is true to say that without the Royal Navy and its activity in Gibraltar and the

employment that it created in Gibraltar, the civilian population in Gibraltar would never have been able to get off the ground so to speak in terms of their economic sustainability, and although we no longer rely on it, it is still an important part of our economy. The Navy's presence in Gibraltar still accounts for over 1,000 directly employed jobs and numerous more indirect jobs in our economy. So not only was it an impetus to the social and economic development of Gibraltar at the turn of the century and since, but it continues to this day albeit in diminishing proportions, it remains to this day still the second largest employer in Gibraltar after the Government of Gibraltar and if somebody came to Gibraltar tomorrow offering to set up a business that would employ 1,000 people, that is what the Royal Navy does today. And of course Gibraltar has reciprocated. Gibraltar has been a willing and home from home host country to the Royal Navy and I know that the Royal Navy much value that. Particularly during the Second World War but really in almost every military endeavour since the Second World War Gibraltar has provided the Royal Navy with a logistical and naval base without which all of its military campaigns would have been difficult, and some of them would simply not have been possible at all, like the saving of Malta during the war and perhaps even the launching of Operation Torch, the relief from North Africa during the Second World War.

Therefore, Mr Speaker, it is on the basis of such principles which I am obviously just alluding to and not pretending to go into in any great detail, that the Government forms the view that few institutions have had a greater impact on Gibraltar and our development as a people and as a community than the Royal Navy. I believe that it is right, fitting and appropriate that we should mark those links, given what I have said including that no British organisation can trace back its arrival, role, importance to Gibraltar and its enduring British sovereignty during the whole of the 300 years than the Royal Navy, and I hope that the House will support the motion which I commend to it.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we are as happy to support this motion as we did the one before and the one before that. The three that we have done today. This House has already granted the Royal Marines who were the people who landed in Gibraltar in 1704 the Freedom of the City, and on this occasion of course I think it has been widened because it was I think after Gibraltar was captured and liberated from Spanish rule, and the Spanish flag removed from our country, and I think just for having lowered the Spanish flag it is worth giving them the Freedom of the City. They need not have done anything else. So we would have been quite happy if that was the only thing they had done to give them the Freedom of the City for that. But of course I think what they discovered was just how useful Gibraltar was to the Royal Navy. Incidentally, it was of course at the time not the Navy of the United Kingdom but of England because that was before the Union. So in fact our relationship with the Navy is older than Scotland's relationship with the Navy. If one looks at the command of the oceans of the Royal Navy and the enormous value that that predominance gave England in creating the Empire, then it is clear that the relationship was more than just reciprocal, it was really a symbiotic relationship where both benefited from the development. The Navy invested in Gibraltar because it was an investment that paid back handsomely in terms of the protection of the trade routes to the Empire that was supported by having an advance base here. From our point of view it made England and subsequently the United Kingdom, post the Act of Union, particularly determined not to give this place up and not to give it back to the Kingdom of Spain. As we know the Kingdom of Spain having signed a Treaty giving it away in perpetuity, started attempting to take it back by force when the ink was hardly dry, and failed. That failure undoubtedly was due to the importance, the military importance that Gibraltar had to the United Kingdom and the degree to which the United Kingdom was prepared to invest human lives, British lives in defending the Rock of Gibraltar making sure it did not fall back under Spanish domination. So this year when we are celebrating the liberation of our territory

from the domination of the neighbouring country, what better way to do it than to start it off by giving the Freedom of the Territory to the liberators, the people who pushed the invaders out of our homeland. It is of course not just the Naval Base, the services to the Army and the Royal Air Force make up the 1,000 jobs, but the biggest component or perhaps of the three services the Navy may still be providing a bigger share of the 1,000 jobs, and it was interesting to hear the hon Member say how by supplying the Navy certain families made large fortunes. I am afraid that this is a lesson that after 300 years the MOD and the Navy should learn. That this business of outsourcing only creates opportunities for people to make large fortunes and that they should employ direct labour. So perhaps if they are listening to the debate today there are a few lessons for current events taking place in the MOD that the MOD might well take on board. Clearly we want the Navy to stay here, we want the Ministry of Defence to stay here, we want it to maintain its presence, we think it is good for them and good for us, and therefore if quite apart from celebrating in one particular aspect our Tercentenary outside Spanish sovereignty in addition to that we have sent a very clear message of how much we welcome their presence in Gibraltar, then all the more reason for giving them the Freedom of the City.

HON CHIEF MINISTER:

I am grateful to the hon Members for supporting this motion. Indeed in participating in all the rest of Gibraltar's tercentenary events the hon Members can choose to celebrate whatever it is that they think they are celebrating, whether it is factually, historically, politically, legally or under any other category of categorisation realistic or sensible, that is entirely a matter for them. In organising the vast majority of tercentenary events, I say the vast majority because some are not organised by the Government, the Gibraltar Government are celebrating 300 years of British sovereignty. We are celebrating the fruits as seen today of that 300 years of history and we are most certainly not celebrating 300 years of the liberation of our

territory from Spain, because simply 300 years ago, when the territory was allegedly liberated, it was not ours.

I have explained to the hon Member before, and I regret that he has not seen it in the same way as me that I do not think that it is politically helpful to present this as a liberation of territory from Spain. Frankly it suggests that the rights of the people of Gibraltar do not derive from our status today in this territory regardless of what happened 300 years ago, which is the only basis upon which our right to self-determination is entitled to proceed, and if our rights were based on the fact that Britain liberated the territory from Spain 300 years ago, I fear that he would find it even more difficult than he finds it today to persuade the international community that our rights to self-determination are well-founded. I think that this in any event inaccurate, leaving it to one side whether they are politically helpful or not, in any event inaccurate political slogans I can see appeal to his politically, what is the word I am looking for, to his politically moustache twitching and mischievous sense of lets stir the pot because from a stirred pot some benefit will flow, I can see that it appeals to that very typical characteristic of him. But as often as he says it the Government will say that we believe that he is wrong, that that is not what we are celebrating and it is certainly not the reason why we are offering the Navy the Freedom of the City. Although we recognise that if the Royal Navy had not taken the territory from Spain in 1704, or from Spain's predecessors one should say more accurately, in 1704, then we would never have had the opportunity to establish our rights to self-determination subsequently and therefore we would not now have what he and I agree are an undefeatable claim to exercise that self-determination today. I think that that is the more accurate way of making the point. But in any case I think we all agree that the Royal Navy is an organisation worthy of being commemorated in this our tercentenary year.

I ought to say to the hon Members as I have done before privately to the Leader of the Opposition, that the Government intends to propose other Freedoms of the City in celebration of

our tercentenary year, that this deals with the military chapter but that for example, I think that there are two people who are no longer in the political front line in the United Kingdom and I think it is important to limit it to people who are not in the political front line, of course there are many people who would be equally deserving but are still in the political front line, but I think there are two people who have done more than most historically for Gibraltar in our political travails and who have now withdrawn from the political front line, and whom I think it is now opportune to recognise, and I will at some future date be bringing a motion, which I know the hon Members will support because they have given me that indication, to propose the Freedom of the City of Gibraltar to Lord Nicholas Bethell and to Lord Doug Hoyle, both of whom have distinguished themselves for upholding, defending and promoting the political rights of the people of Gibraltar, not for the 300 years but at least certainly for the last 30 years I think they have been at the forefront of that and I think it is right that we also have a political chapter to our Freedoms of the City, and that indeed we may want to have a local chapter of people who have contributed beyond the normal to the development of Gibraltar domestically, Gibraltarians and we might even consider whether the Rules of the House permit the Freedom of the City to be granted posthumously to people who have contributed, and then we will have a crop of tercentenary freemen so to speak, some perhaps posthumously, and that will be I think a fit way to contribute to the tercentenary celebration.

Question put. The motion was carried unanimously.

ADJOURNMENT:

The Hon the Chief Minister moved the adjournment of the House to Wednesday 24th March 2004 at 10.30 am.

Question put. Agreed to.

WEDNESDAY 24TH MARCH 2004

The House resumed at 10.30 am.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities
The Hon R R Rhoda QC - Attorney General

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon T J Bristow – Financial and Development Secretary

IN ATTENDANCE:

P E Martinez – Clerk of the House of Assembly (Ag)

DOCUMENTS LAID:

The Hon the Minister for Trade, Industry and Communications laid on the Table the following documents:

- (1) The Tourist Survey Report 2003;
- (2) The Air Traffic Survey Report 2003;
- (3) The Hotel Occupancy Survey Report 2003.

Ordered to lie.

HON CHIEF MINISTER:

Mr Speaker, on a point of order, just to notify the House, we had a discussion about it in our last meeting, that the Government are not proceeding at this meeting of the House with the Employment (Amendment) Bill 2004 for the following reasons. Firstly, there is a new employment sex harassment in relation to employment directive that we wish to take the opportunity rather than have to keep on changing this legislation. It is actually not due until October 2005 but since there are so many changes going on now in this area we are going to advance that and incorporate it in the one transposition and we are also going to bring forward the discrimination provisions in relation to age and disability, which we carried forward and which hon Members will recall. Then we will bring the House a consolidated piece of legislation that will include all the harassment provisions

including the ones that we brought last time, which we had to bring quickly in order to comply with certain directive deadlines.

HON J J BOSSANO:

Can I ask the Government would they take on board the suggestion that we put in a proposed amendment on constructive dismissal and possibly incorporating it in their own proposal. Secondly what happens in between with people who have got cases, I mean what is the situation with people who may have a complaint before we legislate it?

HON CHIEF MINISTER:

Well on the point of their proposed amendment of which they have given notice to the House on the debate on this Bill, namely that constructive dismissal be introduced into the legislation as a complainable ground so to speak, the first thing that I would like to take the opportunity that the hon Members now give me to comment on that, the first thing that I would like to say is that of course, although the hon Members carefully word their public statements to point the finger at Government actually on this occasion it is not the Government, it has never been the law of Gibraltar. That is what the Court of Appeal decided, that is what the courts decided. It has never been the law of Gibraltar that constructive dismissal should be a ground upon which to complain to the Industrial Tribunal. In fact there have been no such cases, there have never been any such cases. So this is not a change in the law it is the Court clarifying what the law has always been. Now of course this House is entitled to say well now that the Court has clarified this, that we either knew or did not know, or appreciated or did not appreciate in the past, it is open to the House to consider whether it should be a ground. I am aware because both the Opposition and Government had the same briefing from the Trade Unions ahead of the General Election.

We are aware that the Transport and General Workers Union feel quite strongly that constructive dismissal should be a ground but the Government do not have a strong view for or against. In other words our mind is open and what we are going to do is that we are going to undertake a consultation process with both sides of industry so to speak, employers and employees, just to make sure that there are no arguments. It must have been excluded from the Ordinance originally for some reason and we just need to understand, we just need to understand what that thinking might have been. So the answer to the hon Members is this. If by the time we bring this new Bill to the House we have concluded that consultation process and the Government have taken the view to go ahead with it, then we will include it in our own Bill. If we should come to the view that we do not want to do it, then the hon Members are free to move their amendment. If we say to the hon Members well look it is not that we have decided not to do it, it is just that we are not ready just yet, then it would be up to the hon Members to judge whether to wait or to press with their amendment. So that is the way I see it panning out. As to his second point about what happens to people in the meantime, I am advised that, remember that the only employment issue which in fact is a hangover from the original transposition of the discrimination directives, the only employment related one that we have not done is this one relating to the transfer of the burden of proof. Now, I am told that we are not yet under any sort of infraction, oh yes it is overdue but we are not yet under any infraction. To do that now ahead of everything else would actually require quite a substantial amendment to the Bill which would rather defeat the purpose of doing it all together and create certainty once and for all, and I am told that in fact the existing legislation, and I have not checked this for myself so I do not adopt this as my own statement in the House, I am told that the existing formula of words in the existing law, is capable of being interpreted to already place that burden of proof. So a Court, to answer the hon Member's specific question, if there was a case between now and then the Tribunal chairman looking at the existing wording of the law and looking at the wording of the

extant directive, could say the burden of proof lies with the employer.

HON F R PICARDO:

Just to make two very short points. The first is that that must be the case because obviously the employer has to prove that the dismissal is fair in any such case and in any event so there is that shift in the burden. Second, just in relation to the point on constructive dismissal and that section which we propose to move, it is not that the Gibraltar legislation omitted those parts of the United Kingdom legislation which dealt with constructive dismissal. At the time of our first Employment Ordinance we copied exactly what the provisions in the United Kingdom were, it is just that we never took on board the amendment made I think in 1974 which brought in those provisions, and that is what we would do now.

THE LANDLORD AND TENANT (AMENDMENT) ORDINANCE 2004

HON J J NETTO:

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

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. This Bill represents the first phase of the Government's

intended reform of the Landlord and Tenants Ordinance. It deals only with two aspects of the Ordinance. The so-called section 15 tenancy and the so-called 45 year rule. Clause 2 of the Bill deals with the 45 year rule. Part 3 of the Landlord and Tenants Ordinance creates a regime of control of premises providing for both control of rent levels and security of tenure. Section 10 of the Ordinance describes the dwelling houses to which Part 3 applies. Under section 10(1)(a) Part 3 applies to every dwelling house that has been erected on or before the 1st day of January of the year preceding by 45 years the first day of January of the current year. In ordinary language the effect of that section is that properties enter the ambit of Part 3 when they reach 45 years of age. By virtue of this provision properties enter the ambit of Part 3 each year and in due course every property will become subject to Part 3. This provision was introduced into the Ordinance by the GSLP Government in 1991 by Ordinance 37/91. Prior to that date the law had been that Part 3 only applied to dwelling houses erected on or before 1st January 1945, a fixed date. The properties affected by the Ordinance were therefore an established, fixed and identified set of properties. No property became controlled by passage of time. The Government consider it appropriate to return to the pre-1991 principle of a fixed cut-off date. The present rule whereby properties become caught with the passage of time, has two undesirable effects. Firstly relatively recent properties such as Trafalgar House or Marina Court will otherwise soon be caught, and secondly, the rule adds as a disincentive to investors to build flats to let because eventually, after 45 years, their property will become controlled under Part 3.

However in reverting to the old system the Government have wished to avoid dispossessing tenants of rights which the existing law has already bestowed on them. Accordingly clause 2 of the Bill returns to the fixed date system but by reference to 1st March 1959. That is properties that were 45 years old or more on 1st March 2004. Clause 3 of the Bill widens the scope of section 15 of the Ordinance. Under section 15, as it stands presently, even though a property is rent controlled if it becomes vacant a landlord and a Gibraltar tenant can negotiate and

agree a tenancy at a particular rent agreed between themselves. Subject to the Rent Assessor's approval that agreed rent then becomes the statutory rent of that dwelling house. However this is only available if the proposed letting is to a Gibraltar for his own benefit or for the benefit of another Gibraltar. Accordingly it is not available to non Gibaltarians including Moroccans. Both the landlords and Action for Housing have pressed the Government to extend section 15 as proposed. The existing provision has various drawbacks. Firstly it places Gibaltarians at a disadvantage over non Gibaltarians because when landlords agree with non Gibaltarians rents higher than the statutory rent in breach of the Ordinance the non Gibraltar can apply to the Rent Tribunal to have the rent reduced to the statutory rent. In the case of Gibaltarians however, they invariably agree the higher rent under section 15 and then this becomes the lawful rent. By the same token the stock of flats amenable to non Gibaltarians is reduced, because landlords prefer to leave them empty than to rent them to non Gibaltarians at the existing statutory rent. The proposed amendment extends section 15 to any other natural person who has been resident in Gibraltar for at least 10 years. This formula preserves the current rights of Gibaltarians who do not need to comply with the 10 year resident rule. This protects the application to section 15 to Gibaltarians returning to Gibraltar after years of residence abroad. The extension of section 15 will not apply to company lets. The 10 year resident requirement for non Gibaltarians is to ensure that the supply is not soaked up by transient expatriates working in businesses who could drive up rents to the detriment of residents. I give notice of an amendment in the Committee Stage to make this clearer. In the proposed amendment to clause 3 the word "who" should be deleted and replaced with the words "which person". This is to make clearer that the 10 year residence requirement applies only to any other person and not to Gibaltarians. I will also be moving an amendment for the deletion of clause 2 and a new clause to be inserted to read as follows:

"2. The Landlord and Tenant Ordinance is amended in section 10(1)(a) by substituting the words "the 1st day of January of the

year preceding by 45 years the 1st day of January of the current year", with the words "the 1st March 1959". I commend the Bill to the House.

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

HON C A BRUZON:

Mr Speaker, we have to look at the merits and the general principles of the Bill as you have rightly hinted and frankly we do not see any merit in the amendment and we shall be voting against the amendment to clause 10 and to clause 15. Many years ago when landlords argued that it was not in their interests to rent properties that were rent controlled because the statutory rent was too low for them to be able to pay for the upkeep and maintenance of their properties, as the Minister has rightly said a provision was made in the law to enable landlords to negotiate a higher rent with Gibraltarians. This was obviously meant to improve the chances of Gibraltarians in obtaining private rental accommodation. It must be remembered that an illegal practice crept in whereby there was a charge called key money to get round the problem of the low statutory rent. In order to discourage that practice this provision was introduced to enable landlords to negotiate with Gibraltarians the higher rent. This higher rent, if and when approved by the Rent Assessor, would become the statutory rent. Only when the flat became vacant would the rent be negotiated anew if required. The amendment seeks to apply the provision to anyone who has lived in Gibraltar for over 10 years. It must follow inevitably that this is intended to increase the number of persons that can potentially avail themselves of this provision in the law to offer higher rents in respect of pre-War accommodation currently on the market. Now since the number of such properties is limited, it can only result in greater demand, pushing up the average rent that is negotiated to the detriment of Gibraltarians, when compared with the position they enjoy as the law stands at present. We will therefore be voting against the amendments.

HON J J BOSSANO:

Mr Speaker, when I was hearing the Minister putting the arguments for this, it was almost like taking a ship and travelling back in time to 1983 when the Hon Mr Featherstone was using the same arguments. In 1983 I think the Minister would have agreed with me not with the Hon Mr Featherstone. He probably did as I remember it. I think he was still here then. In 1983 I think he was still here and he would have agreed with me. The House set up a Select Committee to produce the Ordinance that came into effect and in fact it is I think one of the most peculiar performances of this House that we had a situation in which having produced a report and a recommendation, the people in the Select Committee who recommended to the House the changes, subsequently argued against their own recommendations in this House as a result of the pressure from the landlords. I do not think I have experienced anything else like it in 32 years. In fact what the Select Committee recommended was control in 1983 of 1953 properties, which would have meant controlling 30 year old properties not 45 year old as we are doing at the moment. The pressure produced by the landlords actually got the Bill amended by the proposers. I was against the whole thing but the people who defended it actually amended it to bring the date back to 1945, which is what is there now. I remember asking the Hon Mr Featherstone, well look if his argument is that we are extending the pool of rent controlled properties by shifting the date from 1939 to 1945, can he tell the House how many properties have been built between 1939 and 1945 and the answer was none. It was the War years, a few might have been knocked down but none were actually put up. So in fact when we amended it in 1983 the purpose of the Select Committee and the purpose of the House was to increase the number of rent controlled properties and all that they did was to change it from 1939 to 1945 on which date the number of properties were both the same for both dates. We decided in government in 1990 effectively to rent control 45 year old properties on the basis that in 1990 the ones that were rent controlled were the theoretical ones of 1945 and were then 45 years old. I can tell the House

that we were strongly lobbied by landlords in Gibraltar who said that if we brought that Bill in, in 1990 and controlled properties after 45 years, it would mean the end of property investment. This was followed by the biggest property investment boom in our history in 1992. So the logic of it is that 45 years of unregulated returns on ones investment ought to be a reasonable period in which to recover the money by renting property, and then after that we do something to ensure that there is a pool of rent controlled properties on the basis that properties do not last forever, then we are adding to the pool as other properties disappear at the other end of the age spectrum. So we have seen no evidence that suggests that controlling property after 45 years discourages investment in Gibraltar because this was done in 1990 and we can look at the statistics of the property investment pre-1990 and post-1990.

I think as regards the removal of the special provisions regarding Gibraltarians in the law, the hon Member used if I understood him rightly two arguments one of which contradicted the other. He argued that by giving the opportunity to a Gibraltarian to negotiate a higher rate with a landlord, the Gibraltarian was discriminated against, if I understood him rightly I think he said those words, because that became the official rent. Whereas a non Gibraltarian could not do that and that therefore the present position discriminates against the Gibraltarians. Then he went on to argue that the present position gives the Gibraltarian a privileged position because it means that the landlord will prefer to rent to the Gibraltarian rather than the non Gibraltarian. Well look, it has got to be either bad for the Gibraltarians or good for the Gibraltarians but I am afraid he cannot use both arguments to try and say getting rid of it is going to eliminate two things, one of which conflicts with the other. The intention of the House was definitely to give an advantage in the market to a Gibraltarian. There is no question about it, that it why it was put there. It was put there so that the Gibraltarians would be able to offer a higher statutory rent than a non Gibraltarian and the landlord would prefer to have a Gibraltarian tenant. The reality of it is, I can tell the Minister, is that there are cases today of Gibraltarians, maybe

returning Gibraltarians obviously, because the ones who are here are living somewhere, but occasionally some that for domestic reasons as the Minister may know sometimes have to leave parental homes and have to get into somewhere pending the opportunity of getting Government housing. In those cases this section is being used and there are people who are paying today for a one bedroom pre-War dwelling, flat, £100 a week. Now I can tell the House that we are aware because people have come to us with cases and we have told them, *"no, this is the law and you have to pay the £100 because that is the statutory rent, but you are protected because it is a statutory rent, you have got a measure of protection which you would not have if it was completely free and then you could be paying £100 this week and £150 a week later."* But we know that in those same buildings there are non Gibraltarians paying £200 a week rent, which is illegal and what this would do is make it legal, and when they make it legal the non Gibraltarian may well be in a better position to offer a higher rent than the Gibraltarian is offering as the new statutory rent. The non Gibraltarian who has been here for 10 years will be able to compete with the Gibraltarians to offer more than the minimum statutory rent laid in the law. Of course this does not address the complaint of most of the landlords which have got tenants already because this only applies to vacant property. But it certainly makes a nonsense of the argument that is being paraded, which is the same as was being paraded in 1983, I can tell the Minister that all he has got to do is get the press of 1983 when the Landlord and Tenants Ordinance was before this House and remove the date and he would not know if it was 1983 or 2004, because it is the same argument used by the same people. There are a number of things that certainly an exercise has got to be done in reviewing this, needs to be reviewed, including that many of these properties are in fact properties that are rented at very low rents from the Government and then subsequently re-let. Many of these dwellings in the old part of the town are not freeholds at all, they are Government leases which pay very little money to the Government and the landlords seem to be quite happy that what they pay the Government should be fixed but not what they charge the tenants. But of course if the argument is that

because the rents are so low they are not interested in renting and therefore the property remains empty and becomes derelict, and that is a bad thing for the landlord, the tenant and the infrastructure of Gibraltar. If that is the argument, then is the argument that there are not enough Gibraltarians willing to rent these places and negotiate a higher rent. I do not think that is the case. I think what is happening is that in fact it may be that they can rent to non Gibraltarians for even more than they can rent to Gibraltarians, because in fact because they do not have to rent, they can say well look if I have to rent at 60p a square foot, I will not but if you give me £2 a square foot I will. But it may be that they know that if it is a non Gibraltarian they can extract more than £2 a square foot, and therefore the only possible consequence that this can have is that there will be an increased demand for this kind of property from people willing to pay more than the minimum rent, which today can only do it by being in breach of the law and are doing it in breach of the law. It is there, it is happening, it is known to be happening and consequently this does not address any of the issues and we are not in favour of this.

HON CHIEF MINISTER:

I do not see why the Leader of the Opposition feels free to get up to contribute to a debate on a Bill which has been led on behalf of the Opposition by his Colleague the Hon Mr Bruzon, but when I get up to speak on it I am allegedly coming to the rescue of the Minister. Is this another case of the hon Member saying do as I say and not as I do. It sounds remarkably like it to me. I appreciate that he would much prefer it if I did not participate in debates in this House so that he can more easily get away with what he used to get away in this House for far too long.

Mr Speaker I do not know who lobbied which Members of the House in the run up to the 1983 discussions, nor do I know who lobbied the hon Members in 1991 when they were in Government and introduced the changes that they introduced

including eliminating the Labour from Abroad Accommodation Ordinance and extending in effect the provisions of Part 3 to labour from abroad. I do not know who lobbied who, what I can tell him now is that the Government have not been lobbied only by the landlords. The Government are being pressed harder by Action for Housing on this section 15 point than by the landlords. The landlords actually think it is a rather meaningless little, by itself they think it is a rather meaningless, little amendment. Action for Housing as the hon Member knows is not stuffed full of right-wing reactionaries nor of capitalist landlords but indeed full of people who have made it their business to give freely of their time in support of tenants' rights, are pressing the Government to introduce this amendment. They have studied the way that section 15 as it currently stands operates and they have concluded that it actually does more injustice to more people than it might assist. Therefore it would be a mistake for the hon Member to leave the impression in this House that this is in response to pressure from the landlords. It is primarily in response to pressure from the tenants. Since the Government did a consultation on this with both groups, which was quite a long time ago, the landlords have never once written hey, why is an amendment to section 15 taking so long. Action for Housing on the other hand has written on several occasions saying hey, when is the Government going to get on with this amendment to section 15. That is the reality. He may disagree with Action for Housing and he is free to disagree with Action for Housing, and I you know, his view is his view and he is entitled to hold it, I just wanted to correct the impression that this was a landlord driven amendment. The other one is a landlord driven amendment, the 45 year rule.

Mr Speaker, as to whether it is to the detriment of Gibraltarians or not, we do not believe that it is and neither does Action for Housing. The reality of it is that there is about 35 section 15 lettings a year at the moment, it varies, it varies, on average, some times it is a bit higher some times a bit lower. Public housing is as he knows limited in scope as to who is eligible to access it. If on top of that we disadvantage non Gibraltarians in private housing as well, what we are doing is creating an

intolerable social problem for the people who have access neither to public housing and have a disadvantage, I will define my definition of disadvantage in a moment, and they disadvantaged housing access to private housing as well. Of course the Government are being careful to ensure that the stock of this private housing, private housing, is not available to people who get off the aeroplane. I think the hon Member in his days used to call them sort of people with a haversack or backpackers I think was his favourite phrase. Well whether it is backpackers, whether it is employees of Finance Centre or Gaming companies, or whether it is just people arriving by whatever means, these people would not have access to this regime because one has got to be resident in Gibraltar for 10 years if one is a non Gibraltarian. Now I believe that there are very few Gibraltarians who would dispute the proposition that after a non Gibraltarian has been here for ten years, it is not that long ago that we gave non Gibraltarians who have been here for ten years the right to vote in our referendum if at least they were British, but that non Gibraltarians that have been here resident for ten years should have at least the same right of access to the private housing market, not to the public housing market to the private housing market as Gibraltarians. Certainly the hon Member since I am not a socialist party it is not for me to define principles of socialism, but it seems to me a peculiar view of socialism to narrowly define the category of citizens that should be entitled even to access to the private housing market, and the idea that unless one is a Gibraltarian one should somehow have a restricted access to the housing market, look it is not one that appeals to me, I do not think it appeals very broadly across the Gibraltarian society but if it is the hon Member's view then we will just have to agree to disagree and the Government believes, as does Action for Housing, that this should be changed. There are many flats lying empty, the hon Member knows that, in the private sector and the ability to let empty flats to non Gibraltarians who have been resident here for 15 years mainly, in effect, Moroccans and Indians and a few others, will not only increase the number of flats that they can aspire to live in, have access to, but would also increase the market of tenants available to landlords as potential tenants for these flats.

So to the extent that it is the hon Member's view that section 15 should not be expanded in this way, well look there is simply a disagreement on policy and that is Okay. The hon Member said that in fact the arguments were contradictory. Well the reality of the matter is this Mr Speaker, that the element of disadvantage is most manifest in the following way. Landlords believe it or not are either unaware or ignore the contents of some of the provisions of the Landlord and Tenant Ordinance. When a landlord lets a property to a non Gibraltarian the non Gibraltarian the tenant is often more closely informed about rights under the Ordinance than the landlord. The tenant signs up the tenancy and then goes running straight round to the Rent Tribunal to have the rent reduced to the statutory rent. That is what happens. So in effect the non Gibraltarian accesses these empty flats and then a few months later ends up paying £19 a month rent, whereas the Gibraltarian accessing those flats ends up paying the negotiated rent because it is lawful in his case. That is how to stint on the way these things happen in practice, not through any provision of the law but through stint of how these things happen in practice this is how the disadvantage arises. The Government also feel strongly that the return to the pre-1991, 45 year rule is sensible. For example, it was the position before 1991 for many years and it is not something that the hon Members themselves rushed to change. All right 1988, 1989, 1991, it took them a couple of years to decide that this was a massive injustice. I think it is an important part of the overall package of landlord and tenant measures of which admittedly this is only in the advance instalment and therefore the hon Members cannot see it in the full context of the reformed Ordinance, that the regime goes back to what it used to be and that is to a fixed date, and of course that fixed date is not 1945 so there has been in effect an extension by this amendment, there is in a sense a, what is the word, the clock is stopped today so in effect the difference between this amendment or the situation that this amendment creates and the pre-1991 situation, is that 15 years worth of properties stay in the net. So what we are doing is stopping the clock so that for example, a property that is due to become 45 years old next year will now as a result of this amendment not fall into the net,

whereas but for this amendment it would have fallen into the net on its 45th birthday. When this legislation was conceived I am certain it was conceived in the context of an existing stock of old housing. It was not really foremost in anybody's contemplation that houses that we still regard in Gibraltar as quite modern, I mean nobody walks past Marina Court or even Trafalgar House and buildings like this, and there is one building Matilde Francis Building in South Barrack Road which has already fallen in, and that is stuck in now. But nobody walks past Trafalgar House or Marina Court and says, *"oh well it is about time these blocks were rent controlled because you know look at them, they are still regarded as modern housing"*. Well they are coming pretty close to their 45th birthday some of these blocks and the idea that rents in Trafalgar House or in Marina Court should be rent controlled is not something that anybody has foremost on their lists of necessary social engineering in Gibraltar. So the Government believe that both these amendments, one of which in effect makes the principle underlying the eligibility rules puts it back the principle to what it used to be before the hon Member's own amendment in 1991, and the other responds to quite heavy lobbying from, I am not talking about the odd casual conversation, I am talking about meetings Action for Housing is fully and in detail and intellectually engaged and committed to the section 15 amendment, and I have to say that the Government agree with them.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon F Vinet
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon R R Rhoda

For the Noes: The Hon J J Bossano

The Hon Dr J J Garcia
 The Hon F R Picardo
 The Hon C A Bruzon
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon L A Randall

Absent from the Chamber: The Hon T J Bristow

The Bill was read a second time.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause:
 The Landlord and Tenant (Amendment) Bill 2004.

THE LANDLORD AND TENANT (AMENDMENT) BILL 2004

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

Clause 2

HON J J NETTO:

Clause 2 to be deleted in full and replaced with:-

"2. The Landlord and Tenant Ordinance is amended in section 10(1)(a) by substituting the words "the 1st day of January of the year preceding by 45 years the 1st day of January of the current year." with the words "the 1st day of March 1959".

HON CHIEF MINISTER:

Could I just add for the benefit of the House that the effect of that amendment is just to delete an additional three words. It is not that the whole of the clause in its entirety is new, it is that we had failed to delete the words the 1st day.

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

Clause 3

HON J J NETTO:

Here once again I have given notice in clause 3 to delete the word “who” after the words “natural person” and insert “which person”.

HON CHIEF MINISTER:

Perhaps I could just explain the need for that amendment too. As it presently reads it would read if one adds the new words to the existing words, it would say ‘provided it is a bona fide letting to a Gibraltarian or any other natural person who has been resident in Gibraltar for at least 10 years’. It is arguable that the requirement for the 10 years would then apply both to Gibraltarians and any other person. In other words if the sentence is ‘applies to a Gibraltarian or any other person that has been resident in Gibraltar for 10 years’ it is arguable that the resident in Gibraltar for 10 years applies not just to the any other person but also to the Gibraltarian, semantically, linguistically. Now by changing the word “who” to “which person” it is clear that it would read ‘or Gibraltarian or any other natural person which person has been resident in Gibraltar for 10 years’ making it clear that the words which follow only apply to the person and not to the Gibraltarian.

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

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

HON CHIEF MINISTER:

Mr Chairman with respect I think it is a point that the hon Members often correctly make themselves. The fact that the hon Members are proposing to vote against the legislation and have voted at second and propose to do so at third, is not a reason why they necessarily oppose amendments at Committee Stage in order to improve the legislation.

HON J J BOSSANO:

We are not voting against the amendments we are voting against the Bill.

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Landlord and Tenant (Amendment) Bill 2004 has been considered in Committee and agreed to with amendments, and I now move that it be read a third time and passed.

Question put. The House voted.

For the Ayes:	The Hon C Beltran
	The Hon Lt Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon F Vinet

The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon R R Rhoda

For the Noes: The Hon J J Bossano
 The Hon Dr J J Garcia
 The Hon F R Picardo
 The Hon C A Bruzon
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon L A Randall

Absent from the Chamber: The Hon T J Bristow

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 11.35am on Wednesday 24th March 2004.

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Third Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Friday 30th April 2004 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 J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares

The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC - Attorney General
The Hon Dr J J Garcia
The Hon Miss M I Montegriffo

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 12th January 2004, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Financial and Development Secretary laid on the Table the Draft Estimates of Revenue and Expenditure 2004/2005.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.30 pm.

The House resumed at 3.00 pm.

Answers to Questions continued.

The House recessed at 8.20 pm.

The House resumed at 8.35 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 5th May at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.55 pm on Friday 30th April 2004.

WEDNESDAY 5TH MAY 2004

The House resumed at 9.32 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 J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary
The Hon F R Picardo

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

Answers to Questions continued.

The House recessed at 11.35 am.

The House resumed at 11.40 am.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 6th May 2004 at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 1.36 pm on Wednesday 5th May 2004.

THURSDAY 6TH MAY 2004

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 J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

Answers to Questions continued.

The House recessed at 11.30 am.

The House resumed at 11.35 am.

Answers to Questions continued.

The House recessed at 1.07 pm.

The House resumed at 3.00 pm.

Answers to Questions continued.

The House recessed at 5.15 pm.

The House resumed at 5.20 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 7th May 2004 at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 6.00 pm on Thursday 6th May 2004.

FRIDAY 7TH MAY 2004

The House resumed at 9.30 am.

PRESENT:

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

GOVERNMENT:

The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport

OPPOSITION:

The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon

ABSENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

The Hon J J Bossano - Leader of the Opposition
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ADJOURNMENT

The Hon the Minister for Health moved the adjournment of the House to Friday 7th May at 3.15 pm.

Question put. Agreed to.

The adjournment of the House was taken at 9.33 am on Friday 7th May 2004.

FRIDAY 7TH MAY 2004

The House resumed at 3.15 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary
The Hon Miss M I Montegriffo

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

Answers to Questions continued.

The House recessed at 5.30 pm.

The House resumed at 5.40 pm.

Answers to Questions continued.

BILLS**FIRST AND SECOND READINGS****THE INCOME TAX (AMENDMENT) ORDINANCE 2004.****CHIEF MINISTER:**

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

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 1st June 2004 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.15 pm on Friday 7th May 2004.

TUESDAY 1ST JUNE 2004

The House resumed at 10.32 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 J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport

The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC - Attorney General

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

DOCUMENTS LAID

The Hon the Minister for Education, Employment and Training
laid on the Table the Gibraltar Employment Survey Report for
the period ending October 2003.

Ordered to lie.

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

- (1) Consolidated Fund reallocations Statement No 3 of
2003/2004;
- (2) Pay Settlement – Statement No 4 of 2003/2004;
- (3) Supplementary Funding – Statement No 5 of
2003/2004;
- (4) Improvement and Development Fund Reallocation
Statement No 1 of 2003/2004.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INCOME TAX (AMENDMENT) ORDINANCE 2004

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second
time. Hon Members will have, I am sure, understood that this
legislation relates principally to the taxation rules relating to the
new Gibraltar Annuity Scheme. Also the new rules relating to
the arrangements that the Government have made for the non-

availability of annuities in Gibraltar. This is the taxation aspect of it, not the establishment of the scheme or anything of the sort. Hon Members will be aware that under the Income Tax Ordinance, as it currently stands, up to 25 per cent of the capital value of the accumulated pension fund of an individual on retirement is receivable tax free. So the general rule is that one can receive 25 per cent of the capital, tax free, and with the remaining 75 per cent one has to buy an annuity and then the annual annuity payments are taxable as income. That is the present regime. A number of pension schemes were approved by the Commissioner of Income Tax in the past, that permitted 100 per cent commutation of the pension entitlement. However, any new member joining such pension scheme after 30th June 1987, has been required to pay 20 per cent tax under the existing tax rules, on any capital received in excess of 25 per cent. In other words, prior to 1987 certain private occupational pension schemes had been approved that allowed 100 per cent commutation. They, members of those schemes, were allowed to draw the whole capital tax free. In 1987 the law changed and said, well, fine, anyone who is already a member of such a pre-1987 scheme, can continue to get 100 per cent commutation and continue to get the whole capital tax free. But anyone who joins such a scheme, obviously none of those schemes have been approved since 1987, but any new entrants into those schemes could get 100 per cent commutation, but became taxable at 20 per cent in respect of the capital in excess of 25 per cent that they chose to take out. That is the law as it stands today. Of course there might still be some people in pre-1987 schemes, who had already become pensioners by 1987, who may have drawn out the whole of their capital tax free. But obviously that is now an exhausted class of people, no one is doing that any more. The Government have been conscious of the growing problem being faced by retiring individuals, as a result of the fact that good value annuities are becoming increasingly difficult, if not impossible to find, especially in the case of the relatively low pension fund values. The Government have decided to address this problem on two fronts. Firstly, by extending the option of 100 per cent commutation to members of approved pension schemes, where the excess over the 25

per cent payment is insufficient to provide a pension of at least £1,000 per annum. In fact, this is not a novelty. The change here is in the increase of the amount to £1,000. It has for some time now been the law, the first figure I think was, this from memory because I do not have a note of this, but I think the first rule was that if the balance over 25 per cent did not buy a pension of £104, then one could take it all tax free, all the capital. That was then increased, I think, to £250 or £260. One of the things that this Bill now does is increase that figure to £1,000. So in other words, everybody can take 25 per cent of their capital tax free. In addition, if the balance of 25 per cent does not buy an annuity of at least £1,000 a year, then one can take that capital away tax free as well, even if it is more than 25 per cent. The intention, particularly at times of low interests, that unless one is getting a certain minimum income per annum, it is better to let people to have access to their capital than to have capital tied up earning sums of money, that in any event do not provide a meaningful degree of pension. That figure has been fixed at £1,000 per annum. Just to give the hon Members an example, at base rates of 4 per cent per annum the accumulated capital in a pension scheme in excess of the 25 per cent payable tax free, would need to be at least £25,000 in order to provide a pension of £1,000 per annum. So that just gives the hon Members an indication of the amount of capital that is being freed to be commuted, tax free, over and above the 25 per cent that has always been commutable. Any such capital that is taken over 25 per cent will continue, as it currently is, to be taxed at 20 per cent on withdrawal.

Secondly, the Government are addressing the problem by setting up the Gibraltar Pension Annuity Scheme. This is not strictly part of the debate on this Bill, but as there is a reference to it in this Bill I allude to it. The scheme will enable the investment and draw down of accumulated pension fund monies, in respect of approved pension schemes, that require the purchase of an annuity. Under the scheme, annuitants will be eligible to a monthly payment equivalent to the investment income on the capital invested, and in addition, will have the option to draw down in the first instance, up to 2.5 per cent per

annum of the original capital invested. Unlike most conventional annuities, the capital investment is not retained by the annuity provider on the death of the annuitant. The remaining undrawn capital is payable by the trustees, in full, to the annuitant's dependants. An annuitant will also retain the option to receive payment of the undrawn capital, subject to the 20 per cent tax, where the balance remaining at some stage in the future becomes insufficient to produce at least £1,000 per annum. The Bill amends the provisions of the Income Tax Ordinance to enable the charge to tax on the capital sums received by an individual, in the circumstances that I have described.

Hon Members will see that there is a degree of restructuring of some existing language in the Ordinance, without actually changing its effect. What used to be (g) and (h), have both been condensed into (g), and there is a new (h) to accommodate the last point that I have mentioned, about the withdrawal of capital from the Gibraltar Pension Annuity Trust Scheme, once it ceases to provide an income of £1,000 per annum. This is the tax aspect of the policy that the Government announced in the House some time ago. It does not represent new policy. I commend the Bill to the House.

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

HON J J BOSSANO:

I think the problem we have got with this Bill is that we are not clear that it actually does what the Chief Minister says it is intended to do. Therefore, if we are talking on the general principles, I suppose we ought to be talking about what is intended. If we look at the actual Bill itself and the changes, as the Chief Minister has said, what is currently in (h), is now being moved and (h) is being substituted by something completely different but in fact, what is being moved is the same in the existing law as in the new one. The Chief Minister has said that in fact, people who are able under the provision that does not

exist at present, he said that there was already a provision but the amount was less than £1,000, but I have not been able to identify where in the Ordinance or in the Rules there is. But taking that that is correct, the way that this is drafted, and I am not sure whether the effect of the existing law is the same or not, seems to me not to make that 75 per cent tax free. Because this is, in fact, in the context of the section that says that that income is not part of the assessable income, but will be taxed in accordance with the rules made under the Ordinance. That is how the paragraph stands before the (a), (b), (c). So my reading of it is that if one falls into category (b), the 75 per cent is not part of one's assessable income but is not tax free. Now obviously, that is not what we are being told the law is doing, and therefore, we are not against what we have been told it is doing but we do not see it doing it. If it does not do it then, clearly, it is not the Government's intention to do what this seems to be saying. Because if we read the Bill before the House, it says that the section is amended by substituting paragraph (g), and it says on the front page, the last two lines, "subject to the provisions of (a), (b) and (c), shall not form part of the assessable income of the individual but shall be taxed separately in accordance with the rules under the Ordinance." Now if it is going to be taxed separately, then presumably we are talking about the 20 per cent and not talking about zero tax. So we support that in cases of the remaining capital being £25,000 and only providing £1,000 a year, which is certainly not much of a pension to live on, the Government should provide what was happening before 1987 for those people, which is that they should be able to draw the £25,000 without being taxed. But my reading of it is, that it is going to be taxed from what I see in the Ordinance, and therefore conflicts with what he has said.

The other thing is that in the explanations that have been given before in the House, we were given the impression that until this provision was put in the law, it was not possible for the persons receiving the income from the scheme the Government are setting up, to be treated in the same way that they would be treated if they received the income from any other annuity provider. Now, I cannot understand why it is that the law

requires, in the case of the annuity scheme that the Government are putting in, a specific reference to that annuity scheme, when in fact the law says that any provident scheme or other fund approved by the Commissioner. What was there to stop the Commissioner approving the Gibraltar Pension Annuity Trust Scheme already with the law as it stands, since the law as it stands leaves it entirely up to him to approve any fund that gives annuities. I take it that the Pension Annuity Trust Scheme will be what we have been told is going to be done by the Gibraltar Savings Bank. We do not know whether that will require an amendment to the Savings Bank Ordinance to be able to do that, or whether in fact the Savings Bank Ordinance can simply do it as it is providing other forms of investment vehicles currently. So really we would need to reserve our position on how the Pension Annuity Trust Scheme works, when we actually see it black upon white.

The other thing that I think we need clarification on, is that the provisions on a person getting extra the balance of the scheme because of ill health, we are not clear whether that means that they have to meet the condition of ill health and the condition of the small amount, limited to £1,000, or whether in fact the ill health condition is without limit on the value of the balance of the 75 per cent. That condition on ill health is already in the law and therefore, we would like clarification that in fact whether what exists at the moment is remaining as it is in the amended version, or whether what exists at the moment is being altered in any way. But as regards the principle of the intended purpose, of the objective, we support that objective.

HON CHIEF MINISTER:

Mr Speaker, I have some sympathy for the hon Member's difficulty with the language, because I have to say I have challenged the draftsman and the Income Tax Office as well on this. They have assured me and have persuaded me, not so much on the effect that he, he has drawn one source of confusion of the language and in fact I had thought that the

language was confusing in other respects, not in exactly the same respect as he, but I am assured and I have been persuaded that the language is correct, and I will try and explain it to the hon Member.

I do not know whether it was a mis-speaking, or whether it may lie at the root of his misunderstanding. The hon Member spoke about the 75 per cent not being tax free. Well, of course, it is only the 25 per cent that is supposed to be tax free, the 75 per cent is taxable. That is what he said, I made a note of it, he may have meant 25 per cent and this may not have been at the root of his not understanding.

HON J J BOSSANO:

Mr Speaker, my understanding of the law is that what the law says is, the 75 per cent but for the treatment under different rules, would be part of somebody's assessable income. The 75 per cent. Because it says here, that it is not part of the assessable income but is subject to, that is to say the 25 per cent is not assessable income and is tax free income, that is in fact provided in the law at the moment. It says that capital sums of 25 per cent provided by an annuity are not income for income tax purposes. The 75 per cent one has to use to buy an annuity but if one were to get the 75 per cent it would be assessable income, unless it was treated differently and then subject to the 20 per cent.

HON CHIEF MINISTER:

Mr Speaker, let us see if we can clarify this. Section 6 in respect of which we are amending (g) and (h), is the charging section. Let us get that clear. This is not a list of exemptions as there is in the rules. This is the section that lists the sorts of things that are subject to income tax. When one gets a pension payment, or an annuity, an annual payment under an annuity scheme, that is income and it is subject to tax under a different section of the

Income Tax Ordinance, somewhere in 6, I suspect it is 6(2) or (3) or something but I am guessing at that. In other words, when you are talking about income, that is caught by another section of the Income Tax Ordinance, or another sub-section I suspect of this section of the Income Tax Ordinance. Why is (g) therefore present at all? Because it is talking about capital, not income. It is most unusual in Gibraltar to be talking about the taxation of capital as if it were income. We do not have capital taxes in Gibraltar. Subsection (g) is not the section that deals with the taxation of our Occupational Pension Scheme when we start getting our annual payments. It is the section that says, *"if in certain circumstances you can get capital, which is not normally taxable in Gibraltar because we do not have any sort of capital taxes, if in certain circumstances, in addition to getting income, which is taxable under some other section, you are also getting some money qua capital, then it is treated as income subject to these rules"*. In other words, the first thing we need to remember when we are debating this is that (g) is talking only about the capital payments out. It is not the section that deals with the payment of the monies that would be paid by the annuity that one buys with the other 75 per cent. So we are necessarily talking about, and indeed there are some people who opt not to take their 25 per cent, there are some people who choose to buy an annuity with the whole 100 per cent and choose not to take their 25 per cent tax free capital payment. So this section, this sub-section (g), deals only with the tax treatment of those people who choose, who opt, to draw up to 25 per cent. That is the part of the language that was unchanged from before. In other words, to the extent that this replicates the previous language, then that is what it does. It then says, that it will not be treated as part of the assessable income but will be treated separately. That also is the same as at the moment. In other words, if you take more than 25 per cent to the extent that it is presently permissible, or if one is happy to be a member of one of those lucky pension schemes pre-1987 where one is allowed to take 100 per cent, that amount of capital is not added on to ones income and taxed at the marginal rate, it is treated as if it were a separate situation and is taxed at 20 per cent. So everybody pays tax on that at 20 per

cent. If it were just added to ones assessable income, people would be paying tax on it at 45 per cent if that were now their present top marginal rate. Then (a), (b) and (c) are proviso/exemptions from that regime. (a) protects the position of post June 1987 entrants into pre June 1987 schemes; (b) provides for the position that I have explained already to the hon Members, and that is that in addition to the 25 per cent one can take capital over and above 25 per cent, tax free if it does not buy one an annuity of £1,000; (c) is simply to repeat the provision of the present law, which relates to pre-1987 members of pre-1987 schemes, who are still in the happy position of not only being able to take 100 per cent of their capital, but indeed to be able to take 100 per cent of their capital tax free. That is their privileged position. So nothing in this (g) as drafted, has the effect of rendering taxable or non taxable the income from the annuity, because that is taxed in another section. This section charges to tax capital in the various circumstances where a member of an occupational pension scheme is entitled to make an option to withhold capital, and chooses to exercise that option.

I am conscious of the fact that when I sit down the hon Member will not have a chance to come back to me. So I am happy, before I move on to his next points, to give way to him if he wants to just clarify anything of what I have said.

HON J J BOSSANO:

Mr Speaker, I am afraid it is not the next point. The Chief Minister has just said that (g), he started off saying that (g) deals with the treatment up to 25 per cent. He has just said that. Well I have just heard him say it and I have written it down, up to 25 per cent. In fact, (g) says, capital sums in excess of 25 per cent. Therefore my question is, if somebody instead of buying an annuity with the 75 per cent, takes the 75 per cent as a lump sum. If one takes in excess of 25 per cent then that capital sum is not part of ones assessable income and is taxed separately in accordance with the rules under the Ordinance. That is what (g)

says now. What we are saying in this law is exactly the same thing and it says, *"if you take more than 25 per cent from a provident fund, it is no good saying no you cannot, well if you cannot then why do we say if you do it if it is not possible to do it?"* So, in the circumstances that it is possible to do it, that is to say, for example, paid prior to the retirement to an individual on grounds that he is suffering from serious ill health and has low life expectancy, which is the new (g)(ii). So here we have got an individual who can demonstrate to the satisfaction of the Commissioner of Income Tax that he is seriously ill, he is due to get his retirement and therefore instead of buying an annuity, which means he will not be able to enjoy that income for very long, on the basis of the state of his health, he wants to take out 100 per cent. My reading of this is that in those circumstances the excess over the 25 per cent is taxable but not at the marginal rate, but at 20 per cent. Now if that is indeed the case, one of the questions I asked, since that is made subject to (a), (b) and (c), does it mean that it has to be on the basis of ill health and on the basis of not otherwise providing at least £1,000 per annum? Because that seems to me what subject to be means. So in fact, if it is possible to get it because it is £1,000, but one can get it if one is seriously ill, provided it is £1,000, then it does not matter whether one is seriously ill or not. If we say that one can get it if it is a small amount of money.....

HON CHIEF MINISTER:

No Mr Speaker, I have given way to the hon Gentleman to speak to me again on the question of the capital in excess. I have not got to his points yet on the others. I will give him the same opportunity then as I have given him now.

HON J J BOSSANO:

On the excess one of the questions which I asked was, it seems to me that the existing law and the new law, because it says, for

example, in the new law, in the amendment that we are moving in this House today, capital sums in excess of 25 per cent shall not form part of the assessable income of the individual but shall be taxed in accordance with rules made under the Ordinance, subject to (b). So we now go to (b) and we say, well, who is going to be able to take out more than 25 per cent as a lump sum? The answer is, somebody where the balance after 25 per cent cannot buy a pension, an annuity, of more than £1,000 a year. Which if we assume, for the sake of argument, the example the Chief Minister gave, that there is a return of 4 per cent available, then it means that if one has got £25,000 left in the kitty to buy an annuity, one can take that £25,000 as an alternative to buying the annuity, and therefore get 100 per cent of the accumulated fund. But (b) applies to what is the preceding paragraph which is, shall be taxed separately in accordance with the rules made under this Ordinance. That is why I am asking where does it say that it is tax free?

HON CHIEF MINISTER:

I gave way to the hon Member just to make sure that having heard me, to give him another opportunity to persuade me that he may be right and I may be wrong. I have to say to the hon Member that I remain of the view that he has just failed properly to focus on the chronology and the mechanics of how we come to the position of talking about taxation and annuities. Therefore I will have to start in an attempt to persuade him, at least to make sure that the House is aware of the correct position, I have to just take him back then one more step.

Capital payments are not taxable at all in Gibraltar. That is an incontrovertible remark, which I just put as backdrop to this remark. The tax treatment given to occupational pension schemes, not to be confused with annuity schemes, remember that the occupational pension scheme and the product of the annuity provider are wholly different things. One gets ones money out of the pension scheme and one goes to the annuity provider, sometimes they can be the same company, and one

buys an annuity. Not to be confused one thing with the other. The rules are that pensions schemes only attract tax deductibility of the annual pension contributions if they have been approved by the Commissioner of Income Tax. In other words, the individual has got to submit to the Commissioner of Income Tax the trust scheme with the benefits regime, and he says, I approve this and I do not approve this. I suspect it is not whimsical, I think he has a list of the criteria. Approval of the scheme is only granted provided that one is not entitled to more than 25 per cent of capital, provided that the scheme does not entitle the pensioner to commute more than 25 per cent. So, except those schemes that had been approved before 1987, post 1987 no scheme has been approved which entitles a pensioner to more than 25 per cent commutation. Therefore there are no schemes that entitle a pensioner to more than 25 per cent commutation. If there were, as indeed there were before 1987, the reason why the law refers to the date 1st July 1987 as the cut-off date, is that that is the date that these schemes stopped being approved. There were a few approved before. There were a few schemes approved before June 1987, before 30th June 1987, in which under the terms of the Pensions Scheme itself, the trustees of the Pensions Scheme were entitled to pay 100 per cent of capital on retirement to the Pension Fund holder. There have not been any since then. So the law makes specific provisions, when it was changed in 1987 it said, *"if you are a member of one of these schemes, before June 1987, you keep all your benefits if you can get 100 per cent capital permutation under the scheme, and to boot you can keep your tax benefit under the Income Tax Ordinance."* Along comes the House in 1987 and says, but from now, from 30th June 1987, new entrants into pre June schemes, they can keep their 100 per cent commutation but they start paying some tax on the capital over 25 per cent. Since then there have been no such schemes. There may have been new entrants into pre-1987 schemes, but no new schemes. So there are no new schemes that allow 100 per cent or any figure over 25 per cent of capital, to be paid out.

That is completely different from the question of taxation. I mean this is a matter of the content of the scheme and the conditions imposed by the Commissioner of Income Tax, before he would approve and authorise a scheme in order for the annual pension scheme contributions to be tax deductible against the income of the contributor. Nothing to do with the tax treatment of the benefit itself. Rather the tax treatment of the contribution. So the Commissioner of Income Tax said, I will allow pension scheme contributions to be set off against the income tax of the contributor, provided it is paid under a scheme that does not allow more than 25 per cent of capital to be commuted. But that was not the only exception. There was another exception which is little (2), because the Commissioner of Income Tax recognised that there may be circumstances in which somebody was being paid not just on retirement, but indeed under the terms of the scheme, benefits might be payable before retirement. The purpose of (2) is only to distinguish it from (1). In other words, it is a matter of timing. The rule is, the scheme is approved for the purpose of tax deductibility of pension contributions, provided that on retirement one does not get paid more than 25 per cent of the capital. Then he said unless it is paid earlier than retirement, because of suffering from serious ill health and has a low life expectancy. Yes (2), paid prior to retirement. So (2) simply extends the descriptions under (1), and advances it to pre-retirement in the case of certain individuals. But can I just ask the hon Member to focus on this for a moment. Let us read (g). Capital sums in excess of 25 per cent of the capital value of the pension from a provident society or other fund approved by the Commissioner, that is, and (1) and (2) really describe, recite, what are the Commissioner's rules for approving the pension scheme in the first place. But for (g), and this is the answer I suppose the bottom line answers to the hon Member's question, but for (g), none of it would be taxable. I mean if there was not a (g), and the Commissioner had not through all this that I have just explained to him rendered it impossible, I do not know whether impossible, I suppose somebody could be interested in contributing to a pension scheme without tax deductibility of the contributions, in order to acquire 100 per cent commutation

rights. I suppose that is theoretically possible, I do not think it has happened. So in practice, the Commissioner has seen to it over the years, since 1987, that no scheme exists which allows 100 per cent commutation. But if there were schemes, for example, the pre-1987 schemes for new entrants, the pre-1987 scheme for pre-1987 entrants, that did allow 100 per cent commutation, the whole 100 per cent would have been tax free. But for, and that was corrected in respect of post-1987 entrants into pre-1987 schemes, and entrants into post-1987 schemes by (g), when it was first written into the Income Tax Ordinance, which for the first time said capital in excess of 25 per cent, never mind the circumstances, is subject to tax in certain circumstances. Before that there would have been no liability to tax. So, the 75 per cent remains untaxable except in the circumstances described in (g). Because (g) is the charging section for capital sums in excess of 25 per cent. Now we can go on to decide how that bites. But this is the source of taxation, and then of course in the allowances list, I do not remember from memory whether there is a specific exemption of capital less than 25 per cent or it is just assumed that it is not taxable. I do not know what the answer to that is.

So capital sums in excess of 25 per cent of the value of the pension fund, are taxable in the circumstances when they can be received, subject to (a), (b) and (c). Then (a), (b) and (c) in effect says, that in two circumstances, I think it is (a) and (b), it is not taxable at all. It is not a question of being taxed separately. No, not (a) and (b), I think it is (b) and (c). (a) is a case of it being taxed separately. (c) is a case of it not being taxed at all because it relates to the pre-1987 entrants to pre-1987 schemes. So, the section says, capital sums in excess of 25 per cent are taxable separately, not as part of assessable income, unless (a), (b) and (c), I do not think the hon Member needs me to take him through the (a), (b) and (c). (b) which is the one that he focused on, was the circumstances that I explained about £1,000. So it says capital sums in excess of 25 per cent of the capital value are taxable separately, subject to (b) this paragraph applies to an individual who is a member of or participates in a provident society or other fund, which was

approved by the Commissioner and whose capital sum in excess of £25,000 et cetera et cetera does not buy a pension of at least £1,000. [Interruption] Yes taxable separately.

HON J J BOSSANO:

Not zero tax?

HON CHIEF MINISTER:

No. Not zero tax. Taxable separately.

HON J J BOSSANO:

The whole point is that we have been told that under (b) people will be able to get the £25,000 tax free. That is what he just told us when he introduced the Bill. My reading of it is that they will not be able to get the 75 per cent tax free if it is £25,000. That it will be taxed separately, which he has just repeated. That is the point that I have been making throughout. Because he says that it is unless one comes under (b). This does not say unless one comes under (b). This says subject to the provisions of (b). If I read a law that says, *"if you are allowed to take more than a quarter of the amount in the scheme, you can take a quarter and that is capital and the law says up to 25 per cent is not taxable."* That is in the existing Income Tax Ordinance, in the rules on allowances, deductions and exemptions, rule 12(1) says, capital sums not exceeding 25 per cent of the capital value of the pension received by an individual on retirement from a provident society or other fund approved by the Commissioner. So that is there now, that is not being changed. If one has £100,000 in the fund, one can take £25,000 and that is not taxed. The other £75,000 one is required to buy an annuity which will produce an income stream.

Now let us suppose that interest rates were so low that even with £75,000, it is not likely to happen, but even with £75,000 one could not get more than £1,000. Then, according to section (b), one would then be able to argue with the Commissioner, well look, since I cannot get more than £1,000 I should be able to take the whole of the money, the 25 per cent and the 75 per cent. We are being told that when that happens, one will be able to get not just the 25 per cent tax free but the 75 per cent tax free as well. No. So it will be subject to the 20 per cent.

HON CHIEF MINISTER:

Absolutely. Only the 25 per cent is tax free, in accordance with the existing and the new legislation. Anything above 25 per cent is always subject to this 20 per cent tax as it has always been. Except the only people who have not been subject in the past to the 20 per cent tax on the excess over 25 per cent, have been pre-1987 entrants into pre-1987 schemes, that allowed 100 per cent commutation. Everybody else has always paid 20 per cent tax on any capital over 25 per cent that they have drawn from their pension scheme. That will continue to be the case.

The hon Member also raised the issue of why could the Commissioner not approve this as a scheme, why did we need this legislation? Can I just remit him to what I have said before. Subsection (g) does not relate to the annuity scheme, does not relate to the Gibraltar Pension Annuity Trust Scheme. It relates to the occupational pension scheme. Let us not confuse, let us be clear, I am not saying the hon Member is confused but let me just say it for the sake of clarity and the record. The Gibraltar Provident No. 2 Scheme is an occupational pension scheme. The Gibraltar Pension Annuity Trust Scheme is not a pension scheme. It is an annuity provider. Those are wholly quite different. One could be a member of the Barclays Bank occupational pension scheme, the Shell occupational pension scheme, the Government occupational pension scheme, and then when one comes to retirement, one can take 25 per cent of whatever cash those occupational pensions schemes give and

with the balance of 75 per cent, so one is walking around with a wad of cash representing 75 per cent of ones pension scheme benefit, who will sell me an annuity. The law says I must buy an annuity with this, or rather the trust scheme says I must buy an annuity with this. There are not any. So the Government are becoming, well there are not any any more, the companies that used to sell from the UK annuities in Gibraltar, have pulled out of the market. The Government are therefore becoming an annuity scheme provider. Therefore the Gibraltar Pension Annuity Trust Scheme is not subject to the rules of the Commissioner of Income Tax approval of schemes, those are rules that relate to the approval of pensions schemes not to the approval of annuity providers. So all that we are doing is to say, as there is nobody to sell an annuity to somebody who has exited from their pension scheme, once they have exited from their pension scheme we the Government will sell them an annuity. So it would not have been possible for the Commissioner to do all this under his powers to approve the content of pension schemes, the trust deeds and the benefits rules of pension schemes, because this is not a pension scheme. This only kicks in after one leaves the pension scheme.

The Hon Member refers to the Gibraltar Savings Bank. It may be that this will not be provided by the Gibraltar Savings Bank, and that it may be done by a Special Fund under the Government called, I suspect if we go down that route it will be called the Gibraltar Pension Annuity Trust Scheme Special Fund, established under the Special Fund Public Finance. The reason why we had second thoughts about doing it through the Savings Bank is that it would have increased massively our reserve requirements because the Savings Bank is subject to this 8 per cent reserve requirements. These would have been regarded as deposits into the Savings Bank, whereas ring-fenced in a Special Fund they are not subject to the same, a Special Fund in the name of the Government rather than in the Savings Bank. So that is one of the reasons why this might not emerge under the Savings Bank. We could end up with many, many, tens, hundreds of millions of pounds of this over the years, and if we have to match that with an 8 per cent reserve,

there would be a large and wholly unnecessary use of public funds to provide a reserve when the monies actually under deposit are not under any risk because the annuity income under the scheme is whatever income the funds provide. So the capital and the income do not have to respond to a particular performance.

I think I have dealt with it. There is no change, he asked me to confirm it and I confirm it. There is no change on this question of serious ill health and has a low life expectancy, which simply brings forward the timing of when payments can be made out of an occupational pension scheme, without forfeiting the scheme's approval for deductibility of the pension contributions.

HON J J BOSSANO:

On the last point on the Gibraltar Pension Annuity Trust Scheme. That provides for capital sums received by an individual other than the capital sums received by way of draw down, forming part of an annuity payment. Here we are talking, as the Chief Minister has said, with the amount of capital in excess of the 25 per cent which is used to purchase an annuity from the Government scheme. Right. Now of course we do not know how that is going to work. This is why I said in my original contribution, we might need to reserve our position until we see exactly how the scheme is. But this implies that the scheme will work on the basis that it can pay to individuals capital sums over and above the draw downs that form part of the annuity payments. Well it says here capital sums received by an individual from the annuity scheme, other than the sums received by way of optional draw down which form part of the annuity payments. Now this seems to suggest that if the draw down of the capital that has been put into the scheme is part of the annuity payment, it is part of the assessable income, but that the individual will also have the opportunity to draw down other amounts which will be taxed differently from being part of the assessable income. Is that the case?

HON CHIEF MINISTER:

Mr Speaker, I did allude to this point, maybe in passing and the hon Member may not have heard it. This (h) is the equivalent of (b). In other words, (b) is the circumstances in which one can draw monies from ones pension fund above the 25 per cent. (h) charges to tax the same thing when one draws it later. Later, much later. Let us say that one comes out of the scheme, one cannot avail oneself under (b) because one can buy with the 75 per cent an annuity from the Government that pays more than £1,000, but once the annuity is running one draws the interest and also the optional draw down, which I think is going to be allowed at 2.5 per cent, actuarially has been worked out, and I think the scheme is going to allow people to draw down capital. In addition to the income from the fund they will be able to draw down 2.5 per cent of the capital per annum. Well it is easy to see how the drawing down of capital at 2.5 per cent per annum over a number of years, may well at some future point, reduce the capital below a level where it gives £1,000. Does he see what I mean? So this is so that once one is part of the annuity scheme, once the capital left, if one is drawing it down at 2.5 per cent, if at any point perhaps it is not a question of ones capital withdrawals, perhaps it is just plummeting interest rates. Once one is a member of the annuity and whatever funds one has, either the full fund or the diminished fund, one has been drawing down 2.5 per cent of it per annum, once it, ones remaining funds, provides one with less than £1,000 per annum income, one will then have the option to withdraw the capital. one will then have the option to withdraw the capital. This says that the annual draw downs are not taxed separately at 20 per cent. The annual draw downs are taxed as part of ones pension at the usual rates. But if one decides to take away the whole of the balance of the capital, in one lump sum, then it is taxed at the 20 per cent separately. I have to say, that there is a point here upon which no one has asked the Government for a policy decision. Depending on what the effect of this is, we may have to come back to the House. But one of the things that I have asked is, because the hon Member will recall that one of the novelties of this annuity, and we think that it is going to be

something that is going to be very popular and eventually other countries will start copying us. One of the great novelties of this annuity scheme is that the capital is not lost. The hon Member will know that in most annuity schemes one goes along to the annuity provider, pay him £100,000 and he pays an annuity. If I last 20 years he is paying it to me for 20 years, if I live a year, my family and my estate has lost the capital. This leaves, as part of the estate of the deceased, whatever capital remains on his death. I have said to the officials, that I read (h) in (2) as taxing the capital when it is withdrawn from the scheme by the estate. The balance of the capital. I see nothing there that does not apply to it. It is capital sums received by an individual from, the individual now being the heirs, from the Gibraltar Pension Annuity Trust Scheme shall be taxed separately in accordance with the rules. So unless they can persuade me between now and Committee Stage, that that language is clear, we may at Committee Stage, which we are not taking today, we may come back with an amendment to make clear whether or not it does apply to the residual withdrawal of capital on the death of the annuitant, upon which the Government actually have not made a policy decision because no one has focused our minds on it. So if we decide that it should be taxed, it will stay as it is. If we decide that it should not be taxed, there will be a need to move an amendment to make it clear that it is not intended to catch that.

Question put.

HON J J BOSSANO:

Mr Speaker, we are abstaining on this, because the explanation that we got from the Chief Minister is that it will continue to be taxed at 20 per cent, and we thought from his introduction that in fact that amount was going to be tax free.

Question put.

The House voted.

For the Ayes:

The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon T J Bristow

Abstained:

The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

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 on another day.

THE ADMINISTRATION OF JUSTICE ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make further provision for the administration of justice, 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 is a short Bill but actually it brings about quite an important change in our system of administration of justice. The Bill basically does two things. In 38A(1) it provides a basis in primary legislation for something that the Chief Justice has already done under section 15 of the Supreme Court Ordinance. That is to introduce the Woolf Reforms. Section 15 says that the rules of civil procedure in Gibraltar shall be the same as in the UK, and the Chief Justice under another section has power to make rules of procedure in the courts of Gibraltar. The Chief Justice, in fact, has done all of that to introduce what is called the Woolf Reforms, which is a system of truncated procedure, which has already been operating in our courts for some time. Some doubt has been expressed, let me hasten to add doubt dispelled by those who do not share the view with equal vigour to those that expressed the doubt. In other words, doubt has been expressed as to whether all aspects of the changes that might be possible in UK civil procedures can be introduced into Gibraltar, through section 15 of the Ordinance and the Chief Justice's rule making powers. Some people have expressed to the Government the view that there is a doubt. Other people have expressed the view to the Government that there is no doubt whatsoever. But the Government, with the agreement indeed at the request of the Chief Justice, have agreed to bring this section 38A(1) to make it absolutely clear of what many people have no doubt about anyway and that is that there is already sufficient basis in primary legislation and in subsidiary legislation. So that is really a belt and braces approach to put out to the realms of the possible, the arguments that some people have fielded.

The other thing that the Bill does is make provision for something that could not have been done without primary legislation. That is allow the completion, the deployment of the Woolf Reforms to

be fully completed in Gibraltar. One aspect of the Woolf Reforms was a so-called fast track system basically for small claims. But of course in Gibraltar we have a statutory system for such claims called the Court of First Instance, which is established in primary legislation and therefore cannot be repealed by any rule making power that the Chief Justice may have under the Ordinance. So when the Woolf Reforms were introduced, they were introduced minus the fast track system. This other amendment, this section 38B(1), and the subsequent clauses of the Bill, (3), (4), (5) and (6), has the effect of repealing the Court of First Instance Ordinance, transferring to the Supreme Court any cases presently before the Court of First Instance and allowing the Chief Justice then to make rules, under his rule making power, to create a fast track within the Supreme Court's procedures as opposed to a wholly separate court, separately established by statute, which is what we have got today, the Court of First Instance established under the Court of First Instance Ordinance. So, the Bill also makes provision for something called a "master", which is not a term we are familiar with in Gibraltar. But it is something which is established in the UK. A master is either a more junior judicial officer or indeed a practising lawyer who sits part-time as a master, to hear these small cases in the so-called fast track, but no longer as a separate court, the Court of First Instance, now a fast track procedure in the Supreme Court. So in effect we lose the Court of First Instance as a separate court.

Clause 3 repeals the Court of First Instance Ordinance. Clause 4 eliminates references to the Court of First Instance in the Court of Appeal Ordinance and in the Magistrates' Court Ordinance. I will be moving an amendment in clause 38B(1)(iv), it says the Governor after consulting the Chief Justice, may appoint any person appearing to him to have the requisite knowledge and experience to act as a master. I am advised that under the Constitution the appointment of persons to judicial offices, indeed for example today the appointment of the Registrar, and indeed the appointment of the Judge of the Court of First Instance, which is the person that these masters are in effect replacing, is constitutionally the preserve of the Governor. He does in fact

consult the Chief Justice and others, I am glad to say, but it is not a statutory requirement of him. So I will be amending the subsection (4) just to delete the words "after consulting the Chief Justice", to make it consistent; (a) with the Governor's constitutional position; (b) with the Bills that this is replacing; which is the Court of First Instance under which the Judge of the Court of First Instance is appointed by the Governor. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, I think there is no doubt whatsoever that anything which makes access to justice easier and fairer is going to be welcome in both sides of the House. But as the Chief Minister has already said, the access to justice reforms, the Woolf Reforms, are already very much a part of the daily life of those operating in our courts in Gibraltar, and they have been for the past two or three years. But it is welcome to see formal recognition of the reforms in our primary legislation. I do not know that it is fair, however, to call the reforms a truncated procedure. I think that they go much further than that, and it is for that reason because they do go much further than that that these reforms in particular, in relation to the Court of First Instance and the Magistrates' Court are to be particularly welcomed. Because they will make access to justice in that court cheaper and fairer therefore, both for creditors and for debtors who need to defend themselves and now find themselves, in respect of any debts over £1,000, limited to claims in the Supreme Court, which obviously involves much greater expense than was intended at the time that the Court of First Instance Ordinance was put in place. And indeed at the time, I am sure, that section 26 of the Magistrates' Court Ordinance, which is also being repealed today, was brought about, which gives the Magistrates' Court jurisdiction to deal only with claims of less than £5.00. Few claims today relate to

amounts, contractual amounts, of less than £5.00. So this Bill will be welcome by both sides of the House. The incorporation into our system of procedure in court of the civil reforms, I think has been almost universally welcome by the legal profession, and I hope therefore, also by the users of the legal profession. But one tangible aspect that was missing of those reforms was the fast track procedure. Really the Woolf Reforms were limping if the fast track procedure was not there. It is important that the fast track procedure is there, and therefore this Bill is welcomed, I am sure, by both sides of the House.

HON CHIEF MINISTER:

Whether the fast track procedure in the Supreme Court turns out to be cheaper, will depend on where the maximum level of claim is set by the Chief Justice in relation to the fast track route. The Court of First Instance is not more expensive than the fast track procedure of the Supreme Court so it is capable of having the effect that the hon Member describes and I hope it will have the effect that he describes.

HON F R PICARDO:

What I meant was, if I did not make myself clear I apologise, that the Supreme Court procedure is much more expensive than the Court of First Instance procedure and people having to go through the Court of First Instance procedure, because the parameters of the Court of First Instance which are debts of less than £1,000 are far too low now.

Question put.

Agreed to.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE 2004.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that a Bill to amend the Imports and Exports Ordinance 1986 be read a first time.

Question put. All agreed.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE 2004.

HON CHIEF MINISTER:

Mr Speaker, I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is moved at the request of the Collector of Customs and indeed his own request is based on a view put to him by his staff, who felt that there are certain duties that Customs Officers carry out, outside the run of the mill routine manning of entry points, where they are exposed or potentially exposed to physical situations requiring them to defend themselves, and when they in fact have no means of no

equipment to aid their defence. Hon Members will know that the police are routinely equipped with truncheons and that is part of their standard kit and they wear it all the time. Customs Officers do not. The Government do not support customs officers wearing truncheons all the time, but does support them wearing truncheons when they are engaged in non entry point manning. So for example, the fast team goes out on launches in the middle of the night, they could find themselves having to restrain a particular situation. They patrolled the frontier fence at the time when people were chucking cartons of cigarettes over the frontier fence or running through holes in the frontier fence. They would patrol that and in fact there were occasions in which they found themselves involved in fracas with people that they had surprised and caught doing that. So the Government thought that it was reasonable that there ought to be a procedure whereby customs officers could be equipped with truncheons, when it was appropriate to do so. Hence the formula in this Bill that it has to be specifically authorised by the Collector of Customs, with the written consent of the Chief Secretary. The latter obviously to give the Government some sort of policy opportunity to make sure that the threshold for the wearing of truncheons by customs officers is not lowered below the point that Government policy wishes to sustain. But there is no disagreement between us as to the circumstances in which it should be exercised at the moment. In other words, the Government are happy for them to be issued and worn routinely, when they are out in patrol on their boats and when they go on patrol away from their post, when they are walking up and down the length of the frontier from the whole east to west length of it. That is well within the parameters of what the Government, in fact, that is why we are bringing the Bill to the House, precisely to permit it in those circumstances. 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, certainly any amendment to our legislation which is designed to afford greater protection to our law enforcement agents, will be welcome by both sides of the House and that obviously includes the Opposition. The Bill before us, the Opposition notes that the power to allow officers to carry truncheons is in fact a very wide power, and relates to engagement in any duty or to any power. Any duty, as drafted, includes at any entry points it includes the frontier, the airport, the port or any other part of Gibraltar or of Gibraltar's waters. Although we understand that following the explanation from the Chief Minister, it is something which is not intended for run of the mill duties but perhaps what is called more exceptional circumstances, patrolling the frontier fence or going out in fast launches. The power is exercisable by the Collector but only with the written consent of the Chief Secretary.

Mr Speaker, although the Chief Minister has touched on the subject, we do not feel the Government have adequately or sufficiently explained perhaps, why the Collector of Customs, who is in fact a Senior Member of the Civil Service, should not be empowered to specifically authorise the use of truncheons by his officers himself, and we would welcome an explanation as to why the Collector cannot implement the policy decision of the Government and why it needs to have the second filter as it were, of the Chief Secretary. Because it could be argued that the Collector is in fact the head of that department and therefore should be relied upon to implement the policy without having to go to the Chief Secretary to obtain his written consent. In a sense, perhaps, it could be seen to be superfluous that there should be this double filter, this double layer of decision making should exist.

As I have just said, there is a case for the Collector to be the only authority to determine whether or not his officers are armed. This is surely an operational decision where the Collector would be the best judge of whether truncheons are required or not although we understand the general framework within which the

Government expects for this policy to be implemented. There are also several areas where the Opposition would welcome clarification and perhaps an expansion of the explanation that the Government have given. This that I have just said is one of them. The Chief Minister mentioned that this has come about as a direct request of the Collector of Customs, and that that came about at the request of his staff. What we do not know is when that request was made and how long ago was it that this was requested by the Collector of Customs, and could the Chief Minister please clarify that to the House. It would also be relevant I think, in this context, and if the Chief Minister has that information readily available, for the House to learn what the practice is in the United Kingdom in this respect, and whether customs officers there are also authorised under certain circumstances to carry truncheons, and who is it that actually takes that decision and authorises that decision in the United Kingdom. We think it would be relevant to the debate and it is certainly something that would be useful to the Opposition.

Mr Speaker, the Chief Minister has explained what has brought about the need for this in Gibraltar in relation to customs officers being threatened, or even being assaulted, as they go about their duty in those exceptional circumstances. As I have said at the outset, the Opposition welcomes legislation to provide greater protection to our law enforcement agencies. The areas of clarification which concern us relate more to how the Government have decided to go about it and to the mechanism that they have used, and that is where we are really requesting a more detailed explanation. That is all we have to say at this stage and I certainly welcome clarification from the Government on the comments and concerns and the various questions that we have raised.

HON CHIEF MINISTER:

Well, if I could just take the hon Member's points in reverse order. First of all I cannot tell him what the practice is in the United Kingdom or in any other country for that matter. We

make these domestic policy decisions by reference to what we think is in the best interests of Gibraltar and not necessarily, although on some occasions we are steered by practice elsewhere, we do not regard the practice elsewhere as being definitive one way or the other in deciding the desirability of a particular course of action. I cannot tell the hon Member when the request was made nor do I think it is particularly relevant to the debate, which is whether does he agree or does he not agree with what the Bill says now. That said, If the hon Member is trying to find out whether this was a very long time ago and whether the Government have been sitting on their hands, actually I do not think it was a very long time ago. I think it was quite recent but I could not tell the hon Member when it was. I have to say that I am a little bit perplexed by the hon Member's fundamental point. First, on the one hand he says that it is too wide a power. First of all he says he welcomes measures to support the protection of our law enforcement agencies, but he should have said provided it is not too wide. Because he then went on to say that he thought that this was too wide because it could be done if specifically authorised by the Collector of Customs. In other words, there is not a listing of the circumstances in which it should be allowed. He went through these examples of this or that. Then, the very next point, the first point being that it is too wide, the very next point is to challenge why there should be a need for a second tier of control. Well, the answer to his question why is there a need for a second tier of control, is precisely his concern that it is otherwise too wide. The second tier of control is precisely so that those that are working within Customs, which includes the Collector of Customs, should not be the sole arbiters of when it is acceptable in this community for customs officers to be armed with truncheons. If it were not for the second tier, then in effect management in customs, which is what Collector of Customs is, would be making that decision by himself. Now, in respect of operational discretions, the Government would not normally issue instructions to the Collector of Customs in respect of operational matters. So that is not really enough of a route. The hon Member said well what is the need for this, he is a senior Civil Servant. I suppose he meant one could just order him not to issue truncheons. Well, if

that is his suggestion, then he cannot really object to the principle of supervening power impacting on the Collector's decision, because he is inviting me to do it even without statutory route. This is a statutory route requiring, as he correctly says a second tier, in order that the Collector should not succumb to too much internal pressure for it to be used in circumstances where policy makers, who are primarily the Government and the legislature, do not think that it should be. Perhaps I could just make it clear to the hon Member, it will not require on each and every occasion, the Collector of Customs may seek the Chief Secretary's consent to the description of circumstances. In other words, he will not have to ring on Thursday afternoon, *"Hello, can I give out truncheons to my guys this evening because they are going out on this or that."* So it is not that full. The consent will be to the circumstances in which truncheons can be carried and there will only be a need for a specific written consent if a new situation arises not covered by an existing generic consent.

HON DR J J GARCIA:

Could the Chief Minister please give way. In relation to the comment on the description of specific circumstances, could not that have been done by this House and included in this Bill?

HON CHIEF MINISTER:

No. We did consider doing it that way but we thought it would have been too cumbersome. In other words, to have to come back to this House every time a new circumstance arose that we had not thought of, we at drafting stage and the hon Members might have added a few. If we were talking about arming our customs officers with firearms, I could understand the hon Member's concern. Let us not lose sight of the fact at this debate that we are talking about the carrying of truncheons, which in certain circumstances may be carryable anyway. I am not entirely convinced that one needs statutory provision to carry a truncheon. I am not sure a truncheon is an offensive weapon

per se, but they wanted the comfort of statutory cover and the Government have agreed. We have not got to lose sight of the fact that this is not, the threshold of policy here is not very high it is much lower than if we were talking about firearms, for example. At the end of the day we are just talking about a telescopic truncheon in the holster and that I think that the suggestion that there might need to be that degree of concern that would require listing specifically the circumstances, I think is probably excessive given the fact that we are only talking about truncheons.

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 PUBLIC HEALTH (AMENDMENT) ORDINANCE 2004

HON F VINET:

I have the honour that a Bill for an Ordinance to amend the Public Health Ordinance to further transpose Council Directive 91/689/EEC on hazardous waste and to give effect to Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1A of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article (4) of

Council Directive 91/689/EEC on hazardous waste, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House seeks to amend the Public Health Ordinance so as to provide legislation for the classification of certain waste as hazardous. By way of background I would like to tell the House that infractions proceedings were commenced by the European Commission against the United Kingdom for its failure to treat as hazardous amalgam waste from dental care. During the course of the infraction proceedings the United Kingdom accepted the Commission's point and that as a result legislative changes become necessary, both in the UK and here in Gibraltar. The Bill sets out to achieve the required changes by amending the definition of hazardous waste and updating Schedule 11A. Schedule 11A now sets out all waste which is deemed hazardous, in addition to dental amalgam. Additionally, this Bill permits the amendment of the list by way of notice in the Gazette. This will allow for any updating to be done more efficiently.

Mr Speaker, I am informed that even without this legislation, dental practices in Gibraltar already have dental amalgam filters and therefore the changes brought about by this legislation will not have any adverse impact on their operations. Finally, the Bill gives effect to a further directive led requirement, which is that Member States retain the power to classify certain wastes as hazardous. Therefore, local circumstances should dictate

whether such power needs to be exercised. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, the amendments which are proposed to section 192K, I think actually serve to make 192K (a)(i) clearer than it was. The Minister has told us that in fact these amendments were brought about as a result of legal action against the United Kingdom taken by the Commission. Can I just ask him when he speaks again on this Bill to tell us whether he knows, if in fact he knows, whether actually the Gibraltar method of transposition was also mentioned in that challenge, or whether the challenge was only directed to the identical type of transposition that the United Kingdom was defending. I think, in principle, there is one important point to note about the change in the way that we will deal with clinical waste under this new legislation. Clinical waste has until now, under sub-paragraph (2) of 192K(A), being dealt with generally as hazardous waste. Now, under the provisions of chapter heading 18 of Schedule 11A, there are lots of As in this Ordinance, clinical waste will be broken down into different types of clinical waste. Some of it will continue to be considered hazardous waste and some of it will not be considered hazardous waste at all. I think that that will be an issue that needs to be kept under review. I can imagine that these schedules come from much more learned scientific individuals than any of us, but certainly there are aspects of the heading 18 which relate to what was generally before known as clinical waste which would certainly seem to me not something that one wants to see lying around in a rubbish bin, and that one wants to ensure is dealt with in a more appropriate manner. So that I think is something to look out for, although I understand that we are simply here proceeding to bring into our legislation what the directive requires. It may be that we eventually decide that we want to go a bit further and we want to go back to the blanket

feeling of clinical waste as hazardous waste which I am sure would be something that would not be challenged by the Commission because we would then be going further than transposition requires. I will be moving and I give notice now if it is useful two small changes in the Committee Stage which I think are just of assistance. First that one of the subsections which is not dealt with, which is subsection (7), at the very end talks about written applications to the Chief Environmental Health Office. I think that should be, that is not in the Bill, it is in the section which is being amended. But we might take the opportunity now to simply add that the reference in subsection (7) should be to the Chief Environmental Health Officer not the Chief Environmental Health Office which I do not think exists. There is a reference in the existing subsection (3) to subsections (1) and (2), and I think that consequentially as a result of deleting (2) will need to take out the reference to subsection (2) there. Generally I cannot imagine any reason why we would oppose the new schedule brought into play given that it is a requirement of the EU in certain scientific characteristics. I would say this, the new subsection (9), which gives the Minister power to change this principal Ordinance by order in the Gazette it is not the first time that we see such delegated legislation allowing the amendment of principal legislation. It is very common where administrative circumstances would make it just cumbersome to come back to this House to change a schedule, but it is what is known as a Henry VIII clause that allows the Minister to change legislation. When those types of clauses were first inserted into legislation they were referred to as Henry VIII clauses because of that monarch's particularly autocratic style of government. I say no more.

HON F VINET:

Mr Speaker, if I could take just one of the final points made by the hon Member. I had in fact also noted the discrepancy that will now exist in section 192K(a)(iii) and there is indeed a need to delete referencing to subsection (2). In answer to a query made in the beginning of his intervention, the infraction proceedings did

relate to the UK and to Gibraltar, because the practices conducted in Gibraltar equated to those in the UK.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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 12.15 pm

The House resumed at 12.20 pm

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Administration of Justice Bill, 2004;
2. The Imports and Exports (Amendment) Bill, 2004;
3. The Public Health (Amendment) Bill, 2004.

THE ADMINISTRATION OF JUSTICE BILL, 2004

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

Clause 2

HON CHIEF MINISTER:

As I have given written notice in sub-clause (4) of what will be 38B, to delete the words “after consulting the Chief Justice”. The hon Members will recall that during the second reading I gave the explanation that this is to make the appointment of the master constitutionally consistent with the appointment of other judges, and indeed with the appointment of the Court of First Instance judge which the master replaces.

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

Clauses 3 to 7 and the Long Title – were agreed to and stood part of the Bill.

THE IMPORTS AND EXPORTS (AMENDMENT) BILL 2004

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

THE PUBLIC HEALTH (AMENDMENT) BILL 2004

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

New Clause 3

HON CHIEF MINISTER:

I think the easiest way to do the amendments, rather than amending the existing clauses, is simply to add a new clause (3) of the Bill with the following amendments:

1. In 3(1) in subsection (3) of section 192KA delete all references to subsection (2) where they appear in the first line.
2. In subsection (7) of section 192KA delete the last word of the clause, which is presently "Office" and insert "Officer".

New clause 3 – was agreed to and stood part of the Bill.

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

THIRD READING**HON CHIEF MINISTER:**

I have the honour to report that the Administration of Justice Bill 2004; the Imports and Exports (Amendment) Bill 2004; and the Public Health (Amendment) Bill 2004 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 Administration of Justice Bill 2004; the Imports and Exports (Amendment) Bill 2004; and the Public Health (Amendment) Bill 2004 were read a third time and passed.

ADJOURNMENT:

The Hon the Chief Minister moved the adjournment of the House to Tuesday 29th June, 2004 at 10.00 am.

Question put. Agreed to.

HON CHIEF MINISTER:

Mr Speaker, with your indulgence I wish to change that the reason being that the date that I have moved the adjournment to, the 29th June 2004, is not possible. But I am not in a position to say what date exactly immediately around that is possible. So with the House's consent, particularly the Opposition's consent, what I would like to move is that the House should adjourn to a date to be designated by me to the Speaker this afternoon, and to be notified by him to the hon Members as soon as I have designated a date.

MR SPEAKER:

So we now adjourn to a date to be fixed by the Leader of the House and to be communicated to you by me.

The adjournment of the House was taken at 1.00 pm on Tuesday 1st June 2004.

THURSDAY 30TH JUNE 2004

The House resumed at 2.35 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
The Hon T J Bristow - Financial and Development Secretary

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon R R Rhoda QC - Attorney General

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

DOCUMENTS LAID:

The Hon the Financial and Development Secretary laid on the
Table the Statement of Supplementary Estimates No 1 of
2003/2004.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE APPROPRIATION 2004/2005 ORDINANCE 2004

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the Honour to move that a Bill for an Ordinance to
appropriate sums of money to the service of the year ending with
31st day of March 2005 and to appropriate sums of money to the
Supplementary Appropriation for the financial year 2003/2004,
be read a first time.

Question put.

Agreed to.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Appropriation Bill be now read a second time. I will Mr Speaker, be confining my contribution for this Second Reading to an outline of the contents of the Appropriation Bill. As is customary the Chief Minister will be presenting the Government's budget for the financial year 2004/2005.

The Appropriation Bill this year is in four parts. The first three deal with the appropriation for the current financial year and the fourth part concerns supplementary appropriations for the last financial year. With respect to 2004/2005, first the House is being asked to appropriate an amount not exceeding £142,798,000 from the Consolidated Fund for departmental spending. A further £27,295,000 is consolidated from charges not requiring a vote by this House, brings the Government's total estimated recurrent expenditure to about £170,000,000. Details of this expenditure together with the revenue is set out in the Government's Estimates of Revenue and Expenditure which were laid in the House on 30th April this year. Second, the House is being asked to vote £5 million contribution from the reserves to the Improvement and Development Fund together with a provision of £20,000 should there be any residual spending on the Moroccan resettlement scheme. The third part of the Bill, seeks the appropriation of £80,428,000 for the Improvement and Development Fund spending on capital and economic projects. In addition to the contribution from the Consolidated Fund the rest of the revenue derives mainly from the projected sale of Government land and buildings, EU grants and utilising some of the balance held in the Improvement and Development Fund. The fourth and final part of the Bill seeks supplementary appropriation for the last financial year 2003/2004. Supplementary Appropriation Bills have normally been taken in separate Bills but because of the timing this time round, it coincided with the annual Appropriation Bill and they will be taken together as one piece of legislation. This final part of the

Bill seeks supplementary appropriation in respect of the last financial year of up to £2,500,000 for the Consolidated Fund and £1,500,000 for the Improvement and Development Fund. The purposes for which these monies are sought are set out in the statement of Supplementary Estimates which were laid earlier on in this meeting.

There is just one further point I would make, the supplementary appropriations of the Consolidated Fund of £2,500,000 is being voted to the Supplementary Funding Head as the monies need to be dispersed across the bulk of departmental heads. Of the supplementary provision of £4,000,000 in Approved Estimates for last year, nearly £3.8 million has already been allocated in statements made in this House during the course of this year. Hon Members can see the projected spend department by department, subhead by subhead, in the Forecast Outturn columns of the latest Government Estimates and they can see the overall financial position of the Government thereto and can see that it remains in surplus taking the two years together. I now give way, Mr Speaker, to the Chief Minister and in so doing commend the Appropriation Bill 2004 to the House.

HON CHIEF MINISTER:

Mr Speaker it is an honour for me to rise once again in this House, for the first time in this our third successive term in office, to present the Government's Budget of Revenue and Expenditure for this year, and generally to comment on the state of the economy and of Government finances. I am happy to be able to report yet again that the economy is in good robust shape and continues to grow at healthy rates despite the various external challenges that it faces. In 2001 and 2002 gross domestic product grew from £433.6 million to £470.2 million, representing an annual economic growth rate of 8.4 per cent in money terms and 7.8 per cent in real terms, that is after deducting inflation. This growth in the economy is reflected in many other economic indicators which I will mention later, including the rise in the number of new real jobs in our economy

which increased by at least 600 in the year 2003. It is also reflected in record levels of activity in the various sectors of the economy. In respect of the last year ended 31st March 2004 the Government are forecasting that it operated a small budget deficit of about £1.3 million. This deficit is struck after a £5 million non-recurring grant payment to Community Care. For this current year the Government's budget estimates a surplus of about £2 million, although some planned revenue raising measures that are not reflected in the budget estimates of revenue will, I believe, restore the budget surplus to higher levels than that. The elimination of the budget surplus has occurred as a matter of policy as the Government have consciously set about returning money to tax payers through substantial tax cuts and also by developing and expanding as necessary public services. Government reserves remain at nearly £43 million above the average annual level over the last six years. We estimate that at the end of this year to March 2005, Government reserves will remain at approximately the same level. Public debt has risen as estimated at the year start to £88 million. Gibraltar's public debt levels properly measured as a percentage of gross domestic product or servicing cost as a percentage of total Government revenue remain among the lowest in Europe, and well within recommended prudence levels. Gross public debt at £88 million is at a level only £5 million higher than net public debt, that is gross debt minus debt sinking fund was in 1995, nearly ten years ago. What is more, these are gross debt figures, net debt, that is to say debt after deducting Government reserves, stand at just £45 million. In 1996 this figure stood at £24 million, in other words, net debt has grown just £21 million in eight years despite the strong growth in the size of the economy in that time and the high level of public capital investment that has occurred. Government will continue to operate prudent public finance policies whilst continuing to fund their capital investment programme to ensure Gibraltar's continuing development.

Mr Speaker, this year there has been some ill-informed public comment about the state of public finances and about "the high level of public expenditure". This has led some people to believe that there is a problem in Government finances. This is not the

case, indeed the budget before the House estimate an increase in both Government revenue and Government expenditure. There has been ill-informed comment about "cuts in expenditure". There are no cuts in the approved level of any of the principal items of public expenditure. However, I would not wish to leave the impression with that statement that cuts in public expenditure are necessarily a bad thing. Nor necessarily are they, if they should occur, a sign of shortage of money or financial problems. Public expenditure should be what is required to run Government, to promote the political and economic interests of Gibraltar and to deliver an appropriate level and range of public services to modern European standards. That must be balanced with keeping taxation to the lowest possible levels and indeed striving to reduce taxation as this Government has done every year that they have been in office. And so the curtailment of excessive growth in, that is to say not even actually cutting public expenditure, is a virtue and not a vice not least because it enables the Government to lower taxation. So this ill-informed commentary to which I refer tends to confuse shortage of money on the one hand with budgetary discipline on the other. They should not be confused. It is important that Government Departments keep their annual spending to those amounts approved by the Government and by this House in the Budget. It is absurd to say that when departments exceed the level of expenditure authorised by this House, and they get hauled back by me, this constitutes a cut in public expenditure or in public services. It does not. It constitutes the imposition of budgetary discipline which this House should welcome, indeed should demand. Nor can spending departments be allowed to decide how much to spend. It would be similarly absurd to think that spending departments should be allowed to set their own spending limits at whatever level they submit departmental bids, and that when their bids are reduced, as happens every year with every department in every country in Europe, this can be described as a cut in services or a shortage of money. There is no country in Europe that can afford uncontrolled expenditure by spending departments and Gibraltar is no exception. That does not constitute a shortage of money. Budgetary discipline meaning that departments must

keep to approved levels of expenditure is essential and prudent and it should not be confused or misrepresented as shortage of money. Managing a department even one that provides demand-led services, means delivering the best possible public service on a value for money basis within the budget that is authorised for them by the Government and by this House. I am therefore determined that there shall be a substantial tightening up of budgetary discipline, although it is true to say that many departments already do it very well and for others it is much harder to do it because of the nature of the public service that they provide but even in these it is possible for Controlling Officers to better manage public budgets. By for example, and just by example, controlling the abuse of sick leave and other absenteeism which adds a huge amount of cost in those departments where absent staff need to be covered for by others on overtime. Recently there has been a call on the Government to cut public expenditure which was said to be too high. To say that public expenditure is too high simply because it grows year on year in cash terms is too simplistic an approach. Obviously in a growing economy public expenditure will rise otherwise there is no improvement in or expansion of public services which is one of the fruits of economic growth to ensure that those fruits benefit the whole community. A conventional and correct way to measure public expenditure is as a percentage of gross domestic product. That is to say, is public expenditure growing relative to the size of the economy. By this usual and internationally accepted way of measuring public expenditure, it has not risen greatly and it is not too high. In 1997/1998 public expenditure was a sum equivalent to 29 per cent of gross domestic product. In 1990/2000 it was 30 per cent and in 2001/2002 it was 31 per cent of gross domestic product. Assuming, which I think one reasonably can, a 5 per cent rate of economic growth in each of the years 2002/2003 and 2003/2004, the level of public expenditure is still running at only 32 per cent of gross domestic product. These figures are low compared to other modern European countries. In the United Kingdom for example, which is thought to have low levels of public expenditure compared to other European countries, public expenditure is running at 42 per cent of gross domestic product compared to our 32 per cent.

There is therefore a myth in some quarters in Gibraltar that the public sector is big, too big. That is not true. It is not. But however this should not be erroneously concluded from the view that certain areas of the public sector may not represent value for money or deliver the level of efficiency and productivity that one would like. That is a wholly different thing to the issue of the size of the public service or whether it is too big or the level of public expenditure and whether it is too high.

Mr Speaker, if one chooses to measure the growth of the public sector by reference to for example jobs, it has grown even less as a proportion of the whole economy. Defining public sector in the widest possible terms, that is to include all jobs funded by Gibraltar public monies, therefore including not just Government employees but employees of Government companies, agencies and authorities, the public payroll has increased by a net 267 or 10 per cent between 1996 and 2003. In contrast overall employment in the economy has risen in the same period by 2125 or 24 per cent. It can be seen from these figures that the rate of job growth in the public sector has been much lower than in the private sector. In any event as I have said, public expenditure and publicly funded employment levels have to reflect the affordable social and economic needs of Gibraltar. Our public services, especially health, education and social services, have to keep up with the rest of Europe. Every year when I have described Government's economic policy in this House I have made it clear that part of the Government's budget surpluses would be invested in improving and expanding our public services, and this is what we have done and we make no apology for it. We are proud to have done so because Gibraltar is a better place and a better society for it. Mr Speaker, last year the Leader of the Opposition devoted much of his budget address to observing and stating the obvious. Namely, that public expenditure was rising faster than public revenue and that this would erode and eventually eliminate the budget surplus. Well, that has actually been happening every year for the last few years and it has been happening as a matter of Government policy and not by chance or unintentionally or overlooked. Nor does it mean that the Government have a financial problem or

will be short of money. Indeed last year albeit as a result of a one-off payment, the surplus actually became a small deficit. Government surpluses derive from economic growth and one of the fruits of economic success which increases Government revenue. Budget surpluses reflect the excess of Government revenue over Government expenditure. Put another way, they are the extent by which the Government have taken too much money from the citizens' pockets through taxation. Every year since 1996 when I have explained the philosophy of this Government's economic policy, I have said that we would use Government's budget surpluses and other financial resources for three things. One, to give a share of the surpluses and thus of economic success back to the tax payers through tax cuts. This we have done on a spectacular and unprecedented in Gibraltar scale. The average wage earner, married with at least one child, is now paying at least at least 36 per cent less in tax as a result of our tax cuts. Indeed the vast majority of elderly people are now paying no tax at all. Of course, had we not introduced those tax cuts our budget surpluses would have remained, and indeed grown, but would not have been fair to Gibraltar's tax payers. The second thing on which I have said every year we would spend our budget surpluses is to invest some of it in Gibraltar's infrastructure and physical fabric. This we have also done, spending in excess of £150 million on our roads, squares, public housing, industrial parks, sports and leisure facilities, homes for the elderly, the installation of lifts in Government housing, the repairs to Harbour Views, Gib 5 and Brympton, and in many, many other projects for Gibraltar's social, economic and physical development. The third, the third thing on which I have annually said we would spend a share of our budget surpluses is to invest some of it in improving and expanding public services, especially health, education and social services, and this we have done and will continue to do across all public services. Indeed many vacuums that we inherited in basic social caring services have been filled and there is much yet left to achieve. We promised to share the fruits of Gibraltar's economic success throughout the community as a whole and we have done so. Our tax cuts have been substantial and especially designed to benefit the lowest paid the most. We have invested huge sums in refurbishing long

neglected public housing estates. We have hugely increased public services to the most vulnerable members of our society. We have given hundreds of Government-linked workers an occupational pension. We have hugely improved the rights and conditions of all workers in Gibraltar. We have greatly increased the levels of disability and social benefits and social assistance payments to the most vulnerable members of our society. We have introduced a minimum income for all elderly persons. We have introduced respite and domiciliary care. Better child welfare and protection. A decent public bus service, sports development and summer programmes, an Ombudsman and a Citizens Advice Bureau to empower the citizen against the Government, to name just a few of the improvements to Gibraltar in which we have invested part of the budget surpluses.

Mr Speaker, I was amused to hear the Leader of the Opposition say recently that he did not think that the benefit of economic success was "trickling down to all sectors", by which I assumed he meant working or needy people. The redistribution by this Government of the fruits of the economic success that we have brought about in Gibraltar have not so much trickled as cascaded down in the many ways that I have described. Compare that to the situation that we inherited, annual tax rises, annual 10 per cent increases in Social Insurance contribution which penalised the lowest income earners most. The very little investment that there was in crumbling public services. Even publicly paid workers lacked decent terms and conditions of employment and even a basic occupational pension. Dilapidated public housing, which of course affects workers more than anyone else, and these to name just some of the things that we have had to reverse in our first two terms of office. I do not label myself a socialist but I have not the remotest doubt that any real socialist would recognise that no Government in Gibraltar's recent history has done more for working people than this Government, and no Government has put social conscience more into practice than this Government. In eight years of GSD Government we have embarked on the social, physical and economic re-engineering of Gibraltar on a huge scale for the benefit of all. The face and the soul of Gibraltar have been transformed for the good, as has its

economic and political prospects, and we have done it whilst at the very same time creating economic success, ensuring that the whole community derives its benefits and creating growth and extra jobs and raising living standards. The elimination of the Government's budget surplus means that the excess revenue that was available for redistribution has now all been redistributed. Accordingly, there must now be a pause to enable Government to once again rebalance revenue and expenditure in favour of surplus, to consolidate public finances and thus allow us to continue thereafter with our tax cutting policy and agenda. This will happen naturally through the effect on Government revenue of the continuing economic growth that we continue to experience. However, it will require budgetary discipline. There are also several anomalies in public finances which now needs to be addressed. Various heads of revenue charges have remained frozen over many years despite hugely increased costs which have been absorbed by the Government. One example is public housing rents which have not increased since 1984, that is 20 years ago. During that time the recurrent costs of running the Buildings and Works Department to maintain that housing stock have risen from £1.8 million per annum to £9 million per annum excluding the substantial capital investment that we have made to it in the last few years. This Government have invested millions of pounds in upgrading and refurbishing and improving public housing and estates and this will continue until it is all done. Another relevant factor is the considerable increase in earnings by Government tenants during the 20 years that housing rents have remained frozen. Since public housing rents were last increased in 1984, the average wage in Gibraltar has increased 176 per cent, from £6,309 per annum to £17,460 per annum in 2003. This has meant that the cost of housing has fallen massively as a proportion of the tenant's income. In 1984 when the average wage in Gibraltar was £6,309 per annum, rent represented 10 per cent of wage income. It now represents only 3.5 per cent of the average pay packet. This proportion is even lower when rent is calculated not as a proportion of the average gross wage, but as a proportion of net take home pay because of the very substantial tax cuts that we have made during the last eight years. Just since 1995 take home pay, net take home pay

following pay increases and the post-1996 tax reductions, has increased by more than 25 per cent that is after inflation. Accordingly during the course of this year we shall review the level of public housing rents just as we are obliged to do in the private sector through reform of the Landlord and Tenant Ordinance. Similarly we shall be reviewing electricity tariffs which also have not increased since 1991, and water tariffs which also have not increased for many, many, many years despite very large increases in costs associated with these utilities over that period of time. Finally, Mr Speaker, by way of rebalancing the revenue and expenditure, we shall be pursuing an aggressive campaign to collect arrears due to the Government in respect of PAYE, Social Insurance contributions, housing rents, rates and electricity charges. The Principal Auditor is rightly concerned about the high level of arrears and annually chastises the Government for it. Arrears also means unfairness because some people pay their dues and others do not. In future, the system will operate more aggressively so that everyone pays their dues. Our economic policy has brought about a careful balance between the collective needs of Gibraltar on the one hand and the individual interests of the individual citizen on the other. Collective development and progress on the one hand but also benefits for the individual through tax cuts, frozen costs of most public services, better living environment, better job prospects and terms and conditions of employment. Improved and expanded health, education and social services to support the tax payer and his or her family. We are determined to stick to these principles and extend their physical deployment in this our third term of office.

Mr Speaker, turning now to the Budget itself. As I have said we are forecasting a recurrent expenditure deficit for the last year of £1.3 million. I would however mention a number of things to this House. Firstly, without the grant of £5 million to Community Care to top up its capital there would have been a surplus of £3.7 million. Secondly, the figure for last year's expenditure does not include £6 million of excess expenditure deficits carried forward by several statutory bodies including the Gibraltar Health Authority, the Social Services Agency, the Gibraltar Development

Corporation and the Gibraltar Health Authority. The deficits in respect of their operations last year are included in this year's Budget by means of increased contributions to those bodies from the Consolidated Fund. Thirdly, the budgetary position is adversely affected on a one-off basis last year by the transition from the Electricity Department to the Electricity Authority. The House may have noticed that for last year the expenditure side bore £8.134 million of Electricity Department expenditure but only £4.177 million of electricity related revenue is included in the revenue side. If all revenue and expenditure were stripped out this would have had a net positive effect on the forecast outturn for this year's recurrent budget on the Consolidated Fund. Fourthly, I would point out to the House that Consolidated Fund's charges expenditure rose by nearly £1.75 million last year. This was due mainly to two items, civil service pensions and gratuities which rose £1.5 million and now account for 9 per cent of total recurrent public expenditure. The other item is legal aid and assistance. In 1995/1996 this head of expenditure stood at £16,600. In 1996/1997 it rose tenfold to £184,000. In 2003/2004 that is the financial year just ended, it is forecast to have risen to £1 million, from £16,600 in 1995 and 1996. Indeed, just last year alone it rose by £500,000. In other words, it doubled last year. This exponential growth in this item of expenditure is not acceptable. I am advised that it is due in very large measure to the spiralling cost of divorce cases despite the fact that most are uncontested divorces, involving only wrangles about money and access to children. There are better and cheaper ways to resolve such disputes, not just in the interests of public finances but probably also in the interests of families themselves. There is growing evidence that these publicly funded matrimonial disputes are being unnecessarily strung out by some divorce lawyers resulting in an unnecessarily high cost to public funds. The Government intend to take action to reduce this and has already initiated consultations with the judiciary in this respect and to explore ways in which this might be done.

For the current financial year the Budget before the House estimates a surplus of £2 million. Revenue is estimated to increase this year over last year's forecast outturn by £12.5

million or by 7.8 per cent. Mainly £5.8 million in higher income tax yields and £4 million from higher import duties yield. Recurrent expenditure is set to rise by a net £5 million or 3 per cent. The main net increases in expenditure are Health £4 million, Supplementary Provisions £3 million, and Education £1.1 million to reflect mainly scholarships following the abolition of parental contributions to University grants.

Mr Speaker, moving to the Improvement and Development Fund, last year we estimated that we would make capital investments of £24.6 million, but in fact managed only to spend £16.6 million or 67.5 per cent of the amount we had estimated at the start of last year. This follows a pattern established over the last few years. In 2002/2003 we had managed to spend 72 per cent of a £27.8 million estimate. In 2001/2002 it was 86 per cent of a £25.5 million estimate and in 2000/2001 we managed to spend 71.3 per cent of a £26.8 million estimate. This year therefore, we are only estimating what we think we can spend, which is £18.4 million an increase of nearly £2 million on last year's spend of £16.6 million. Housing refurbishment projects again takes a large share at £3.2 million of which the Varyl Begg refurbishment project accounts for about £1.3 million. £750,000 will be spent on completing the Mount Alvernia refurbishment and extension project, and £2.5 million will be spent on completing the new Bayside Sports Complex. £1.7 million will be spent on creating further industrial parks at Lathbury Barracks and on a proposed new reclamation at Western Beach. £1.6 million is being spent on beautifying and refurbishing John Mackintosh Square, Catalan Bay, the Frontier area and the Northern Defences and the World War II Tunnels. The Government intend to proceed with the scheme to enhance parking facilities in the south district. The remainder of the spend is on such matters as environmental projects, capital investments in various public services and departments, computerisation of Government functions, investment in other sports facilities, road works and maintenance, works to our sewers, to our rock faces, to our retaining walls, Government buildings, including schools.

Mr Speaker, I would like to take this opportunity to say something about the Theatre Royal, about which much false information and comment is made. I leave to one side such comment including the gross exaggeration of how much it has already cost the Government and the confusion of some commentators as between Government budgetary expenditure and capital investment. The Government remain committed to endowing Gibraltar with a proper theatre as a base for our future cultural development and for the economic value of its use as a conference centre. I appreciate that this is a vision thing and that not everyone shares or agrees with that vision. However, while remaining committed to the theatre, Government have bowed to the views expressed to us by well-meaning objective observers that whatever may be the virtues of the project there are other more pressing needs that should be provided first. We have therefore postponed the prioritisation and timing of this project in Government's capital projects programme. It is true however, that the Government's design team substantially under-estimated the cost of this project but I am glad, not by the factor that has happened in the public's project for the building of a new parliament in Scotland, which was budgeted at £40 million has so far already cost £400 million and is still not finished. Mr Speaker, the cost of a theatre for Gibraltar has to be put into perspective. This wonderful theatre which will be an important part of Gibraltar for the next 150 years, would cost not much more than the Government spent of its own money in fixing the Harbour Views fiasco, about half what it has cost this Government to buy Gibraltar out of the GSLP's disastrous in-town refuse incinerator contracts, and less than half one year's revenue from import duty on tobacco. So I ask this House, what price a major cultural and architectural asset, you pay your money and you answer the question for yourself. Mr Speaker, turning to pensions and to Community Care. I now intend to put the record straight in respect of Government's stewardship of the Pension Fund and the Short Term Benefit Fund in the light of wholly misleading statements recently made by the Leader of the Opposition that Government are diverting monies from pensions funds and therefore putting at risk Government's ability to pay old age pensions are wholly spurious and false, and intended to

alarm elderly pensioners. The same is true of absurd statements and insinuations to the effect that Government have used any of the Community Care money. Pensioners should understand that their pensions and Community Care payments are and will always be safe. In fact the only pension funds to general Government expenditure is the Leader of the Opposition, the Chief Minister ever to have diverted monies away from old age Hon Mr Bossano when he was in Government and I shall now place the true facts on record in this House. When the GSLP arrived in office in 1988 the total Social Insurance contribution was then £17.26 a week. Of this £15.56 was for Social Insurance which then included both pensions and Short-Term Benefits together, 30p a week was for employment injuries and £1.40 was for the Gibraltar Health Authority budget through the Group Practice Medical Scheme. In August 1988 the GSLP Government increased the contribution by £2 a week but this went into the training levy. None of the increase went towards the Pensions Fund. In January 1989 they again increased the weekly contribution by £2 and again none of it went towards pensions but rather it all went to the Gibraltar Health Authority budget. But that was not all. In that year the then GSLP Government also split the Social Insurance Fund into a Pensions Fund and a Short-Term Benefits Fund. In that year the weekly contribution rose to £21.26 a week yet the amount for pensions fell to £12.87 a week with 69p going to the Short-Term Benefits Fund. The amount going to the combined Pensions Fund and Short-Term Benefits Fund was reduced by £2 a week. By 1993 the GSLP had raised the weekly contribution to £32.14 a week but the amount applied to the Old Age Pension Fund had fallen to £10 a week. The amount paid into the Short Term Benefit Fund had risen to £2.88 a week. I have heard the Leader of the Opposition say that he diverted funds from the pensions to the Short-Term Benefits Fund to protect them from the clutches of the United Kingdom. Well this is pretty incredible, but let us give the hon Member the benefit of the doubt. It still does not add up. When the Leader of the Opposition took office in 1988, the combined pension and Short-Term Benefits Fund received £15.56 a week from contributions. When he left office in 1996 the combined figure had fallen to £12.88 a week, a net reduction

in contributions to the Pensions Funds of £2.68 per week per employee. And even this interpretation is over-generous to the Leader of the Opposition, in accepting that some of the £2.88 to which some of the money by which the Short-Term Benefits Fund had risen, was really pensions money that he was protecting from seizure by the British Government. I cannot imagine what for, since the funds that accumulated would not have paid for anything like the local pensions. But I say that the interpretation is generous because the evidence does not support the existence of this worthy motive. Why? Because when the Pension Fund was dissolved in 1993 following the agreement with the British Government and our contributions then became contributions to the GDC Preoccupational Pension Fund and no longer needed protecting from the British Government, the contribution to the Pension Fund remained for four years at only £10 a week, £2.88 a week continued to be paid into the Short Term Benefit Fund. Further, in each of the four years 1992 to 1995 the weekly Social Insurance contribution was increased by £2.48, £3.60, £3.60 and £3.60, 10 per cent per annum, yet none of this increased contribution was paid either into the Pension Fund or into the Short-Term Benefits Fund. So where did the Leader of the Opposition divert the extra £2.68 per week that the Pension Funds were receiving before he came into office but it was no longer receiving by the time he left the office. The answer is to pay for general Government expenditure, namely the Health Service. This is also where the bulk of the annual contribution increases went as well. In 1988 the Health Service got just £1.40 per week out of each weekly contribution. By 1996 this had risen to £23.80 a week from £1.40 per week. In this way the Leader of the Opposition diverted away from the Pension Fund not only monies that it had been receiving before he arrived in office but also he diverted away from pensions the totality of the very substantial contribution increases that he introduced between 1988 and 1995. Mr Speaker, it is true that the net annual erosion of capital in the Pension Fund has continued even though after we came into office in 1998 we increased the contribution to the Pension Fund from £10 a week to £12 a week per employee. That was the first increase that the Pension Fund had received since the GSLP had come into office

in 1988. The reason for the annual erosion of capital in the Pension Fund is twofold. First the general decline in interest rates over the last decade has reduced the Fund's investment income. Second there is the issue of arrears contributions. I have already announced a vigorous campaign to tackle this. The Government are acutely aware of this erosion of capital and could have addressed it at any time by increasing the rate of weekly contributions. We had not yet thought it necessary to do so. When we do we will. In the meantime it is sheer demagoguery and scare-mongering to suggest that pensions are at risk. They are no more at risk now than they were when the GSLP was last in government. The Leader of the Opposition has frequently been critical of the Government's decision to transfer £5 million from the Short-Term Benefits Fund to the Social Assistance Fund. He has recently repeated that criticism. I roundly reject it. The hon Member is simply wrong. I have already expressed a view about the credibility of his statement that the monies in the Short Term Fund were pension monies put there to prevent the British Government from grabbing it. I think the hon Member watches too many television movies. I think he once said that he was a fan of a programme called the X-Files, but he must not take them too seriously. The Short-Term Benefits Fund was and remains grossly over-funded. In 2001/2002 it had in it over £11 million, even though its annual liabilities amounted to only £500,000. There are provisions in the law to enable the Financial and Development Secretary to pass funds from one Special Fund to another when one fund has more money than it needs. The monies were transferred to the Social Assistance Fund and from there they facilitated a £5 million grant by Government to Community Care, a purpose not wholly unrelated to the purposes of the Short-Term Benefits Fund. For Opposition Members to describe this sensible transaction as "raiding the Pension Fund" or "using pension monies for Government expenditure" is wholly disingenuous and misleading. The Short-Term Benefits Fund still has a surplus of capital in it.

Mr Speaker, I now turn to Community Care. In the Government's judgement, Community Care is sufficiently funded to enable it to continue to make its payments for the foreseeable future. The

Government have not touched a single penny of Community Care monies. We have a commitment to ensure that Community Care can continue indefinitely to make its payments. From time to time we make capital grants to Community Care to top up their capital. So far we have given them £10 million. We will not however, pay monies to Community Care unnecessarily at the expense of other projects and other policies of value to Gibraltar and at the expense of our ability to cut taxes. That would be absurd, so we will continue to fund Community Care properly and prudently but certainly not excessively. Opposition Members can continue to try and scare-monger and abuse the vulnerable elderly if they wish but the elderly know that they are safe with a GSD Government. The Leader of the Opposition has cried wolf on this issue once too often. No one believes him any more because there is no wolf.

Mr Speaker, in my introductory remarks I said that the economy is in good and robust shape. Gross domestic product has grown in 2000/2001 by 7.8 per cent in real terms compared to 3.9 per cent in the previous year. The Statistics Office is making arrangements to accelerate the compilation of GDP figures. It hopes to have published by December this year the figure for the year 2002/2003 and thereafter to keep up that publication timescale. I have no doubt that they will show further growth which brings me to another distortion of accurate debate which I would like to take this opportunity to respond to. The Leader of the Opposition has taken to saying that I believe that economic growth of more than 6 per cent is not possible and that therefore if economic growth is more than 6 per cent I cannot take credit for it because I cannot take credit for what I thought was impossible. I have not said that economic growth above 6 per cent is not possible. What I have said was that economic growth of 12 per cent which is what he promised if elected was not likely and was certainly not sustainable year after year even if it could be achieved in one year. That assessment remains correct. I also said that even if the economy were to grow by 12 per cent per annum it could not sustain his Father Christmas all year round election manifesto full of goodies. The proof is clear even with economic growth of 8.4 per cent the Government's budget is

tightly balanced but we do look forward to a continuation of this sort of healthy and sustainable growth rate which is sustained mainly by an increase in income from employment resulting from the increase in jobs in the economy which has risen 4.1 per cent and the increase in the average earnings which has increased by 6.8 per cent. The average earnings in Gibraltar rose by 3.9 per cent to £17,460 per annum as of October 2003 from £16,802 in 2002. This represents an increase of nearly 30 per cent in the average wage since October 1996. Equally if not more significant than this, is the 25 per cent increase in net take home pay, allowing for inflation during a period that the index of retail prices, that is to say the local measurement of inflation, has itself risen by 12.8 per cent. So net take home pay has increased by 25 per cent after allowing for accumulative inflation rate of 12.8 per cent. This is the real measure of the improvement of pay in the economy coupled with the effects on take home pay of Government's very substantial sustained policy of tax cuts. The 2003 Employment Survey recorded an increase in jobs of 1,153 over the figure for 2002. The level of jobs at October 2003 stood at 15,419, the highest level ever recorded. Stripping out of that number jobs that may not actually have been newly created during that year, and which simply reflect a better return to the Employment Survey by more employers, it is still the case that some 600 to 700 new additional jobs were created in Gibraltar in one year, 2003, an increase of 5 per cent growth in the total economically active labour force in one year. One of the main growth areas in employment is the international gaming sector. There are now 11 operators employing 837 people compared to 10 operators employing 708 people last November. One operator, Cassava, has increased jobs from 144 this time last year to 204 last November and 268 now. Victor Chandler has similarly expanded to 294 from 253 this time last year and 265 in November. Gaming Tax revenue has increased from £1.8 million in 2000/2001 to £3.2 million in 2003/2004 and is projected to rise this financial year to £3.9 million. We expect growth to continue in this sector. The Government are planning to strengthen the gaming legislation and regulation in Gibraltar, particularly with reference to internet. In this connection the Government are monitoring international and telephone gambling

developments in the gaming industry, particularly in the United Kingdom in the light of their proposed legislation to modernise and regulate UK gaming as set out in their November 2003 draft gambling bill. As mentioned in the House last year, the Government will take whatever legislative or other steps are necessary to ensure that Gibraltar remains a premier attractive jurisdiction for reputable internet and telephone gaming operations. The Government's policy remains as outlined previously that it will only license blue-chip companies with a proven track record and good financial standing. Tourism and the port continue to show growth and resilience to external obstacles which nevertheless curtail their potential. Visitor numbers have once again risen to record levels at nearly 7.8 million. Air arrivals continue to rise as do arrivals at our hotels. Cruise passenger arrivals have also risen to record levels. Yacht arrivals have also increased by 9 per cent on the whole a most creditable performance of growth. No doubt all this will be written off on the basis that some other destinations have grown by more. The hon Members should acknowledge the fact that other destinations do not suffer our small size, our limited number of hotel beds and transport infrastructure, nor the problems endured by our airport and our cruise terminal at the hands of Spain. The port has similarly seen increases in excess of 10 per cent in both numbers of ships visiting the port and bunkering. Both of which activities have attained record levels yet another year in succession. I take this opportunity to congratulate my Colleague Joe Holliday for the committed and expert manner in which he constantly and consistently delivers commercial success for both our tourism and our port sectors. The value of imports excluding petroleum also showed an increase of nearly 12 per cent.

Finally, the Finance Centre continues to defy the laws of gravity in the light of the challenges that it faces from continuing uncertainty in relation to tax reform and the exempt status company, and the impending Taxation of Savings Directive, for which legislation is now on the agenda of this meeting of the House. Both areas of uncertainty should improve soon. It seems increasingly likely that the Taxation of Savings directive

will come into effect in July next year if not on 1st January 2005 as had been envisaged. Most banks in Gibraltar do not regard the Directive as destructive of the viability of their operations, even though they may experience some short term disruptions. On the tax reform front, the House already knows that litigation has now commenced to challenge the European Commission's finding of State Aid on the grounds both of material and regional selectivity. We hope shortly to be able to make an announcement in respect of arrangements relating to the tax exempt company. In the meantime our Finance Centre continues to develop away from its historical tax haven base into many more areas of more sophisticated international finance centre work. The Government encourages such diversification which gives our Finance Centre more strings to its bow, thus enabling it to withstand challenges to any particular line of business in the future. Banks, banking remains pretty static in terms of licences but the existing operators are very profitable and continue to grow their business, their profitability and their employee numbers. These are currently fluctuating at around 650 up from 600 in 2001. Insurance continues to be one of the exciting new growth areas. There are currently 39 insurance companies, up from 31 last year, 22 in 2002, 13 in 2000. Employment in insurance companies presently stands at around 190. The Company and Trust Management sector continues to perform well, despite being the sector most affected by the uncertainty surrounding taxation. Although the incorporation of Gibraltar companies continues to show a decline, as expected, levels of business is holding up well. Trusts under management continue to increase as do the number of companies for which management services are provided. The number of licences also grew in 2003 to 354. HNWI business continues to grow but the latest new growth area is futures or derivative trading. There are now 120 traders established in Gibraltar, compared to 80 last year, 20 in 2002, 7 in 2001 and just 4 in the year 2000. Early this year I inaugurated at Europort the third largest computerised derivatives trading floor in the whole of Europe, run by one of the world's leading futures trading companies. All of this increase in activity has resulted in a 6.6 per cent increase from 1,883 to 2,007 in the number of people employed in financial services in

2003 compared to 2002. The number of jobs in financial services has grown by 25 per cent since October 1998. We expect this robust economic activity to continue.

Mr Speaker, I now move to this year's specific Budget measures. Parental contributions towards grants for university students are abolished with effect from the academic year commencing this September. Import duty on cigarettes will rise by 7p for a pack of 20, I hope that this will encourage the Leader of the Opposition to give up smoking. That is by 70p for a carton of 200. Cigars, cheroots and cigarillos will be subject to an additional ad valorem duty of 5 per cent. Whisky, spirits and other alcoholic beverages will be subject to an additional ad valorem duty of 5 per cent. Duty on petroleum will rise by 1.7p per litre. Duty on automotive diesel will rise by 1.5p per litre. Duty on computer hardware and software will be restored at the reduced rate of 6 per cent. All the above take effect as from midnight last night. Social Insurance contributions, social insurance contributions and the need to deduct PAYE tax from the earnings of students on holiday jobs during school and university vacations is abolished. All personal tax allowances are increased by 3 per cent. The tax allowance for medical and health insurance premiums is increased from £515 per annum to £1,000 per annum. The elderly persons minimum income guarantee is increased by 6 per cent to £95.40 per week for a single person and £127.20 per week for a married couple. All social assistance payments and statutory Short-Term Benefits are increased by 3 per cent. Mr Speaker, I have the honour and pleasure to join my Colleague the Financial and Development Secretary in commending the Bill to the House.

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

HON J J BOSSANO:

I will speak on the general principles Mr Speaker, it is more difficult to speak on the merits. I will first deliver what I had

prepared in anticipation of what the Chief Minister has had to say and then I will put the record straight on his latest explanations which really do qualify him to be running an X-File because of his inventiveness, altering history. Mr Speaker, as far as we are concerned and as the Financial and Development Secretary indicated in his opening remarks, there are two Bills before the House, rolled into one. There is a Supplementary Appropriation Bill to provide additional funding for the last financial year 2003/2004, and the Appropriation Bill for the current financial year 2004/2005. This is the first occasion that a Supplementary Appropriation Bill for one year has been incorporated as part of the Appropriation Bill for a subsequent year since I joined the House in 1972 and in all probability, the first time since the 1969 Constitution created the House. I must say that the argument that has been put by the Financial Secretary that it simply coincides in time and that therefore that justifies it is not one that we accept. I will therefore deal with the general principles as regards the Supplementary Appropriation Bill 2003/2004 which is shown as Part 4.

As far as I am concerned what I have to say about that is what I would say if it was a separate Bill and there are different considerations in looking at one and looking at the other. That is to say we have got a view about the Supplementary Appropriation for last year and that does not necessarily translate into our view about the provisions that are being made for this year. On 21st of June a Revised Agenda was circulated which provided for the Statement of Supplementary Estimate No. 1 of 2003/2004 which has today been Tabled. This is what has to be debated at Committee Stage, if we were dealing with the Supplementary Appropriation Bill we would have that at the Committee Stage of that Bill. It would be a debate which would deal with the additional money that had been spent and the reasons for the expenditure. The Constitution in section 65(3)(b) states that any monies that are being expended on any head of expenditure in excess of the amount appropriated for the purpose included in the head by the appropriation law, or for a purpose for which no amount was appropriated, requires a Supplementary Appropriation Bill. It says that that

Supplementary Appropriation Bill has to specify by head of expenditure where the money is going. Well we believe that what is being done today does not comply with the requirements of the Constitution. It says quite clearly that the excess amount appropriated for the purpose in that head by the Appropriation Bill is what the Financial and Development Secretary shall cause a supplementary estimate to be produced showing the sums to be spent or that have been spent, and that this should be laid before the House, and the heads of expenditure are supposed to be included in the Supplementary Appropriation Bill. The Bill before the House does not do this, and that is why we consider in our judgement that it fails to comply with the provisions and the requirements of the Constitution. The £2.5 million we are being asked to approve from the Consolidated Fund is money that has already been spent up to the end of March 2004 in excess of the amounts originally approved by the House in last year's budget. The heads of expenditure are known and this should be identified in the Statement to the Supplementary Bill and an explanation given in each case for the extra amount that has been spent up to the 31st March. Last year we voted in Head 12 a sum of £2 million to provide for pay increases and another £2 million to provide for unforeseen requirements arising during the financial year and requiring additional funding. When money is reallocated from this Head 12 to whatever department requires the extra funding, it is done by warrant from the Financial and Development Secretary and the information is provided in the Schedule, Tabled subsequently in the House. To date there have been five such Schedules. No. 1 showed a total of £15,744 being moved between subheads but within the totals applicable in last year's budget for each expenditure head. No. 2 used £1,032,000 from the £2 million in Head 12 to supplement expenditure in five heads, leaving a balance of £968,000 available for redistribution. No. 3 again moved small sums between subheads as was the case with No. 1, but in addition took £400,000 from Subhead 1A to Subhead 1B of Head 12. The explanation given was that the money was not going to be required to meet pay increases and would be used to supplement other excess spending. This happened on 25th May this year after the close of the last financial year and when the

extra spending had already occurred. No. 4 of the same date disbursed from Subhead 1A of Head 12, £1.405 million to meet pay settlements, leaving there a balance of £95,000. No. 5, which is the last one that has been tabled, used £1.333 million from the Subhead 1B in Head 12 to supplement other spending in eight expenditure heads, leaving a balance from the amount that was already identified of £35,000 unused. Head 12 exists for this purpose, to allow the Government to meet pay settlements which cannot be quantified at the beginning of the financial year, and other unforeseen expenditure requirements over and above what was approved in this House. It is not to give this margin to the Government to meet expenditure without specific approval by the House that the provision exists. The Bill before the House today is a misuse of this mechanism and is not what it was intended for. In the forecast outturn for 2003/2004 is shown the revised expenditure by head and subhead of the amounts that have been spent up to 31st March. The Financial and Development Secretary has informed us that it includes the changes that were brought about by the five schedules and as I have mentioned the reasons for those changes have been given, but it also includes the way the £2.5 million will be reallocated by the Financial Secretary out of the Head to which we are voting it. That is not the purpose of the exercise, it is not that we vote £2.5 million here for him to then distribute because that is what we do at the beginning of the year since he is not in a position to say to the House where the money is going to be spent. It is not an exercise that we can easily do to try and extract where the £2.5 million has gone by identifying each single element in this book. The spending has already happened, the Heads are known and the Constitution in our view clearly requires this to be identified by Head where the overspending has taken place and individually approved. We cannot therefore support the proposal to put £2.5 million into Head 12 which shows a zero forecast outturn in the Estimate book. The part dealing with the Improvement and Development Fund in the Supplementary Appropriation Bill does not suffer from this defect and therefore we have no problem with that, since it actually asked the House to vote the money in the area where the money has been spent and identifies each component. I am not very sure how we are

going to be able to deal with this though, but clearly the House knows we will have to vote against the clause that refers to the £2.5 million when we come to it. This brings me to the result for the last financial year.

Over and above the £137 million provided by Heads of Expenditure the Government have used the £4 million leeway in Head 12 plus an additional £2.5 million, which is what is being included today, plus £5,988,000 spent by the statutory bodies which the Government have chosen to reflect in the Estimates as if it was money that was going to be spent in the current financial year after 1st April. Since there is a Supplementary Appropriation Bill before the House and the Heads of Expenditure in which this amount of nearly £6 million is going to be reflected can be identified, it would more accurately reflect the position of the Consolidated Fund if for example Head A which currently shows a payment of £14.4 million to the Health Authority for 2003/2004, when in fact the Health Authority required in the last financial year £4,225,000 extra and spent the money, if this were to be shown in our view in the forecast outturn and in Part 4 in addition to the £2.5 million. Given the fact that there is a Supplementary Appropriation Bill, the passing over into the current financial year in fact distorts the reality of the amount of cash that there is. It means that when we are looking at the estimate for the amount that is going to be provided for the Health Service we are here going to be voting £22.5 million for the Gibraltar Health Authority when in fact they are not going to get £22.5 million of money to spend, because they have already spent £4.225 million last year, which must have been covered by an advance from the Consolidated Fund because otherwise there would be people who had not received payment. The effect of this is that last year the amount that they really needed was £18,625,000 and that therefore this year, what we are voting in terms of fresh money when we adjust for the fact that the £4,225,000 is money that they should have received last year and which they spent in anticipation of receiving it, the amount this year is £18,275,000. So in fact what the Government are asking this House to do is to give a subvention to the Health Authority for the current financial year which is £350,000 less than what they required last year

and what we are providing by moving the payment into this year. So if one were to look at the estimates in the absence of that information one would get the impression that in fact the Health Service is getting £8 million more than they got a year ago, when in fact what they are getting is £350,000 less. The fact that almost £8.5 million has been spent over the estimated approved budget, the £2.5 million and the £6 million, is not in fact reflected in the Summary on page 5 giving the forecast outturn. The real cash position of the Consolidated Fund is that the deficit for the year just ended is £7,322,000 and not £1,344,000. That is the reality of the position. As well as overspending £8.5 million the Government failed to achieve their projected revenue and therefore the effect was that instead of the year finishing with the estimated surplus that we were told in the House a year ago of £6,744,000, it has ended in the red to the tune of £7,322,000, a result of £14 million worse than projected. Since the Chief Minister likes to come here every year to boast about all the things he has done since 1996, he can add to his long list having achieved a record worsening of the Government's financial position which beats all previous records.

The House may recall that a year ago I predicted that there was not the remotest possibility of the Government keeping to the level of estimated expenditure. The Government planned their recurrent expenditure in 2003/2004 to go up from £158 million of the preceding year by £2 million and this was inclusive of the £4 million in Head 12 to meet pay settlements and unforeseen expenditure. The £5 million over and above the £160 million was to provide a grant to the local charity, which was the terminology that we used last year when it was considered by the Chief Minister sensitive to mention the name of the local charity, since he has mentioned it twice this year I assume that I can now mention it as well, and therefore it was £5 million given to Community Care Limited, which this year he says is additional capital payments to maintain their capital and therefore is not really part of recurrent expenditure. Well that was not how it was shown in the Estimates but in fact in making the comparisons between one year and the next, I made the point last year that we needed to take that out of the equation because it was not

something that was reappearing every year. The £5 million that was put in that Estimate at the time I predicted would only be possible to do this and come up with a surplus at the year end, if in fact the revenue was better than was being anticipated, given that there was not enough money in the rest of the Budget to meet departmental costs. Although I warned that the projected £6.7 million surplus was not going to be achieved and that in fact the year might end in a deficit, I must admit that the massive gap of £14 million between the estimate and the forecast outturn is much greater than I thought was going to be the case. However, I am questioning not just the credibility of the expenditure requirements but also the revenue expectations a year ago. The Government have projected an increase in income tax receipts from £65.7 million to £68 million, and I said that this was likely to be exceeded based on past experience. However I questioned how they expected to achieve £2.5 million more in import duty from £29 million to £31.5 million when in fact they had previously shown in 2002/2003 an increase from £29.9 million to £31 million and achieved in fact a drop of £900,000 and collected less money by only getting £29 million. I asked if there was no increase in import duty where was the extra £2.5 million coming from and I had no answer when the Chief Minister replied, and I was going to say that I hope that I will get an answer this time but of course we have got an answer this time. It may be that it is easier to give the answer that the import duty is going to be increased on a range of things to produce more money this time, because this time is after November last year, last time was before November last year. That may be why the Chief Minister pencilled in £2.5 million and then when he decided on the date of the election decided to rub it out. In 2003/2004 the import duty was £3.5 million less than expected, so in fact the projection that he put in last year's budget which was that he was going to collect £2.5 million more, turned out to be not just wrong in estimating how much more was going to be obtained but actually produced a result of £1 million lower than it was in 2002/2003 and only £28 million came in. It is still incomprehensible unless the explanation that I have pointed to has hit the nail on the head why the Government were hoping to get £32 million without raising anything when in fact the trend on the £28 million must

have been there already, unless something very drastic happened in the second half of the year. Last year the Government claimed that the forecast outturn for 2003 was an over-expenditure of £4.2 million more than the original estimate of £158.1 million, which the Chief Minister argued was reasonable estimating and a reasonably good level of budget control. I do not know whether he would apply the same definitions this year to the result. In fact today we have the final figure for the preceding year 2002/2003 and that figure shows that the forecast expenditure which was £158.1 million was not in fact what was actually spent and that the expenditure came in at £600,000 less, at £157.5 million which was the figure that we had here in this year's Estimate compared to the original estimate of £153.9 million. However, as I pointed out to him a year ago, he was not comparing like with like or apples with apples as he now likes to say. He is in a vegetarian mood nowadays. Because £153 million included the £5 million grant to the then anonymous charity, now revealed to be Community Care which was not proceeded with. So in fact when we look at the figure we need to compare the original one without the £5 million since that did not happen and the Chief Minister when he exercised his right to reply acknowledged that in fact it was legitimate not to have proceeded with that money as otherwise it would have eaten into the estimated surplus that there was in the book. The original estimated recurrent expenditure therefore, for the provision of public services was £148.9 million and the final result came in at £157.5 million, after we have taken out the £5 million grant which did not happen. This was an overspend of £8.6 million not as he claimed a year ago £4.2 million because he had ignored the disappearance of the £5 million grant from the original figure and he was comparing the figure with the £5 million with the result. Of course that was not an accurate calculation. That is why I told the House a year ago I do not think that there is the remotest possibility of keeping anywhere near these figures in the current financial year. Because in fact they had just exceeded the previous year by £8.6 million and they were not providing any money at all extra in the year other than the money in the Supplementary Head 12. As I have already shown, the forecast result of expenditure incurred in 2003/2004 by me has proved

right, and the overspend on this occasion is £8.5 million, £2.5 million in the proposed supplementary for the preceding year and £6 million in the deficits of the accounts of the statutory bodies. So we have a situation where this year the Chief Minister has spent part of his speech arguing that there has been a laxness in budgetary control beyond the expenditure approved by the House, and last year he was congratulating the departments for their reasonableness in keeping to budget, except that last year they overspent £8.6 million and this year they have overspent £8.5 million. I suppose he just reads the figures that get put in front of him instead of scribbling it all like I do with a little calculator. If I pass my calculations to him then maybe he can try to reconcile one with the other.

Can we expect anything different in this financial year, Mr Speaker? I think it remains to be seen. Clearly the amount that the import duty increases which came in last night is estimated to achieve is already reflected in the Estimates otherwise there would be no other possible explanation. But he has said that the other areas where the Government are planning to increase charges like electricity, water and Government rents, are likely to be done during the course of the year and I take it that the figures in the Estimates do not in fact include any expectation of the sums that that might produce. But obviously on that basis, based on what he has said, that the figures are not there, then effectively what we are saying is if and when those increases come in during the course of this financial year then it would have an effect on increasing the revenue that is being estimated and obviously in increasing the surplus that is being estimated of just over £2 million. But I have to say that our conclusion is that the Government's approach to spending seems to be that they take on commitments without doing their homework as to what it is going to cost and then they find the cost after the event. There is much, as far as we are concerned, money being spent in areas where we believe it is wasteful, but it is their judgement and their priorities that determine that expenditure and therefore the Chief Minister will come here and say that he is still intent on spending huge sums of money on the Theatre Royal and some may believe him and some may not, I think I belong to the not camp,

but he can carry on saying it. The warnings we have issued in the past have dealt as he refers to the rate of growth of Government spending which was growing faster than revenue and faster than the growth rate of the economy. The argument that we have used is that that position is not sustainable and it is self-evident that it is not sustainable. What is new is the recent statements by him when the surplus started coming down and has now disappeared over the horizon, that this is a deliberate Government policy, that the Government had been deliberately wanting to get rid of the surpluses. He did not wish us to think that and he has always come to this House describing the position as prudent and robust and all the other adjectives that he uses, irrespective of whether he had a £17 million surplus, a £6 million surplus or a deficit. Well clearly if the definition of anything being robust, sustainable, prudent and all the things is because he is responsible, they must all be all those things because otherwise it would reflect some deficiency in him, which is simply not admissible, then of course I understand the adjectives that he uses. I must say I am very happy to learn that the economy has grown by 8.4 per cent and I look forward to getting the detailed information on the composition of the GDP to see where the components have been rising to contribute to this growth, and the Government, the Chief Minister says it is not true that he has argued in the past that the economy could not grow at more than 6 per cent. Well I take it the Chief Minister will not deny that he is being consistently quoted in these interviews that he gives to this journalist that writes on economics and writes about the explanations that he has and what the Chief Minister is doing with the economy, and that all the time in all those articles he is quoted as saying that the economy is growing at around 6 per cent and that it is firing on all cylinders. Well if it is firing on all cylinders and the speed at which it is moving is 6 per cent per annum, then by definition it means that unless he is going to add more cylinders to the engine the economy cannot grow by more than 6 per cent. Unless he knows something that I do not and he watches more X-Files than I do which enables him to move perhaps backwards and forwards in time, which is what he constantly does here when he finds himself in a difficulty over having to explain some of the things that go wrong in his

administration, he immediately takes that car that moves one back in time and goes back to the future now and starts talking about what happened between 1988 and 1996. Well he can keep on doing that in every Budget because every time that he does that the more he spends talking about those years, shows the more concern about what is happening now and wants to sweep it under the carpet. Mr Speaker, if indeed the Government were of the view that it was not possible to increase economic growth any faster, then of course the only other option would be increasing revenue or cutting spending. Now if he does not believe it, then why is he doing those things now? In fact the analysis that we have made was that there were, that the Government sooner or later, it has just happened sooner rather than later, would have to be faced with raising revenue or cutting spending or a combination of both as an alternative to a higher rate of economic growth pushing up Government revenue by itself. Now, this year the Government presumably are estimating that the growth rate of the economy is not going to be reflected in increases in revenue beyond what has been happening in the past, because the figures in the Estimates do not indicate that there are going to be more sums of money other than from betting shops, coming into the Government coffers. That is the activity that is going through the roof and nothing else.

The other action being taken by the Government is the attempt to improve the collection of revenue by reducing arrears. I need to remind the Chief Minister that we have heard it all before. Perhaps he may remember that some years ago he announced in the Budget a blitz on arrears, I do not know whether the blitz of that time was more draconian than what he proposes to do now or less, but I can tell him that the position since he announced the blitz was that the arrears has gone up every year since the blitz. I do not know whether the non-payers have gone into air raid shelters to avoid his blitz but that is the situation that is reflected in the audited accounts which as he says, the Auditor every year points out to the Government that they are doing nothing about arrears and that they keep on going up. So we will have to see what the blitz produces this time. When I asked him in a question earlier in the meeting of the House as to the

position of putting companies in liquidation, because one of the things that the Principal Auditor had said as I pointed out to him, was that in his last Report of 2001/2002, the Accountant General had stopped action being taken against some companies, and I wanted to know how this came about given that the Principal Auditor seemed to be saying that he was not being given any explanation as to why at the eleventh hour action was being stopped and that therefore the recalcitrant payers did not take the threats seriously, because they did not materialise. In fact what he said was that it finished up on his desk and he was the one who sort of triggered the action but that in doing that clearly something that had to be weighed up was the effect of putting somebody into liquidation in terms of employment and so on, and I think that is a reality, a political reality in Gibraltar which cannot be escaped. It is no good saying to the Government, *"look, we want you to collect the arrears even if it means busting up the private sector"*, because at the end of the day what we collect in arrears is going to be multiplied with what we stop collecting in terms of having x people on the dole. So it is not an easy exercise. If it had been an easy exercise it would have been done by somebody else a long time ago. The revenue estimates for the current year as far as we can tell, do not have pencilled in therefore amounts in expectation of higher collection of arrears and we are assuming that to be the case. Therefore if there is success, it will be reflected in an improvement on the situation shown in the book. The only area where I wondered whether there was an element of arrears and perhaps he can clear that up when he replies, is in the £12.5 million collection of electricity which shows a higher year to year change this year than has happened in any other previous year. I do not know whether that means that they are expecting a reduction in arrears or they are expecting that to be the reflection of the increased electricity charges that have been mentioned or it is Part of one and part of the other, or whether in fact neither of those two elements have been reflected. We would like to know so that we can look in at the estimated performance of the public finances for the rest of this year so that we are able to make some kind of judgement as to whether the performance of the revenue and expenditure of the Estimates is likely to be moving in one direction or another.

Clearly how much has been already factored in makes a difference to that judgement.

Whilst on the subject of the performance of the economy I should like to remind the House of the statements made by the Chief Minister in the introduction of last year's Budget. He has not said it this year but he has claimed in the past that I attribute statements to him which he does not make and then attack him on that basis. I can only suppose he makes this claim because this is precisely what he does, and therefore to use a favourite phrase of his, it is a self-serving argument to impute what he does to others. Therefore he does it and then he uses his own misleading line of argument, as he has done today in respect of the Pension Funds which I will deal with later, and as I will show he did last year. In fact what he said last year was before I had even spoken on the Budget, he was the opening speaker I had not said a word so far when he said this, he said, *"in 1999/2000 the Government collected £13 million in corporate tax, in the year 2002/2003 the Government collected £17 million on company profits, that is an increase of 30 per cent in just two years."* Incidentally Mr Speaker, it says something about the Chief Minister's numeracy skills since it was 30 per cent increase in three and not in two years, which makes me wonder whether he has difficulties when he starts getting into double digit counting. Be that as it may, he then went on, we have an increase in corporation tax yield in just two years of 30 per cent and if the hon Member, meaning me, wishes to continue to argue that the economy of Gibraltar is not growing and has not grown in the past since 1996, then he has practically no chance of persuading anyone. Well I have always said that the economy of Gibraltar was not growing as fast as we believe it can and that the Government are not doing enough to make it grow faster. It would have been absurd to have said that there had been zero economic growth since 1996 since the growth in Government spending alone is sufficient to produce economic growth. He also attributed to me another argument that I had never used. He said, as much as the hon Member might try he cannot explain a 30 per cent increase in corporate tax yield by some strange analysis of the collection of arrears. I have never used this

strange analysis as he puts it. But I can tell him who has, he did. In 1997 he was arguing that the yield of corporate tax at over £10 million was the result of the collection of arrears during the time of the GSLP. This was the level he inherited. Since he likes to talk so much about what he inherited as if the world had been created just before he came into office, and nothing had ever happened before in the history of Gibraltar, well I can tell him that he inherited over £10 million in corporate tax and that we inherited in 1988 £2 million a year, and that the difference in the term of office of the GSLP was an increase of 500 per cent in the yield of corporate tax and that I never used it once as evidence of economic growth of this size. So he can see that not only have I not argued that 30 per cent increase in company tax is not indicative of some growth, but I have never placed this as an indicator in the time or boasted of the 500 per cent increase as he boasts of the 30 per cent. However, since he argues when it suits him that 30 per cent in two years is everywhere else in the civilised democratic world regarded as an indicator of economic health, he might wish to dwell on one thought in respect of this year's figures and what they indicate. There is now shown in Head 1 Subhead 2, company tax combined with exempt company payments, and the figures for 2002/2003 are shown as £19.4 million, and the 2003/2004 is shown as £19 million, and the 2004/2005 is also shown as £19 million. Does he now believe that zero growth in company tax yield in three years, everywhere else in a civilised democratic world is regarded as an indicator of economic ill health, is it that the converse of his argument of last year does not apply? Let me say, it is not a view I share, and I sincerely hope that he does not believe that because we have enough problems in the Health Service as it is without adding the burden of ill health permeating our economy as well. The growth that he has given for the year 2001 of 8.4 per cent is something that we hope will continue when the figures are produced for subsequent years and that in fact we hope that the rate will be even higher, if the figures on employment are indicative of that then what we need to assume that the economy is growing faster today than it was growing in the year for which he has just given us the figure. As I have said, the yield from company tax being static between 2003 and 2005, the year we

are in, according to the figures in the Estimates, are not an indicator as far as we are concerned that the economy has stopped growing but what they are an indicator of is that in the current financial year the Government are not expecting to collect more in company tax, and that is difficult to understand. Because it either means that there is no expectation of being able to collect arrears in respect of this sector, or even worse that they are going to be collecting arrears but the fact that the total is no higher means that the level of profits on which the tax yield is based, has fallen in respect of current payments. We see no reason to believe either of these two scenarios and therefore we have difficulty in understanding how it is that a figure of £19 million is there when it was £19.4 million two years ago. Indeed, the Employment Survey levels to which the Chief Minister has referred in respect of October 2003, ought to be an indicator that if anything companies are making currently more profits than they made two or three years ago. In looking therefore at the context of the Budget proposed and the expenditure proposed this year and the estimated surplus shown on page 4, we are doing so on the basis of the economic growth that has been occurring until now, that is the average that there was until now, because we believe that is what the estimates of revenue reflect and we are not factoring in the 8.4 that has been revealed this afternoon. Therefore we look at these figures and try to evaluate whether the appropriation which at first sight appears to be an extra £4.8 million, going up from £165 million to £170 million, is what the Government are likely to require and what departments are likely to require to provide the services which the House asks them to provide in approving the Appropriation Ordinance. However, the figures that are there, as happened in fact last year when I mentioned the need to deal with the £5 million grant, are not comparable if we need to make a judgement as to whether the amount that is being provided extra this year is going to be sufficient or whether the Government are going to find themselves needing to supplement those sums during and possibly at the end of the financial year. A number of adjustments need to be made therefore to compare like with like. The £170 million as I have already mentioned includes the £6 million already spent last year and which we have argued ought

to have been shown as part of the forecast outturn and included in the Supplementary Appropriation Ordinance for 2003/2004. So we have £164 million of new money, after we have taken out that £6 million. However, this is not as might appear a £1.2 million reduction because last year there was a £5 million grant to Community Care, which was made from import duty and paid over in October 2003, the first time such a grant has been made from the Consolidated Fund since 1st April 1996. Because as we all know he chose to remove money from the Short-Term Benefits Fund and I will deal with that when I answer the points that he has made. The fact that the £5 million was paid from the Social Insurance Fund into the Social Assistance Fund and then subsequently transferred to Community Care, as has been mentioned today, is something that we have been opposed to from the very beginning and as far as we are concerned, that is money that should be put back into the Social Insurance Fund and that therefore the Government will have to pay back at some stage. That is our view and that is the view that we put to him at the time. So when we are looking therefore at the amount that there is in the Appropriation Ordinance we find that there is £2 million of supplementary funding for an expected expenditure arising during the course of the year. The same as was done a year ago, and in the expenditure estimates what we have is a position in which the amount that was provided for the pay rises last year which was £2 million, we learned during the year as a result of the supplementary schedule of relocations that I referred to earlier, that only £1.4 million had been used for the payment of pay rises and £400,000 was moved and added to the £2 million that was the supplementary for last year. This year there is a sum of £1 million for pay rises, so in the amount that we are adding to the Estimates for this year we have in fact a £1 million there for pay rises and I can only suppose that in estimating a lower amount the Government are doing so because they have indication of the trend of pay rises in the United Kingdom, given that as a result of parity this will be translated here this year, but clearly they are expecting to have to meet a lower level of pay increases this year than they expected last year because last year they put in £2 million and this year they are putting £1 million. The other element in the expenditure comparison

between the forecast outturn and the provision this year is that there is a sum of £1.158 million increase provision in Consolidated Fund charges which do not require the approval of the House mainly made up of increased pension costs and increases in debt charges. This would indicate that when these components are adjusted the Approved Expenditure Estimate is around £300,000 below the forecast outturn, except for the fact that the changes introduced by the removal of electricity expenditure from the Consolidated Fund and its transfer to the Electrical Authority alters the picture and therefore we need to make an assessment of how the picture is altered comparing the outturn for the year ending March to the estimate for the current year. On page 6 we have a figure of £8,134,000 which is the cost of the Electricity Department for 2003/2004 for the part of the year that it remained as a Government department. This is no longer in this year's Estimates and therefore in the outturn of last year there is an expenditure item which is no longer there, but it needs to be balanced by the fact that there is in this year's Estimate a cost that was not there last year which was the payment of £2.7 million to the Authority, made up of a subvention to meet a deficit of £1.5 million and the payment for electricity services provided to Government departments. This would indicate that given the difference between the £2.7 million and the £8 million that if we were to compare like with like, that is to say removing the Electricity Authority from last year's costs and comparing the cost of the remaining departments that there is available in the Appropriation Ordinance a sum of around £5 million to be distributed amongst the different expenditure heads. Assuming that the calculations that I have made are accurate, we then come to the question of how realistic is it that the Estimates of Expenditure that we are going to approve in this House will not be exceeded, independent of whatever action may be introduced by the Government to have more rigid controls over not spending more than is approved.

If there is indeed an extra £5 million is that enough? Well, in looking at that we have to look at all the statutory bodies that are not included now in the Consolidated Fund and there what will we find? We find that the ETB is being provided with £500,000

less than they spent last year. That the Electricity Authority is expected to reduce its deficit by £1.4 million from £2.9 million to £1.5 million. That the Elderly Care Agency will only get £20,000 more in the current year than they spent last year in what was a budget of £3.5 million. That the Social Services Agency is having its budget cut by £580,000 and that the Health Service, after having to pay extra rent for Europort of £1.25 million, and when that is taken into account finishes up with a budget this year of £42,025,000 which happens to be £323,000 less than they actually spent last year. An awful lot of ifs in items of expenditure there that have to materialise for the estimated expenditure to remain and for the surplus to stay at just over £2 million subject of course to the information we have been given today that there will be extra revenue created during the year. It seems to me that it is more likely that the Government will be facing pressure for supplementary funding in respect therefore of these statutory bodies than in the actual Government departments in the Consolidated Fund if the figures in fact that I have quoted and the calculations that I have made are in fact an accurate assessment of the picture in the book. So we may well find that it is in this area that the Government may need to come back to the House to supplement, and these are the areas that the Government have said are demand-led. I think that when I asked the Chief Minister frankly not expecting the answer that I got, whether the Social Services Agency was likely to spend the £2.3 million that had been voted, I certainly did not know that the answer was going to be that they had spent £3.2 million. But of course if we are looking at the Social Services Agency and the fact that it has spent £1 million more than was originally voted, it is difficult to understand why in that £1 million it is the Respite Care that suddenly becomes the important area to claw back. I accept what he has said in defence of her position as the Minister responsible, that she has provided more than was there before, but she also needs to understand that in areas such as this once we provide a service people adjust their lives to it and it is very difficult, and really I would have thought that it would not be impossible to find if there was a need to bring down the budget of the Social Services Agency and I would say that there are other areas of Government spending that can be more easily

tackled without repercussions than the Social Services Agency. But if there is a need to do it then why not look in other places as opposed to looking in the Respite Care which affects such a small group of people. That is why we urged her to wait for the opportunity that we should debate this in the House and then maybe in that debate it would be possible to persuade if the Government feel so essential to cut, that the cut which is not astronomical compared to the figures we are handling, could fall somewhere else. I take it there will be a cut from what has been said in the current financial year as compared to what was actually provided in the year that has just gone by. The Chief Minister seems to say that it is not a cut if one spends less this year than one spent last year because what one spent last year was not what one hoped one would spend. Well look I remember him telling me whenever I have questioned him in the past about the figures that we look at, that Estimates are just estimates and that we cannot hold him to estimates. So if at the end of the year reality is different from the estimates, well so what. What counts is the final picture not the estimate. That has been his argument in the House on previous occasions. Now when he does not like what the final figures produces he turns round and he says no, no, no, the importance is not what the final outcome is, the importance is that we must give to the estimates because that is what the House approves and therefore people that are spending the money and controllers of expenditure must know that it is completely wrong for them to depart from the estimated amount that the House has approved. Well look because that is what the Government considers that the Government will require to provide a level of service and if they find that the level of service turns out to cost more than they hoped, well I do not think it follows necessarily that the answer has to be that the figure that was put there is sacrosanct and the service has now got to be reduced. If that is the view of the Government, fine they are entitled to that view but what they cannot then do is moan because somebody tells them they are cutting. Because they are cutting. In looking therefore at the projected surplus this year and the fact that he has argued without conviction that it has always been his intention to bring the Budget down, and that he has always said it, he can probably

point to always having said something even if it is diametrically opposed to what he claims he has always said on another occasion, because he constantly contradicts himself. Therefore on that basis he can always say that he has said something at one point in time and I can always say that he said the opposite at another point in time and I now propose to do exactly that. I would remind him that in his Budget speech of the year 2000 he preached to us the following which I now proceed to quote. *"So when one looks at the size of the surplus the Hon Member",* meaning me, *"knows how part of that surplus is generated"*. Let me say that that was code for the revenue from a particular commodity which like a particular charity we had not mentioned before, but which this year we have mentioned because he has said that 50 per cent of the money he gets from the duty of tobacco is the equivalent of so much and now from that everybody will be able to calculate the duty on tobacco, from the figure he has given us today because he compared it to the expenditure which is available in another area and he said 50 per cent of the duty of tobacco will pay for that.

In the year 2000, when he was being more skimpy with his information in those sensitive areas, he simply said that I knew how much of the surplus was generated and that he said our prudent approach is to use that money whilst the sun shines. Let me say that when we were together at the Conservative Party Political Election Rally which masqueraded as a Chamber dinner, I told him that if he intended to increase tobacco I would stop smoking, so I suppose that is why he has decided that it has now got a dual benefit, one is that he can blame me for the increase in tobacco and say it is my fault, because he is doing it to protect my health. He then went on, but what we will not do is make the Education budget, or our Health budget, or our ability to continue to pay the Civil Service, or our ability to do the things that are important year in and year out in this community, dependant on a budget surplus to which it is contributed by earnings which we could loosely call of poor quality, meaning that their sustainability is not in our hands. Therefore that is a factor which we take into account and which I would urge them to take into account also. We have heeded his words and we have

taken into account what he said to us in the year 2000. But what I cannot say is that I have any confidence that this philosophy can logically be applied to the £2 million estimated surplus of this year, especially when the £2 million estimated surplus of this year as far as the figures in the book are concerned, are almost entirely dependant on a £4 million increase in import duty and when we know where part of that import duty is being generated, which was the area which may not be so sustainable and the same might be said for the duty on petrol. So, I do not know whether it is that force majeure has made him abandon that advice that he gave us but since we listen very carefully to everything he says when he talks sense, I mean it is easy to do that because he does not do that all that often, therefore we have borne in mind what he told us then. This year there is an area that I also need to look at and that is the Improvement and Development Fund. In the Improvement and Development Fund this year there is also an innovation, which is that the column which showed balance to complete in respect of each project in the I&D Fund, which has been present in every previous year's estimates is missing. We consider that there is a legal requirement for this and that therefore the Estimates have been incorrectly produced and are in breach of the provisions of the Public Finance (Control and Audit) Ordinance which states the following in Part 4, the part dealing with the Improvement and Development Fund. And it says in section 28 "*the Financial and Development Secretary*", that is speaking about the Improvement and Development Fund, shall cause to be prepared and laid before the House of Assembly before not later than 30 days after the commencement of each financial year, estimates of revenue and expenditure of the Fund for that year, and such estimates shall form part of the annual estimates of the Government to be laid before the House in accordance with the provisions of section 65(1) of the Constitution. (2) The estimates shall be in such form as the Financial and Development Secretary may from time to time direct, however he does not have a free hand. Provided that the estimates shall conform with the requirements of proviso (b) to section 41, which deals with the appointment of officers as controlling officers, and (b) show in respect of each development project for which provision is made therein the total

estimated cost of the project and the revised estimated expenditure on the project in the preceding financial year and the amount expended in previous financial year. The effect of having the column balance to complete, is that if one has the amount from the preceding financial year, which is the final figure, plus the outturn plus the estimate, plus the balance to complete, one complies with the requirement that the total estimated cost of the project is being shown. And in the absence of that column the total estimated cost of the project is impossible for us to establish unless what we are being told is that every single project in this year's estimates is going to be completed before 31st March 2005 and nothing is going to be there to complete after that, including the infamous Theatre Royal which the Financial and Development Secretary says there is no balance to complete. So perhaps it is a point that can be addressed between now and when we come to the Committee Stage of this Bill because it is not that we are against supporting the Improvement and Development Fund expenditure, we are in favour of it, but we do not see that we can support a Bill that we consider is deficient and does not comply with the requirements of the Public Finance (Control and Audit) Ordinance. It would need to be looked at I would have thought and then if they feel that they are complying and they can persuade us, well fair enough, and if they feel that they are complying and they cannot persuade us, then we shall have to vote accordingly on the basis that we do not think that it is right what they are doing.

Mr Speaker, something else that I wanted to mention was that in last year's exchanges a great deal of time was devoted by myself and the Chief Minister to the input/output study report. I ventured to tell him that the expenditure from tourists which was published subsequent to the figures that were quoted in the report, was an opportunity to test the predictability of the report by reference to an outside factor which was changing. The Chief Minister when he replied, rubbished everything I said, argued that that showed how little I knew about how the system worked and that all the experts agreed with him. Well I have to tell him that in the reply that I obtained in September to that specific query which I had

submitted on 19th August 2003, Professor Fletcher answered that my calculations were correct. He said the answer is yes, provided the £177 million is spent in exactly the same pattern as the £145 million was spent, in which case the increase would be pro rata. If the expenditure pattern changed, then the overall multiplier value would change, which is exactly the explanation that I gave in the House at the time in last year's Budget when he said it showed how ignorant I was about economics and that I did not know what I was talking about, and how all the experts told him that he was right and I was wrong and that I did not know. I can only suppose that in fact his grasp of economics is so limited that he cannot even understand what the experts tell him, just like when he kept repeating here year in year out that all the experts confirmed that the MOD was not part of the GDP but part of the GNP. Something that he put right last year when he came back and acknowledged that in fact it was and had always been part of the GDP. But of course he also has to remember that in the preceding year, when he had the draft report, he had told me in the House that the Government's intention was to publish the full report, but that if for any reason they decided not to publish the full report, then he would make available to me on a confidential basis, the bits that were not being published. He subsequently has argued with me that the reason why my calculations are incorrect is because I do not have the bits that he has not given me and that I would only be able to get the figures right if I had the full report, which I do not have because he does not give it to me even though he promised me. If he has changed his mind let him say that he has had second thoughts about giving me the report, presumably thinking that if I have the report I will be pestering him even more with figures and that therefore it is a self-serving argument not to give me the report. But can I remind him that when I wrote to the Chief Secretary, I asked him to request of the Chief Minister that I should be given the report and the reply I got was that I had to write directly to him, and that when I raised the question in the House on the last occasion that I did, the Chief Minister said well he assumed I had not written to him because it was around the time of the Election, this was the reply I had in September, but that all I had to do was to write to him. The very same day that he told me that I went

out, drafted a letter, had it typed and handed it to him by hand. I still do not have the information. I think it would be preferable if he says to me, *"look, I have changed my mind and I do not want you to have it"*, and then I will stop asking for it, or else if he will give it to me in confidence just so that I can see what it is that is missing, because it seems to me that one of the things that was published in respect of previous years input/output studies was the employment multiplier, and that is the element that I had to calculate working back from the published report because in the multipliers in the transaction table that he gave me there are numbers employed but I am not sure that the calculation that I can make from those numbers is the correct procedure to follow to calculate the employment effect. I think it is important to know that because in fact if the whole essence of looking at the inter relations in the economy of Gibraltar is that we are able to see what happens in terms of money coming into Gibraltar, what happens in terms of expenditure by visitors, and what happens in terms of jobs, by looking at the Tourist Survey Report and looking at the Employment Survey Report and those different sources are supposed to link up in a relationship which is what allows Professor Fletcher to give examples in his report of the numbers of people employed as a result of £145 million of tourists or visitor expenditure in Gibraltar, then clearly from my perspective it is not enough to read it there without knowing how the calculation was made. Since as far as I can tell that is the only bit of the report that I have not seen, from the contents of previous reports I cannot see that there can be anything else other than that, I really do not see why that needs to be a State secret for it frankly. If the results are there why not the manner in which the result is elaborated.

Mr Speaker, I would like to move now to the comments that the Chief Minister has made in introducing this year's Appropriation Bill. He has given an optimistic picture of the performance of the economy and the performance of the economy is robust, and it is robust whether it grows at 7 per cent, 8 per cent or 5 per cent. So robust is a moveable target. This is like the British Government being robust over Spain are. They robust over Spain when they capitulate, are they robust over Spain when

they take up the State Aid case. So robust really is a commodity suited to the consumers' needs, one pays one's money and one picks a flavour. We think 8 per cent growth is encouraging and welcome and we hope that it will get even bigger when he publishes the figures in December and that in fact it will make possible for the Government to be able to meet their expenditure commitments without having to raise electricity or water or rent. Let me say that we may disagree with some of the things on which the Government spends money but we are not the ones that are saying that the amount or the size of the expenditure budget is too high, because it does not mean anything. Too high compared to what? What is the yardstick of what is too high or too low. So we may agree with some of the contents and we are entitled to have a different view to the Government as to what our priorities might be and not theirs, but we accept that the people decided that it was their priority that should dictate the pattern of spending last November, and therefore we are entitled to put a different view and to be critical of it and no more than that. At the end of the day it is their responsibility. But of course what we have said is that however worthy the expenditure may be, it is inevitable that in an economy of which the share of the size of the economy is the expenditure of the Government, if that share grows faster then ultimately it is not something that can be sustained indefinitely. The Chief Minister himself recognised that when he said look it was 30 per cent, it is now 32 per cent but the UK which is considered to have a low figure by comparison with other countries is 42 per cent. Well obviously, but if we had a situation where the economy grows by 6 and Government grows by 7 and then the economy grows by 8 and Government grows by 9, eventually, inevitably in the fullness of time, one would catch up with the other and that is not the possible position to arrive at. Therefore when I pointed out to the Chief Minister that the trend was pointing in the direction of that gap closing, and I will give more thought to the figures that he has quoted today, which obviously I have not been able to do immediately after he said it in his speech, but when I have the time to analyse them I will because one of the projections that we made last year was an assumption that the economy would have grown 6½ per cent as opposed to the 8.4 per cent that he has now given us,

and that was based on the fact that the average had been 23 per cent in the preceding four years, which worked out at 5.8 per cent so we actually postulated a slightly higher figure of 6½ per cent but as it turns out in fact, the result is better. [*Hon Chief Minister: I cannot take the credit for it.*] Well, yes he can take the credit for it being better but I do not think he has a problem in taking the credit for it. He takes the credit for everything else, he takes the credit for Community Care which has been paying people since 1996 and he only put £5 million in of his money in October. Yes, he said the elderly people can forget all the scaremongering because their future is guaranteed yes. Yes it is guaranteed because I left them £63 million not because he put in £5 million. He has been able to have the luxury of congratulating people every National Day on a National Day bonus paid by the money we left, so he can take the credit for it, he has been doing it since 1996, why should I begrudge him the credit for a mere 2 per cent improvement in economic growth, which I still do not think is enough. I was under the impression that he did not think it was attainable for the reasons that I have already given him because if he says we are growing at 6 per cent and we are going full blast economically, and he has talked about it before in this House about the under-spending in the Improvement and Development Fund, he has argued in the past that that was because there was over heating, yes over heating in the construction industry and that therefore the figure could not be spent because of lack of capacity. Well if lack of capacity is not a constraint on economic growth then I would like to know what the phrase means. So, I am glad that he has actually corrected that impression today that I had of his approach to economic growth and that now he is saying only that it is not sustainable indefinitely and that 12 per cent is not possible. I hope he hits 12 per cent and then he will find that it is possible. I have to tell him that look given the Employment Survey Report for the year for which he has just given today the GDP of 8.4 per cent, I would expect that the GDP for the year that has just ended would have grown much more than 8.4 per cent, given that we have got an increase in employment levels much higher this year than was the case two or three years ago. So, he may yet be pleasantly surprised and find that he is once again wrong. I am surprised

by the quote and I will have to take a closer look on the definition that he gave that the public sector jobs given the widest definition, including people employed 100 per cent on publicly financed contracts, had grown by less than I thought they had. I was one of those who shared the impression that that.....

HON CHIEF MINISTER:

Does he want me to give the history of that? He has got to listen to all of my words carefully on that. Growth, if publicly funded employment, would not include people that were publicly funded but had just moved to another organisation. For example, if before there were employees of Milbury which was Government funded and they have now become more directly a Government employee through the Social Services Agency, they are not in the growth even though they suddenly appear on the public side of the equation. So it is the growth in publicly funded payroll that was the important part of my statement.

HON J J BOSSANO:

Well I appreciate the interruption for that clarification but I took it to mean, and if I am wrong perhaps he can correct me or answer me when he replies, I took it to mean in fact that because he was saying it is the widest possible definition that he was doing that, that is he was not counting twice the people who moved from one side of the fence to the other but I also assumed he was not counting them twice if they moved in the opposite direction. That is not the case. I see. So in fact it means that if there are publicly funded estate wardens which have now been relocated to somewhere else in the Buildings and Works, and they have been replaced by contracted estate wardens, that does not show as an increase. Well I would put it to him then that it is not the widest possible definition, there is a wider possible definition.

HON CHIEF MINISTER:

Mr Speaker, because this answer was for others who are not in this House who made the allegations in the first place, I just did not want them to think that the answer was limited to Civil Servants as they understand the phrase. It may be possible to widen it even further than I had widened it but the only point I was trying to make was the case which would have been worse than the one that they thought they were making if they had been right.

HON J J BOSSANO:

I think what is true is that the Government of Gibraltar is by far the biggest employer of Gibraltarian workers and that in fact it is true that most Gibraltarians would rather work for the Government of Gibraltar than work for the private sector, if they had the opportunity and the choice. I do not think there is any question about that. Therefore to that extent the growth in employment in the Government of Gibraltar provided it can be financed provides better conditions and better security for our own people than the others. I do not think there is anything wrong per se in people being employed by the Government, it is a question of what he has said of using the services of the people that are paid from the public purse in a way which gives the whole community value for money. I do not think anybody in this House would disagree with that. If there are people who argue in the private sector that the public sector is getting too big compared to what they think it ought to be, all I can say is well look the reluctance to employ Gibraltarians seems to be as much on the part of the employer as there is on the part of the prospective employee. Gibraltarians do not go over the moon about working for the private sector but I have never noticed any great enthusiasm on the private sector's part to give priority of employment to Gibraltarians either. So given those facts which are there, it seems to me that the competition is limited because we would expect the Government of Gibraltar to have a policy of giving priority to our own resident labour. No Government has

ever managed to convince the private sector to do likewise and I do not see any indication of it happening now.

Mr Speaker, to round up I would like to deal with the science fiction story about what happened with the Pension Fund in 1988 and what the Chief Minister did or did not do. The Chief Minister who has either a poor or selective memory, seems to forget, even though I have reminded him of this before, that he was the one who in this House accused the GSLP administration of running down the level of the Pension Fund from the level he claims it used to be in 1988 under the AACR. With his poor grasp of figures he actually got it wrong to the tune of £34 million. Because he claimed here in 1997, when he introduced the Insurance Ordinance which was reinstating the suspended Pension Fund, he actually claimed that the AACR had left in the Pension Fund £50 million and that I had run it down to £16 million. Of course he was talking utter and complete nonsense as he often does. The facts are that the £16 million was the amount that was there in 1988, not in 1996, and that it actually went up as far as £55 million when the ODA agreed to pay the Spanish pensions for five years because they argued, at a political level and at an official level, that it was preferable from their point of view to go through the embarrassment of having to get the money approved by the House of Commons on one occasion than to have to go back every year and have nasty questions being asked so that they preferred to put up about £30 million pounds up front and to pay the Spanish pensions by paying out of the income generated by the £34 million which went into our Social Insurance Fund and was managed as a Spanish pensions sub-fund by the Crown Agents and to use that almost as an annuity, with the payments to the Spanish pensioners coming up by partly the interest and partly a reduction of capital. The Chief Minister says that to not put money in the Pension Fund is the same as to take money out. That has been the essence of his argument. He says because in 1989 and in 1990 the payment of the stamps included increased contributions for the Health Service, it means that I was taking money away from pensioners. Well no it does not mean that because in the period that more money was going into the Health

Service there was also more money going into the Pension Fund, and he may believe or he may not believe the separation of the two was an essential part of the strategy of the Government to protect Gibraltar's own Pension Funds from what was the policy of the British Government. In 1988 when we got elected the position of the British Government was that we had to contribute more than had been promised by the previous administration which was £1 million a year. The previous administration had said they would pay £1 million a year from local funds to Spanish pensioners. We fought an election and we said not one penny. When the British Government agreed to pay for five years, and then in 1993 to dissolve the Fund, when the Fund was dissolved if he looks at the Auditor's report for 1993 he will find that there was £30 million. When he took over there was more money than there is now and what he argued in 1997 in this House, was that the Short-Term Benefits Fund was over funded, that it was legitimate to argue that really it was money that could have been put together with the Pension Fund because after all it was initially the separation of Short-Term Benefits and the over funding of the Short-Term Benefits was a safeguard so that more of the money would be ring fenced and not in the Pension Fund to which the Spanish pensioners had a claim through the incompetence of the British Government. The fact that the ring fencing ended in 1997, with the restitution of the Fund was something that I put to him and I told him, *"why do you not go back to the position that there was in 1988 and create a single Social Insurance Fund and forget the distinction between the Short-Term and the Long-Term Fund."* He actually agreed to look at the possibility and put off the Committee Stage of the Bill. Right. Well Mr Speaker, how can he say then how absurd it is to say that they are from the same thing, he agreed to the possibility of merging them, and if he had merged them all his arguments would now disappear. He looked at the possibility, he decided not to do it but what he came back and said was, *"okay we are not going to do it we are going to carry on with a separate fund but what I agree is that we could move the whole of the £8 million out of the Short-Term Benefits Fund and transfer it to the Pension Fund. But that would only cure the problem for two or three years."* Those are his words. He can look at Hansard, it is

all there, I have quoted them to him before, he can shake his head as much as he likes, I suggest he does it less it might fall off. But I am afraid what is there on the record he cannot change, and he was arguing then in 1987 that the problem, which is when he put the contribution up, that the problem would not be solved by putting up contributions by £2 million and would not be solved by moving money from the Short-Term Benefits to the Long-Term Benefits, and therefore we opposed the Bill when he came here to say that the money could be taken out. We do not accept that the, in fact, the legislation has been properly honoured because it says there that the money is taken out because it is not required for the Fund. It is not required for the Fund because you chose to put it in in the first place. If one has a situation where one has got £6 million in a fund and then from the insurance contributions every year you decide to put x pennies in the Short-Term Benefits and so much in the Pension Fund, and one could choose a different distribution, and one puts in a fund that one claims is over funded before starting, £5 million more, when he said before he put the £5 million that it was already over funded, and then he came back later and said *"Ah, it has got £5 million too much I am now going to take it out and use it for something else."* Well it has got too much because he put it in and he put it in when he could have put it in the Pension Fund, and he chose to move money which had been contributed by employees, not all of whom are Gibraltarians, and not all of whom are resident and what does he do with that £5 million? He gives it to a worthy cause. Mr Speaker, I did not say we did not think the cause was worthy. I said at the time that we opposed it that we did not think this was what that worthy cause should be getting the money from. Because it should be getting it from import duty which is where even last year when he wanted us to vote on the provision of £5 million from the Consolidated Fund, I said to him no we cannot, we are not prepared to vote it from the Consolidated Fund, because the Social Assistance Fund exists precisely as a mechanism into which we put import duty and from which we make grants to charity. He has argued in this House that when he dissolved the other Special Funds he retained the Social Assistance Fund because he agreed with its usefulness for that particular purpose. So if the Social

Assistance Fund exists for that purpose and that purpose primarily, why does he want to give money from the Consolidated Fund to Community Care? And why, which is even worse, does he give money to Community Care which is money the source of which is the payment by employers and employees of insurance contributions. [*Hon Chief Minister: That is exactly what we are on about.*] Yes that is exactly what happened, the contributions to the Short-Term Benefit Fund are made by people working in Gibraltar now and the Government took the money accumulated in their time when the Fund grew by £5 million, as a result of those contributions they took that £5 million out, they put the £5 million in the Social Assistance Fund and then they took the £5 million out of the Social Assistance Fund and gave it to Community Care. That is what they did, and because they did that we did not agree with them, we said, "no you should not take that money out, if you want to give money to Community Care give it out of the Government's revenue from import duty like you have done before."

HON CHIEF MINISTER:

That is what happened.

HON J J BOSSANO:

That is not what happened Mr Speaker.

MR SPEAKER:

I ask myself what has this got to do with the Estimates.

HON J J BOSSANO:

It has nothing to do with this year's Estimates, Mr Speaker.

MR SPEAKER:

Then I can stop you if I want to. If it is not relevant.

HON J J BOSSANO:

Well you can stop me if you want to Mr Speaker, but then I do not understand why you did not stop him.

HON CHIEF MINISTER:

Mr Speaker, I rise only to say it did not happen the way that he has described it. He should have listened to my words more carefully. I said in my own address this afternoon that the payment of the £5 million from the Short-Term Benefits Fund to the Social Assistance Fund had, quote myself, facilitated the making of a grant. It was carefully structured so that it was not the funds from the Special Short-Term Benefits Funds going into Community Care, and I would urge him not to assume. I will explain it to him more at length when I reply to him but he should not, at least for the time being, at least until he has had the benefit of my explanation, assume that it was the way that he is now surmising.

HON J J BOSSANO:

Well Mr Speaker I will wait for that explanation. All I can say is that this is exactly how it looks when one looks at the movement of money. That is how it sounded at the time that it was done when the Chief Minister said that it was for a worthy cause and I answered that it was not the cause that I was questioning it was the source. But I will wait for the explanation.

Mr Speaker the amount of money that there is in the Pension Fund is now, as a result of the reply we have had in the questions in this meeting of the House, down to the level which is

less than it was in 1986. If it carries on going down it will be down to the level that it was in 1984 by next year. Now I do not see why the Government says it is scaremongering, I mean these are facts. The fact is, he may argue that in my time the Pension Fund did not go up by as much as it might have gone up if the money that we raised and gave to the Health Service we had raised and given to the Pension Fund instead. That is all he can argue. All the rest of it is sheer manipulation of facts by him. That is the only thing that he can argue. And he would be correct in arguing that. The point is of course that the level that we left for him to inherit was higher than the level we inherited, and that is the most that anybody can say of any government. But the government that inherits the Pension Fund from him will have less than even we were left in 1988 by the AACR. He cannot get away from that. That is the truth. There is less money now to pay pensions even in cash terms, forget that we are talking about a 20 year gap. Forget that if we look back at the 1980s we are talking about a pension that was not frozen because it became frozen in 1990, and therefore if we look at two things, the fact that the pension was lower then because the further back one goes the lower it was and the number of pensioners were less and the life expectancy was lower, what we have today is that we are now in a situation where the actual payment of the frozen pensions to local pensioners is running at something like £10m and the actual reserve in the Pension Fund is £11.75 million, according to the answer he gave me in the earlier part of this meeting. In fact in 1988 it was the equivalent of 26 months of pension, and when we left it, it was the equivalent of a higher ratio. Since he took it over the number of months of pension covered by the reserves has been going down every year, and it needs to be addressed and sooner or later something will have to be done to bring that figure up so that the ratio is more like it used to be historically. Now those facts are indisputable because they are all recorded in the public audited accounts and he cannot escape from that. He chooses to say that I was the one depleting the funds even though the figures show them not going up, and that he is the one that is protecting the pensioners, even though the figures show the money coming down. Therefore, as is to be expected, the Chief

Minister who never concedes that he can be wrong in anything will continue to argue notwithstanding the explanation that we have given as he has done today. As you correctly say of course, the things that he has said today in relation to the pension or in relation to some of the other references he has made to me, really have absolutely nothing to do with the Appropriation Ordinance before us, but given the fact that he chooses to open the debate picking on these topics, it is impossible to resist the clear invitation for a reply to those points. We know Mr Speaker that the Hon Member will spend the next two days carefully thinking up nasty things to say about me and then spend four hours saying them but we are immune by now to that.

The House recessed at 5.50 pm.

The House resumed at 6.05 pm.

HON J J BOSSANO:

Mr Speaker, the position then I think has to be seen in the context of the results of the Government's Revenue and Expenditure over the last three years and if we look at the position in last year's Estimates and this year's Estimates, what we find is that in the actual figures for 2001/2002 which have now been audited the Government had revenue of £159.5 million and expenditure of £144.1 million with a surplus of £15.4 million and that the figures which are the actual figures for 2002/2003 which are being produced in the House today, shows that the revenue moved from £159.5 million to £164 million and the expenditure moved from £144.1 million to £157.5 million bringing the surplus down from £15.4 million to £6.5 million, by almost £9 million less than the preceding year. Now the Government tells us that that is by design, well, we have difficulty in believing that because there has not been any clear linear progression in a particular direction since 1996, the figures that we finally come up with at the end of the year have been up or down depending

on changing circumstances during the course of the year. At the end of the day the Estimates are what the Government expect the result to be and the results sometimes are different. In fact in the year 2002/2003, as I mentioned earlier in my contribution, the fact that expenditure finished up at £157.5 million instead of £158.1 million meant that the starting position of the Consolidated Fund reserve at 1st April 2003 was better than had been anticipated. If we look at the preceding year figure what is now page 5 and which becomes in the Approved Estimates page 13 because of the charts that are put in front of it, we see that last year we were told that the Government expected that the balance in the Consolidated Fund would be standing at £30,091,000 and in fact this year we are being told it is £31,390,000 so it is £1.25 million improvement on the position that was produced for the benefit of the House a year ago. But of course what has happened in the course of the 2003/2004 financial year is that as far as we are concerned there has been a drop in the results from a surplus of £6.7 million to a deficit of £7.3 million making the turn round from the prediction enormous at £14 million, this has not happened before a change this drastic and nothing spectacular that we can tell has happened in 2003/2004 to explain this dramatic change in the projections, and certainly as far as we are concerned we hope to be able to give more credibility this year to the Estimates for the forthcoming year than happened to be the case in what has turned out to be the result for last year. In arguing as we do that that money ought properly to be reflected as part of last year's expenditure, because that is what it has been spent, effectively what we would be doing then would be rewriting the pages in question so that we would start with £31,319,000, that would be brought down to £23,985,000 as a result of this year's deficit and from that would be removed the £3 million contribution last year to the Improvement and Development Fund. The reserves therefore on 1st April this year really are £21 million. To be precise £20,985,000. Of course since the effect of moving the £6 million back into the preceding year is that we can add it back into this year, it means effectively that the balance predicted of £29,092,000 remains unchanged because there would be a surplus really on this year's expenditure of £8 million. Because

really effectively what the Government is budgeting is for a surplus of £8 million, £6 million of which would need to be given to the statutory bodies to cover their over-expenditure. Of course last year's performance in terms of the Consolidated Fund reserves was also helped by the under-spending in the Improvement and Development Fund, since in fact in the Estimates for the preceding year we had a situation where the amount that it was intended should be taken out of the Consolidated Fund and put into the Improvement and Development Fund was £8 million. Therefore the Government were projecting that they would have £36 million that £8 million would be taken out and that that would produce £28.8 million. The result has been that they are starting with £20m and that in fact they have taken out of the Consolidated Fund for use by the Improvement and Development Fund, £3 million as opposed to £8 million. That £5 million which has not been used obviously is in the Consolidated Fund reserves but the Consolidated Fund reserves were expected by the Government to be higher even without the removal of that £5 million. We therefore enter into the current year with a projection where as I have already pointed out we see, if in fact I am correct in the calculations that I have done in adjusting for the disappearance of the Electricity Department, that indeed the Government have put in, in the figures for this year an amount of £5 million over and above what the department spent last year then really they ought to be able to keep to that because that is more than they did last year. But given that most of the tight controls on the Budget appear to be in the statutory bodies then I do not know whether it is easier or more difficult to keep control of the statutory bodies. From the results of last year it would appear to be more difficult then it seems to me that where the Government could be facing a problem and might well have to come back to the House for supplementary funding would be in respect of the expenditure of those bodies. One of the things of course that we will be monitoring with interest will be the performance of the Electricity Authority, given the fact that the Government argued initially that the change would not produce a more expensive situation than was the case when the production of electricity was done as part of the Government and as a Government department. So, as far

as we are concerned, subject to the reservations that I have expressed about the Supplementary Appropriation Bill and the disappearance of the column on balance to complete in the Improvement and Development Fund, and subject to questions that we shall be raising on individual items in the Committee Stage of the Bill, we will be of course supporting the Appropriation Bill as a whole.

HON MRS Y DEL AGUA:

Mr Speaker, the Estimates of expenditure for the Ministry of Social and Civic Affairs contain a couple of new items this year as a result of my amended portfolio. My responsibilities now include social security and social assistance, social services, including the elderly, the disabled and the children's residential service, the hostels, the prison, drug and drug rehabilitation, consumer affairs and civic rights.

Starting with social services, this is an area where tremendous progress has been made over the last eight years. When we came into office in 1996 a Department of Social Services as such did not exist. The heavy investment by Government into this area in both human and financial resources, has allowed Social Services to expand in a more structured and effective manner for the benefit of all service users. Although some would argue that it is natural that budgets should increase over the years, this analysis is not commensurate with the dramatic increase that there has been in eight years, and I will prove this although I am not a vegetarian, by comparing apples with apples. The last Estimate book produced by the Opposition Members during their last year in office showed a complement for Social Services of 29 employees. It is important to note that when they came into office in 1988 the complement was 25, an increase of four members of staff in eight years. Similarly only two items are shown in recurrent expenditure, one in relation to child care which increased by a mere £2,000 in eight years and another under handicapped support services which stood at £650,000 in 1996. Therefore the overall budget for Social Services under the

GSLP when they left office was approximately £1 million, a growth in eight years of £550,000. Since 1996 to date the staff complement for Social Services has grown from 29 to 151. Overall the Social Services budget has increased in eight years by more than £1.75 million from £1 million in 1996 to £2,768,000 this year. This figure does not include the items shown under Head 5-A pertaining to support to the disabled, totalling another £435,000. New services being provided include a new children's residential service, a community service for adults and children and families, a counselling psychology service, respite and sitting services, unitisation of Dr Giraldi, independent living for the disabled, a family centre, social worker support for elderly day centres and a Government drug strategy. The increase in expenditure in the Social Services budget is therefore not due to the run of the mill cost of living and inflation. This increase is due to the enormous growth and improvement there has been in this Department and the wide range of services that are being provided. Having reached this standard of care these services have to settle at a reasonable and affordable level. It is true that the more and better services one provides the greater the demand one creates, but nowhere in Europe is demand met 100 per cent. Admittedly there are some areas where demand has to be met, for example, in child protection issues. Unfortunately this has been the case recently with an increase of 100 per cent in the number of children being taken into care since March 2002, with the obvious direct overall effect on funding and more specifically on salaries and related items. This combined with other circumstances including a substantial increase in staff and a package of measures consisting of better pay and conditions for employees, caused a considerable overspend in last year's budget. Another contributing factor to the overspend was the fact that the Agency in its first year of operation has tried to meet demand for respite and sitting services on what is defined as presenting needs. That is giving a service to every person requesting it. This had the effect of creating an overspend in the relief cover item which provides for this service from an estimated £100,000 to £440,000 last year. In a bid to ensure that decisions about who gets services are as fair as possible whilst adhering to the budget, the Agency will shortly be adopting

the eligibility criteria in place among local authorities in the UK, none of which have a limitless budget. The eligibility criteria consists of four bands. Band 1 defines the person's need for help as critical. Band 2 as substantial. Band 3 as moderate and Band 4 as low. This criteria will allow the Agency, by looking at everyone's circumstances individually, to focus its support on people who come into Bands 1 and 2. Those whose need for help is either critical or substantial. If resources allow, help will also be offered to people whose need is moderate or low. Another aggravating contributor to the huge overspend in this item, although to a lesser extent, is the high incidence of sick leave among certain members of staff consequently increasing to an unacceptable level the need to use supply workers. In an attempt to curtail this practice the Agency will be adopting an unsatisfactory attendance procedure. This procedure was implemented by the Elderly Care Agency some time back in consultation with the TGWU when it was encountering similar problems and it has been quite effective in improving attendance at work. Mr Speaker, both these measures that I have just mentioned will hopefully assist the Agency in working as far as it is possible within this year's budget, which as I have said, has increased very substantially over the past years and by nearly £500,000 from last year's Estimates, whilst still maintaining services which are free of charge.

Mr Speaker, all in all disabled people have fared well under this Government. The first thing that we did when we came into office was to include disability matters in a ministerial portfolio. Dr Giraldi Home, the opening of which was delayed for a couple of years because the administration at the time claimed it cost too much to fund it, was taken over by Government and administered through a contracted company specialised in social care. Dr Giraldi was subsequently remodelled into three separate self-contained apartments to allow service users to live more independently and privately. In 2002 a statutory Social Services Agency was formed, taking on board with much improved conditions of employment including pension entitlement, all the employees which had previously been employed by the Dr Giraldi Trust and subsequently by Milbury.

We implemented a structured respite service which has grown dramatically over the years, especially in the last two years. The provision of this service still remains much higher than what was being provided this time last year. The disability allowance which had remained static for eight years has been increased twice. A fund has been created to assist disabled people with the purchase of wheelchairs and other mobility aids. Government has funded a Shop-mobility Centre, a first in Gibraltar, which has allowed disabled people the mobility that they need to lead a much better quality of life. Public sector projects now focus on the needs and accessibility of the disabled. Bearing in mind that two general elections ago the word "disability" did not even feature in other political parties' manifestos, I am proud to say that the progress which has been achieved to date speaks volumes of this Government's track record on disability issues. We are committed to building on this progress and the disabled remain high on our agenda. I would like to take this opportunity to confirm that the purpose-built swimming pool for the elderly and the disabled is still very much on the cards. I am hopeful that this project will commence construction during this financial year.

A project which has been delayed has been the introduction of independent community living for disabled people. I mentioned in my last Budget speech that six of the more able-bodied and independent residents of Dr Giraldi had been identified as possible pioneers of this new service. A service which the Disability Society has been advocating for some time. A flat has recently been allocated to the Agency for this purpose. However there appears to have been a change of heart on the part of the residents who were going to move out, who are now reluctant to do so. In accordance with the philosophy of freedom of choice, the Agency cannot impose itself on the will of these individuals and it is therefore using its best endeavours through its social workers and the counselling psychologist to try and convince them of the benefits of this move. If this fails the Agency will try to identify others for whom this move would be an option, both from within Dr Giraldi and among those who still live at home with their families and who might need future residential care.

Mr Speaker, the last financial year saw a major review of our social assistance arrangements leading to an increase in benefits of 35 per cent especially targeted at those in genuine need. As a consequence single persons under the age of 65 have seen their entitlement rise from £29.10 to £39.30 a week, whilst in the case of married couples it has risen from £50.20 to £67.80. The allowance for dependent children has also risen by as much as 63 per cent. In the case of single parents the additional allowance has risen by 67 per cent and all maintenance payments to the children are now disregarded when assessing entitlement for the parent. In addition to the increases there have also been changes to the eligibility criteria to certain benefits which has allowed more people into the net. A statutory benefit which had not been increased since 1989, unemployment benefit, has also been increased by 35 per cent to provide a more realistic level of benefit. Mr Speaker, a manifesto commitment which will be honoured this year is the extension of the maternity allowance from 14 to 18 weeks. As hon Members are aware this social security benefit replaced the statutory maternity payable under the Employment Ordinance by employers. Legislation was also introduced so that no social insurance contributions are payable by either the employer or the employee during the 14 weeks of maternity leave. This will now be extended to 18 weeks representing a saving for employers for each employee of £1,140. In addition, as already announced by the Chief Minister, social assistance benefits and statutory social benefits will increase by another 3 per cent.

Turning to the elderly Mr Speaker, the minimum income guarantee was increased in July last year from £110 to £120 per week for a married couple and from £85 to £90 a week for a single person. In addition savings income for up to £10,000 of capital is also now disregarded when assessing the level of entitlement. This year, as already announced, the minimum income guarantee will increase from £90 to £94.40 for a single person and from £120 to £127.20 for a married couple. Another manifesto commitment which will also be met this year is the amendment of the rent relief formula so that any increase in

minimum income guarantee and in social assistance payments does not adversely affect rent relief entitlement. Two of the four day centres for elderly people which are now fully funded by Government have moved to new and improved premises. The Day Centre which was housed at Bayview House has moved to the basement of the Social Services Agency and after representations from the users of the Glacis Day Centre, a flat in the area has been refurbished and allocated to them for this purpose. In the past eight years three opportunities from which 660 persons have benefited have been given for people to complete their Social Insurance contributions and so be able to benefit from a higher pension. Again, in accordance with our manifesto, another opportunity will be given this year for those who missed the boat on the previous occasions. Mr Speaker, September will see the completion of a newly refurbished and expanded Mount Alvernia which will be the jewel in the crown of elderly care in Gibraltar. The discovery of asbestos and the need to have it removed by a specialist company has unfortunately resulted in delays in the completion of the project. The end result however, as the hon Members will have a chance to see for themselves, will be well worth the wait and the capital financial investment of £2.5 million.

Yet another example of this Government's commitment to good, open and fair government has been the establishment of a Civic Rights Agency which has now been up and running for just over a year. The Agency encompasses a citizen's advice bureau and a consumer protection and trading standards office. Consumer protection deals with complaints related to private tenancy, home improvement problems, personal goods and services, house fitting and appliances, small claims, new and used cars and motorcycles, vehicle servicing and holidays. Trading standards deals with complaints relating to misleading advertising, deceptive trading practices, unsafe consumer goods, copyright, trade marks and time share. Relevant legislation has already been passed in this House for example, the Misleading and Comparative Advertising Ordinance, Unfair Terms in Consumer Contracts Ordinance together with the transposition of various EU legislation. The Legislation Unit is working on various other

pieces of legislation which will bring us into line with other countries enabling the Department to deliver a high quality, consistent and responsive service based on the rights of the consumer rather than on their expectations. The Citizen's Advice Bureau has proved to be an extremely popular and successful service. The Bureau has introduced and is continuously developing the Gibraltar Information System which gives a wealth of information on rights, entitlements and procedures available to clients. It offers free, confidential and impartial advice on many issues central to peoples lives, including debt counselling, advice on benefit entitlement, housing, education, legal matters, employment and immigration. Advisers help to fill out forms, write letters, negotiate with creditors and represent clients in tribunals or accompany them to lawyers. In 2004 we will see the introduction of an outreach programme with visits planned to the hospital, prison, local school, day centres for the elderly and youth clubs. Clinics will also be based on a regular basis at the Primary Care Centre. Both the Consumer Protection and Trading Standards Office and the Citizens Advice Bureau are currently embarking on a publicity campaign to make more people aware of their existence and the services they have to offer. I congratulate the staff of both sections and the trustees of the Citizens Advice Bureau on their resounding success in providing such an excellent service to the public. Touching on the area of drugs and drug rehabilitation. The Drugs Advisory Council which includes the operational representatives of the Drugs Task Force has been meeting regularly since the Government drugs strategy was launched just over a year ago. Despite the delay in recruiting the Drugs Strategy Coordinator, once in post he has managed to cover a lot of ground towards the implementation of some of the aims and objectives of the strategy. I can assure hon Members that a lot of work is being carried out behind the scenes, although this is not always necessarily visible or tangible. Especially so in the area of drugs where a lot needs to be done and which unfortunately has not been dealt with as robustly as it should have by past administrations. Without forgetting the excellent service provided by the staff at Bruce's Farm and the Gladys Perez Aftercare Centre, I would like to briefly touch on the most

recent work covered so far towards the implementation of the strategy. A very important piece of legislation which underpins much of the aims of the strategy has already been passed in this House. I am referring to the Drugs Misuse (Amendment) Ordinance. Although Gibraltar had a duty to pass this legislation in order to comply with the provisions of the Schengen Convention, the reality is that the members of the Drugs Advisory Council had already been actively working on proposed changes to the Ordinance for some time, because as drafted neither the Ordinance or the Regulations provided effective control on the importation, manufacture, supply and possession of Class A, B and C drugs. Mr Speaker, drug education is a very important element in the fight against drugs. Whereas in the past different bodies have held their own awareness campaigns through advertising, sporting events et cetera, all initiatives now come under the auspices of the Drugs Strategy Coordinator. This will ensure that a unified, stronger and more consistent message is delivered in resonance with the underlying principle of the strategy. Another key element in the strategy on the education side, is the adoption of a structured and consistent drug incident policy for all schools and educational establishments. After a lot of consultation and planning with the Headteachers of the different schools, a comprehensive document on how to deal with drug-related incidents at school has now been produced. The Gibraltar College Construction Training Centre, Youth Service and Police have all been consulted and have been actively involved. It sets clear guidelines on the definition of a drug incident, searching of pupils' desks and lockers, personal searches, searches of school and personal property, involving the police, contacting parents, the identification and disposal of drugs, recording all situations et cetera. A checklist of procedures has also been drawn up for teachers to follow. The document has met with widespread approval and the Coordinator is now in the process of consulting the Attorney General's Chambers to ensure that it is compliant with local legislation. We are hopeful that the new policy will be able to be introduced in the school year commencing September 2004. The Drugs Advisory Council has formed into a sub-committee to work on legislation to protect our youth from the dangers of

alcohol and tobacco. A draft Bill entitled Protection of Children and Young Persons Intoxicating Liquor and Tobacco Ordinance has been carefully revised and discussed amongst the members of the sub-committee and it has been presented to the Council with proposed amendments for their consideration. Discussions are also taking place with the Legislation Unit and with the Attorney General's Chambers. Once these have been finalised the draft Bill will be considered by Government for implementation. The Council has also been discussing the desirability of introducing mandatory drug testing in prison. MDT as it is commonly known is an established practice in all UK prisons. Although every effort is made to ensure that drugs do not find a way into the prison, it is not possible to ensure its total eradication, although I am pleased to say that this problem is minute compared to prisons in other parts of Europe. The aim of MDT is to provide the Prison Service with information about drug misuse to act as a deterrent to those prisoners considering taking drugs, to identify people in need of treatment and to promote the well-being of inmates and others. In essence, MDT is designed to reduce both the supply of drugs in prison and the demand for them while offering the choice of treatment to inmates. It is important to note that voluntary drug testing is already in operation at the prison with the incentive that the inmates enjoy enhanced privileges if they test negative. After lengthy consultation with the Prison Authorities and other relevant bodies, a report on the feasibility of mandatory drug testing in prison has been drawn up and will be shortly presented to Government for consideration.

On the prevention and enforcement side of the strategy an important measure which has been adopted has been to increase the complement of the Customs Dog Section in order to provide more cover at the land frontier. Two extra dog handlers have been recruited and two passive dogs have been trained and purchased from the UK. It is a well known fact that the majority of hard drugs finds its way into Gibraltar through the frontier. I am pleased to say that since the start of this new operation in January of this year, there has been a 472 per cent increase in detections at the frontier. We also have intelligence

which indicates that the presence of dogs at the frontier is being felt by those involved in this illegal trade, and that users and importers are now much more wary of importing drugs from Spain via the land frontier. These measures give an indication of the progress that has been made in a relatively short period of time towards the implementation of the drugs strategy. This is a five year strategy and there is still a lot of work to do. A public information campaign is currently being devised which will give details on a regular basis of the work undertaken and what is in the pipeline for the short, medium and long term. I feel it is important to reassure the general public that things are moving in the right direction as I know that this issue concerns all of us. Finally Mr Speaker, I take this opportunity to thank members of staff of all my departments for their hard work and commitment. I also wish to thank the Chief Minister who makes decisions on ministerial portfolios, for allowing me to retain mine, albeit with a few added responsibilities. Social affairs and working to improve the quality of life of the most vulnerable is an area of Government which I thoroughly enjoy, and although a thankless task at times, it is also very rewarding and uplifting to be able to make a positive difference in helping the least prosperous and fortunate in our community. Thank you Mr Speaker.

HON DR B LINARES:

Mr Speaker, I will be reporting on my ministerial responsibilities for Education, Training and Employment, giving an account of progress during the past financial year and pointers for future developments planned by the Government. In Education as I warned in my Budget speech last year, there is now no doubt that the toughest challenge for our secondary teachers and our education system in the years to come will be the adoption locally of a wide-ranging proposed reforms envisaged by the UK Government for the age range 14-19. The UK Government have now published the interim report of the working group headed by Mike Tomlinson, the former Chief Schools Inspector, on 14-19 reforms. The report outlines the working group's long-term proposals for a unified framework of learning programmes and

qualifications covering all 14-19 learners in the UK. The proposals are intended to be phased in over a period of 10 years. This is not the place or the moment to give details of what is a very complex and technical document, but the proposals are aimed in general terms at offering a coherent and effective way of organising 14-19 learning, which builds upon the strength of the current system whilst seeking to tackle long standing weaknesses. Perhaps the most striking feature is the radical change of the present national qualification system, by a four-tier diploma replacing the present A-level grades with a seven point scale akin to the International Baccalaureate which is common in other European countries, and the GCSE grades A* to G could be split into two levels, the foundation level and the intermediate level. Now the diploma at all levels is intended to ensure that all young people leave school with the same core skills, namely maths, communication skills including language and information technology. But an innovative and key feature is the requirement that all pupils, again at different levels, do an extended project or personal challenge which should include attributes such as self-awareness, self-management and inter personal skills, what used to be called in my days education for life and which has been largely lost recently since then and which employers are now calling for. All this can be demonstrated by the pupils through a range of extra-curricular activities including community work and work experience. The report also stresses that while the traditional external public examinations would continue to be used for many parts of the diploma, including the core subjects of maths and communications and ICT, other units could be assessed by teachers themselves including trainers or even via computer assessment. Another far reaching aim of these reforms is to enable pupils to do academic or vocational subjects or a mixture of the two in a way that gives both paths equal status. The House will appreciate the radical implications, some have described them as revolutionary of these 14-19 reforms as suggested by the Tomlinson Report. Mr Tomlinson justifies all this by stating that the report sets out proposals, and I quote, for a new structure that will move 14-19 learning from a system that works well for some to one that will meet the learning needs of

all. Members may recall that in my Budget speech last year I announced that the Department of Education had formed a working group to study ways in which our three post-16 institutions namely Bayside and Westside and the College, could collaborate more closely to offer a full range of educational programmes to all students. Well I am meeting with Sue Rogers, the National Treasurer of the NASUWT in the Union, a meeting which took place in January this year, we agreed that any initiatives locally should be held back and measured against the wide-ranging reforms proposed in the UK. Mrs Rogers told us that the proposed reforms were still very much in the pipeline under cautious consideration by educators and the Unions in the UK. The final report on the recommendations from the Tomlinson Working Group are expected to be presented to the Secretary of State in September this year and they would still need to be approved by the Government. Meanwhile it was agreed that both the Department and the Union locally would follow these developments closely.

Mr Speaker as a background to all this let me say, I would like to restate that our education system is of course largely modelled on the system in the UK. I believe that this is a right decision since our opportunities for higher education reside in British universities and colleges. However our policy has been always to adopt but also to adapt whatever happens in the UK to our own needs. Not all reforms in the UK in recent years have been welcomed there by the teaching profession. The complaint has been that these reforms have introduced a level of bureaucracy into the teaching process with an unacceptable workload on teachers. It is often commented that with all the recording and all the paperwork and all the reporting requirements, teachers now have very little time to teach. We have I think, wisely therefore, largely avoided these excesses whilst at the same time adopting all that is good in UK developments.

Higher education, the fact that we are ready to review and indeed widen and improve our post-16 educational provision given the important and far-reaching changes that are being planned in England, should not be seen as a sign of

dissatisfaction with the achievement of our children in public exams. The fact that every year over 40 per cent of our annual intake gain access to higher education is proof of our success in preparing our pupils throughout their school career for public examinations. The statistics speak for themselves, in 2003 the GCSE pass rate, that is from A* to C grades was 68 per cent, AS level pass rate was 92 per cent and the A level pass rate was 97 per cent. The number of students in UK universities and colleges this academic year is 553. The cost of tuition fees paid this financial year by the Government is £581,833.38. As from next September, as has already been announced by the Chief Minister, the Government will be awarding full maintenance grants to all holders of educational awards and abolishing the present system of parental contributions. Provision for this extra expenditure has been made in the current Estimates. Now the British Government, Members of the House may know, intend to introduce in September 2006 variable tuition fees to be charged by UK universities of up to £3,000 yearly as opposed to the present standard fee of £1,200. In order to comply with EU legislation the DFES, the Department for Education and Skills, is making plans to include EU students and this will of course include Gibraltar students, if required, in the same arrangements as for UK students once these variable fees are introduced in September 2006. Now these arrangements are as follows. Loans will be offered by UK Government owned company which would only charge interest at the rate of inflation. A student would only be required to pay the loan once he or she had finished the course, was in full-time employment and earning a sum equivalent to 60 per cent of the average earnings in his or her country. Unpaid loans would be written off after a period of 25 years. The new system will only apply to students commencing courses in 2006. Under the current system students on Gibraltar Government scholarships have their fees contribution paid directly by the Gibraltar Government through the Department of Education and Training. The Government intend to continue to fund all tuition fees and not pass the financial burden onto students. Nevertheless investigation is presently taking place to see if this can be achieved whilst still

taking advantage of the UK student loan scheme with the Government of course assuming all repayment obligations.

Pupil/teacher ratios. The total complement of teachers on a permanent and pensionable status is currently 308 as opposed to 288 when we came into office in 1996. The average pupil/teacher ratio in our schools is well below the levels in UK. In First Schools the average locally is 1 to 16.38, the agreed maximum with the Union is 1 to 20. In Middle Schools the average is 1 to 18.9, the agreement with the Union is 1 to 25. In Secondary Schools the average ratio is 1 to 14.91.

Pre-School Education. We have six nurseries today run by the Government as opposed to two when we came into office in 1996, catering now for 315 children as opposed to 135 in 1996. In recent years we have been able to offer a placement to every child whose parents have requested it. In the course of this coming academic year we will be introducing legislation to ensure adequate academic and health and safety standards in all private nurseries. A summary was provided to owners of private nurseries at a meeting last year in the form of consultation and we are currently awaiting their collective response.

Performance management. Performance management in schools has quickly become an established feature of the way schools are managed. Benefits have become apparent. Better focused schools and teachers, better planning and more relevant professional development leading to higher attainment on the part of the children. Progress up the main scale as indeed the upper and leadership scale is also dependant on success in meeting the performance targets and objectives. Next September the third point on the upper pay school that is beyond what is called the threshold becomes available to all teachers on the upper pay point 2 who have sustained a high level of performance set against certain criteria during the past two years. The Government in keeping to their policy of parity will be awarding to teachers the latest pay rise implemented in the UK, that is, 2.5 per cent. In the UK the recruitment and retention

allowances have been abolished at a national level in favour of discretionary school-based allowances. Locally the Government will continue to pay these allowances to present holders at 2003 rates pending further negotiations, which are still open, with the NASUWT/GTA. The position regarding management allowances, what we call here responsibility posts in schools, is also under review in the UK and the Government are awaiting the results of this review before taking appropriate action. In the meantime all vacant responsibility posts that carry management allowances are being filled on an acting capacity to ensure the smooth running of our schools.

Professional Development. The Department continues to offer tailor-made courses to meet the professional needs of schools and teachers. These range from courses to update staff on the latest changes in public examinations to diploma courses in management, educational management. It is important to continue to offer management courses since these will become in UK compulsory for promotion to Deputy Headteachers and Headteachers. These courses are being offered in conjunction with Sheffield Hallam University. Of the 52 teachers who were undergoing a course, 25 have already completed their post-graduate certificate, 14 are now working for their diploma and 20 teachers are currently at different stages of their post-graduate certificate level.

Special Needs. Our policy continues to be one of equal opportunities. In broad terms children with special educational needs will be educated in mainstream schools alongside their peers, always keeping in mind what is realistic and affordable. In particular the inclusion of such children will not be at the expense of the learning opportunities of other children. Specialist provision will continue to be provided at St Martin's School for those pupils for whom mainstream education is inappropriate. Additionally special units in mainstream schools continue to operate for those children whose needs cannot be met throughout the school day in the mainstream classes or who cannot be met at St Martin's. Outreach programmes nevertheless operate from St Martin's School and the Special

Unit to facilitate social interaction between children with special needs and their mainstream peers. In order to implement such a policy effectively the Government has well-qualified teachers in every school and a substantial number of support staff, classroom aides, nursery nurses and nursery assistants.

Additionally the Government have been engaging supply staff to meet the needs of some children when these cannot be met by redeploying existing staff.

Infrastructural works. The on-going programme of repairs and maintenance in schools amounted this last financial year to around £642,000. This actually included £201,950 to securely encapsulate, they say, the asbestos found at Governors Meadow and Bishop Fitzgerald Schools. Over and above this expenditure and funded from the central vote intended for security measures, we have commenced the programme of installation of shatterproof film in all external windows in our schools. So far the Hebrew School and St Mary's First School in Town Range have been completed. Work continues in the planning phase of the intended projected new first and middle school at Reclamation Road/Queensway. The new schools will cater for around 450 children and will release the pressure, the present pressure on Governor's Meadow and Bishop Fitzgerald Schools. Next September, I am pleased to say, will also see the completion of the extension to St Paul's School in Varyl Begg Estate. This consists of a large dining hall-cum-assembly hall plus five extra classrooms above the hall and a new nursery to replace the old portacabin. This will enable the school to accommodate a greater number of children given again the increased demand as a result of the move and growth of population to this area.

Information Technology. There is now a requirement for ICT to be included in the group of subjects known as the National Curriculum Core. That is Mathematics, Science, English and ICT. Government have invested largely during the past financial year to equip our schools accordingly to the tune of £142,591. Each school has been provided with at least one modern, up to

date computer suite with the latest technology and internet-enabled. The computers in these rooms have been networked to allow for the sharing of internet access and printers, scans and other peripherals and modern software applications.

School Lunches. The fact that the vast majority of children continue to stay in school for lunch, 90 per cent, is a clear indication that parents are very satisfied with the provision being made by the Government. This year also saw an improvement in the conditions and wages of lunch supervisors which has resulted in greater stability for this service in our schools, the change in their conditions notably the attendance bonus which is now being granted to them, has vastly improved attendance. Instability had been caused before by the need to send supplies for absent lunch supervisors very often, with the need to explain to them all the time the set-up and for them to get to know and establish a relationship with the children.

Educational Exchanges. Our children continue to take part in events organised by the Municipio of Los Barrios. Many of our pupils took part in the Dias de Convivencia which took place in Spain on 22nd April and in Gibraltar on 5th May this year. Two hundred children took part each day, 100 from Los Barrios and 100 from Gibraltar. Children also travel, and this is a popular trip, to Hera which is an archaeological educational site near Chiclana, very good, and to Granja El Dorado, an animal farm with environmental means of education near Jimena.

Tercentenary Projects. I am proud to say that the Department and all our Schools have been and are still fully engaged in brilliant activities related to the Tercentenary celebrations. In the last three years the Ministry of Education and Training in conjunction with the Ministry for Heritage have worked together to produce local history resources. A text book, a lovely text book on prehistoric Gibraltar was written by a First School teacher, Mrs Giselle Montegriffo, and the Museum's Education and Research Officer Dr Darren Fa, an ex teacher himself who continues to work with the schools and children. At present work is going on in a Middle School history module of the same type.

The Tercentenary posters projects was jointly planned by Dr Darren Fa and Mrs Patsy Scott, the Senior Education Adviser, with participation of a multi-disciplinary team. This consists of a series of beautiful full colour posters and accompanying teachers notes for use in schools and the theme "Three Hundred Years of British Gibraltar". The project was funded to the tune of £5,300 by the Tercentenary Sub-Committee on Heritage. Thank you very much. Three children from First Schools and Middle Schools have participated in what all those who were privileged to see the combined, the magnificent combined schools dance display which was performed the other day as part of the programme for the official inauguration of the new Sports Stadium and linked also to Princess Anne's visit to Gibraltar. Murals depicting events throughout the 300 years of British Gibraltar have been painted in St Joseph's First School, in Bayside School and in Westside School. A school exhibition where paintings, friezes, projects, artefacts produced by school children throughout this academic year commemorating the Tercentenary will be on display at the John Mackintosh Hall during the week of 25th October, and similar exhibitions actually can be seen in all our schools. Drama presentations by children, Sacred Heart School, Bishop Fitzgerald School, St Mary's School, a compact disc, which I recommend to everybody to buy produced by the children of St Joseph's First School, recording very interesting interviews with their grandparents and parents in some cases with local persons reminiscing on their experience during the Evacuation especially and in the past, together with popular songs and other bits of folklore of the past, including the war and of course the evacuation. Bayside Comprehensive School have gone over the top. They have already held their Walk Through History Project, when all pupils visited and researched key places of historical interest in Gibraltar, but their main event is planned for July, along the lines of the Evacuation Evening and the Verbena held in 2000. The event will include a play produced by Leslie Zammit and the unveiling of a large mural in the main playground, 30 metres of mural. History of Education Book. Perhaps the major project sponsored by the Department of Education is a book on the History of Education in Gibraltar which will be appropriately published during this

Tercentenary year, towards the end of the year. This is a major piece of work researched and written by Albert Traverso and Ted Archer and it is the first time such a wide-ranging account of the development of education in Gibraltar has been published, covering not from 1704 but certainly building up throughout the years before the war and after the war through to the more systematic approaches of recent years, including comprehensiveism and the Education Ordinance of 1974 which governs education today, to the present day. This books fills a crucial gap in our understanding of the growth and evolution of the Gibraltarian people over the last 300 years. In a reflective final chapter the authors write "while there may be room for improvement and development as the third millennium gets under way Gibraltar enjoys the benefits of a well-structured system from pre-school to higher education and beyond, wholly financed and controlled by the Gibraltar Government".

In conclusion in my report on Education Mr Speaker, I would like to add to this that we can all be legitimately proud of this and thankful to all those who today, as in the past, are committed to the education of our people. Sound knowledge, rational understanding, balanced judgement, moral discernment, social and religious tolerance, faith in the future, these are the hallmarks of our community and as we move into the future this Government wants to ensure that through our education system we keep these values well implanted in our collective mind and spirit.

Mr Speaker, I will now turn to my report on training developments. I have already explained to the House the importance being given in UK under the 14-19 report to vocational education as an integral part of a broad based educational curriculum. Indeed not only throughout the 16-19 phase is this being recommended, but as an on-going provision of skills development in the form of what is called life-long learning. The Government believes that training to ensure the development of skills at all levels and in all spheres of activity, is a crucial means to sustain economic growth and permanent employment, and at a deeper level to bring about a sense of

purpose in our community. I will now give an update of schemes and courses currently available. The maritime sector, the Department of Education and Training continues to work in partnership with the Gibraltar Maritime Authority and local Port operators in order to make available training provisions for the watch rating certificate. During the last year we have sponsored 11 employees from the private sector to attend courses at Warsash Maritime Centre in Southampton, to attend basic safety training weeks. We currently have a member of staff from the Registry of Ships undergoing a series of courses and attachments in the UK and a second member of staff who has just commenced an 18 month course at World Maritime University, Malmo, Sweden, leading to a Master of Science Degree in Maritime Administration. We also have a graduate who is furthering his maritime career by undergoing practical training by means of attachment to an international shipping company.

Diploma in Business Administration. This is a business-related course leading to accredited qualifications issued by the London Chamber of Commerce. Lecturers from the Gibraltar College deliver theoretical components of the course at Bleak House and trainees receive work-related experience with local companies.

Financial Services Sector. The Department of Education and Training has been working in partnership with the newly-formed Gibraltar Association of Compliance Officers. Where possible it is envisaged that Government will assist this Association in setting up and delivering accredited courses. Courses leading to a certificate in offshore finance and administration and a diploma in offshore finance and administration will continue to be offered in Gibraltar. The Department of Education and Training continues to offer subsidies to students undertaking the Certified Accountancy Examinations known as ACA during this last year's evening classes, offering tuition in preparation for the Certified Accounting Technicians Exam have been offered at Bleak House for both private and public sector employees. The Association of Gibraltar Insurers and Managers, the Chief Minister earlier reported on the growth of the insurance business and activity,

and insurers and managers are currently discussing with the Department of Education and Training the possibility of offering the Advanced Diploma of Insurance, similar to the ACA qualifications, but in this case for insurers in Gibraltar.

Management Training. A business management programme for the private sector leading to a Diploma in Management accredited by the Chartered Management Institute commenced in January 2004. These courses are being delivered and validated by the Business School of the University of Durham. Courses are also being run for Civil Servants to attain diplomas in management and there are 48 participants from the Civil Service at present in the Professional Development Programme and 21 more participants in the Senior Management Programme. During the past year around 86 persons from the private and public sectors have obtained certificates and diplomas in these courses.

The Construction Training Centre. During this last year 58 trainees have undergone training in the various construction related trades. Of these 24 were new entrants, commenced last September, that was intake 10, of which 17 still continue in our training scheme working towards NVQs. All apprentices are following NVQ training leading to awards by the UK joint awarding body, that is the City and Guilds London Institute and the CITB, Construction Industry Training Board. As part of the Government's plans to reorganise Buildings and Works, labourers in that Department are offered the opportunity to undertake NVQ qualifications in areas where there are shortfalls in core disciplines. A total of 14 labourers originally expressed an interest to undertake NVQ training up to craft level and eight of these took up the final offer and commenced training in March this year.

Engineering Trades Training Scheme at the Cammell Laird Training Centre. During the last year 33 trainees continue their training in the engineering trades leading up to NVQ level 3. Of these 9 apprentices have completed formal tuition and are awaiting results of their assessments in NVQ Level 3

qualifications. It is hoped to have a new intake of apprentices who will commence this coming September, actually the advertisement for applications came out today. The external verifier from EMTA awards visited Gibraltar in late May this year and once again granted the Department of Education and Training Centre approved validation.

Training for prisoners. The Government's Training Officer is currently working closely with the Superintendent of Prison and the Employment Service with a view to extending training facilities currently on offer to persons who are confined to prison. It is intended to offer a range of academic, vocational leisure classes in preparation, hopefully, for the inmates' rehabilitation programmes.

Vocational Training Scheme. VTS. There are currently 158 youngsters between the ages of 16 and 26 participating in our Vocational Training Scheme which continues to be partly funded by the European Social Fund. All participants have the opportunity to receive training in numeracy and literacy skills, with a further option of training in information technology.

Customer Care Courses. The Department of Education and Training has assisted both the Chamber of Commerce and the GFSB, with funding towards customer care training courses. During this coming year it is hoped that with Government assistance, more private sector companies will attain ISO accreditation.

The Training Advisory Council. The Training Advisory Council which was constituted by this Government in December 1998 represents a wide range of relevant organisations and agencies, both in the private sector and in Government departments. I want to take this opportunity to thank all the Members of the Council for their invaluable advice and to Government enabling us to focus on training needs and skills development in different sectors of our services and industries.

Mr Speaker, I now turn to my responsibility for the Ministry of Employment. Because this is for me a new area of ministerial attention, it may be useful, certainly to me and for the record perhaps, to restate the aims and objectives of the Employment Service under the charge of the Ministry of Employment. Let me say from the start that it is not the task of the Employment Service to create or generate employment. This is essentially an economic factor which is governed through a whole range of schemes and initiatives mostly promoted by the Department of Trade and Industry and intended to attract investment and consequently prospects of employment. The general overall aim of the Employment Service is to provide opportunities and assistance to all registered persons to find or secure fair and suitable employment in what can be broadly termed our labour market thereby also of course serving the needs of services and industries which contribute to our economy. As I say, this is a general aim a sort of mission statement but in order to achieve this the Employment Service is equipped and structured accordingly. This can be described as the specific objectives and functions and they are as follows. (1) The registration of all employers, employees, vacancies, notices of terms of engagement, contracts, notices of termination of employment, notices of variations of employment, registration of all unemployed persons et cetera. (2) The provision of assistance by designated employment officers and employment counsellors who make up what has come to be known as the Job Centre and the Job Club, to enable unemployed persons to find suitable employment. (3) To monitor, supervise and enforce the implementation of statutory requirements in our employment legislation. This is done through designated officers who make up the Labour Inspectorate, the Health and Safety Inspectorate and through the secretarial service that we give to the Industrial Tribunal. It is under these three headings, registration processes, employment assistance, enforcement of statutory requirements, that I will now give substance to my report by indicating and indeed analysing the current state of play in each of these areas and pointing to policy options for the future.

Employment Registers. In this context I want to share with the House my admiration upon taking office in this Ministry of Employment, and I say so as someone who comes from the sophisticated world of education, of the extraordinary technological and human resources with which my predecessors since 1996 have equipped the employment service, making it possible almost at the press of a button as they say, to produce all the vast statistical data and information which is of great use of course to the Government in our economic planning, and as reflected also in the litany of questions asked by the Opposition as being also of course of great interest to them as well. I am sure therefore that the Opposition Members opposite will join me in expressing our appreciation to the management and officers of the Employment Service for this efficient, prompt and valuable service to all of us. At the touch of a button we can produce statistics on such key areas of the current and historical employment scenario, as casual workers, detached workers, part-time workers, registered unemployed persons, vacancies registered, new entrants to the labour market, work permits issued to non EEC applicants, registration of self-employed persons, terminations of contracts, variations of contracts, prosecutions initiated by the Employment Service, fixed penalties issued, the use of the Job Club and all this broken down on a monthly basis, and if required also on a daily basis, and by gender, age and nationality. Now given this vast statistical landscape it is important for me at least not to miss the wood for the trees. In other words, the need to analyse the data and focus on salient factors and trends which enable us to assess the reality of our employment situation and its implications for our economy. I will therefore now put to the House the following considerations that reveal the state of play so to speak of employment patterns in Gibraltar currently and in their historical context. Now I would think that the vital statistics, at least in my mind, must be what is our total work force. What is our labour market? Well, as on 31st October 2003 our registers in the Employment Service show an active legally employed work force, excluding directors and self-employed persons, of 16,878. Now there are a number of points that I want to raise about this figure. First of all there appears to be an unspecified number of

terminations of employment which are not notified to the Employment Service, hence it is likely that this figure in our registers is somewhat inflated. Because of this we normally turn to the Employment Service of the Statistics Office annually carried out by the Statistics Office, and as reported for October 2003 out of 1,298 employers surveyed, 1,052 that is 81 per cent actually returned information in respect of the number of employees. This actually is an improvement on 2002 when only 897 employers submitted such information. Therefore though very close I think the figures of these statistics of the Employment Service still fall short I believe of giving us a complete 100 per cent accurate picture of the number of employee jobs currently active in our market. The total number of employee jobs reported by the latest Employment Survey is 15,419, which is a feedback from the figure that I gave from our registers, 1,459 short of our own figures. But if we take into account my earlier caveat about the failure of some employers to notify to us terminations of employment, I think the Employment Survey figure should be very close to the mark. My guess, my enlightened guess I hope, is that the total number of employees making up our total work force, that is as of October last year, should be between 15,500 and 16,000. What is unquestionable however in spite of these variables and relatively minor discrepancies in our given statistics, is the trend revealed by all these figures, which actually reflect an impressive pattern of growth and this of course of great economic significance, that is the expansion of the labour market in Gibraltar. 12.5 per cent during the period of 10 years from 1985 to 1995 and from 1996 to 2003 a period of seven years which is of course of direct interest to this Government, there has been a growth of around 18.8 per cent. This is an extraordinary trend in employment growth and of course very good news in terms of our economy. This point is actually highlighted in the Employment Survey Report and I think the Chief Minister actually gave some of the statistics contained there before, recording that the number of employee jobs reported in October 2003 increased by 8.1 per cent over the year from 14,266 in October 2002 to as I said before 15,419 which as they say is the highest ever recorded number of employees in the market recorded from the Survey.

The Report further indicates that the level of employee jobs in the private sector increased by 10.1 per cent, notably in the construction industries and in the betting activities. In that particular industry the increase has been 55 per cent over the year and other data which again was reported by the Chief Minister, is in the Employment Service Report which is worth recording is the fact that average annual earnings from October 2002 to October 2003 have increased from £16,766.49p in October 2002 to £17,460.44p in October 2003. Let me point out that the percentage of Gibraltarians actively employed within this overall labour market, according to all the figures available to us which I have quoted, lies between 62 per cent and 65 per cent. Just about the same as before the frontier opened in 1983. In other words statistics show that the increase in Spanish labour, which obviously came about after the opening of the frontier and which is presently 13 per cent since the frontier opened, has not been and is not today at the expense of Gibraltarian labour. If anything it has been in lieu of Moroccan labour which has dropped over the last 20 years by 12 per cent from 17 per cent when the frontier opened to 5 per cent today. I say this because the Opposition and indeed the Government show natural concern about the number of unemployed Gibraltarians at any particular moment of time. What our figures demonstrate is the following. Firstly that over the year 1983 the average number of unemployed Gibraltarians was 789, this figure began to drop over the years to 456 in 1995 and since 1996 the yearly average of unemployed Gibraltarians has further dropped to an average of 351. Secondly, it is important to heed that what these figures really signify. We are talking of Gibraltarian unemployment at 2 per cent of our total labour market, if we rely on Employment Service figures, or 2.2 per cent if we use the Employment Survey figures. Now Members are aware that these minimal percentages are reckoned anywhere to be equivalent to full employment. Thirdly, it follows that it is naïve and incorrect from every logical and statistical point of view to raise a political issue whenever our published quarterly figures of unemployed Gibraltarians show a minimal increase or decrease for that matter. Only recently the Opposition decried the average increase from January to March 2004 quarter compared to

figures in the same month in 2003. The increase they were referring to was 26. Now whereas we must feel of course for the plight of those 26 individuals who unfortunately, honestly I hope, found themselves in the unemployment bracket, in terms of statistical analysis it is sheer demagoguery to declare those figures as alarming. Members will be pleased to hear that the register for April and May this year shows a marked decrease in Gibraltarian unemployment from 363 in March to 314 in May. A drop of 49. But it would be just as wrong for me to make a song and dance about this, as it is for the Opposition to raise a hue and cry about the smaller increase shown in the previous month. Any statistician will say that these minor fluctuations, these small ups and downs in the average data, can be due to incidental factors. For instance the sudden influx of graduates returning at the end of their academic year and in no way denote alarming trends in the economy or indeed in the available opportunities open to Gibraltarian workers. Employment Assistance is the second part of my report. Mr Speaker, I now turn to the second area of activity carried out by the Employment Service as I have defined it earlier. The provision of assistance and advice to registered unemployed persons seeking and hopefully obtaining suitable employment. Again I have to give credit to my predecessors in this Ministry for introducing in the Service what I would call an ethos of personal attention to the individuals who turn to us for help. I have now had occasion to observe at close quarters the style and the manner in which our Employment Officers and Employment Counsellors attend to individual service users, some of whom I have to say are not always amenable to dialogue, to reasonable dialogue, to face interviews with sympathy and effectiveness and above all courtesy and respect. Over the past year thousands of interviews have been given by the Employment Officers and the Employment Counsellors to service users and although not all employment contracts have been the outcome of these interviews, because some notices of vacancies registered with us already specify the prospective employee, it speaks for itself when we consider that over the year 2003, 6,903 job vacancies were filled. This not only points to the turnover of our Employment Service but indeed it is surely a reflection of the vitality of our economic outturn. Please allow

me to highlight the particular purpose and significance of the Job Club which was created by my hon Colleague and Friend Jaime Netto in the year 2000, following good and enlightened practice in employment services throughout Europe, intended to add a caring and personalised dimension to what would otherwise become a purely impersonal bureaucratic process. The Job Club is primarily intended to assist the most vulnerable and disadvantaged in our community, such as ex offenders, recovering addicts, and single parents, through personalised counselling by qualified counsellors offering not only moral support and encouragement but practical job seeking skills, service workers in liaison with lecturers from the Gibraltar College and with social workers and includes workshops for prison inmates on a weekly basis, and particularly popular are the 10 week computer courses available to all registered unemployed persons. The Job Club had a turnover last year of 566 service users who used the service 864 times. 115 of these service users were under 18 years of age and 182 from 18-25. I have to say that I consider the Job Club in the Employment Service to be one of the most pertinent and caring elements in our community services generally. Well as Minister with joint roles in Education and Employment I am pleased to say that liaison and cooperation between the Department of Education and Training is close and productive, particularly in the field of training, which is so relevant to the promotion of employment. The Director of Employment is able to advise the Training Advisory Council of which he is a member and to which I have referred earlier, in my report on Education and Training on areas where from our perspective the prospects of employment for Gibraltarians, especially school leavers and the young, are most relevant and necessary. Particularly close is the cooperation between the two departments in structuring and monitoring the YTS, the Youth Training Scheme, to which I have also referred in my earlier report on Education and Training but which is seen by the Employment Service as a valuable element in the task of promoting employment opportunities for young Gibraltarians. Mr Speaker, I will now give account of the statutory framework within which the Employment Service operates. The Statutory Instruments are the Employment Ordinance, the Employment

Regulations 1994, Conditions of Employment Orders, Employment Regulations (Offences) Ordinance, Business Trades and Professions Registration Ordinance 1989, GDC Employers Insolvency Regulations 1991, the Factories Ordinance, Working Time Ordinance and the Equal Opportunities Ordinance 2004. A great pressure and challenge for us in recent years is the constant flow of EU Directives requiring transposition into our local legislation. Quite apart from the instrumental mechanism that this process requires and which stretches our own limited resources to the maximum, and here I would like to give credit and thanks to the efforts and efficiency of our Legislation Support Unit, one wonders as I do, and this is a personal reflection, probably wrong, whether it might not be possible for a small community like ours to govern our affairs to the benefit of our community like ours, sixteen odd thousand persons that make up our labour market, actually I do not like the word market I prefer the more classical epithet workforce or working class, and their social partners, mostly small scale enterprises and employers without all the draconian, gigantic edifice of EU Directives. But that as I say is a personal option which I wanted to take off my chest but meanwhile, we have to go along with things as they are. A typical example of what I am getting at is the recent introduction in our local statute of the Equal Opportunities Ordinance. This is meant to transpose European Council Directives 1997/80, 2000/43 and 2000/78. Actually I wholeheartedly welcome this piece of legislation as it touches upon social issues of equality, social justice, which are close to my heart. But it is interesting that for purely logistical reasons, and I repeat purely logistical reasons, no question of principle, in coping with the legal complexities of the European Directives, we have had to postpone the introduction of strictures against age and disability discrimination. Now this is the point which I was making before. The fact that European legalisms have as yet not been adopted by us for as I say logistical reasons surely does not mean that in our caring community, and indeed within the broad scope of our own Employment Ordinance as it stands, and indeed in our very Constitution, we are in any way insensitive to the rights and needs of our aged and disabled. In any case, I am pleased to announce that our

hard working Legislation Support Unit are now completing the draft of legal instruments to establish the requirements of the EC Directives with respect to age and disability discrimination, and these will soon be brought to the House.

As Members of the House will recall there are a number of amendments to the current Employment Ordinance which flow from the Equal Opportunities Ordinance. One of these I am pleased to announce will be the introduction of the principle of constructive dismissal as an explicit area of contention in legally establishing cases of unfair dismissal. The House will recall that the Chief Minister stated in the House that before we went ahead with this we would carry out a process of consultation with relevant parties. This has now been done, the issue was discussed at the last meeting on 22nd April of the Labour Advisory Board, which as Members of the House will know, represents the social partners, the Chamber of Commerce, the Federation of Small Businesses, the Unions that is Transport and General Workers Union, Prospect and the Gibraltar Trades Council, and I would like to take this opportunity again here to express on behalf of the Government our appreciation of the time and the effort that these organisations give in advising the Government on employment issues, sharing with us their interest and their expertise in the field. The outcome of the said meeting now allows the Government to go ahead with the proposal to introduce the principle of constructive dismissal into our legislation, and I think we may be able to do it actually during this meeting of the House. Mr Speaker, Members of the House are aware of the accession as from May 1st of 10 new Member States into the European Union. That is a challenge for us as well. Now unlike the UK, which I believe has not chosen to do so, Gibraltar will continue to exclude nationals of the new EU Member States from free access to our labour market during their transition period. There is a transition period when derogation powers can be exercised, in other words they will require a work permit as other normal nationals.

HON J J BOSSANO:

Is there a period?

HON DR B LINARES:

I think it is five years. In conclusion, Mr Speaker, allow me another personal reflection. Employment generally and everywhere, particularly in the European Union, is increasingly becoming a complex scenario where rights and obligations are forever finding their way into the Statute Book. This whole process, often a legal labyrinth but perhaps a field day for lawyers, is a catalyst for legal intervention all round where rights and obligations are often the cause of conflict as opposed to resolution. It therefore requires a real effort on the part of all those of us engaged in this enterprise to focus on the fact that employment is meant to be essentially about people, and to resist to be swallowed up in bureaucracy and legalisms. I am satisfied, as I have tried to put across throughout this report, that this is the spirit and ethos that moves all those who work in the Employment Service and I wish to pay tribute and express my appreciation to all of them. I also want to thank you Mr Speaker and all Members of the House for your attention, and I commend to the House approval of the items of expenditure in the Estimates of Expenditure for 2004/2005 under Heads 1A, 1B, 1C, 102 Subheads 1, 2 and 3, and Appendix B under the heading of Employment and Training. Thank you, Mr Speaker.

HON J J NETTO:

Mr Speaker, subsequent to the General Elections held last year, I am both pleased and privileged to be able to continue delivering public services in connection with housing and maintenance. As we all know during the General Election, together with Health the subject of Housing remained at the forefront of political debate and quite rightly attracted substantive discussion and deliberation. This third term gives the Government the

opportunity to continue to implement their comprehensive policies in the area of housing including our manifesto relating to new Housing built.

If one is totally frank one should say that expectations are high and the Government are determined to work hard on their promises. This means that a planned approach will be applied though it will include sufficient flexibility to embrace new needs. That said, Government propose to continuously upgrade the existing housing infrastructure whilst also carefully addressing new emerging demands. I am therefore pleased to confirm that the Government will continue concentrating on these important areas of housing provision with the same level of commitment that our community expects and deserves. Though ambitious these plans may be the Government remains totally committed to delivering growth in the context of housing within three critical areas. These are Growth in Services, Growth in Investment and Growth in Projects. This approach, which I shall refer to as the 'threefold strategy', is necessary to meet the growing demands of a modern society which Gibraltar can proudly boast. The threefold strategy will enable substantial improvement in housing services, substantial investment in procuring these services and substantial continuity in the delivery of major capital and refurbishment projects. I therefore would like to expand further by firstly highlighting the first of these three strands namely Growth in Services.

Growth in Services

Last year the Ministry for Housing updated many of its systems including CIT infrastructure and indeed build new counters for Housing Allocation, Housing Rental and the Reporting Office. It has enormously helped my staff when dealing with the general public, and the benefits include smart facilities that are properly maintained together with back-up infrastructure, enabling quicker access for information. Many of our clients now enjoy much better improved facilities at the ground floor level rather than having to climb stairs, an inconvenience and I dare say an

impossibility for some of our elderly and/or our disabled citizens. I wish to improve this further in due course. For example, the Government plan to centralise the Reporting Office so that clients are able to contact one source when requiring information or assistance within matters concerning public housing, its maintenance and any other related miscellaneous service. In other words, a system will be introduced whereby the reporting office will do the chasing on behalf of the client since it should not be the other way round. This will include for the provision of a centralised telephone recording system so that calls may be verified, which will enable further improvement in customer care.

Mr Speaker, now that I have touched upon the theme of customer care, I wish to remind the House that the Ministry for Housing inclusive of Buildings and Works, has undergone extensive customer care training. This was delivered by the University of Durham and funded by the Department of Education and Training. Firstly may I just say that I am very grateful to my hon Friend the Minister for Education and Training for his support in providing the funding to this crucial area of continuous professional development. This drive within training is already paying dividends whereby numbers of complaints reported by the Ombudsman earlier in the year (aimed at counters), have dropped dramatically. I would like to say that this is much a result of both (a) hard work by my staff when dealing with sensitive housing related issues, and (b) training which has helped foster greater focus and attention at the customer interface. The Government are determined to study further their customer care strategy by looking at other ways of creating greater proactive activity and maintaining a positive momentum in providing a professional service to their clients. May I also add that I welcome the Ombudsman giving suggestions and ideas on general issues relating to housing, since many of these have been discussed within senior management, and I dare say even implemented. Such a collective platform is indeed one that I would like to maintain in pursuit of orientating our mission towards better housing services.

The Ministry for Housing has designed a number of leaflets aimed at members of the public to provide general information on housing matters, maintenance and repairs and rent relief matters. These are now available at our counters as well as the Citizens Advice Bureau and the Office of the Ombudsman. I hope that this will further educate members of the general public about what type of services we can offer. To maintain this information drive the Government intend to continue this supply by introducing topical areas which are both (a) relevant, and (b) informative within the housing domain.

Mr Speaker, for the first time within the Ministry for Housing, I intend to publish an annual report for the benefit of tenants giving useful information and details of housing provision. The draft is already complete and this should be publicly available shortly. This should bring together the external family of housing (inclusive of NGOs) thereby providing a wide range of services and professional advice.

The House will also recall the extensive reforms that have been introduced as a result of an independent audit carried out in the year 2000/2001 by HLB Kidsons Consultants Limited. With this in mind last year, two further Clerks of Works were introduced into the Ministry for Housing to help complement the Technical Division, in the monitoring of works by both the private sector and Buildings and Works. In addition, for the first time, the Ministry for Housing has a properly trained draughtsman to help support the professional staff.

Mr Speaker, I mentioned earlier that the current plans to centralise the Reporting Office in order to coordinate and maintain the proper monitoring of calls. The Government have recruited a Reporting Office Manager whose main responsibilities will be to liaise with tenants and substantiate their queries or, if need be (on their behalf) chase up progress of works. The Reporting Office Manager will also be closely involved in monitoring response times and highlighting to senior management any areas whereby there are perceived to be

difficulties in meeting and satisfying acceptable response times referred to as targets.

This year the Ministry for Housing will have further staff to assist in the development of a much needed Asset Register and implementation of a centralised procurement policy. These two areas are what is remaining in respect of human resources when driving through the necessary reforms to help further improve service delivery. That said, the Government also intend to follow their manifesto commitment with the introduction of a vehicle removal service for non authorised parking within Government Estates. This has been much sought after by Government tenants and for this purpose the Ministry for Housing has two additional Administrative Officers to administer parking permits.

What I have stated earlier demonstrates the importance given by the Government in listening and respecting tenants' reasonable needs. The Government are careful and prudent when introducing policies which will affect tenants and, therefore, they should and are always placed at the forefront of our minds when building on our mission: "*Orientating Housing Services to the Needs of the Community*". This is our agenda, this is our promise.

In keeping with this policy of consultative participation, where practically possible, the Government will continue meeting with established Tenants' Associations, since this is viewed as the best form of interface in tackling tenants' needs. Just to remind the House, there are currently around 16 Tenants' Associations already in operation. I personally chair these meetings, hence the importance that we place on this vehicle of positive exchange and sometimes, dare I say, negative exchange. It is, therefore, the Government's intention to openly encourage such participation and I hope that we shall enjoy further Associations being developed over the course of time. In order to help further attention in this matter, the Ministry for Housing has designed posters that will be placed within Government Estates and Blocks, that openly encourage such development and participation.

Mr Speaker, one such positive exchange by Tenants' Association was their dissatisfaction on the cleanliness of Government estates in general. As Members will recall, the cleaning of estates was formally conducted by the Wardens Section and in January 2003, this activity was passed over to the private sector. I am pleased to say to the House that our tenants are happy and satisfied with the new service and I wish to place on record my thanks to Master Service (Gibraltar) Limited for their tireless effort in maintaining the highest levels of cleanliness within our estates.

The House will be aware that the last review of the Public Housing Ordinance took place some 32 years ago in 1972, whilst the Allocation Rules were revised in 1994. Since then, the problems within public housing has grown ever increasingly complex and, therefore, the Government plan to introduce new legislation to widen the Ministry's powers to effectively address housing problems and for improving controls on public housing. The Government also plans to put forward proposals for tackling anti-social behaviour in public estates which is causing concern to the Ministry and tenants alike. The proposed legislation will include for a new Public Housing Bill, Public Housing Regulations, Public Housing (Anti-Social Behaviour) Regulations, Housing Allocation Rules and a new Tenancy Agreement.

Mr Speaker, the police, social workers, education welfare officers and mental health practitioners have been consulted as regards the proposed legislative and administrative arrangements put forward for tackling anti-social behaviour, and there has been consensus that the proposals provide an effective response and that there should be prompt implementation.

The Government are keen to further empower tenants in drafting a Tenants' Charter. This will be instrumental in focusing on service delivery and particularly will hold the Ministry for Housing (inclusive of Buildings and Works) to account with target times for the implementation of emergency, very urgent, urgent and routine works. This open and transparent process allows

scrutiny of service delivery, which is the daily essence of where service delivery should be improved.

For the first time, I intend to start a new Housing Advisory Council. This will essentially advise the Government on questions relating to both private and public housing, such as supply/demand, rights/obligations and problems that generally arise from housing issues. The Council will be Chaired by me as Minister for Housing and comprise key members across our community that are well qualified in identifying the needs of Gibraltar. Typically, this will include participation from the Ministry for Housing, Ministry for the Environment, Roads and Utilities, Associations of Private Estates, Government Estates Associations, Land Property Services, Private Landlords, Action for Housing and the Gibraltar Banking Association. This platform will encourage full discussion and consultation, so that Government may enjoy a balanced perspective, both over the short and long terms. Typically, the Council's terms of reference are designed to:

- (1) Study requirements and provide related information on local needs, trends and fluctuations in the local market;
- (2) Assess local demands, supply, and suggest ways of tackling these parameters;
- (3) Identify present and future housing issues within our society requiring attention;
- (4) Provide a balanced perspective between private and public sector needs;
- (5) Compare market trends and subsequent local impact;
- (6) Advise on how to modernise current practices and provide practical solutions;
- (7) Suggest ways of combating anti-social behaviour; and
- (8) Generally to advise the Government on housing matters.

The Council will be held on a regular basis and it is envisaged that all participants will take this opportunity to raise their concerns and advise on practical solutions when dealing with housing, which is increasingly seen by many people as a particularly sensitive subject area.

Last year, I highlighted that it was important to distinguish between the roles of both Housing (as client) and Buildings and Works (as supplier). Though they are part and parcel of the same Ministry, they both serve different functions and, therefore roles. This must be properly defined so that both parties are clear on what is expected from them. I am pleased to say to the House that this has now been drafted and it is expected that these will be further discussed between Housing and Buildings and Works, prior to being agreed.

Before discussing Buildings and Works, I wish to briefly say to the House that never has so much been done for applicants classified as medical or social cases. I am very grateful to those who continue to wait their turn even when this has meant giving way to someone, or, family, in greater need. To give the House an idea of the number of medical and social cases being deliberated, please note that ever since May 1996, under the Government the number of social applications accommodated has been 146 to date. Similarly, the number of medical applications has reached 280. This demonstrates our total commitment to those very people in our society who are in greatest need of public housing assistance, health, care and support. Our campaign will continue as long as the Government are privileged to remain in Government. Never in the history of public housing has so much been done to accommodate medical and social cases. To those who wish to argue against the Governments' policies, in what can only be described as an ever increasing, complex and important social field, is neither in touch with the true picture of events, nor are they in tune with the realities of the problems that we face, today, on a day-to-day basis. With this in mind, I hope all in this House will share in giving thanks to those members of the Housing Allocation Committee, and the Medical and Social Boards, for their unstinting resolve and commitment when scrutinising and assessing public housing applications. Their work often goes unnoticed and it should be placed on record that these people voluntarily and, willingly, give up their free time and energy when undertaking work of this sensitive nature. I hope all in this House

will share in expressing our gratitude to members of the public housing committees.

Mr Speaker, I have generally highlighted growth in housing services and wish to elaborate further the extent of progress within Buildings and Works.

Growth in Services by Buildings and Works

During last year's Budget speech I spoke about the changes that were being implemented in Buildings and Works, since mid February 2003, regarding the way they were conducting businesses via the different Depots. As the House is aware, the three depots' field of responsibility were originally based on geographical areas, simultaneously tackling Flat Refurbishment, Minor and Major works. The reorganisation based on centralisation of resources, is demonstrating that productivity and quality of service has improved.

The House will recall that each of the three depots were given areas of responsibility that were categorised by type of work, rather than geographical lines. For example:

- Flat Refurbishment Depot (including OT cases and pensioner bathroom conversions).
- Major Works Depot.
- Response Maintenance Depot.

Regardless, these changes are by no means the only ones that will be introduced, since change is a continuous process, and as such, will act as a tool to further improve our services to tenants, as and when required.

Mr Speaker, I wish to run through some statistical information for the benefit of the House. Since the reorganisation of the Buildings and Works depots, a total of 126 empty flats have been

refurbished/prepared by Buildings and Works and consequently returned to the housing stock. The average response time for flat refurbishment by UK Local Authorities is around 8 weeks - Buildings and Works average is now down to 6 weeks upon works commencement, though I should stress that there remains a backlog of 47 flats programmed up to December 2004. This figure, obviously, does not include new entries that may arise in the future. The Buildings and Works workforce is positively responding to the Ministry for Housing's needs by showing full flexibility and providing a quick response. This has been achieved by the improvement made in inter-departmental lines of communication and effective pre-planning by Buildings and Works Management.

Mr Speaker, to elaborate further, the response time regarding Occupational Therapy (OT) cases and pensioner bathroom conversions, has also been reduced. For example, a total of 98 individual requests have been dealt with which has reduced the works programme substantially, that is, the backlog has been reduced to 40. Buildings and Works will catch up with the small backlog before the end of this current financial year notwithstanding new requests that will continue to be reported by tenants. The present system will, therefore, help eliminate previous reactive response methods and allow proper pre-planning of works. It will also further decrease the tenants waiting time to an acceptable level.

Mr Speaker the Major Works Depot deals mainly with external repairs and refurbishment of common areas. Again, since the reorganisation, there has been a marked improvement. Estates such as Laguna, Moorish Castle and Glacis are presently getting a facelift. Parts of the Upper Town and the South district are also included in the rejuvenation/refurbishment programme, as well as other estates. By having a centralised depot (nominated by works category) we have noticed that our biggest challenge lies in the further reduction of response times related to day-to-day requests. Although there have been inroads since February 2003 in the backlog of minor works requisitions, we are presently about to introduce minor changes to reduce these further, in

order to aim to eliminate them. This involves a screening process, which, as I speak, is continuing to be properly scrutinised. For example, it has been found that requisitions have unwittingly been entered twice, whilst in some other instances (where works have been completed), these subsequently have not been erased from the system, thereby remaining in the backlog. This is notwithstanding emergencies and new defects that have been reported and executed during this same period. Within the next few weeks, the different works programmes will be scrutinised much more than before and all works considered desirable, rather than necessary, will be placed in abeyance. Flat refurbishment, OT cases and pensioner bathroom conversions, will not be affected. By temporarily removing these desirable works from the programme, we will have freed enough resources to concentrate on outstanding historical minor works backlog. This temporary measure will be closely monitored in case it has any adverse effect on the overall service that the Government wishes to provide to tenants: a quality service that they rightly deserve. I am confident that a substantive reduction in the backlog will be achieved. We will therefore reduce reactive maintenance to an acceptable minimum and thereby free sufficient time for managers to plan works, well in advance. It will help boost the morale of the workforce and improve job satisfaction since this would encourage more positive ownership of their actions so that they may achieve important objectives. Above all, it will increase productivity, effectiveness, efficiency and, generally, the overall quality of service supplied to Government tenants. In addition, it will help mould better teamwork and help address the present entrenched culture of the organisation. Mr Speaker, towards this aim, we will need to invest further by encouraging employees to attend courses such as National Vocational Qualification, B.Tech National Certificate (which is equivalent to the former qualification known as the Ordinary National Certificate) and specialist short courses, covering important areas such as Health and Safety together with the proper handling and disposal of asbestos materials. The Government, therefore, remain totally committed to training their workforce, since we strongly believe that this is the crucial factor in facilitating the improvement of

skills to (a) employees, (b) the organisation, and (c) the most important parameter, the end user, namely the tenant. The Government have recently advertised in the local media, vacancies for labourers and craftsmen. More job vacancies will be advertised in the not too distant future, which will maintain manning levels as agreed between the Trade Unions and Government. In order to further increase productivity and quality of service, Buildings and Works has procured additional plant and tools so that tradesmen may carry out their work more efficiently. I can confirm to the House, that a paper is being prepared to procure more plant that will further and efficiently boost our present stock levels. We have also centralised the control of plant and tools so that greater efficiency may be introduced. This should promote a positive effect in as much as it will reduce the funds spent on hiring. A similar system has also been introduced for the hire and control of scaffolding. Mr Speaker, there has been a remarkable improvement in the dissemination of information and feedback to the many enquiries made by (a) tenants, (b) the Ombudsman, and (c) other Government Departments. This is a secondary service that most of the time goes unnoticed and is just as important as physically undertaking repairs and responding to reported defects. In the great majority of cases, those making enquiries only require further confirmation that this is in hand, and not as we have witnessed in the past, where sometimes, these reports are being simply lost within the system or subsequently forgotten. As stated last year in my budget address, further investment will be injected into Information Technology, and I am pleased to confirm that this is already happening. The result of such an investment is improved communication between Housing and Buildings and Works. Both organisations will be able to interrogate the system without needing to request additional data, thereby reducing time lost when waiting for information. This new system will free more time to adjust the service we provide. For example, rather than having to request the information from Buildings and Works, Housing will directly be able to reply to tenants, when in receipt of queries related to repairs or works. I am very confident that further improvement will transpire thus reducing the number of complaints being

received by the Office of the Ombudsman. It is this independent feedback, together with the effort made by Tenants' Associations, that have generally helped to truly gauge, whether there is any notable improvement in service delivery. I am pleased to say to the House, that this mechanism (one of many) remains a formidable benchmark in measuring the performance within Buildings and Works, and I can confirm that this improvement is beginning to pay dividends. Service delivery is improving though I will be the first person to say that further improvements will be necessary. I also wish to add that proposals are currently being put together to explore further whether it may be feasible to accommodate both Housing and Buildings and Works, within the premises formerly used by the MoD WSM. This would allow for greater centralisation, improving communications, lessening duplication of stores and facilities, though at the same time improving control and integration of these two important arms of the Ministry for Housing. At this point of my address, I would like to quickly update the House on Government's plans to move Buildings and Works into an Authority. The Government are shortly about to begin the process of negotiations with the Trade Unions, on all issues relating to the move. When this process has been completed then further information of any agreement will be made public. As the House will gather, such growth in services is clearly unprecedented and obviously, such plans require proper financial investment. This forms part of the second strand of the three-fold strategy, which I earlier referred to as Growth in Investment.

Growth in Investment

Mr Speaker, I wish to firstly briefly run through recurrent expenditure. The Ministry for Housing has undergone major changes principally in areas such as staff restructure with recruitment and the contracting of services. These changes have had a financial effect on the Approved Estimates of recurrent expenditure for the Ministry, which has increased significantly year by year. In the Financial Year 1999/2000, the

Approved Estimates for this Head of expenditure was £6.275 million and this rose to £7.749 million in the last financial year; an increase that represents 23.49 per cent for the period. It is expected that further increases in recurrent expenditure, during this year of account, will be represented mainly by increases in salaries and wages and to a lesser extent in expenses related to the general administration in providing the service.

This year has seen the need to recourse to supplementary funding in both the Ministry's (Head 3A) and in Buildings and Works (Head 3B). The figure for the Ministry will be approximately £142,000 although in excess of 50 per cent of this figure has been incurred as a result of unbudgeted expenditure, relating to increases in salaries and services contracts to it such as in the cleaning of estates. Similarly, in the Buildings and Works, supplementary funding was also sought to meet areas of overspending, principally in the procurement of materials and specialised contractual services, incentive schemes bonuses, overtime payments, and to a lesser extent, in more general administrative duties. As with Head 3A, a large proportion of the amount of supplementary funding refers to unbudgeted expenditure which was unforeseen and could therefore not have been provided in the bid figure when estimates of expenditure were submitted.

With respect to expenditure in Capital Projects, an unprecedented level of refurbishment has been carried out in a wide cross section of Government Estates and other areas. The works undertaken range from general beautification projects, roofs and general repairs, lifts installation programmes (which is well in progress) and other projects of a more general nature. The extent of Capital Refurbishment, commencing in 1998, has exceeded the £13 million at the end of the previous financial year. The main major projects that have been completed to date are:

- Glacis Estate Beautification and Installation of Lifts;
- Laguna Estate Beautification;
- 62 Flat Bastion Road;

- Sandpits House;
- MacMillan House;
- MacFarlane House;
- Willis's House;
- Anderson House;
- Coelho House;
- Heathfield House;
- Scud Hill House;
- Belvedere and Electra Flats; and
- Tankerville House and the Prison Quarters next to it.

Mr Speaker, this year I am pleased to confirm that the Government are planning to invest a further £3.2 million through Head 101, Improvement and Development Fund, for Major Remedial Works and Repairs to the Housing stock. This level of funding, in addition to the well over £13 million already mentioned and spent since 1998, reinforces the Government's campaign, which, similarly to last year, remains unprecedented in the history of housing services.

The Capital Programme is, therefore, on-going and a number of projects have been earmarked to commenced during the course of this current financial year. To date, there are already a number of important projects in progress, such as the Varyl Begg Refurbishment programme, which includes the replacement of existing roofs and installation of lifts. Other projects in line are the lift installation programme at Alameda Estate and refurbishment works at Upper and Lower Witham's, Vineyard and Rosia Houses.

This leads me to the third and final strand of the three-fold strategy, which focuses on Growth in Projects.

Growth in Projects

Mr Speaker, before elaborating further, I wish to initially summarise what projects we have in hand.

(a) Housing Initiatives and Refurbishment Programmes in hand.

New development for home ownership which is expected to begin construction this year; New development for a senior citizens building, this is similarly expected to begin construction this year;

- Replacement of Windows;
- Edinburgh and Bishop Canilla House/Major Repairs;
- General Lift Installation Programme;
- Knight's Court Gates and Parking;
- Upper and Lower Witham's House;
- Varyl Begg Estate, Phases 1 and 2, Lifts and Roofs;
- Scud Hill House;
- Rosia House;
- Vineyard House;
- St Joseph's Estate, External Staircases; and
- Alameda Estate Lifts.

(b) New proposals for the next four years.

Introduction of Target times for Housing Maintenance Repairs;
Review of Public Housing Ordinance;

- Introduction of Anti-Social Behaviour Legislation and Enforcement;
- Estate Wardens;
- Penney House Refurbishment and Lift Installation;
- Referendum and Constitution House Refurbishment;
- Kent House Refurbishment;
- St John's Court Refurbishment and Lift Installation;
- Churchill House Refurbishment and Lift Installation;
- Knight's Court Lift Installation;
- Police Barracks (Officers' and Sergeants' Blocks), General Refurbishment;

- Gavino's Dwellings, General Refurbishment;
- Alameda Estate Scheme;
- Moorish Castle Estate Beautification Scheme;
- St Jago's Estate, General Embellishment Scheme; and
- St Joseph's Estate, General Embellishment Scheme.

Our programme is both ambitious though warranted when tackling the enormous decline in public housing infrastructure that was to become the legacy left by former administrations. Our commitment in raising the standards in public housing remains pivotal in our campaign towards orientating services to the needs of the community. This will continue to take place though it will be balanced with new emerging demands such as that proposed under the new low cost housing scheme.

New Low Cost Housing Scheme

Mr Speaker, I believe it is appropriate at this point to update the House on the new Housing Development Schemes. Firstly, the House will recall that established Consultants have already been engaged by the Government to design low cost housing which will be designed to be 'homes for life'. That said, rather than concentrating on a numbers game, the Government plan to construct homes that boast of greater individual space, so families are attracted to stay and enjoy the amenities available. Secondly, the House will be aware that the Government are close to finalising these details with a view to proceeding with subsequent construction. Thirdly, the area known as the 'Sands' has now been vacated by the private concern formerly using this as a parking area, and this area will be constructed first. Fourthly, the first OJEC notice has been advertised to substantiate potential tenders who may be interested in this project. As dictated by OJEC rules, a second notice will shortly be publicised and we will then be in a position to provide further details about cost and design plans.

I am pleased to have led this Government's improvement in housing services. We can proudly witness the major benefits

that this has accrued. Particularly, when we see the embellishment of Laguna and Glacis Estates, together with extensive external refurbishments at MacMillan, Sandpits, MacFarlane, Willis's, Anderson, Coelho and Heathfield house, Knight's Court and of course, other works. It is also a fact that we have cleaner estates, which is regularly attended and further reduces the very real risk of disease and unsightly accumulation.

Mr Speaker, in conclusion, I have outlined a 'three-fold' strategy to delivering growth (in the context of housing) within three critical areas. These are: Growth in Services, Growth in Investment and Growth in Projects. This three-fold approach, is indeed necessary to meet the growing demand of a modern society and will enable substantive improvement in the provision of housing services, substantive investment in procuring these services and substantive continuity in the delivery of major capital and refurbishment projects.

There is much more work to be done and all of these three strands are inextricably linked to the Government's aim of prudently steering housing policies that are in tune with the needs of our community. This has, and remains, solidly at the forefront of our mission: "Orientating Housing Services to the Needs of the Community" - this is our ambition, this is our goal.

Finally, once again, I would like to pay tribute to all my staff both in Housing and Buildings and Works. Particularly to my Principal Housing Officer, my Personal Assistant and my Personal Secretary for their total commitment and loyalty to this task. Thank you.

ADJOURNMENT:

The Hon the Chief Minister moved the adjournment of the House to Thursday 1st July 2004 at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 8.20pm on Wednesday 30th June 2004.

THURSDAY 1ST JULY 2004

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 J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon C A Bruzon

The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

The Hon F R Picardo
The Hon Miss M I Montegriffo

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

Debate continued on the Appropriation Bill, 2004.

HON C A BRUZON:

Mr Speaker, I would like to thank the Hon the Chief Minister for his description of the Theatre Royal as being a vision thing, because in my humble opinion the Government's performance on housing since 1996, as far as I can analyse it, has been a vision thing. The results to date have been abysmal. I will try to demonstrate in my speech today why I think that this is so. I would also like to say to the hon Lady, Mrs Del Agua and the Hon Mr Netto that I sincerely hope that everything they said yesterday will be fulfilled, because for the sake of the people of Gibraltar, whereas their vision seems right and their ideas are good, I found that as I have studied the brief history of the GSD in power they have been able somehow to project the view that

their achievements are imminent but in fact in some cases their achievements have not happened.

It is a privilege for me to be a Member of this House and I have been so for six or seven months, but I attach much, much more importance to the time that I have spent with our constituents, because after all they are our constituents, I have visited in their homes when people have come to me with problems, I have done my best to point them in the right direction so that they can get the necessary help. If it was not for the contact the direct contact that I have had with our constituents, my contributions to this House would be weakened immensely. Let me say that on Housing there have indeed been no shortages of schemes and plans but no new buildings can be seen. Promises made by the Chief Minister in a number of his New Year messages but no new buildings can be seen anywhere to accommodate the many people on the housing waiting list and I would like to quote briefly. The New Year message from the Chief Minister 2001 in January, this is what he said, "2001 will also witness the start of two quite ambitious projects and one of them is the launch of various housing schemes by Government to ensure the availability of low cost reliable quality housing at affordable prices." Then in January 2002 once again the Chief Minister said, and I quote, "this year we also want to concentrate on providing much needed affordable housing for the next generation of first time buyers and for the elderly as well". The GSD administration in 1996, actually just before they were in Government because this is a manifesto commitment, said under the heading of Housing for Rental: "however some people cannot afford to buy their homes and we are therefore committed to providing rental housing. In support of this policy the GSD will allocate financial resources to the building of additional rental housing." And they add a little proviso: "should it be necessary to complement existing housing stock." Mr Speaker there has not been a single day when this has not been necessary. In 2002 they also said, "we will build more housing, including more housing for the elderly and for 2RKB list". Also in their 1996 manifesto we were told that a GSD Government would allocate financial and labour resources to a major programme for the

external upgrading and beautification of housing estates generally, as well as a note, as well as to the quicker carrying out of internal repairs and maintenance. That is what they said in 1996. In fact when I ask the Minister for Housing the Hon Mr Netto to what extent, this is recently in the House, to what extent are Government responsible as landlords for the internal repairs and maintenance of Government housing units. The answer he gave me was to hand me a copy of the agreement signed by every tenant, Government tenant prior to accepting the key to his or her new home. In the agreement it says, and I quote, "the tenant will not be responsible for any damage or defects which in the opinion of the landlord are due to the reasonable wear and tear or to defective workmanship or materials". Well, if it is not the responsibility of the tenant it must follow logically that it is the responsibility of the Government as landlords. All the beautification that the GSD can boast about that is all fine. The external refurbishment of some Government housing estates, the installation of some lifts, yes that is all very well but where is the much needed affordable housing, Mr Speaker? And where are the internal repairs to many of the Government housing units that is affecting many of the Government tenants that I have visited since I was elected to the House in November last year. There is still talk of projects and schemes but no new housing units can be seen anywhere. The Chief Minister has told us on more than one occasion recently, that they were elected into Government on what they promised in November 2003 manifesto. In a sense he is right. But does he not realise that the failed promises of the past years has adversely affected the lives of many people here in Gibraltar. The elderly, yes, but also young couples with children who have had to move to Spain because there is no adequate affordable housing for them here either to purchase or to rent.

In the last Session of the House, in answer to a supplementary question regarding the 33 flats that were being made available to the Government by the MOD in Chilton Court, the Chief Minister said that it would be preferable and more desirable for our elderly citizens to be allocated housing units in a new housing estate similar to Bishop Canilla which was going to be built for them in

the future. Seriously if their past record on housing is anything to go by, God help our elderly citizens. Already there are delays in their plans. They said in November that the housing project at the North Mole Road, North Mole, would start in the spring this year. That construction would start in the spring this year. Already there is slippage of time, already there are delays. In the Official Notice printed in the Gibraltar Chronicle we are told time limit for completion, works are to be completed by 31st December 2006. Then it says, final date for receipt of request to participate the 5th July 2004. And final date for despatch of invitation to tender for selective candidates 30th July 2004. I hope that they succeed for the sake of the people of Gibraltar but if their past record is anything to go by, as I said before, God help our senior citizens. In a Government Press Release dated 15th March 2004 we were told that presentations had already been given to the Government indicating outline schemes and that shortly this would be substantiated with final design proposals. That consultants commissioned to undertake the design of the new housing schemes had engaged specialist sub-contractors to carry out ground investigation tests. We were told in November last year, as I said a minute ago, by the GSD administration that construction in the North Mole site would commence in the spring of 2004. It has not happened. We may well ask what the concept of good citizenship or moral behaviour have to do with the Budget. Well economics has a lot to do with how people live and work and budget decisions can and do affect peoples' lives. People living in cramped and overcrowded conditions can and does give rise to different degrees of violence and pressures. It is not the fault of the Housing Allocation Committee if they take longer than is reasonable in allocating homes for the many people on the housing waiting list. I have a short letter here that I received three weeks ago of which the Housing Unit has a copy. This is what it says, "I wish to bring my housing situation to your attention. I have resided with my wife at the above address for the past eight years. This is a 3 bedroom flat belonging to my in-laws. My wife's grandmother also resides there, and in the ensuing years we have also had a child. As you can appreciate we are living in very cramped conditions. Since his birth our three year old son sleeps in our bedroom, we have

absolutely no privacy either in our room or indeed in the house itself. Although we are all reasonable people at home, relationships can at times become tense. In recent years this has continued to deteriorate. The degree of tension was such that I was left with no choice but to leave the house as matters had got completely out of hand. I genuinely feared that the situation was potentially violent."

I referred Mr Speaker, in the last Session of the House to a letter of which I now have more than one copy, because this has happened more than once, about the response of the Housing Agency to elderly couples who request, genuinely request, to be allocated ground floor flats. This was dated January 2003, a year and a half ago. "The Medical Advisory Committee discussed your case at the meeting held on 13th January 2003. I regret to inform you that no further recommendation was made on your case. This is because the imminent installation of lifts should ameliorate the problems tenants like yourself are encountering in accessing their flats." I think it would have been much more reasonable if these people had been told that they would be considered, that they would do their best, that the Housing Agency would do its best to find proper ground floor accommodation for them, rather than give them the explanation that I have just read out.

Mr Speaker as spokesman for Social Services I must start by making a few general comments and then concentrate on two specific areas of the service which have been in the news recently. The elderly and the disabled. The feedback we get from the many people who come to us is that there is a lack of adequate information given to those who make enquiries at the Department's counter. But this is not obviously necessarily the fault of the people who work there. According to the Ombudsman Mr Speaker, a person going to the Department of Social Security to ask about a specific benefit will receive a good service. But somebody who goes there just knowing that he needs help is not quite sure how to proceed, and will not receive the same service. This is dependant on whether the clerk behind the counter is able to identify the needs of that particular person.

I agree with the recommendation made by the Ombudsman that the Department should have a general enquiries counter where anyone seeking general assistance can be informed of his or her rights, and of the benefits that may be available to them. I quote the Ombudsman's Report published recently, verbatim, "the Department's contention that the clerks serving at their counters should not be expected to know everything about the different benefits that are available can no longer be sustained." There is one specific case that I would like to bring to the attention of this House before I move on to talk about the matters concerning the disabled and the elderly. It concerns a gentleman who went for help to the Department of Social Security because he was unemployed. But unfortunately did not qualify to receive unemployment benefit because he had not made sufficient weekly contributions during the year in question. He was told by the Department that he had to go to the ETB to sign during the 13 week period but because he was able to demonstrate that he had no source of income he should have been put on social assistance from the word go. He should have been advised accordingly.

Mr Speaker, I do not intend to speak to give a long, long speech. I will actually simply concentrate highlighting two more situations concerning the disabled and the elderly affecting the Ministry that I shadow as a Shadow Minister for Social Services. Let me start first with the matter of respite care affecting the disabled and their families. Contrary to what Government Ministers often say that the Opposition always reacts negatively to anything the Government say or do, I personally was left with no option but to react to the Government decision to make cuts in the help given to the most vulnerable of our community. For this Government who, in my opinion, is well known for its spending on non-essentials to have made cuts on the very sensitive area of respite care is inexplicable. It should have been up to Government to defend their policy of reducing aid to the disabled and their families as the Leader of the Opposition said yesterday in the Budget debate, and that is one of the reasons why we called on them at the time to reverse their decision to implement these cuts until the matter had been properly debated in the

House of Assembly. It is the House that approves after proper debate has taken place what the funding should be for this important service that provides demand-led expenditure. The Hon Mrs Del Agua seems to have got her facts wrong on another matter which I believe needs clarification. When the Dr Giraldi Home was built by the GSLP administration, indeed at the request of the Disability Society, it did include provision for respite care. Just as the GSLP introduced improvements after 1988, it was only natural that further improvements should have taken place after 1996. Clearly in any area where additional services are provided, it is only natural that demand for such services should increase after a period of time. These increases arise in particular in instances where the family carers of persons with disabilities, themselves start having problems relating to health and infirmity and face an almost impossible task in coping with the needs of their loved ones. That is what respite care is for, to give the families a break. To help them to cope. But in a press release I believe issued by the Hon Mrs Del Agua, Minister for Social and Civic Affairs, on the 4th May this year concerning respite care, the Minister said that she could understand that the Disability Society should lobby for whatever amount of service its users wanted et cetera. But then went on to say that she had much less sympathy with what she called the GSLP's new found concern for the disabled, and considered that the statement which I issued on behalf of the Opposition on this matter, to be a huge case of unprincipled political opportunism. The use of this kind of language is unhelpful and I think.....

HON CHIEF MINISTER:

I think it is very moderate.

HON C A BRUZON:

Do you think so? I think it is unhelpful.....

MR SPEAKER:

Order, order, I would not like interruptions, please, carry on.

HON C A BRUZON:

The use of this kind of language Mr Speaker I think is unhelpful and irresponsible. I will let the people of Gibraltar decide and come to their own conclusions as to whether or not in their view I am an unprincipled political opportunist. In fact only the other day somebody stopped me in the street, a pensioner, and said to me, "*Charles how is political life treating you? How are you getting on in politics?*" And he said to me, "*you will never make a good politician because you are far too honest.*" My reaction was well, if that is the definition of a politician, I am no saint but I do my best to be Honest and sincere in everything I do and say. Mr Speaker, the Disability Society in their newsletter made a small comment and they said disability is not an abstract subject. Disablement is the daily life of many Gibraltarians and their families, it is not an issue for the scoring of points or of coming out on top.

I would now like to turn to the question of Government Debentures issued through the Gibraltar Savings Bank. Government decided earlier this year to lower the interest rate payable to pensioners removing the extra half per cent over base rate per year payable to those who are aged 60 years and over. This facility was introduced by the GSD Government in 2001 as a move to benefit pensioners who would be given a secure, risk-free monthly income at a rate higher than non pensioners. The scheme had proved very successful and the Opposition had regularly monitored the growth in savings. We therefore condemned and opposed the decision of the Government to do a complete u-turn and a reversal of policy in going the other way to discourage pensioners from investing in Gibraltar Government Debentures, by ending the half per cent extra for new investors and phasing it out from the amounts already invested as interest rates move up. In addition it appears that a £100,000 ceiling had

been put as the maximum investment and we did not see why pensioners should have been discouraged from keeping their savings in Gibraltar by investing in Government Debentures. It is as if the Government was encouraging Gibraltarians to put their savings outside Gibraltar, when what it should be doing is encouraging the repatriation of money deposited abroad. When the Pensioner Bond and Debentures were brought in, the Government announced it as a move to benefit our senior citizens and the Opposition supported it. We therefore considered totally unacceptable that the Government should have removed the benefit when apparently the scheme had proved to be a success, which must surely have been the original intention. I imagine that the excuse the Government will give for having decided to discourage pensioners from investing in the Savings Bank by lowering the rate of interest and putting a cap on the amount that may be invested, is the fact that by paying half per cent over the base rate it left no margin for the Savings Bank to make a profit. And that in addition for every pound a pensioner saves with the Savings Bank, the Bank has to have a 10p increase in its reserves. The problem with this excuse is that this is not a new development. These factors were already in place when the Government took the initiative to introduce the Pensioner Bonds. That is to say, from the beginning they knew that they would not be making a profit, and said so publicly. They also knew that in encouraging pensioners to put their money in the Savings Bank they would be increasing the reserve requirements of the Bank pro rata. Therefore, what this shows is that this is another example of the Government doing something which they promote as being a good thing and beneficial to a particular sector, and then changing their minds as if they had not done their homework initially and only discovered the implications after the event.

Mr Speaker, in her Budget speech last year, the Hon Mrs Del Agua, Minister for Social and Civic Affairs, made the following statement. Concerning a swimming pool for the elderly and the disabled. This is what she said and I quote verbatim. "Mr Speaker during the last Budget session, 2002, I announced that Government were committed to providing a purpose built

swimming pool for the elderly and disabled somewhere within the reclamation area. I am pleased to say that after lengthy consultations with representative bodies of both senior citizens and disabled people, Government are now in a position to give details of this facility. The new swimming complex will be located within the existing GASA complex, although it may be completely separated from the latter. This project will provide a state of the art pool for the elderly and disabled and I am told by the representative bodies with whom I have met, that it exceeds their expectations by a very long stretch. The complex will be for the exclusive use of the elderly and disabled during the summer season. During winter the use of the pool only will be shared with members of GASA who will utilise it on a sessional basis for teaching purposes." I assume that money must have been allocated at the time in the Budget to make all this possible. Could this not be another example of the Government promising something which they promote as being a good and beneficial thing to a particular sector of our community and then change their minds as to the swiftness of the delivery, of delivering such a project. Another example of a major, as it was described, a major social project was the relocation of the prison to a purpose built facility at Lathbury Barracks. We were told last year by the Minister for Social and Civic Affairs that the existing prison was almost 300 years old and must be the oldest, if not the oldest in the Commonwealth. It was obvious, the Minister told us, that in the 21st century this penal establishment had more than outlived the purpose of its original construction, and the need for re-siting it from its present location was well overdue. She then stated that since coming into office, that was she stated this last year, so since coming into office was four years ago now five years ago, the Government had provided funds on a yearly basis to enable the Prison Authorities to improve conditions in general at the prison for both staff and inmates alike, and added that despite all this, the Prison was still visibly outdated and could not serve the functions of a modern prison due to its existing structure and location. The move, she said therefore, would bring important benefits to the inmates, the staff and the immediate vicinity. Is this all rhetoric Mr Speaker? What exactly is happening with this Government? They seem to be good at

announcing projects, at making promises, but the realisation of these promises is slow in coming.

Mr Speaker, I have often asked myself a question. It is a very simple question, and it is this. Is winning an election an end in itself or a means to an end? Surely it is a means to an end. This Government's performance in the vital and important human issues that I have been asked to take responsibility for as Shadow Minister, leaves much to be desired, and the results so far since they came into office in 1996, in some of these areas particularly on housing, give me the distinct impression that for them winning an election is almost an end in itself and this is not fair on the people of Gibraltar. Since November last year when I was given the responsibility and the privilege that I now enjoy of looking after Housing and Social Services, and this includes the elderly and the disabled, we have had in the region of 200 complaints brought to us by the people who have real human problems who need solutions now. I have visited many homes of these people, I have visited them in their homes to see for myself and to understand their problems better, and I can assure the House that in the vast majority of cases a solution to their problems is long, long overdue. Thank you very much.

HON C BELTRAN:

Mr Speaker, as Minister for Heritage, Culture, Youth and Sport it is with great pleasure and for the first time that I rise to inform the House on all aspects of my ministerial portfolio. This includes the Government Department of Culture, Sport and Youth as well as the Heritage Division, Public Service Broadcasting and Lottery. I will speak on each of them separately for the sake of clarity and in order to avoid giving my contribution an air of disjointedness, given the obvious differences between the areas that I am responsible for.

I would like to start with Culture. Mr Speaker, Gibraltar undoubtedly has a wealth of talent in all fields of the arts, music, dance, drama and the fine arts. The Ministry of Culture has

during the past year not just continued with the process of encouragement, of reinvigoration and reactivation of cultural activities that we have witnessed over recent years, in fact the Ministry has by supporting different groups and organisations with substantial funding, premises, logistical and advisory support, in fact increased vibrancy and frequency of cultural activities. Evidence of this is the extraordinarily successful International Art Exhibition held in January and the equally successful and ever growing in popularity, Spring Festival held from late April to 5th June, when almost every day was taken up with cultural events ranging from concerts, plays, shows, exhibitions including the Sixth Spring Art Exhibition, and demonstrations of arts and crafts amongst other achievements. Ince's Hall has had bookings for every week of the year with performances ranging from drama productions, such as the successful plays *Telling Tales* not *Suitable for Children* and the *Mousetrap*, pantomimes by the Trafalgar Theatre Group, dances by Group 2000, the week of drama with participation by Buds, the Annouilh Player, Spotlight Drama Group and Stage Musicals Group. I have to thank all those groups, associations and individuals, too many to mention all, for giving so much of their time for the enjoyment of our community. It is indeed a blessing to have such a wealth not only of talent but also of community spirit. Quite apart from the annual grants given out by Government to support individual groups and associations, this past year premises were renovated for Group 2000 at the Ince's Hall courtyard and the Cool to be Fit Club at the Garrison Recreation Rooms. Substantial remodelling and renovation works were also carried out at the Ince's Hall courtyard in order to accommodate the offices of the Ministry of Culture, my personal staff and myself. Further repairs and refurbishment works have also been undertaken in the Ince's Hall Theatre, including the auditorium. The John Mackintosh Hall, celebrating its 40th birthday this year, continues to function as a very important cultural centre. It performs an invaluable social function. In 2003 there were 796 meetings and exhibitions held in the Hall and these were organised by a total of 168 organisations and associations. This statistic also testifies to the active and diverse cultural life of the community. Speaking of

both the John Mackintosh Hall and the Ince's Hall, it is important to point out that refurbishment and renovation works have been completed at Ince's Hall and this year I am giving priority to a similar programme of refurbishment of the John Mackintosh Hall building.

This year has also seen the involvement of this Ministry in a number of Tercentenary events like the model soldiers and the postcard exhibition that proved so successful. I would like to congratulate and thank all those involved for the hard work and enthusiasm they put in to ensure such excellent results. Other exhibitions still to come include the 300 years exhibition of paintings, prints and books, as well as the Art Exhibition of Gibraltar paintings. The Ministry also organised the dance displays performed at John Mackintosh Square by Stylos and the Gibraltar Academy of Dance in honour of Her Royal Highness the Princess Royal. I would like to thank the two dance groups involved for their cooperation and very high standard of performance in spite of the heat which created difficult dancing conditions for the young dancers. The Ministry has also been tasked with the organisation of the Fair Week and National Day celebrations. Substantial work has already been undertaken to ensure the standards set are maintained, if not improved. Also, starting on the evening of 3rd August and continuing into the early hours of 4th August, there will be a street party and variety show organised by the Ministry to mark the crucial date in our Tercentenary celebrations. As the Chief Minister has said the new Theatre Royal remains a Government objective, although the timing of the project has been subjected to a re-prioritisation of Government capital projects insofar as expenditure for improvements to cultural facilities is concerned, I am very pleased to announce a very substantial increase with £100,000 being dedicated to projects in this area.

Mr Speaker I now turn to sport. During the last financial year the Sports Department continue to build on the work carried out in previous years in the provision and management of the following:

1. Sports facilities – including the Community Use of Schools Scheme;
2. Technical Support – assistance and advice to Sports Associations and schools as necessary;
3. Training Support and Sports Schemes through the Sports Development Unit; and
3. Financial assistance through the Gibraltar Sports Advisory Council.

First facilities. The works at Bayside are well under way. The new Sports Hall and ancillary building, which will include lecture rooms and another squash court, a cafeteria and new offices, are expected to be in full use by autumn, by which time the changing facilities and spectator stands for the hockey pitches will also be ready for use. The Sports Hall now has a name, The Tercentenary Sports Hall, and as hon Members are aware it was recently graced with the presence of Her Royal Highness the Princess Royal, who inaugurated it. The great success in forward planning and vision that this project represents was evident from the many positive reports and comments made by the public following the show put on by the Harlem Globe Trotters in the Tercentenary Sports Hall a few weeks ago, as well as by those present in the inauguration by Her Royal Highness. Mr Speaker I take this opportunity to pay tribute to the huge success achieved by my predecessor and friend the Hon Mr Britto, in other areas too but most outstandingly in the Bayside Projects.

Technical Support. The Sports Department continue to provide support, assistance and advice to the Associations and schools as required in the provision of facilities, equipment and development systems, and in the organisation of events such as the Gibraltar Open Dance Competition, so successfully held in March 2004.

Training and Support Schemes. The Sports Development Unit successfully continued to expand the Summer Sports Programme last summer, including a wide variety of leisure and educational activities. An even wider programme will be launched within the next few days for this summer. An increased number of national coaching foundation courses together with other generic coaching courses from the British Sports Trust, SAQ International and the Youth Sports Trust were again run for local coaches. Assistance and support have also been provided to sports associations in the organisation of Accredited Sports Specific Coaching Qualifications in athletics, in basketball, football, in shooting, in skating, rugby union, squash, badminton, hockey, volleyball, shooting, swimming, rowing, sailing, table-tennis, gymnastics and rhythmic gymnastics. The tutors delivering these courses have included, in appropriate cases, separate school in-service training days thus offering coaches and teachers the opportunity to further develop their expertise. The objectives remain to achieve eventually as much efficiency and self-sufficiency as possible in the delivery of coaching and training. The Unit also introduced schemes for senior citizens in partnership with Social Services and the Senior Citizens Club. Also, for the Cardiac Rehabilitation Group. The Sports Advisory Council and its sub-committees have met regularly and I wish to take this opportunity to thank all its members who are volunteers, as indeed are those many persons who run sports clubs and associations week in week out, and so dedicate much of their free time in supporting sports development in Gibraltar.

Financial assistance. A substantial level of financial assistance has continued to be provided to sports associations through the three funds available. The Government provided £100,000 to enable participation by a large number of teams from over 20 different sports, to compete internationally and locally at different levels of officially recognised competitions. A further £40,000 was provided by Government to finance Gibraltar's successful participation in the Guernsey Island Games 2003 and advanced some funds for expenses towards the Commonwealth Games 2006. Funding was also provided for participation in the 2003 Strait Games held in Los Barrios. The Sports Development Fund

of £55,000 together with the involvement and efforts of the sports associations enabled a large number of sports specific coaching courses to be held in Gibraltar. The improvement to Sports Facilities Fund of £700,000 enabled the provision of specific assistance to associations running their own sports facilities, as well as the purchase of essential safety and other equipment and the refurbishment and improvement of existing facilities, including the resurfacing of the Stadium's football pitch and athletics track. This has proved to be a great success with FIFA and the IAAF Accredited Standards having been achieved in Gibraltar for the first time.

It is expected that the administration of sports in Gibraltar will become the responsibility of the Gibraltar Sports Authority during the course of this financial year. It will assume responsibility for the new sports facilities being built, including the hockey pitches. Negotiations continue with the existing departmental staff. As has already been explained, the staff will not be compelled to join the Authority but will be incentivised to do so. However, if they do not voluntarily agree, no changes will be imposed on existing staff. I wish to highlight the fact that funding for sport this year will again be increased. The main aim will be to extend the services provided, and, as regards the new facilities, to complete current phases and to progress with the next phases of the Extension to Sports Facilities Project at Bayside. A large amount of infrastructural works in preparation for the subsequent phases of the project are also scheduled. For these purposes, £2.5 million is being provided in the I&D Fund.

Some emphasis will also now be given to resourcing non-sporting leisure activities. During the course of this financial year the Government will publicise their plans for the new Leisure Centre at King's Bastion, which we will establish during this term of office. Gibraltar's sport will again participate this coming year in many official international competitions. Government will be providing £160,000, again an increase on last year, to enable our sportsmen and women to represent Gibraltar internationally. A number of events such as the first International Rock of Gibraltar Mountain Race, with the participation of world class athletes and

the visit of the renowned Harlem Globe Trotters have very recently taken place, delighting sports enthusiasts as we celebrate Gibraltar's Tercentenary. Some of these have been funded directly by the Sports Department and others through funds provided specifically by Government for Tercentenary celebrations. In another event supported by Government funding, Gibraltar's young sportspersons once again enjoyed and learned much from the participation in the 2004 Strait Games held in Tarifa in early June 2004. Again I wish to thank all those many volunteers, who through their dedication and selflessness, made such a success of Gibraltar's participation in this event.

In the Sports Development Fund £60,000, again a considerable increase on last year, is being made available to assist sports associations based on their submissions and also the advice provided by the Sports Advisory Council, to cater for the provision of accredited sports specific coaching courses and participation in internationally recognised training opportunities in support of the development of sport in Gibraltar. The number of sports associations organising such courses and events is expected to increase and the level of coaching courses will continue to progress, leading to the raising of standards of sports generally. The Sports Development Unit will continue to supplement coaching strategies with generic courses and qualifications, and with sports development schemes such as the Summer Sports Programme, which I mentioned earlier, and Sports Link, a scheme to encourage formal links between schools and sports clubs. It is also intended to provide some funds to assist events and projects of a more leisure-orientated, or recreational sporting nature, not as yet covered by the criteria used for the programmes, but the new sports facilities which will become available will allow the introduction of new indoor sports into the programme. Such as indoor cricket, indoor hockey and short carpet bowls amongst others. This will also increase opportunities for recreational sporting activities. The excellent cooperation that has been built up between Sports Department, the Education and Training Department, the Schools and the Sports Associations, augurs well for the future.

The sum of £250,000 will be provided to further improve existing facilities including the Westside School tennis courts. A further £100,000 is also being provided to refurbish vacant premises for use by associations and clubs, although this is not restricted to sports and youth societies. In this connection, a study is planned to be carried out in partnership with the Heritage Division, into the feasibility of refurbishing South Jumpers Bastion on similar lines to North Jumpers. A further £100,000 is being made available for the refurbishment of Youth Clubs. The provision of adequate facilities at the Giralda Gardens for petanque is also well under way and is due for completion during 2004/2005. The Hon Mr Bruzon will be pleased to hear that in partnership with the Social Services Department, it is still very much one of Government's projects to provide a new swimming pool suitable for the elderly and disabled, and for the teaching of non-swimmers. It is intended that upon completion the elderly and disabled will indeed enjoy exclusive use of this facility during the summer period. Government hopes to make a start on this project during the current financial year.

The demands on the Sports Department are expected to continue to increase and Government will continue to review resources in order to ensure that a quality service is now continued to be provided. Sports, both competitive and recreational, makes a very valuable contribution to the Gibraltarian's quality of life, and therefore it is Government's policy to continue improving facilities and supporting the Sports Associations in their efforts. Government recognise and appreciate the great work and commitment of the large number of volunteers in the Sports Associations and Clubs who ensure that sports thrives and develops in Gibraltar for the enjoyment and benefit of all.

I now turn to the Youth Service. This last year the Service has continued to consolidate the delivery of its work, emphasising to users and the community as a whole the value and the role of modern youth work. Government continues with its commitment to consolidate and improve its youth work delivery in order to provide opportunities for young people to pursue activities and

interests, not only as ends in themselves but also as a part of a wider developmental process, in which they learn about themselves and the society they live in, through activities that also afford them enjoyment of course. Government will continue to support not just the Government Youth Clubs, but also those associations that are internationally regarded as delivering youth work and have the interests of young people at heart, such as the Gibraltar Scouts Association, the Guides Association and the Duke of Edinburgh Awards Scheme. The Youth Service, often working together with other agencies, offer young people planned programmes of personal and social education that compliment the home and school environment, and that encourage and empower our young people to become active, responsible citizens. With these aims in mind, Government provides funds to the Youth Service to equip their youth workers with the skills and support necessary to deliver these objectives. There is at present a Trainee Youth and Community Worker studying in the UK who will be ready to join the current team in the summer of 2005, on successful completion of a degree in youth and community work. A vacancy exists in the established staff complement for a full-time youth worker, which is intended to be filled by the start of this summer. The demands made on the service are reviewed periodically. The training programme for part-time youth workers has continued this year and has introduced youth work to over 20 persons. The successful candidates will be able to deliver youth work within a Government-funded club or project, as a paid or voluntary youth worker, and/or with other clubs and societies. At present, eight paid part-time youth leaders and three volunteers have already been recruited through this system. Government is keen to encourage training in youth work that conforms to recognised standards in the United Kingdom. Youth Service full-time and part-time staff and volunteers have also attended Health and Safety, First Aid and Counselling Skills Courses, as part of their continuous development training programme. Training during 2004/2005 will include areas such as child protection, counselling, bullying and involving young people in curriculum and service development amongst other matters. All these initiatives underline Government's commitment to ensure that

accredited youth workers deliver competent youth work. In fact a measure of the success of the Gibraltar Youth Services' high standards, which I confirm with much pleasure, is the fact that it has been accredited as a field placement centre for students in the United Kingdom undertaking Youth Work Degrees. This underlines the credibility that the Gibraltar Youth Service has gained with training establishments in the United Kingdom. Parallel to these initiatives the Youth Service has continued to develop opportunities for young people to participate in activities that are educational, as well as being enjoyable. For example, in 2003/2004 a youth educational trip to Sierra Nevada and day excursions and visits to sights in Gibraltar were organised. The Youth Service is also actively involved in the Cheshire Homes Project. Young people who use the Youth Centre were involved also in the construction of floats for the Three Kings Cavalcade as well as participating in rock bands and dance groups. Year 9 pupils from both Comprehensives were also involved in personal development programmes carried out by the Youth Service in partnership with the schools. These programmes assist young people to identify project topics which interest them, and with the support of the Youth Service staff and other volunteers, carry out their own research and help in putting the projects together. Credit must be given to youth workers who are able to respond to young peoples' initiatives and work with them to create a relevant learning environment and experience. This is the real value of youth work and the importance of having competent and properly trained youth workers.

Opportunities for young people to visit local places of interest continues with groups visiting Lower St Michael's Cave, the City Fire Brigade, the local Museum and GBC. Local enthusiasts and professionals have in turn visited youth clubs to talk to members about a number of interesting areas, health hazards schemes, local projects for the disabled and women's needs. The Duke of Edinburgh Awards Scheme also gets support for the delivery of its programme. The Award is currently experiencing a boom in the number of young people following its very demanding programmes. It is a successful youth development programme that attracts young people from a wide diversity of backgrounds

and with different levels of ability. The Award has moved to the Youth Centre, providing a central venue for participants to continue with respective programmes. Government have already provided a site for a new Duke of Edinburgh Award Centre at the new Sports Complex at Bayside, and construction will commence soon. Government will also be assisting the Guides Association and Scouts, with funding to help them with their training and other projects, underlining Government's support for those groups and associations who are willing to support the young leaders.

For the year 2004/2005 the Youth Service has planned to continue its work in partnership with the Comprehensive Schools, in the personal, social and health educational programme. There is also a trip planned to Cyprus that will be concentrating on women's and cultural issues, and another for the future which may involve South American and European countries. Dolphins Youth Club is also organising a trip to Barcelona involving cultural visits there. A series of projects will be worked on with the Sports Development Unit, as well as continuing with the responsibility for the organisation and running of the Youth Pavilion at the local Fair.

Mr Speaker, as part of the Youth Service's active citizenship programme, a trip is being planned to take a group of young people to Brussels and Strasbourg. This will involve them in a series of learning experiences before, during and after the trip, and will deal mainly with Gibraltar's newly acquired right to vote in European Elections.

All clubs and some of the other groups are organising Tercentenary celebration projects. Most important of these will be an International Youth Forum called Rock Solid, to be held in July with the participation of some 60 young persons from abroad.

I am glad to state that there is an increased interest in young people participating in youth service activities and programmes, Mr Speaker. Laguna Youth Club is experiencing an increasing

youth attendance, and in particular more girls are participating. Projects have been organised in response to recent vandalism problems in the area, and these are producing very positive effects. Plater Youth Club collected through a project about the United Nations Children's Charity, over £1,000 for UNICEF. The Youth Centre has been working mainly on encouraging newcomers to take part in planning, organising and assisting the running of discos, cookery projects and away days to local places of natural historical value.

The Youth Service intends to continue reviewing and adapting its programmes to suit the needs and preferences of young people. Issues of loneliness, low self-esteem, bullying, disaffection, exclusion, drug abuse and labelling amongst young people, have been identified as requiring attention, in partnership with relevant agencies. Therefore, the Service will continue with its participation and involvement with the Drugs Advisory Council, the Royal Gibraltar Police, Community Consultative Forum, Social Services, and establishing greater inter-agency cooperation with schools and local community groups. Government will ensure that the Youth Service is well placed to meet its obligations to the young people in particular, and the community as a whole. Government attach great importance to services and facilities that are of direct benefit to young people, and therefore intend to continue to support and resource the Youth Service adequately, to enable it to achieve its goals. An example of this Government's commitment in this respect is the £100,000 that has been allocated for the refurbishment of, and improvement to Youth Clubs.

Heritage. The past year saw the consolidation of the Heritage Division within the new Ministry of Heritage, Culture, Youth and Sport. This was the final stage in a process started by this Government, when we established a Heritage Section, and then a Heritage and Planning Division. It testifies to the importance attached to heritage by this Government. It is also a long term commitment to heritage conservation, and an indicator of our intentions with regard to the pursuance of world heritage status that I shall return to later.

Heritage is of importance across a range of Government policy. It has a bearing on economic development, tourism, environment, housing and education policies. This Government recognise the growing public interest in heritage and will continue to respond to this by providing firm committed and consistent leadership and support, as well as encouraging effective partnerships, developing a solid information base from which to develop policies and facilitating access.

In pursuance of these aims, the Division's strategy has been one of developing four cornerstones.

1. Knowledge and Information.
2. Public Awareness and Access.
4. Stewardship; and
3. Economic and Social Benefits.

The basis for sound policy-making is good and solid evidence Mr Speaker. For this reason the Government will continue to dedicate resources for the development of research programmes.

The work undertaken so far has put Gibraltar firmly on the map. In particular the two major heritage assets, the Fortifications and the Pre-history, have been prominently researched. The Pre-history, involving work in our caves in particular, reached an all-time high in 2003 with up to 60 researchers working in Gibraltar during August. This work is now partly funded by the European Community. Gibraltar, through the Museum, is taking part in an Intereg III B Project within the MEDOC Programme, with Spanish and Italian partners. The Project Paleomed, investigates human occupation of coastal sites in the last quarter of a million years in the Mediterranean. Gibraltar has consolidated its position as

world leader in this field. The Museum team was invited to participate in a major international workshop organised in Rhodes by Cambridge University in April of this year. Within Paleomed itself, Gibraltar organised an international workshop from 19th to 21st May, which involved major players coming to the Rock from the United Kingdom, France, Spain, Italy, Greece, Morocco, Malta and Israel. This year's Calpe Conference will also be dedicated to the subject of human evolution and pre-history. It is the third occasion that the Calpe Conference, since it was established by this Government in 1997, will deal with this subject. The Calpe Conference on Pre-history has become an item in the international calendar, and Government will continue to support this initiative. Since 1996 the Government has supported archaeological research in Gibraltar, and these results, when added to a number of major international publications that are now featuring Gibraltar, testify to our aim of making Gibraltar a centre of excellence in this field, having exceeded all expectations.

Research into our fortifications is also receiving an impetus as we give due recognition to their huge importance. As I said previously, the Government consider that the fortifications, including the tunnels, the fortified city and the walls, are a major heritage asset of world value, and a cornerstone of our world heritage bid. Hereto, we are making inroads at international level. We were invited as guest speakers at a Conference on Latin-American, Caribbean Region Fortified Cities, organised by the Mexican Authorities and sponsored by UNESCO in Campeche last March. I can also advance that we are giving consideration to hosting a major international conference on fortifications in 2006, under the Calpe umbrella, and the prospects are looking very positive on this front. The Museum and the Archives are the tangible basis for all this research and documentation.

I now turn to the second major component, public awareness. I use the term in its widest context to include education, access and involvement. Earlier this year I launched an initiative that would involve the study of our identity. The Government regard

the study of our identity as a people, as a fundamental area of heritage work. Through understanding our past and our heritage we can better understand ourselves, our make-up and our identity. Public awareness and education are key components of this identity. For these reasons we attach a huge importance to the development of programmes that increase our awareness and understanding, and this has been reflected and continues to be reflected in our recurrent budget.

Last year saw the production of a film on the Sortie. It received wide public acclaim for its content. It was a pilot for other documentaries that could focus on specific aspects of our history. We are currently studying the possibility of further films of this kind on events such as the evacuation or the Bedenham explosion, for example, in which personal testimonies of the events would bring these to life. Personal testimonies are vital to our record of our identity and we are developing a programme of interviews and questionnaires of a broad cross-section of the community, that will record the intangible heritage of our community and conserve it for future generations. We have seen the great interest that there is for this in our community. The recent highly successful Museum Open Day, focused on this intangible heritage, in keeping with a wider international effort in this field. So here too we are keeping well in the fore of international initiatives.

The Division works closely with the Education Department in its Heritage Education Programmes. School visits for hands-on experience in the Museum have now become a regular feature of the education calendar. The teaching of our history as part of the National Curriculum now involves all schools and age groups. Last year we funded the production of an excellent book on pre-history for our First Schools, as well as a supporting kit which has been acclaimed internationally. Work is now advanced for another set of heritage education tools. As part of the Tercentenary Project, we have also funded a series of posters and supporting educational material, covering the decades of Gibraltar's history since 1704.

The Government continue to work closely with the Gibraltar Heritage Trust as part of their plan to involve the community in heritage. I am pleased to recognise the great value and work of the Trust, who we regard as a major partner in our heritage initiatives. We do not want to leave it there. We want everyone in Gibraltar to be proud of their identity and their heritage, so we will continue to encourage collaborative partnerships, awareness schemes and public participation. Access to information will be strengthened further. Especially through the use of the internet, and we are continually reviewing physical access to heritage sites within the natural constraints of their conservation.

Stewardship is the third element in our cocktail. We identified the need to strengthen our heritage legislation some time back, and made the introduction of new heritage legislation a manifesto commitment. We have been working with the Gibraltar Heritage Trust towards a new Heritage Bill, and it is still very much Government's intention to bring a new Bill to the House as soon as it is ready to do so. We have also been active in conservation schemes. During the last financial year we completed the first phase of the conservation of the Tower of Homage. We will continue working on this site during this financial year, in anticipation of the release of the entire Castle complex for heritage use, once the prison is relocated. The Moorish Baths in the Gibraltar Museum have also been fully conserved, and will re-open to the public shortly. Once all these works are completed we will have made a necessary and important contribution to two of our most important monuments.

I lastly move to the fourth element in heritage, which is the economic and social potential of our heritage. The Government are committed to heritage conservation, but in keeping with the current thinking of leading heritage professionals, we do not see heritage as static. We recognise the need for change and our policy is to manage change in a way that brings wealth to our community, improves the quality of life and retains significance. For these reasons we favour schemes that achieve these objectives. I will highlight a number of such schemes that are under way, or that we hope will commence in the medium term.

I have already made reference to our medieval castle. The Government took the significant step of moving towards the relocation of the prison, an important social and heritage investment. We have a medium term view for the Castle complex. It is a view that will involve research on the site to allow a better understanding of its significance. This is a unique opportunity for our knowledge of this part of our history to be advanced, with the aid of archaeologists and historians. Then we will initiate conservation works, and third, we will open up the area as a public amenity.

It is no coincidence that we are promoting several schemes at the northern end of the Rock. We have been working towards opening up an important stretch of 18th century galleries and World War II tunnels. This work will continue this year, and will extend in future years to include the Northern Defences. This project will, along with the Castle, provide a series of heritage attractions of benefit to the local community and to the tourism sector. Together, they will represent seven centuries of fortification. These projects will link up with the Casemates area that will be the hub. They will additionally provide an opportunity for business development within the charming, narrow streets and alleys of the medieval town, creating the basis for sustainable urban regeneration.

Our aim is to gradually but actively open up our heritage assets in a planned and coherent manner. For this reason we will commence work on the conservation and exposing of our City Walls along the northern end of the City. In this way we will be able to link these up with projects that I have mentioned above. The Government are therefore contemplating a scheme centred around Orange Bastion, that will improve the City Walls, within that area, while creating a significant public amenity in keeping with our aim of improving the quality of life of our citizens.

This is in sum, our heritage programme. I will highlight that it is a programme that is built into a long-term strategy, and is therefore not to be seen in isolation. We are at an exciting point in our work, a point in which results are becoming patent in many

areas of heritage, as I have outlined. It augurs well for the future of heritage conservation in Gibraltar, and particularly for our bid for World Heritage Status that I am confident will go forward very soon.

I turn now to broadcasting. Mr Speaker, my ministerial responsibility for broadcasting and particularly to the services provided by the Gibraltar Broadcasting Corporation, is what I shall now speak on.

During the course of the financial year just ended, the Corporation has continued to develop and improve its product with the community now enjoying an improved programme choice. The new programming arrangements recently adopted for the Corporation's television service, have resulted in a major increase in output. These new arrangements have seen the television service programme schedule extended to 24 hours a day. This has increased the combined number of radio and television broadcast hours to over 20,000 hours per year. For this year there are plans to broadcast Radio Gibraltar over the internet. This will make the Radio Gibraltar transmission available to a worldwide audience. This will also be a 24 hour, seven day a week service. It is expected that the service will go live very shortly.

The financial management exercise by the GBC's sound, and the range of services offered, continue to be provided within the genuinely approved budgetary limits. The Corporation's audited annual accounts for the year ended 31st March 2003 will soon be Tabled. Ahead of this I can inform Members that the accounts reflect an operating surplus for the year of over £30,000. This turn around in the GBC's finances is welcome. For the year ended 31st March 2004, the Corporation has achieved a technical break even. The provisional outturn is a small deficit in the region of under £8,000. The main contributory factor to this end of year result was the decline in air time sales of some 13 per cent for the year. This decline was, however, successfully contained to the earlier part of the period under consideration, due to a timely review by management of its sales and marketing

strategy. The revised strategy paid off and the declining situation was reversed. This strategy continues in place.

The Corporation continued its migration plans to digital technology and during the latter part of the year, installed its first digital video editing facility. As part of the preparatory work, two senior managerial grades attended a seminar on digital broadcast services. For this year there are plans to increase the number of digital video editing facilities. A further enhancement will be the installation of an enhanced video graphic work station. One area of delay to the Corporation's plans, is that the digital broadcast frequency or frequencies it is to be allocated, is still pending confirmation. As part of its public service broadcasting limits, the Corporation cooperated with the UK Electoral Commission and produced a public discussion programme as part of the sounding out of public opinion for the inclusion of Gibraltar in one of the UK European Election Regions. During the course of the year, the Corporation also produced and covered a number of important community-related programmes and news events. These included National Day concert, a debate on Gibraltar held at Westminster Hall, London, the Gibraltar Fair and the Elections to the European Parliament.

As in previous years, the Corporation has continued to send its news team abroad to provide coverage of key Gibraltar-related events. This, is an important aspect of GBC's role of keeping the community informed of matters relating to Gibraltar. The success of the 2003 GBC Open Day is worthy of mention. With the wholehearted support of the community, an all-time record sum of £63,000 was raised. I take this opportunity to congratulate all those involved in making such a success of the GBC Open Day.

During the year, GBC continued to play an active part in the activities of the Commonwealth Broadcasting Association. The CBA enjoys a membership of over 100 organisations in 54 countries. Last February GBC was represented at the Association's General Meeting, where GBC's General Manager was re-elected as the CBA's President for a further term of two

years. This year the Government will be making available to GBC a subvention of £1,150,000 and a further £120,000 as part of the Improvement and Development Fund.

I come to my last area of responsibility in the order of speaking, and that is Government Lottery. Finally, I would like to say that the forecast outturn for the Government Lottery for the financial year ended 31st March 2004, is shown in the Draft Estimates of Revenue and Expenditure as a projected surplus of £121,000. Projected surplus for the financial year ending 31st March 2005, is estimated to be £497,000. The level of returned tickets during the year ended 31st March 2004, was marginally lower at 28 per cent of gross sales compared with around 32 per cent within the past four years. However, prizes on returned tickets were also lower at 16 per cent of gross prizes payable, compared with the Approved Estimate of 33 per cent.

The tender for the administration of the Lottery was awarded on 2nd October 2003. A number of proposals were included in the tender for changes to the structure of the Lottery, and for enhancing sales of lottery tickets. These, together with other ideas, following the Government Review of the Government Lottery conducted by the Treasury, and discussions with the Lottery Agents, are being considered by Government.

In conclusion, I take this opportunity to thank the Civil Servants and other employees who work hard to ensure the successful attainment of the many varied and at times difficult objectives that we set ourselves in our Ministry. Thank you Mr Speaker.

HON S E LINARES:

Mr Speaker, on hearing the Chief Minister's presentation, the impression he had to portray is that there have not been any cuts. He said that there has been overspending from Departments and that there had to be control on this spending. It is incredible to hear from this man who spends money himself as

if there are no limits, anyone can just look at the amount that he has spent in Convent Place itself.

In relation to Education, Training, Youth and Culture, the cuts this Government have imposed have had a great effect on teachers, students and pupils generally. I also heard with interest what the Minister for Education had to say on the Budget, which nearly made us bring tears to our eyes, and to which few would disagree. He praised everyone, he gave an expose of the Tercentenary functions and exhibitions in schools, and all the wonderful things children and staff have done. The same can be said about the Minister for Culture, who praised all and sundry. I was expecting both Ministers to state the item of revenue or expenditure where all the praise appears in the Draft Estimates of Revenue and Expenditure.

I will proceed to prove that the Chief Minister's cuts have deprived children of things that they have always enjoyed. I will also analyse how the lack of Government policy and direction affects our education system, our youth and how this GSD Government's priorities have nothing to do with the improvements that he, the Chief Minister, has mentioned. Before I continue with my prepared notes, I would like to state that the Minister was asked by myself way back in the year 2001, whether Government were looking at having ICT, for computing, as a course subject, to which he answered in the negative. And now we see that this is happening in the UK, and I hope that he will amend the 1991 Regulation on the National Curriculum as soon as possible. In relation to workload of teachers which the Minister referred to in his statement, I would like to say that if we are not careful and we do not make an assessment into the teachers' administrative load, we will fall into the same trap as they have done in the UK.

I will now continue with my prepared notes. The funds for the maintenance of schools this Budget has been cut in the last five months, due to the overspending of the irresponsible GSD Government. Schools have experienced these cuts to the extent that there have been reports of members of the teaching

profession having to carry out some minor works, in order to keep children in a safe environment. We have seen a lack of planning in certain works such as that of Bishop Fitzgerald. The school lacks proper toilet facilities due to the large intake that it has to cater for. In the last General Election, the GSD promised to upgrade facilities and spaces in this school, yet we do not see funding provided for this. St Martin's is still awaiting its roof to be refurbished or repaired, and its long promised playground equipment, which has been lying idle in the same place for the past year, to be set up. I wonder whether the item in the Improvement and Development Fund in this year's Estimates, include the repairs of the roof, since only the playground is mentioned, and only last night I had a number of parents calling me up to complain about the lack of lockers for the new intake in September at Bayside School. Many students will have to share lockers as from the first day in a new school. The lack of policy from the GSD Government has seen us with no legislation on truancy, which is fast becoming a problem in our schools. On nursery education where, if it not for the good practices of owners and their assistants, these institutions would be a nightmare story, since his Department has not inspected them since 1997. No School Nurses visit them, no in-service is conducted on an annual basis. Basically, no support from the Department of Education. This, despite having been asked in this House on numerous questions on the matter. This questioning prompted Government to react. Their reaction being a meeting with owners with an Educational Advisor instructed by the Minister, before the Election. After that, no meeting, nothing, nothing has happened since. They will probably meet them in the year 2007 or 2008 before the next General Election. This Budget clearly shows that Government are not going to continue with having, as a policy, 100 per cent full-time pre-school nursery education. No substantial funding has been provided for in this year's Estimates.

The lack of policy and proper planning has also seen us with no school at the Westside area. The GSD has been promising a school at the Westside area since it entered into Government seven years ago. Eight should I say now. In this Session, in

Question Time, the Minister stated that it is still Government's intention to do it, but again, this year no funding has been provided. Another empty promise from the GSD Government.

In relation to the parental contribution and its abolition, a thing that was mocked during the 2000 Election by the GSD, is now going to be a reality. I work on this, but during Committee Stage the Minister could explain how students obtaining grants this year, the Estimate budget is less. Why is it less than last year's Estimate? With the fact that parental contribution is abolished, how is this going to be funded? This Government took the decision to alter the way stationery was purchased, which has been traditionally done by schools directly. According to Government's own figures, this has resulted in the Department of Education increasing capitation by 3 per cent in order to meet the financial cost of this move. Subsequently and despite warnings from the profession and us in the Opposition benches, it resulted in delays on materials and books to schools. Then this idea was scrapped. It is obvious again, that the person who took this decision did not understand why and how the system has been to do direct buying. All this uncertainty led to some schools having disruption of a nature which has never happened before.

The change of school hours happened with lots of turmoil, due to this GSD Government not having consulted properly. The worst thing of all in relation to the change of school hours saga, is that this Government never intended or does not intend to, in the future, to review and evaluate what is currently happening in order to improve. I therefore question his statement that there is stability, when he has not reviewed the change at all. In answers to a question in this House, the Minister confirmed that this Government had not, and will not, carry out any review. It is incredible that we see a running cost of nearly £500,000 spent on Service All to provide dinner ladies and supervisors, and I would like to make it clear that I am in no way questioning the work they currently do, when this could have been done by teachers. For free, if they had been properly consulted and their views taken seriously. This £500,000 is yet another item of expenditure which could have been used for many other things

needed within the Education system. It is not good enough to say that more money is being spent on Education, when the beneficiaries are not our children and students. This has been the case in the last two examples I have mentioned, that is the purchasing of stationery and the contracting of a private company to supervise the change of school hours.

The cutbacks in the last five months, as mentioned above, have affected schools and therefore children, in that children are now being deprived from fulfilling National Curriculum requirements, due to the fact that they are no longer able to go swimming in the GASA pool. The cost, as arranged by the GSD Government, is that £1.50 per child is given to GASA for the upkeep of the pool. This fee was paid by the Department of Education directly to GASA. Now, due to the cutbacks, the burden of paying this bill has fallen to the schools itself, and therefore decreasing in real terms the money provided for the schools.

The asbestos saga is one which demonstrates the attitude of this Government towards the teaching profession and Government employees generally. I heard with interest the Minister for Social Affairs in relation to asbestos, that a specialist company was contracted to deal with the asbestos at Mount Alvernia, and it would be interesting to find out who they were, and whether they were the same ones that dealt with the asbestos in Bishop Fitzgerald and Governor's Meadow. The lack of information to the staff, and the fact that parents were not told, speaks volumes. The fact that subsequently more asbestos was found in the College of Further Education, should have prompted Government to draw up a register of asbestos that might be in other schools and institutions in which people might be exposed and at risk of contamination. In this case, the Government are not complying with the spirit of the law. In a recent article in the Safety and Health Practitioners Magazine, the March publication, it states, and I quote, "recently published research on mesothelioma has reinforced the message that many more people are doomed to die of this cancer in the coming years, because they were exposed to asbestos in the 50s, 60s and 70s. Whilst there is unfortunately little that can be done to halt the

progress of the disease in those people, compliance with the incoming Control of Asbestos at Work Regulation should help prevent further harm in today's workers." The author of this article states that the Regulation introduces a new explicit duty to manage asbestos risk. That the Regulation makes employers, and I quote, "keep an up to date record of the location and condition of the asbestos containing materials, ACMs, in the premises". And finally and more importantly, he states that even without the Control of Asbestos at Work Regulation, which incidentally we do have in our Statute Books, make it explicit in law, finding out exactly where asbestos is present in a premises as an imminently sensible, not to mention morally correct, step to take. So I would urge the Minister to conduct a thorough survey with a view to complying a proper register, at least in schools and other educational institutions, where students, children and its employees can be exposed to asbestos.

Continuing with the cutbacks, the cover for absenteeism has been cut to the extent that classes have had to be doubled up at times. This has been the case because both Supply Teachers and Supply Classroom Aides, have not been contracted lately as was before the General Election and because of these cutbacks there is a shortage of both Classroom Aides and Teachers in all schools. In this year's Estimate there is a decrease in temporary assistance by £250,000. It would be helpful if at the Committee Stage of the Bill the Minister can explain why this year we have a breakdown in Head 1A Subhead 1D, and I wonder if the £250,000 cutback of this year is to buy the promised computers that this Government have been announcing in the last two years, in their usual propagandistic fashion. The GSD Government announced the £250,000 in computers were to be spent at all levels. When asked in this House how much has been spent on computers, the Minister of Education stated that £147,000. But this figure included the suite into which the computers had to be housed. Hardly the £250,000 in computers. In the Youth Service nothing was spent and neither was any money spent on computers in St Bernadette's Occupational Therapy Centre. It was mentioned at all levels. The St Bernadette's Occupational Therapy Centre is yet another case of

total abandonment on the part of this GSD Government. Hardly any educational programmes for the users of this centre. This is due to the lack of policy of this Government, and since I am speaking about special educational needs, I would like to mention that the cuts that this Government have made, has affected both pupils of special educational needs and other children. I cannot understand what statistics presented to this House that there was 1 to 3 ratio of Classroom Aides to children in the inclusion programme. The figures given to this House show that 34 Classroom Aides are assigned to this inclusion programme, yet in the Estimates we have 33 Classroom Aides. The explanation to this can only be that a Supply Classroom Aide over and above the 33, is employed to make the 34. But does this then mean that there is no Classroom Aides anywhere else within the Education system? The Minister stated in this House that eight Classroom Aides are on permanent supply. This terminology of full time or permanent supply is a contradiction in terms. One cannot have a full time supply, a supply is supposedly to cover for absenteeism. Therefore the analysis from the Chief Minister that absenteeism is the reason for some of the over spending is a red herring. What is happening in real terms is that this Government are employing Classroom Aides and Teachers as full time supply, as they state, and these have nothing to do with absenteeism.

Mr Speaker, my portfolio includes that of training, and year after year we see the Chief Minister and the Minister for Education stating that training is both qualitative and quantitative, yet the failure of this Government is that the courses offered are not attracting the number of students that courses require for them to be fruitful, especially in the financial situation that the Government finds itself, and having to do cutbacks in the manner it has done so recently. This year we have had a repeat of the courses that are offered, as he did in the last two Budget speeches. The Training Advisory Council has only met three times this year, and is basically a talking shop, and the Minister thanked all the members of the Council, presumably for having the patience of attending meetings now and then, to see any progress on the part of Government. The School of Tourism

which was announced by the usual media orchestration by this Government has attracted two students this year, of which one has also dropped out. To boot, most of the other students that are in other intakes are on work placements. Is this a school, or is it not the same as a cadet scheme? If we look at the numbers given to this House by the Minister himself, we can see a slow decrease in the number of students enrolling in courses, and therefore the lack of interest on the part of young students.

Mr Speaker, yet another mishandling of the Government's funding is the money which the Government spent on the Retreat Centre at Lathbury Barracks, which has cost over £1 million, and carries a running cost of £117,000 per annum. This place has only been used on fourteen occasions since it was inaugurated. This brings me to two subjects which are of great worry, and that is our Youth Service and the Drugs Strategy.

Our Youth Services needs to be given the right tools to be able to develop, together with Bleak House, Construction and Training Centre and the Department of Education, to draw up a general policy for our youth. It is worrying to see how Government's Drugs Strategy, which again was given all the usual propaganda and has been publicly criticised by a retired senior police officer, seems as if it had not got off the ground properly. Though the Minister for Social Affairs has mentioned Drugs Strategy and she mentioned that now there is coordination between the different departments involved, and I am not reassured by this point. It seems as if the lack of coordination from different departments to engage on what is the task ahead is the problem. It is not just good enough to have a high profile press conference to announce it, and then take months to appoint a Drugs Coordinator. Despite this, and taking into consideration how serious this topic is for our youth, I am willing to give the Minister more time to see if the drugs strategy and all the initiatives mentioned actually brings the results we all want.

In the schools we see that the 14 to 19 education is not as it should be, and we have seen that the committee which the Minister set up has again met six times in four years, and without

any significant proposals to tackle the issue. The fact that the Minister mentioned the Tomlinson Report, and that in the UK they are still considering it, should not mean that this committee can not come out with a strategy for the 14 to 19 young people, whilst we wait for developments in the UK. The one year course offered to 14 to 15 year olds before they leave school should be a priority, since at present it is not giving the pupils any qualifications or any skills at all. Another factor that is worrying is that of juvenile delinquency which is on the increase. We see on a weekly basis juveniles being taken to court for petty crimes, and at times not so petty.

Mr Speaker, the lack of the Government's support to our Youth Service, the failure to recruit young people to training courses, the lack of coordination on the Drugs Strategy, the lack of commitment in relation to the post 14 education, and finally the increase of juvenile delinquency, shows that this GSD Government are failing our young adolescents. It is no longer an argument that these things were not done during the previous administration's time in office. We have now moved on and practices have developed. No, what has developed is ethos and practices in Western Europe, not from the Chief Minister's Convent Place nest. It has not developed there, it has developed everywhere. Yes. We have moved on and practices have developed since 1996 as the Minister mentioned. The Tomlinson Report is an example, yet our youth are currently getting a raw deal.

Mr Speaker, on culture. When hearing the Minister for Culture he gave the impression that all events that he mentioned only started when the GSD Government came into office in 1996. Is it that before 1996 there was not a Spring Festival, a Drama Festival, Exhibitions, talent in Gibraltar? Of course there were.

I now move on to the infamous Theatre Royal. What can be said about this Millennium Project? It seems as if the then Minister for Culture, the Hon Bernard Linares and his buddy the Chief Minister got together one day and had this vision. This vision was probably to emulate Tony Blair. Tony Blair's Millennium

Dome. The similarities were not the word “millennium” but the disastrous ending that both projects have had to date. The Theatre Royal has been the big failure of this Government. From the outset it clearly shows that both the Chief Minister and the Minister for Culture did not have a clue as to what they wanted from the project, and what the cost was going to be to the taxpayer. The consultation process that the Minister said he had undertaken, were also done well after the agreement was signed in November 2000. When the Minister signed the agreement with the owners, and he stated and I quote, “we sincerely appreciate the genuine efforts made by the owners of the Theatre Royal, to reach an agreement with Government. We believe it is a good and fair deal, both for the owners and for the people of Gibraltar, who can now aspire to the restoration and re-opening of this historical monument as part of the cultural heritage”, which is now a hole in Bishop Rapallo’s Ramp or in City Mill Lane. It is ironic that not only was it a terrible deal for the Government, since it now has a running cost of £60,000, the price of probably employing an extra Educational Psychologist or Occupational therapist. The worst part of this is that there is nothing to show for it to date, for this expenditure, and to boot it has lost its heritage value due to the demolition works which have to date cost over £3 million. Anyone would have thought that before embarking on such a project, that proper surveying of the building would have been done. A proper feasibility study should have been conducted. In answer to Questions to this House, the new Minister for Culture confirmed that only two surveys have been commissioned. It takes no rocket scientist to find out, like I have done on numerous occasions, that there is probably some 2,000 people interested in opera or likewise or with the capacity, and with a capacity of 520, four shows are more than enough for this place. This means that if tickets were sold at an average of £20 per seat, it would come to £4,000 which easily falls short of the cost of bringing a theatrical company to Gibraltar. Albeit with the logistical nightmare of transporting all the necessary props and equipment to the theatre in the middle of town, which has difficult access. With respect to conferences that has also been mentioned, we have to see how the hotels are doing as conference centres. I realise

that they are small in nature and bigger ones are also being entertained. So, is there a need for these facilities? Mr Speaker, this eccentric venture was announced as a project that would obtain EU funding under Objective 2 Programme, and due to the Government’s incompetence to date, only £481,855 has been received as EU Grants. These figures fall well below the expected 40 per cent as stated by the Minister in this House. Forty per cent of £3 million should have been up to date, the Government should have obtained £1.2 million. The sum of £481,000 odd is just a quarter, are we to get the rest? It is not only me who thinks that this project is one which is eccentric in nature. Even the Chamber of Commerce thinks as much. In a recent article entitled “A £9 million White Elephant”, published by the Chamber’s magazine B2B, the author and editor seems to share my views. Firstly he states, cultural flagship stranded on financial sandbank. Secondly he states, miscalculation of costs, uncertainty about the extent of the surveys undertaken before the works began and Ministerial determination to another public doubts under a blanket of hype, have all contributed to the creation of a costly white elephant. Thirdly, it questions the project by stating, in fact has the unfolding story of the Theatre Royal Project been a saga of time and budget miscalculation. Fourthly, it points towards the lack of planning, which I have been stating all along, and I quote, “consultants point out that the elaborate provisions of the theatre had not taken into account the need of access for the scenery”. It continues, “but it was not clear whether either the Minister for Culture or for Tourism, had researched the economic viability of a theatre in which performances of opera and zarzuela were to be staged”. The article states that any layman, including myself, have been saying all along. Many thought that seating of only 520 would make it impossible to balance the books for a major stage production. Would the buying power of so limited a venue, that is the cost ratio between tickets for available seating and the likely fee to be commanded by a visiting reps’ company or opera companies, be viable? This article proves my point that not only has the GSD Government made a big blunder in this project, but they have not done their homework or the background work needed before embarking on this project. Just as an anecdote I

remember the Chief Minister telling me that I was like an accountant, in that I knew the cost of things but I did not know the value of them. Well, it is clear that I and the people of Gibraltar, know the cost of the hole that has become the Theatre Royal, and quite frankly no one is able to see the value of that hole which has cost to date £3 million. Again, as the Leader of the Opposition said this year, we do not have a balanced complete column in all items, but especially on the Theatre Royal, since they might have to show that they have fallen short in this balance to complete. It is interesting to see what is meant by postponing the construction of the Theatre Royal, and how much this is going to cost the taxpayer, as this delay, since this also carries a running cost as mentioned above of £60,000 per annum.

In conclusion, our Education system that we have traditionally been very proud of, is quickly going down a slippery slope in a way which Gibraltar has never seen before. It is no longer acceptable for the Minister to pull the wool over peoples eyes by saying that our Education system is good and that everything is hunky dory. Again, echoing the Leader of the Opposition in relation to spending, the GSD Government were elected to spend whatever they want but it is our statutory duty to highlight to people when cuts have taken place, and more importantly who are the ones who suffer from these cuts. It is also legitimate to highlight where we believe Government fail to fulfil their own policy, or the lack of policy in areas. The overspend, as I have mentioned above, in most cases are not decisions that have been taken by Heads of Department, but it has been taken at a political level. A decision taken at Convent Place by the GSD Government for its own political ends. Thank you Mr Speaker.

The House recessed at 11.30 am.

The House resumed at 12.41 pm.

HON F VINET:

Mr Speaker, some of our Members will recall that in past years I have sat in the public gallery and listened with great interest to the contents of the Budget session produced by both sides of the House. It is therefore a genuine privilege to address the House in what is my inaugural Budget speech.

Mr Speaker, I will address my political responsibilities in the following order. Environment. Technical Services Department, Roads and Transport, the Electricity Authority, Gibtelecom and AquaGib.

If I can start with the Department of the Environment, as in previous years, the pressure from the EU in the field of environmental legislation continues. In order to manage this we have created a specific Department of the Environment so as to deal with the transposition of EU Directives, and even more importantly, putting in place systems to manage the requirements of such directives. We continue to transpose all those directives which we are obliged to, and in some instances, also those that although not obliged to adopt, we consider appropriate in order to pursue our commitment to the EU policy on the preservation, protection and improvement of the environment, the protection of human health and the prudence and the rational utilisation of our resources.

This financial year will see the installation of two air quality monitoring stations. It will provide the framework for the management and assessment of air quality in our community. The purchase and the maintenance of the pertinent equipment represents a significant financial investment by Government, and proof of their commitment to environmental matters is that, as I have already informed this House in the past, there will be two separate monitoring stations, at distinct locations, notwithstanding that we are legally obliged to supply just one. A website will be set up that will allow the general public to access daily updates of air quality measured by the station, together with

a summary of the current pollution levels, a data download facility and information on the health effects of pollutants.

The Water Framework Directive has already been transposed. Work is under way to identify how best to prepare the system, that will allow monitoring of the quality of all our waters, and to devise a plan to keep improving this. We will also shortly be initiating a waste study, which will provide us with information on the types and quantities of waste produced in Gibraltar, in order to continually update Gibraltar's Waste Management Plan. This Plan will identify how the disposal of our waste can be best effected in keeping with the requirements of EU Directives. Government are fully committed to recycling and this significant step is to be seen as the first stage of a more vigorous recycling policy that we wish to introduce, albeit subject to financial and geographical considerations. Other important issues to be dealt with imminently, are those in relation to directives on the disposal of refrigeration equipment, fire extinguishers and other equipment containing solvents, and also that in relation to the disposal of end of life vehicles. The tenders for the storage and subsequent exportation through a disposal facility of end of life vehicles, was advertised on 18th June 2004, and the tender for the disposal of refrigeration equipment, fire extinguishers and other equipment containing solvents, will be advertised shortly.

Some initial preparatory work has already taken place to fulfil our manifesto commitment to draw up a local environmental charter. The consultation process with responsible environmental groups and individuals will commence shortly, and I am hopeful the charter, which will guide all sectors of the community insofar as their actions impact on the environment, will be published within this financial year. As this House knows the cemetery which is the subject of a wide project dealing with two companies, dealing with the aspect of vegetation encountered various difficulties during the execution of these trials and so Government has embarked on considering other options that will be more cost-effective and result in a greater impact on the enhancement of the cemetery. Design work on the re-paving of all pathways, as

well as of the general embellishment of the cemetery in a viable and workable manner, will take place during this financial year.

Also during the course of the current financial year, Government will be inviting tenders from interested parties wishing to invest in the construction of a crematorium and clinical waste incinerator. This will be a shared facility to be located at Lathbury Barracks within the area of the ex Guardroom complex. The successful tenderer will be required to invest and undertake everything that is necessary for the development of this site for the stated purpose. In return for which, Government will grant the successful tenderer a concession to operate the facility on agreed terms and conditions.

The structure of the new Department of the Environment continues to take shape, and this Department has been tasked specifically with monitoring the many contracts in place for the carrying out of services which have an impact on our environment. The contracts relating to planted areas, including the Botanical Gardens, the cleaning services and the maintenance of parks and playgrounds, together with those affecting our fauna and pets, are being revised in what is a very significant exercise to improve the services in keeping with update requirements, and bringing on board new technologies and methods.

Mr Speaker, a substantial number of organisations, groups and individuals, carry out important work pertaining to the environment. I would like to take this opportunity to thank them, because in carrying out that work they ensure that environmental issues become part of the public culture, and thereby assisting us in our commitment.

The Technical Services Department has been involved in the design and/or project management of a number of construction projects during the last financial year. The following are the major projects, all of which are still on-going, although some are now nearing completion. Construction of a spectator stand and administration centre buildings for the new sports complex at

Bayside, as well as acting as the client's representative on the construction of the new sports hall. Provision of new roofs, lifts installations and refurbishment of the four large blocks at Varyl Begg Estate. Refurbishment of the building in Town Range intended for use as an extension to the Law Courts. The installation of new lifts to five blocks at Alameda Estate. The installation of new potable and salt water and electrical distribution system at the New Harbours Industrial Estates. Waterproofing of the podium at Sir William Jackson Grove. The Department was also involved in the design and project management of a new car park project at Landport Ditch, which was completed during last year. Works continued at a steady pace on the John Mackintosh Square beautification project, which has now achieved its practical completion. This project has served to enhance the central focal points within our city, and create a pleasant open space for the enjoyment of all, and which is more in keeping with its original layout and function.

During the past year the Highways Section of the Department has undertaken the resurfacing of a number of roads. These include Tank Ramp, Secretary's Lane, Governor's Lane, College Lane, Witham's Road, the southern part of Red Sands Road and a section of Naval Hospital Road. Sir Herbert Miles Promenade was also resurfaced and new ramps constructed to facilitate disabled access. Other works undertaken during the year include the construction of a new wider footpath at Cornwall's Parade and the construction of parking bays and a footpath along Rosia Road. In consultation with the Occupational Therapy Centre, ramps for disabled access have also been constructed at various locations and on our footpaths. A new pedestrian crossing has been provided adjacent to Westside School, Boyd Street and at Waterport Roundabout. Repair works have also been undertaken to a number of retaining walls such as the Upper Galleries and Rosia Lane.

The Highways Section was heavily involved in defining and managing the works required to the bus stops and public highway to cater for the introduction of a new bus service. Other

works are planned for the coming year to further improve traffic flows.

With regard to works related to the sewer and storm drain systems, the Department has undertaken the rehabilitation of the storm water culverts at Europa Point, the storm drains and sewer at Hospital Hill, the storm drain at Gowland's Ramp and the manholes at Lathbury Barracks. New storm drains have been installed and improvements undertaken to the existing systems at Buena Vista Road and Glacis Road, and major repairs carried out to the sewage pumping main adjacent to the Watergardens complex. As part of its programme for the cleaning of sewers, the Department undertook last year the cleaning and flushing of the sewer and storm drain systems at Devil's Tower Road, part of the Westside Reclamation area and Catalan Bay Village.

The various studies initiated in previous years in connection with the proposed sewage treatment works continued during last year, and have now been completed. The final reports are currently being compiled and will shortly be submitted for the Government's consideration. This will enable the project to move on to the next phase, which is the procurement stage.

The Department has also acted as technical adviser to the Department of Trade, Industry and Communications, in connection with the project for the creation of a small boat marina at Coaling Island, intended for the relocation of boats from Western Beach. The initial design phase of this project is now complete, and pending the relocation of a number of MoD facilities in the area, works should commence within the next quarter. In connection with these MoD relocations, the Department has also been actively involved in providing technical advice and project coordination services, also to DTI for the relocation of such facilities to Gun Wharf. This latter project already having commenced. Both these projects are due for completion during the current financial year. Works recently also commenced at the Frontier on the construction of a new canopy spanning over the vehicular entry and pedestrian entry and exit gates. These works are being undertaken by contract for the DTI

with Technical Services performing the role of technical adviser and project manager. This project is also due for completion during the current year.

I will now turn to the Department of Transport, this is another department which falls within my portfolio. As mentioned by my predecessor last year, the Government relocated all the various Government departments that dealt with matters relating to motor vehicle licensing and testing, to the newly refurbished facilities at Eastern Beach Road. This has created a one-stop site that provides for faster, convenient and enhanced service delivery to the public.

This year, 2004, has also seen the introduction of a new bus service. This, by far, has been the most significant project that has been completed in terms of transport, during the course of this financial year. A new bus company, the Gibraltar Bus Company Limited, has been set up by the Government and has acquired licences of Rock City Services. To this end, the Government will ensure that this new company operates to the very highest of standards. By now most of us will have seen these buses operating on our roads. Indeed, how can we possibly fail to notice them, given the vastly improved frequency and reliability of the service. I am sure this House in its entirety will agree with me that the service they offer is far superior to what was available previously. Our new environmentally friendly public bus transportation system has brought us into the new millennium. Members will have seen these are modern, attractive, comfortable vehicles. They have air conditioning, adequate seating, low floors and ramps that allow persons on wheelchairs to board or disembark comfortably, together with a whole raft of other features never before seen on our public buses. Passenger numbers are up by the hundreds upon hundreds per day, and I am confident that the introduction of the season ticket travel cards and the corresponding price reductions, will be yet another incentive to make increased use of the brand new fleet of vehicles. Also, September will witness the start of a comprehensive bus service for school children, full details of which will be announced in due course.

Mr Speaker, I took over the responsibility for the buses in April, once the Gibraltar Bus Company Limited started operations, but the preparatory work had been completed prior to my involvement, and I would like to thank and congratulate my Colleague, the Hon Joe Holliday, not just for the very visible and obvious achievement on this front, but also for the tremendous patience and restraint demonstrated when confronted with the barrage of unfounded, misleading and short-sighted criticism from the Opposition. Opposition Members have been proved wrong. The feedback from the general public has been as positive as it has been overwhelming, and this is a success story that Government are rightly proud of.

Another issue that is high on the Government's list of priorities is the further provision of car parks. The Government have already taken great strides in this area with the commissioning of free car parks such as Commonwealth Parade and Landport Ditch. However, given the number of vehicles that use our roads on a daily basis, further provisions for car parks have to be made. In order to ameliorate the situation the Government continue to look at increasing parking facilities in the Upper Town area and now, also, in the South District. Several options are currently under active consideration.

In their Election Manifesto, the Government said that derelict vehicles are a plight in the urban environment and occupy parking spaces. We also said that in order to address both of these issues, legislation would be introduced and enforced to more effectively remove derelict vehicles from our roads. The Government have now published the Abandoned Vehicles Removal Regulations 2004. The scheme of the Regulations is that police officers and other designated officials may, when they believe that a vehicle has been abandoned, either remove it to a place designated for that purpose by the Government, or affix a notice of apparent abandonment on the vehicle. Details of vehicles so dealt with will be published twice in a daily newspaper. If not removed or reclaimed, the Government will then place a further notice in the Gazette, giving seven days notice of intended disposal of the vehicle. We will now embark

on a programme to enforce this new legislation, and remove the accumulation of derelicts and abandoned vehicles from the highway.

The Government also continue to pursue their aim to ensure that the general public is provided with greater information on road works and closures. Unfortunately, there are times when roads have to be closed but by implementing an integrated road works programme, Government will coordinate road works and ensure that these are kept to a minimum and the general public is inconvenienced as little as possible.

The Department of Transport also closely monitors European Union legislation to ensure that Gibraltar complies with and meets its obligations. To this end the Government will shortly be introducing a harmonised vehicle registration document, log book. This document will be issued to new vehicles that are registered after the implementation date, and will not be retrospective. However, should any person wish to change the current document, they may order a new one from the Department upon payment of the prescribed fee for a duplicate document. This is in response to new EU legislation aimed principally at combating car theft. The document will be of a common format throughout Europe and will incorporate various security features that include, amongst others, watermarks and fluorescent fibres woven into the paper.

The Department of Transport maintains close links with other licensing authorities within Europe, forms part of EUCAREG, which is a pan-European association of licensing authorities aimed at combating car crime. The EUCAREG executive board meets on an annual basis and Gibraltar attends these meetings of its own right. I would like to take this opportunity to thank members of the Transport and the Traffic Commissions who give of their time voluntarily, I am very grateful for their assistance.

I will now turn to the Utilities, but before doing so I would like to thank the management and workforce of Gibraltar Community

Projects Limited, which comes under the auspices of the Ministry, and whose work on occasions goes unrecognised.

The Gibraltar Electricity Authority became established on 1st April 2003, and following detailed and close consultation with its workforce, all have now transferred to it. The last group doing so on 1st February 2004. The last financial year saw the Authority replenish its most important assets namely, the human resources element. A total of 26 new employees joined the Authority. These include engineers, technical and skilled grades. It is vital for a complex industry like electricity, to have a succession plan for its workers. One hundred and fifty four employees will make up the total workforce.

This coming financial year, an emphasis will be given to the modernisation of the Authority's accounting system, so as to bring it in line with commercial standards. The main priorities in the continued development of the Authority will see the implementation of computerisation throughout all its activities, improvements to its transport requirements and training of its human resources. The Authority has embarked on an ambitious in-house programme to do away with its 6.6 kilowatt high voltage system and transfer all high voltage feeders to the new distribution centre at Orange Bastion. The SCADA was commissioned in December 2003. The Authority continues to have a major input in all developments taking place in Gibraltar, and the requirements for more sectors of the community for the services provided by the Authority demonstrate no signs of abatement. There are very few activities that take place that do not require an electrical supply or lighting. The Authority is also responsible for providing the electrical contracting services to Government, to Government housing and official buildings, as well as traffic lights.

During the last financial year, the power peak demand reached a high of 26.3 megawatts and the total units of energy generated by Waterport Power Station and OESCO reached an all time high of 136.59 million units. Net units, within the distribution of the system, totalled 129.35 million, representing a 3.3 per cent

increase over last year. Units billed to consumers totalled 124.75 million units, and the amount collected was £11.34 million. The total outstanding debt stood at £7.45 million and the Authority is committed to recover as much of this debt as possible. The number of consumers reached a high of 15,746.

An additional generator, having a power output of approximately 5 megawatts, is in the process of being installed at the OESCO Power Station, and should be commissioned before this coming winter peak demand. Further expansion to the generating capacity of Gibraltar is under consideration, and this is linked to the proposed residential and commercial developments. As is widely known, fuel prices have suffered significant worldwide increases in the last few weeks and these have not escaped the Authority. The situation is being monitored.

Finally, the Estimates of Accounts presented in this Session for the current financial year 2004/2005, represents the transition from being a Government Department to a free-standing Authority.

Mr Speaker, I took over as Chairman of Gibtelecom, Gibtel and AquaGib, following the General Election. I would first like to pay tribute on behalf of the respective shareholders, to the sterling work of my predecessor the Hon Ernest Britto.

If I can start with the telecom companies, he chaired these for nearly eight years, overseeing the developments of the internet business, and the two companies coming together into common ownership in an expanded joint venture, between the rival communications of the United States and the Gibraltar Government. I also pay tribute to those staff who took early retirement as part of the restructuring of the business, for their contribution, including the Hon Lucio Randall.

Last year regrettably due to the close of Gibtelecom, Christmas Eve having to lodge an application with the Court of First Instance of the European Communities against the EU Commission. This action relates to the complaints to the EU

Commission brought by Gibtel in 1996, concerning the impossibility for its customers to be able to roam with their mobile phones in Spain. The original complaint, hon Members may recall, concerned a breach of the EU Treaties competition rules. In 1997, it was converted into a complaint by Gibtelecom against the Spanish Government, following the latter confirming to the EU Commission that it had given instructions to Telefonica not to conclude the roaming agreements with Gibtelecom. Those instructions had been given on the grounds that the Spanish Government considers that the recognition of Gibraltar's ITU telephone code (350), tantamount to recognising Gibraltar as an independent state. The Gibtelecom's Board initiated EU proceedings, following the EU Commission's October 2003 Decision to take no action on the complaint, despite some seven years of deliberations. The case is not expected to be heard in Court till later this year. Further public debate, beyond what I have said, would not be useful at this stage.

There is the related but separate complaint concerning the unavailability of telephone numbers due to Spain's non-recognition of Gibraltar's 350 code, which was lodged with the EU Commission in 1996 by Gibraltar Nynex Communications Limited. The Commission has not yet taken any final decision on this case and communications continue to the company by counsel and Commission officials. The shortage of numbers continues to impact on Gibtelecom, as well as Gibraltar more generally. For example, mobile services, both prepaid and post paid, can now only be offered by a numbering shadowing module. Although some subscribers can live with this option, there are currently over 100 customers who require the full post paid mobile service, if and when occasional numbers become available through natural churn.

With regards to fixed line services, the company has been able to stretch the number supplied a little, primarily through the introduction of their on-line service in December 2003. For this service the customer enjoys a 50 per cent reduction on the residential numbering line rental.

The turnover of the Gibtelecom group in the calendar year 2003, rose to over £21 million, an increase of nearly 3 per cent over the previous year. The dividends received of £1.7 million, shown in the Government's Estimates, reflect the final dividends of £700,000 for the financial year 2002, and an interim dividend for 2003 of £1 million. The final dividend for 2003 has yet to be declared by the Board.

The company continues to make substantial investment in enhancing their telecommunications infrastructure, which is now being utilised by a number of competitors carrying international traffic, or offering IT services. The group's capital investment of some £4 million in 2003, includes enhancing the network for both voice and IT traffic, increasing the availability of leased band width and demand, introducing ADSL or broadband services, and building a new mobile switch and upgrading new related network. In addition, hon Members may be interested to note, the company have recently introduced distributing denial of service technology, in which Gibraltar's IT band width has been protected to a large extent from extortionists running major businesses in experienced internet traffic unless they pay a ransom. Two months ago, in May this year, Gibtelecom also introduced the facility for the customers to pay their telephone bill, or view their account, over the internet. This includes, for the first time in Gibraltar, itemisation of local calls. The Government welcome these initiatives, which contributes to our commitment to the development of e-commerce in Gibraltar.

I would like to highlight Mr Speaker, two particular developments. First, the investment in the GPRS switch and general traffic radio service switch. Whilst the new mobile switch is now in operation for GSM traffic, it is not expected to be until later this year, that this is brought into operation, for 2.5 G technology, enabling data and images to be transferred at higher speeds. The project is proving to be technically demanding and there are commercial challenges for such a small operator setting up partnering arrangements for transmitting mobile data around the globe.

I have not used this opportunity to promote the company's various initiatives to reduce and simplify international tariffs over recent months, as this is now a more competitive market with several service providers offering alternative services. However, in view of the remarks by the Opposition Members at the last Question Time, I consider it is necessary for me to comment on the company's ADSL pricing strategy.

Gibtelecom's prices are often compared to the lower prices available elsewhere in Europe but most of these companies are either multi-nationals or have a market share of tens, or even hundreds of thousands of customers. Gibtelecom does not enjoy the critical mass of such operators or service providers and as the Hon Opposition spokesman on telecommunications will know from his time working in the industry here, the substantial capital investment involved has to be spread across a small customer base. Gibtelecom also offers an ADSL service with hardly any contention. Whilst in other parts in Europe the average contention is as high as 50 to 1, which means that approximately 50 users will share the same band width. Additionally, many operators add restrictions, such as the time which can be used and the excessive download charges. Gibtelecom does not. Gibtelecom has, since the introduction of ADSL, been looking at ways in which to enhance the value of its service. The company is presently reviewing its ADSL pricing structure, with I understand, a view to introducing a cheaper offering in the very near future. Indeed, press advertisements to this effect have already appeared, and the new price structure will be applied as from 7th July.

I now turn to the business of the merger. The completion of the integration of the two companies was achieved last year, and following many months of negotiation with the Union, the company is on the brink of introducing new, integrated pay and conditions, which will bring all employees together under the Gibtelecom employment umbrella. This new pay arrangement provides for further modernising the workings of the business and delivers the flexibility the company and its employees require to move forward in the fast changing and challenging world of

telecommunications. It was, however, with concern, that the shareholders of the company learned of the industrial action that took place in April but we were pleased that Gibtelecom managed to continue to operate all its networks and call centres, such that the impact on Gibraltar was minimal. The strains of merging the two companies with different background cultures, together with the pressures of the changed management programme under way and the new challenging demands placed on the workforce by telecommunications-hungry businesses in an increasingly competitive market, will have contributed to unsettling hearts and minds. Nevertheless, the positive and constructive way in which the company's management and the Union have got down to resolving the various issues over the past few weeks is, I believe, a testament to the success the business can continue to enjoy in the future.

Finally, I turn to the company's acquisition of 13/21 John Mackintosh Square. Planning and building permission has been sought for the construction, which the company hopes will get under way shortly. It is regrettable that this construction was not able to get under way at the time the Square was undergoing the main refurbishment but this is largely due to circumstances beyond the company's control. The building was purchased in the spring of last year, and as a condition of the sale, the vendor then had to knock down the old building, which was the subject of a Demolition Order. Once this was completed, extensive surveys had to be carried out, together with consultations with the Planning Authorities on the scope of the building on this sensitive site. It is planned that the building will house Customer Services, General Offices and, being close to the City Hall and the Haven, will facilitate the continuing development of fixed line services.

Mr Speaker, I now move on to AquaGib, previously Lyonnaise des Eaux, and I would like to start by referring to the circumstance behind the change of name. The majority shares in Lyonnaise des Eaux Gibraltar, were held by Northumbrian Services Limited, previously Ondeo Services (UK) plc, then passed to the Suez Lyonnaise des Eaux Group. In May last

year, Suez sold 75 per cent of its holding in Ondeo Services UK, retaining 25 per cent. Northumbrian Services Limited is now part of Northumbrian Water Group plc, a company listed on the London Stock Exchange. As a consequence of these changes, Lyonnaise des Eaux Gibraltar changed its name to AquaGib Limited, with effect from 15th December 2003. This change does not affect the way the company operates and, as has been demonstrated to date, the company continues to deliver the services as usual.

During the last financial year a total of 1.21 m³ of potable water was supplied. 3.42 m³ of sea water were pumped to the various sea water reservoirs, and the sewage pumping stations were operated at 100 per cent availability. Throughout the year the quality of potable water supplied by AquaGib complied with the requirements of Directive 98/83/EC.

The two reverse osmosis plants have performed at greater capacity, producing potable water of excellent quality. The Waterport Distillation Plant meets some 40 per cent of the water demand. Fuel oil is the main source of energy to power the Waterport Plants, making the company vulnerable to fluctuations in the price of oil. The cost of this fuel has risen by over 30 per cent in the last two years and continues to rise.

Additional to the capital expenditure driven by its asset management plan, the company has developed and increased Government's water supply infrastructure. This, in order to supply directly, some of the premises previously supplied by MoD, such as the Shiprepair Yard. The company continues to offer those customers that so wish to receive bills via electronic mail, and make payments to bills on line. Customers are now offered a range of payment methods.

Turning to human resources, AquaGib currently employs 101 persons. Of these, 14 are Government employees, seconded to the company. Together, they provide the company with a wide range of skills required to operate effectively. The training and development of employees continues to be a priority for the

company. This year training has been concentrating on health and safety issues, the safe excavation and reinstatement of the public highway, plumbing skills and maintenance of special regulating valves. In the course of the last financial year, Aquagib obtained certification of its quality management system through the new ISO 9001/2000 standard. The scope of its certification covers the production and supply of potable water, extraction and supply of sea water, sewage pumping facilities, metering and billing services, design and operation of water cycling infrastructure. In line with the necessities of Amber Security Alert status, the company strengthened physical security and implemented appropriate security measures. Those measures are currently in place.

Mr Speaker, that concludes my address as to the various elements of my ministerial responsibility. Before finalising my contribution however, I would like to express my sincere gratitude to all those ladies and gentlemen who make up the Ministry I head, and who form part of the respective Government Departments. Their loyal support is invaluable in ensuring delivery of the Government's programme and commitments. My thanks also to the management and workforce of those commercial entities for which I have political responsibility. Thank you Mr Speaker.

HON F R PICARDO:

Mr Speaker, budget debates in this Parliament have been focused for many years now as debates on the state of our nation, and it is right that that should be the case, for as Gladstone observed, finances as it were, the stomach of the country, from which all other organs take turn. But when Joe Bossano started the tradition of referring to this debate in such terms, some in our community scoffed. We have moved on considerably since then, that we should consider this debate as a time to reflect on the economic state of our nation is no longer scoffed at. Indeed, even the Chamber of Commerce now holds a state of the nation dinner. But perhaps the most welcome

development is that no one in Gibraltar would challenge the concept of Gibraltar being a nation. Now that is what I call progress and I want to start by congratulating the Hon Mr Bossano on having embarked us on that road to nationhood. That is a distinction which cannot be denied here.

I have now been a Member of this House for seven months. I have learnt more in that time than I imagined possible, and I am grateful for the indulgences of yourself, my Parliamentary colleagues on both sides of the House, and your staff. I hope that my learning curve has not been too trying on your patience. Perhaps it has been on the Government Ministers.

Government will not like what I have to say in this speech, and they may not congratulate me for it. But my responsibility in this House is not a partisan one, it is a duty of care to our people, and in discharging that duty, I will endeavour to be both helpful and constructive when I can, as I hope I have shown in my attitude to Third Readings, but firm and vigilant in the performance of the role for which I, we, are paid in this House, namely to oppose the Government of the day.

I am responsible for a number of shadow portfolios. I have been entrusted by the Leader of the Opposition, with responsibility for the Finance Centre, Employment and Industrial Relations, the Environment as well as the Media. I will deal with the economic and political issues that affect each of those portfolios, in addressing myself to this Bill and reviewing the Estimates, but I want to start my contribution by reference to the wider picture, setting the income and spending of £170m that we will debate in its historical and international context, and in the legal framework of the Constitution and the Public Finance (Control and Audit) Ordinance.

Mr Speaker, economic self-sufficiency must be the goal of any emerging people. Whether emerging into nationhood, whilst in the case of Gibraltar, emerging from colonialism into nationhood. Much of the struggle to emerge from the yolk of colonialism, must be to free the colonial people from the economic shackles

of empire, as much as from the social vestiges of imperialism. A people weaned on imperial handouts cannot easily stand on their own two feet when those handouts disappear. And that has been the defining zeal of our endeavour as a people in the last quarter of the twentieth century. To move our society away from being dependent on an economy orbiting around the colonial power's activity in our land. In the Gibraltar in which I was born, we were still used as a people, to the syndrome of "Isabelita paga", the Crown will fund it all, and the Crown in that sense, in right of the United Kingdom, and those were the 70s in Gibraltar. During her short address this week, the Princess Royal herself has noted the changes in our economic activity. Noting as she did, the changes undertaken at the Dockyard, which had previously been a much greater economic hub and often referred to as a pillar of our economy. So the politics of creating home-grown economic activity, literally by the people and for the people, is the only real politics with the ultimate aim of political self-determination in its sights. Now in a world of growing economic interdependence, economic self-sufficiency is not made out only by ensuring that the economy of a nation takes over, pays for itself and grows moderately. We can debate how much an economy like ours should grow, but one other essential ingredient of self-sufficiency is that the economy of a nation should have depth. By depth I mean longevity. Economic longevity to withstand national, or international times of less growth than the growth we might all want to agree is the minimum necessary. In effect, the economy of a truly self-sufficient nation must therefore enjoy the benefit of diversity and prudent reserves. In that the Hon Mr Caruana has previously made clear that his view is that saving for a rainy day is not his style. In the Gibraltar Chronicle of Saturday 19th June 2004, he is described as having told the Annual Dinner of the Gibraltar Society of Chartered and Certified Accountants, that the Government, and I am quoting him now, "*had returned to the taxpayer the budget surplus that it had*". He has kindly repeated those words in this House in his presentation of this Bill, so I do not need to, I think, prove that statement. In fact, that has been the theme of budget speeches he has made in recent years, not just this year.

I cannot believe how foolhardy such statements are. First of all the absence of tax cuts and goodies in this year's Budget is not because everything is going to plan. Everyone in Main Street knows that the problem the Chief Minister is facing is that his capital projects are all overspent. The new hospital, the Theatre, the Piazza, the new fleet of buses, just about each of those falls into that head. And that means waste borne from ineffective planning of capital projects, all of which has a serious effect on the overall state of our finances. Indeed, in the words of Disraeli, there can be no economy where there is no efficiency. That may explain to a great extent, why the balance to completion column in the Estimates for the spending from the Improvement and Development Fund, may have disappeared, despite convention and legal imperative. The alternative is that we have no on-going long-term projects. Gibraltar at large also knows that recurring expenditure has risen dramatically under this Government. It is in particular recurring expenditure that has snared him into its trap. He has been lured into a web of annually growing costs which is now spiralling behind the growth rates, and which he, and his party, are capable of growing our economy. The one is catching up with the other. But the level of expenditure incurred by this administration is not the problem per se. It is in both the failure to create a matching increase in annual growth and the items on which expenditure is concentrated, that we will principally find the disagreements between us. Expenditure into black holes, like the demolition conservation project that is the Theatre Royal, like the parties at The Savoy and at the RAC, all those things have contributed to the scenario that we now see developing. And we as a people are left with our public finances staring down the twin barrels of deficit and over-spending whilst having to head off serious challenges to the financial services industry, one of our economic engines. In effect during the course of my intervention, I will accuse the Chief Minister, who I shadow on most of my portfolios, of recklessly risking the growth of our economy, our most essential prop, in the battle for self-determination, by spending on a litany of frivolities which have him at the core.

What is unforgivable is that this comes about as a result of the culture of pecuniary waste over which Mr Caruana has presided. Like a spoilt, little rich boy Mr Speaker, the Chief Minister has squandered a splendid inheritance on a bonfire of vanities. If that sounds harsh see as an example one aspect of the schedules of reallocation of expenditure provided by the Financial and Development Secretary.

Statement No 1 of Reallocation approved by the F&DS in respect of the Improvement and Development Fund, shows a transfer of over £500,000 to the refurbishment of No 6 Convent Place and the Post Office. That is not £500,000 to refurbish No 6. It is an extra £500,000 for the cost of on-going refurbishment works higher than budgeted. Here it is in case they have forgotten that they gave it to us at the beginning of this Session. The total cost Mr Speaker, of adding grand chandeliers, a lift and other luxuries, must therefore now be totally astronomical and all while spending on respite care is slashed. I just cannot understand it. In effect this amounts to moving money away from necessary Heads of Expenditure to the refurbishment of the Chief Minister's own immediate environment at No 6. In fact the Chief Minister has taken money in this reallocation from the Fire Brigade and Police budgets for equipment and the budget for infrastructural works in order to adorn and decorate his own offices. Like a modern day pharaoh, creating a temple to himself but he is not Rameses, for he has not heeded prudence and for the past seven years of spending plenty, he has saved less and less for the leaner years or un-neighbourly attacks which may come. His technicolour dreams of theatres and the like, that vision thing, now leaving us all vulnerable to a potential economic failure borne of a lack of proper economic planning of capital projects. And to add to the decline in our fortunes in these eight years of Caruana rule, we have paid an expensive human and social price. These Caruana years, the Chief Minister has presided over a new exodus of locals from Gibraltar to Spain. An exodus objectionable when it is brought about by the desperation of those who find that no new affordable homes have been built. Although now, as he feels the electorate's displeasure rising, the Chief Minister puts out a tender to develop in a short time table

at The Sands, which appears in the press only last week. Mr Speaker, too little too late. Another squandered inheritance. Where the Housing Waiting List had been tamed, now lack of housing is again a major social problem. The Government may wish to deny it but that is the reality and in their hearts of hearts they know it. Even those steps that will be taken now at The Sands to build some homes will rely on land reclaimed by the first socialist administration. And I have to ask myself is this the spendthrift Chief Minister who has yet to lay a brick for affordable housing projects, the same man who questioned the tax payer meeting the cost of Joe Bossano having a sandwich at his desk. History tells me that it is, but what a hard face he has, to paraphrase a common Spanish expression. How politically hypocritical. The man who complained of under £5 being spent on keeping a Chief Minister fed and watered whilst he remained at his desk, goes on to spend £30,000 of snacks, apparently none of them containing cocaine, at the Savoy, and hundreds and thousands of pounds on Club Class travel. I can accept the argument that some things have a value beyond their cost but surely the Chief Minister has to accept that the waste that surrounds him alone is now quite out of hand. He has spent the last eight years behaving like the chief executive officer of one of the best performing companies on the FTSE, and in common with most of those fat cats, the more he spends on himself, the worse his successors become, the worse his company, our company Gibraltar plc, performs.

Mr Speaker, now to try to ensure the figures do not reflect these expenses by the next Election, we move on to what appears to be a new stage of the Caruana economic plan. What I will call the plastic surgery approach to economics. Nip, tuck, cut, tighten and stretch. Except that the Hon Mr Caruana is no plastic surgeon and he is cutting in all the wrong places, he is tightening all the wrong belts and he is stretching all the wrong features. We are going to end up with a pretty disfigured economy by the time he is finished.

The Leader of the Opposition has already demonstrated the potentially unconstitutional exercise undertaken by the

Government to obfuscate the reality behind this year's dramatic overspend on capital projects. In fact, the breaches highlighted of both Chapter 6 of the Constitution and Section 28 of the Public Finance (Control and Audit) Ordinance, betray a serious and perhaps even potentially impeachable attempt to hide the reality behind this year's Estimates from public scrutiny, unless all capital projects are to be finished this year. Why, even if not illegal, should the balance to completion column have disappeared? What good excuse could there be? Except that the electorate might find the balance of that now missing column, hard to stomach. And to compound it all this year's Bill includes Supplementary Appropriations which should have been debated separately. So much then for the Chief Minister's alleged respect for constitutional checks and balances. The quality of his commitment to those principles of propriety has to be tested now that he holds office, and he holds the purse strings, and on his performance he fails abysmally, although I have no doubt that he will blame others because let us face it, when things go wrong it is never his fault.

In fact, returning to my analysis of the Chief Minister's spendthrift CEO style, we might benefit from pensioning him off now with an expensive golden handshake. It might prove to be cheaper and more effective than to have him remain in centralised control of the cheque book for three and a half more dismal years. Indeed I sincerely hope that the new hospital is not added to the growing list of failed projects presided over by him because already as it is after the next election, when his political obituary is written, the negative side of the balance sheet will far outlist the positive. As to credibility, I also want to take this opportunity to answer one small point which the Chief Minister made in his reply to the Opposition last year. As part of his onslaught, I am looking forward to the one that is yet to come, when he alleged that everything said by the Opposition was a catalogue of falsehoods, he tried to rebut an obvious truth. Namely, that the Theatre Royal is in an area of difficult vehicular access and that this could be added to the mounting evidence that the project was badly thought out. At page 276 of the relevant Hansard Mr Speaker, and I have it here, he said, *"the National Opera House in*

London, which has just been built at the cost of tens, and tens and tens of millions of pounds, I think actually in excess of £100 million odd, is built in Covent Garden Square, which is pedestrianised and where traffic cannot get hardly anywhere near to it. It certainly cannot be driven up to and there is no parking around it". That is a direct quote on what the Chief Minister said. Let us look at the credibility by which we can test the Chief Minister's remarks. Given that we are often accused by him of not telling the truth, let us analyse that statement forensically.

The main entrance of the Royal not the National Opera House, is in Covent Garden Square, but it is hardly 20 metres from where vehicles can set down passengers. The exits, the stage door and the backstage door are all surrounded by roads, namely, Bow Street of the famous Magistrates' Court, Floral Street and Russell Street. In effect therefore, traffic can come straight up to the Royal, not National Opera House, on three of the four sides of that opera house. It is possible even actually to park. So in the truth stakes, when the statements are analysed forensically and measured against hard facts, the fact is he does not fare very well.

Mr Speaker, another fact is that the Theatre Royal, whether the Government like it or not, in respect of that project, a little less haste and a little more delay and a little better planning, would have saved Gibraltar a considerable amount of money. He has now accepted that there was a gross underestimate of the cost of that project, although less than the cost of the Scottish Parliament. But he has not told us in fact what that gross understatement was. He has just told us it was less than the Scottish Parliament. Well if the Scottish Parliament was going to cost £40 million, and it has now cost £400 million and growing, there is a margin of error there of £360 million which even this F&DS will not let him get away with, I am sure. I wonder why he, the Chief Minister, fails to reveal that figure.

Again I see in this a potential reason for the disappearance of the balance to completion column in the pink pages of our Estimates.

The philosophy behind this project and so many others of this Government's capital projects has been to make decisions in haste and repent at leisure. It is not the Government alone that are repenting, for others have to repent with them. Like P&O for example, who must be repenting their decision to rely on the Government's commitment to have the North Mole ready to have received the Queen Mary II, and relying on this to add Gibraltar to its prestigious itinerary. That project was not properly planned and it had to be abandoned.

Mr Speaker, even the Chief Minister's usually sycophantic press are clear on this. The Chamber of Commerce's own publication which the Hon Mr Linares has already referred to, now unashamedly refers to the Theatre as a £9 million white elephant. It may be that all governments have white elephants and it is just my own experience that leads me to be surprised at that reference. But if that were not enough to illustrate how capital projects are falling by the wayside due to ineffective planning, what of the rest of the projects which he himself said in his New Year Message of 2002 would commence that year. The new hospital was to be ready by the end of 2003. It is not ready now and we are in the middle of 2004. The King's Bastion leisure centre was to be ready by the end of 2003, yet nothing, we are going to vote £1,000 for that leisure centre so not even in 2004.

How could all these projects have been sold to the electorate as part of the Chief Minister's electoral programme if we were headed for a £14 million discrepancy. How can the projects now be competing between themselves if they were sold to the electorate in November. Unless, there was not a massive electoral, political fraud perpetrated by the Chief Minister on our country's voters. On that evidence I impeach the Chief Minister's electoral promises as unreliable.

Mr Speaker, we are therefore at a stage in our history where we cannot take for granted the prudent, economic management that we deserve of our economy, in a manner that is socially benefiting the wealth of our community, and which stimulates our

economy to perform at its best. Even our trading community is suffering. Many companies that trade with the Government have found themselves not having their bills paid within the normal credit periods. In effect, the Government of Gibraltar under Peter Caruana has become a second-class covenant. It is in that less than perfect shape that we face the wider world.

Internationally, having left behind the deplorable attempts by the UK and Spain to share our sovereignty, we are not by any means out of the woods. Cooperation with our neighbouring nation remains, for them, subject to the Brussels Agreement. Economically, greater cooperation with our neighbours on non-sovereignty related issues, would be favourable or would be favoured by both sides and welcome, but never with a sovereignty price tag. It is time to stop sending conflicting signals. We in Gibraltar will not contemplate discussing, negotiating or auctioning our sovereignty, not for sweeteners or threats from Madrid, not for sweeteners or threats from London. And that means that our economy must be designed to grow and prosper despite London and Madrid and as a result, despite Brussels in its EU incarnation. That leads me well into my first portfolio specific analysis of our economy, in respect of our financial services industry, where I shadow the Chief Minister.

Mr Speaker, the Hansard reflects that most contributors believed that last year had been a difficult year for the Finance Centre. Well it was, but this year has been even worse. Where last year we faced arguments on State Aid from the Commission, we now face negative decisions already taken against our best interests, and with a clear, underlying political objective to disable Gibraltar's ability to operate as a successful financial services hub that it is. There will be a number of areas that I will want to touch on in my contribution on financial services, and the State Aid investigation I have just referred to is only one of them. I think it is also important to address the interplay with the Primarolo group initiatives and the implementation of the Savings Directive. I also want to touch on issues affecting insurance, pensions and generally to address the absence of available office space. I will also wish to deal with the problems faced by

local investors in the now notorious TEP Plans, and in that context I will seek also to touch upon the on-going evaluation of the Financial Services Commission.

By far the most pressing matter however, is the negative conclusion of the Commission on the Government's proposals in respect of the State Aid investigation and I will start with that. Gibraltar has been allowed to get itself caught in a pincer movement of the EU Commission and the Primarolo Group. Both are seeking to undo our tax competitiveness by attacking the exempt company. The zero percent vehicle that has served Gibraltar well for many years. Yet it is not only Gibraltar that is under attack. All of the previously named offshore centres, save perhaps for Delaware in the United States, are under attack. All face the challenge of repositioning themselves to continue to provide a competitive product. But we in Gibraltar are privileged to have a financial services industry, like so many other sectors of our economy, can succeed in the face of serious onslaught and can even flourish despite a lack of effective leadership. Why do I say that there is a lack of effective leadership? Because the Government's handling of this most serious of challenges has left a lot to be desired.

First of all the Government have failed to consult widely on their now rejected alternative corporate tax proposals. Yes, they sought views in certain sectors of the industry, but they did not really listen to the views expressed. In my view, the decision on how to react had been taken already. The Opposition itself had not been consulted or even informed of how the Government intended to act. There is no need for anybody to convince me or any Opposition Member that the State Aid investigation and the need to adjust our financial services products accordingly are a matter of national importance. I am signed up to that view from day one and the Opposition's approach from the beginning has been consonant with such an attitude, but what we cannot hide from is the reality of what has transpired in the last three years.

Despite repeated requests from the Opposition, and despite, of late, repeated grimaces from the Government, we have not yet

had sight, even on a confidential basis, of the submissions of the Gibraltar and UK Governments to the EU Commission. Although it is clear now that the UK had no objection to those being provided to us and the Gibraltar Government had apparently no objection to providing their own. Given that these submissions were already with the Commission and available to the Spanish Government, what possible legitimate reason could there have been not to have provided a copy to the Opposition? None, Mr Speaker. I do trust that the Chief Minister will undertake in his reply to us, that the copies of these submissions will be provided to the Opposition as a matter of urgency. The disclosure will at least enable us to understand what it is that has been rejected.

Secondly, I and many of my friends and colleagues in the Finance Centre, smell the onset of an embarrassing volte face. The Chief Minister is already talking about interim measures on low tax in place of the no tax option which was the core of his proposal to the Commission. In fact, when the purported consultation process began, there were many, I would say a majority, in the Finance Centre who believed that the real future of the Gibraltar Financial Services industry, lay in the low tax alternative. Small operators believed that a continued no tax regime was the only alternative for them. I believe that the latter were in a minority, but that they were very well connected.

In addressing myself to this point, I want to answer specifically a point made by the Hon Mr Caruana on Newswatch on Friday 18th June. Just over a fortnight ago. In his interview that day he said that at the time of the consultation process undertaken by the Government in 2001, the Finance Centre was speaking with one voice in favour of the zero percent company over the low tax alternative. I have no hesitation in saying that the Chief Minister's interpretation appears to me completely at odds with the reality lived and breathed within the industry at that time and I believe I can prove that he is speaking with a forked tongue when he makes these remarks. The large majority of the Finance Centre has been calling for a low rate of tax, in single figures if possible, since 2001. The fact is that some of the minority who favoured the zero tax option, were prominent

members of the GSD Executive and the Chief Minister favoured the preferred option of his own disciples over the option proposed by the clear majority. I will accept however, that he has moved artfully to cover his tracks by enlisting the public, if not private, support of the professional bodies involved. None of which would, for fear of incurring his wrath, or could, for fear of undermining Gibraltar plc, have said anything other than they supported the proposals submitted by the Government. Even now, I will not air publicly my views on why low tax may be better for Gibraltar, because I do not wish myself to give any assistance to those who reject the Government's proposals for zero tax. At the end of the day, the proposals rejected are now the subject of further representations and legal challenges are the Government's, but we all in this community have a collective stake in them. But he certainly cannot be allowed to get away with rewriting history in his usual revisionist style. He will have to answer for the mistakes he has made by listening overwhelmingly to his partisan colleagues.

For that reason the Chief Minister cannot have been surprised to read in the Chronicle of Tuesday 22nd June, in that paper's financial column, that when he said at the Accountants Association's dinner, that he has always encouraged the Finance Centre in Gibraltar to adopt low tax as opposed to no tax, the remarks drew astonished gasps.

Mr Speaker, I actually think that the better description would have been to say that the serious Finance Centre received his remarks with a sigh of relief, given that his conversion to low tax comes three years too late. And that is not to be interpreted as a criticism of the drafting team. They produced legislation to order. It is the order that I criticise. Quite unlike other parties the Opposition have continued to act in a sensible and responsible manner by holding back on specific criticism of the proposals throughout. We will continue to do so. Indeed, I will go further. I will make clear to the Chief Minister that we wish to see Gibraltar succeed in identifying and implementing a new financial services product, or products, that will enable our financial services community to develop even more into one of the most able,

sophisticated and prosperous. But that cannot be taken as a licence exonerating him from political responsibility, from his own shortcomings in the handling of the State Aid issue. And I call on the Chief Minister to release to the Opposition the documents requested, on a confidential basis, without any further delay.

I want to add that last year the Chief Minister actually brazenly confirmed that the Government had specifically chosen to hide the fact that the presentations could be made to the Commission on the issue of the State Aid investigation by non-governmental bodies. He said that he would not have wanted all and sundry allegedly interested parties to have started writing willy nilly letters on the basis of the sort of depth and breadth of knowledge that the Opposition had. Boy was he wrong in his assessment. The tightrope act which he said he had carried out for the benefit of what he called some of Europe's leading legal minds in terms of European law and State Aid Rules, has gone badly wrong, and the trail of responsibility leads squarely to the door of 6 Convent Place and nowhere else. Now is the time for the Chief Minister to show real intellectual humility and listen to the professionals in the serious Finance Centre. We have now to move quickly and effectively. The uncertainty created in the Finance Centre by the negative decision of the EU Commission has undermined confidence. In the first quarter of this year we have seen 842 companies formed in Gibraltar. At the same time, 11,730 have been removed from the Register of Companies. Those are the figures provided by the Government in answer to Questions 1279 and 1284 of 2004. Many of those may simply be old companies being removed under new rules but it is a process that seems to be taking years. But many also will be redomiciliations or liquidations, as some decide to leave us to the risks of the battle that we now face with the Commission.

Losing more than ten times the number of companies from our Register than we have gained, does very little to bolster confidence, and our competitors are themselves moving to secure their own business. Let us for one moment look at changes being made in Austria to the corporate tax rates of that country. Austria is not a clear competitor of ours, but the

Austrian Government have lowered corporate tax rates to 25 per cent from 34 per cent, as from 1st January 2005, making Austrian corporate tax rates the second lowest in the euro zone, after the Irish Republic's 12.5 per cent. In conjunction with the cut in rates, new rules are being introduced in Austria to allow deductibility of foreign subsidiaries losses, and new rules on taxation of groups of companies. That level of competition from traditionally onshore states like Austria, and the on-going review of UK tax on betting exchanges and high street bookies in the Gaming Bill, not the Gambling Bill as the Chief Minister referred to it, although he may be gambling that it is not going to get on the books in the UK soon, must be a source for concern to the developments of our own armoury of financial services products. Well beyond the simple exempt company.

Into all of this melting pot, the added ingredient of real poison is the commitment required by the Primarolo Group that Gibraltar should, independent of the State Aid investigation, and in relation to the separate imperative of the eradication of harmful tax practices, abandon the exempt company. We have been told in Gibraltar that this has been met by a political commitment from the Government of Gibraltar, to sign up to the code of conduct roll back date 2005. In answering Opposition questions on this issue, in particular my supplementaries to Question No. 450 of 2004, the Chief Minister has told this House that it is, and this is a quote, *"currently understood by the UK and accepted by them, that we cannot be expected to roll back the exempt regime until we can replace it with another one. We cannot be without a regime, but if that were to change, then that is the only other date which might intervene in the horizon"*. That is the end of his quote. That does not actually evidence much certainty. In fact that answer betrays the possibility that we may in fact be, at some stage, without a regime. Why is that possibility even open? Is it that any commitment that was given by the Gibraltar Government to the Primarolo Group, was not properly caveated to take into consideration the possibility that the Commission might actually reject the Government's reform proposals? If so, that would certainly speak volumes of the arrogance of the Government's approach to the reform. The answer to that may

also be the answer to the reason why we have not yet in the Opposition, received a copy of the Government's submissions to the Commission. A clue appears from paragraphs 103 and 111 of the Order of the President of the Court of First Instance, of 19th December 2001, in the cases commenced by the Gibraltar Government against the Commission. In paragraph 103, the President found that it was public knowledge that the legislation identified by the Primarolo Group must be rolled back by no later than 2005. Now, that terminology referring to an obligation to roll back by 2005, is repeated in paragraph 111 of the President's ruling. In Gibraltar however, we have repeatedly been referred to the Government having given a political commitment to roll back the legislation by 2005. That is the spin put by the Government on the commitment they have given the Primarolo Group, driven by an obvious conviction that the alternative regime would certainly have been approved before then. Yet now that appears not to be the case. How do we really stand on that alleged political commitment to the Primarolo Group, which is interpreted by the President of the Court of First Instance, as an obligation expressed in imperative terms to roll back by 2005. Greater clarity is required on this.

Thirdly, Mr Speaker, one issue related not just to the financial services but to our economy as a whole, where the Opposition and the Government have no quarrel, is the seriousness of the regional selectivity argument to the whole of our economy. We also have no quarrel with the Gibraltar and UK Governments' rejection of the application of the regional selectivity arguments to Gibraltar. These arguments are being deployed only to assist in the sabotage of our economy, and they are wholly without merits and they must be seen off firmly.

Leaving the State Aid investigation behind, I want to deal now with the insurance industry which has continued to grow in the past year. This is to be welcomed. But in this respect I think it would be churlish for the Government to take the credit where it is not due. The growth in the insurance sector is clearly industry-led, and there is little the Government are doing which can be pointed to as the reason for the growth. All the primary

legislation was there in the late 80s. In fact, it might even be wise to actually ask the Government to steer well clear of the sector. Please, can the Government kindly leave well enough alone. Perhaps in that way the players in the industry can be allowed to continue their sterling work, growing the sector further. But it is in niche areas like this on which we must concentrate. Areas where the real business is done from Gibraltar. It is that Finance Centre that we are best placed to develop from within the EU. A sophisticated alternative to the secret pocket tax havens of the past, and it is within the EU that we must wish to remain, although alive to the challenges which come with the benefits of membership and the aggression of Spain's abuse as its position as a Member State. I would also say, that many of the advances we have seen the Chief Minister refer to, are possible only because of the investment in telecommunications made by the first socialist administration, which provided the conduits for businesses such as the trading exchanges we now see and welcome. *[Interruption]* I would add to those giggles from the Government Members, that the ex Minister for Trade and Industry, the ex ex-Minister for Trade and Industry, in his last budget speech was at least kind enough to recognise that that was the case and that the Hon Mr Montegriffo recognised that the investment in infrastructure had been essential to the growth that had followed. One other particular area highlighted previously for growth, but where there has been no progress at all, relates to legislation on pensions. Here we could exploit deficiencies in the treatment of pensions and the fiscal efficiency of pensions in other EU States to become an exemplary centre for pension fund administration. I commend this to the Government as an area where they have delivered nothing by way of legislation or other progress, to enable professionals to market Gibraltar, but where they must act.

Again, I think it shows an element of unacceptable lack of that vision thing and neglect. There is a market out there waiting to be tapped. The implementation of the Savings Directive is now also upon us either by January or July next year. Repeatedly both sides of the House have agreed that we in Gibraltar should not be subjected to the unfairness of an uneven playing field on

the implementation of this Directive. Yet Gibraltar is not to enjoy the benefits of choosing generally or specifically between exchange of information or withholding tax. We will be required in every instance to exchange information, putting us at a gross disadvantage over some of our competitors. In effect, although the Chief Minister has sought the UK's agreement to allow Gibraltar the choices to be enjoyed by our competitors and other Overseas Territories, he has failed to obtain their agreement to any such concession. Perhaps now, he would benefit from being reminded of his words in relation to the Financial Services Commission (Amendment) Ordinance 1994, where on 26th April 1994, at page 13 of the Hansard, he said of the Hon Mr Bossano who was then the Chief Minister, *"whether he likes it or not, the position in which we all now collectively find ourselves unquestionably reflects a failure of the Government in general, and the Chief Minister's in particular, by lateral diplomacy with the United Kingdom to the extent that there is a matter of financial services importance and a degree of constitutional importance, that he has been unable to secure for Gibraltar the position that Gibraltar would have wanted him to secure, represents a failure on his part to deliver success from his bilateral relations with the United Kingdom"*. That is a direct quote. The same applies now to his performance as Chief Minister in respect of the Savings Directive and the Taxing of Savings Ordinance.

Mr Speaker, finally now in relation to my responsibility for financial services, I want to deal with a very local issue. The collapse of the TEP Plans which have plunged so many Gibraltarians into financial turmoil. The Opposition has supported the formation of the TEP Plan Association which has been formed by individuals who are holders of these ill-fated investments. We believe that the formation of the Association is a positive development for all those affected as it will help ensure that their voice will be collectively louder than it is individually. Only in that way will all the parties involved perhaps start to realise that these investors will not simply roll over and accept the loss of the investments without more. It is clear to anyone who with the benefit of hindsight undertakes an analysis of the

product that it is fundamentally flawed when leveraged and paired with an inordinately high gearing. It is also abundantly clear that the product was being sold and advertised as low risk income producing and guaranteeing capital, perhaps even after it was, or should have been clear, that it was nothing of the sort. Many issues arise which may affect any legal action which might be commenced or served in respect of this investment, and a number of regulatory issues also arise, especially as to the actions of the Financial Services Commission when the product was first advertised. After problems were brought to the FSC's attention, and since the product's collapse became obvious and the FSC began its intervention. All of these issues will fall to be determined in time. But a number of issues arise immediately for this House in this debate.

The FSC is an independent statutory body, any shortfall in the budget of which is funded by a vote in this House. This year, in the reallocations of expenditure, we see we have contributed almost £300,000 to fund the FSC's conduct of one piece of litigation, £292,000, item 7 in Notice No 5 of Reallocation of Expenditure of the Consolidated Fund of 2003/2004.

Mr Speaker we have to ask ourselves, does that body provide a sufficient service to small investors who lose their investments in Gibraltar, or is it geared overwhelmingly as an industry-friendly body, better equipped to communicate with the professional advisors or licensees, rather than with disgruntled customers. If so, what body should be established to take over such a consumer-friendly approach? A Financial Services Ombudsman perhaps. I believe so, and from answers to my Parliamentary Questions on that subject, I believe that the Chief Minister may be persuaded of that also. We are talking of a failed investment here of over £11 million collectively. That will not go away and it cannot be brushed under the carpet. In order to preserve the confidence of local investors however, the problems affecting TEP Plan holders have to be addressed now. Any Financial Services Ombudsman will likely take time to be established and will only have prospective jurisdiction. If the Government can help to advance the claims of TEP Plan holders, then, I entreat it

to do so. There may be a formula that enable the Government to assist without straying into the jurisdiction of the FSC. If so, as I have said before, this is not a partisan issue and I would hope that the whole House can somehow support those affected. I call on the Chief Minister to bring this issue up on his agenda of important issues affecting our people and to act positively where he can. The individual TEP Plan holders and their collective TEP Plan Association, deserve the unequivocal support of this House, to enable them to find a workable, short-term, final and acceptable solution to the problems.

That leads me also to the review of the Financial Services Commission, which is on-going, and to which the Opposition will be making representations. As I have already identified, there are issues about how the regulatory functions have failed to prevent the TEP and other problems in the past financial year. It is necessary to assess whether the legislation governing the FSC therefore, needs amending. Now is the right time to do so. But one thing must be clear, what would not be an acceptable outcome for the review, would be the imposition on Gibraltar by the front or back door, of a more stringent regulatory environment than in the UK, in a manner designed either, to disable our financial services industry as part of a wider master plan, to sabotage our economy, or in order to take away from any sector of our financial services industry, a competitive advantage it may enjoy over London, the Channel Islands or elsewhere.

We, are being asked to vote over £750,000 for the Finance Centre offices of the Finance Centre Director, as part of this vote. In fact, the amounts involved are even higher than that given that Ministerial responsibility for this has now been taken over by the Chief Minister. I think it is fair to ask that this expenditure should be monitored in some way to reflect directly what it produces for our economy. Why are issues such as niche pensions legislation not already done and dusted as projects for the future? The answer is probably little to do with the Finance Centre Director and his team, and more to do with the doctrine of centralised control which has affected all areas of our public administration.

It is necessary to say also that Gibraltar is presently, in any event, in no shape to enjoy an economic boom from developments in pensions legislation, a positive resolution of the State Aid investigation, or anything else. Why Mr Speaker? Because the investment in the physical and infrastructural fabric of Gibraltar has been so noticeably absent for so long, and this reflects directly even on Finance Centre activity.

Property is becoming so expensive that it is pricing even middle management out of its range. Organisations wishing to set up in Gibraltar now find office space prohibitively expensive, if it is available at all and a dearth of residential property. That is what I mean Mr Speaker, about the lack of funding of infrastructure. In fact the Hon Mr Caruana has turned into a reality the GSD dream of using the Campo as a dormitory for Gibraltar, by its neglect of property development. What a turn out for the books then. That all this is really caused by the Hon Mr Caruana's fundamentally flawed decision to turn Europort into a hospital, and it is not that our Finance Centre industry is doing so extraordinarily well that the Chief Minister can afford to pat himself on the back. It is that the decision to put the hospital into premium office space, is such an extraordinarily bad one. The Finance Centre and traders and professionals of Gibraltar, are suffering for it.

I now move on to my shadow responsibilities in relation to the media, where again, I shadow the Chief Minister. Although we are a small community, we enjoy our own television and radio station, two daily newspapers, one of them the second-oldest English language newspaper in the world, two weekly's, as well as a plethora of locally produced magazines. All of these have become a part of the communication of ideas and information between and about our people. Of the media in public ownership, GBC in particular, I am very conscious in this debate. The Chairman of the Corporation is right to say that during the period of the joint sovereignty discussions, GBC once again demonstrated the importance of Gibraltar continuing to invest in its own public service broadcasting capability. That is in the Annual Report and Annual Accounts for the years 2001/2002.

As he has himself recognised, it is important for the Corporation to ensure its output is politically balanced, both at news time and at feature time, for GBC's influence on our society is unparalleled. Indeed, GBC are the custodians of an ability to communicate massively with Gibraltar, that although dented by the greater choice and quality offered by the onset of satellite television, remains second to none, and I know that my hon Colleague Mr Randall, will be dealing specifically with issues relating to broadcasting. But in the same way that our society is large enough that we require a means of mass communication in order to inform our people, we are also small enough to know the truth of what happens all too often in the news room. An anxious Government Media Director calls in. The Chief Minister refuses to be interviewed on a particular issue, he is not happy that an Opposition Member has been interviewed, he wants a story told in a particular way. It is ridiculous but it is true and that is not just done to the public service broadcaster, it happens also to the printed press. The Chief Minister himself delivers tellings off to some editors for the words that they have written, or that their journalists have written, and they have printed. We have seen the way he tells off his own Ministers in this House when they fall foul of him, so I pity the journalists that he holds out for discipline. That is not the way to conduct political affairs, especially of a Government in the modern era. If that were not enough, some journalists complain of having to submit written questions before interviews with Ministers and of having to submit draft articles before the same are published. All of them to be approved by the Chief Minister himself. How he can he justify that to this House? Talk about control-freakery. Mr Speaker, that is not my definition of media relations and I deplore the fact that he should bring the weight of his office and his natural arrogance to bear on journalists in order to advance his political objectives. I do, however, believe, that the influence of his complaints is waning. Why? Because he has built his administration on fear, not on respect, and the fear of him is starting to disappear, and rightly so. I am reminded of an interview he once gave whilst he was Leader of the Opposition, saying that if he became Chief Minister, persons would be able to proclaim him a fool from the highest roof tops in Gibraltar but not suffer when it came to the

grant of tenders of other Government contracts, permits or permissions. He cannot even pretend to have stuck to his promise on that one. Indeed, after this speech, I do not fancy my chances for any tenders, permits or permissions.

Returning to GBC, the Corporation has recently seen some of its elder statesmen retire. The torch has passed progressively to a new, younger generation, and that is reflected in both output and outlook. The Open Day collection improves every year, and that is positive, but the cost of running a station like GBC is also rising and we need to ensure that this cost is managed as effectively as possible, to deliver what the community really looks to GBC for. Namely, general entertainment locally-produced programmes and news and current affairs programmes on the issues that affect us all collectively. I do not believe that the three hour loop which is daily on our screens, has been as popular as the Corporation expected, and more needs to be made of the potential for digital terrestrial transmissions.

Mr Speaker it is important to ensure that the resources are there for GBC, for the GBC that we want and deserve. We are very lucky to have GBC and we cannot afford to undermine it, but we must keep an eye on the bottom line nonetheless. I have faith in the professionalism of our print and broadcast journalists and I believe their output eschews the deplorable, attempted influences of the Chief Minister. I may not always agree with what they broadcast or write, I may vehemently disagree, but I defend their right to broadcast or write it, without fear of reprisal or political pressure. There is no democratic alternative. I want also as an essential part of this section to my speech on this Bill, to address matters relating to the proceedings of this House and the media.

I do not believe that this House meets often enough. As a Parliament I believe that we should have more regular meetings for questions, which would make our Question Times more topical and would naturally cut down on the build-up of questions. None of this requires any reform. The Chief Minister has it in his gift to call monthly or bimonthly meetings of this

Assembly. Our ability in the Opposition benches to scrutinise public spending would be enhanced in that way. And, if there is anybody in this House who does not want to be in this House, or considers it a drag, they should not have stood for election. Importantly, this House and its proceedings would also in that way become a more obvious part of the political life of our nation. What is happening here is as important to the assessment that the public must make about each of us, as of the public statements that we make and the political campaigns that we run. That also requires that this House be a welcoming place for members of our public and for members of the press. It is true to say that there are little or no facilities here for members of the fourth estate. They are our bridge to the population and we must ask ourselves if we are failing to make provision for the press, are we failing ourselves in getting people interested in the proceedings of this House.

I have been approached by a number of people who are upset at the fact that the proceedings of this House are only transmitted on the medium wave frequency on GBC Radio. They tell me that reception of that frequency is not great, and that the three hour loop on GBC TV, now deprives them of the ability to hear the relay on television. I go further, I believe we should have a debate on the merits or demerits of televising the proceedings of this House, and of modernising our timetable. However much of a hard worker each of us may be, we are not giving of our best at 11 at night. It is simply insipid to pretend otherwise. We can have a testosterone-fuelled contest to see which side can outlast the other, I am confident that we would win it, but that would actually get us nowhere. And none of us requires anything other than that the Leader of the House should be amenable to a civilisation of procedures. There is no need to reform our Standing Orders or anything of the sort. Just call more meetings. Give better notice of business and stick to sitting no longer than agreed times.

As for broadcasting, we already do more than other territories which only offer highlights of their Parliaments but we must not consider that enough. If GBC is to feature a blank screen or a

three hour loop of repeats during the day, we can use that time when we are on in this House, to reach out to the people who put us here. In my personal view, we should assess the cost of televising the proceedings of this House and debate seriously whether we want to go down that road. And this is not a partisan issue because I am conscious that I am echoing the Hon Mr Azopardi's words last year, in what was his last budget speech, and I may not be speaking to the preference of everyone on these Opposition benches. In fact, I think this may be an issue where the Leader of the Opposition and the Leader of the House actually find themselves in agreement.

This House must reach out through the media to its masters in the population. Not just at election times. We must make better facilities available here for members of the press, and we must not scrimp and save on that. It is too important.

I want to address a small number also of issues, that relate to law and order and which relate to these Estimates. Many promises have been made to the Royal Gibraltar Police, to the City Fire Brigade and to the Customs Department, about the resources which were to be made available to them by this administration. Very little has actually been delivered despite the promises. Those that are at the forefront of the battle to secure law and order in our community, should not have to battle for resources, human or otherwise. It is wrong that they should be led up the garden path to believe that resources will be there and that those same resources should later be denied or delayed them. The purchase of new patrol bikes for the RGP is one case in point. Although new bikes were quoted for a tender, an order for new bikes was not placed. The existing bikes were repaired over and over again. The cost of those repairs soon exceeded what would have been the cost of obtaining the new bikes. Only then were the new bikes ordered. The cost is therefore double. The culprit, well, only one person has abrogated to himself the power to make such decisions, centralised at 6 Convent Place.

Mr Speaker, in our Courts many family cases are being delayed pending Social Services reports, which can now take up to nine

months to be completed. That is not the question of court resources but of Government Departments affecting one of the most sensitive areas of our Court's legal activity. Even if not its most lucrative. For the sake of the welfare of the children involved in these cases, I urge the Government to act. I will add here my own views on the increased costs to the taxpayer of legal aid and assistance. I can speak as a lawyer who has never sent a legal assistance bill and only once sent a legal aid bill in my first year of practice and it is not because I am not on the roll or because I do not do the work. The cost of legal assistance has grown exponentially, on that the Chief Minister and I are agreed. The answer to this problem must however be crafted carefully to ensure that in worthy cases, those who are entitled to legal assistance, do obtain it. That may require actually raising the minimum earnings before eligibility for legal assistance, because those were set so long ago, but limiting the funds available for lawyers to charge. I would sound a cautionary note in relation to the important distinction between legal assistance and legal aid. It is legal assistance, that is the public funding of civil cases, that is responsible for the massive rise in the cost to the taxpayer. Legal aid, which provides public funding for criminal defence work is not so much the problem and is much more essential in terms of the fundamental rights to a fair trial under the Constitution and under the European Convention. We must be alive to ensure that the controls necessary in relation to legal assistance are not allowed to act as strictures on legal aid which might inevitably impact a defendant's rights.

I would also urge, and I am disappointed that the Attorney General is not here to hear me, that by next year the Estimates should also make provision for the remaining cost of the implementation of PACE into our laws, as well as for the adoption of any recommendations made as a result of the death in custody investigation, which has been recently completed. I say remaining because so much of the expense has already been incurred by the welcomed introduction of recording devices to record interviews and other such material. Some expense would remain, some related to retraining and some to the duty solicitors scheme. But these expenses will outweigh the benefits

of the full introduction of PACE into our laws. I say next year because I do sincerely hope that all reporting which remains of the Committee chaired by the Attorney General in respect of the legislation, should have been completed by then and the draft legislation should have been brought before the House even before then. Again, this area I do not believe that these would be partisan issues.

I want to deal again with this question of the refurbishment of Convent Place because it is relevant to this question of law and order. The monies moved were moved from monies set aside and voted by this House for the equipment of the RGP and the equipment of the Fire Brigade. That is the reality of the commitment which the Chief Minister has to the men and women of law enforcement. Much the same as his commitment to the swimming pool for the elderly and the disabled. No commitment at all. I should add here my own concerns about the men and women of the Ambulance Service. They do a fundamentally important job that could save the lives of any of us within the community when the time comes that we might need urgent medical attention, as I am likely to do if I were to wander into the ante-chamber at the wrong moment, after this probably. They are clambering for better terms of conditions of employment and that includes a claim for increases in salary. The men and women of the Ambulance Service are very concerned also about their working environment which by all accounts is far from dignified and includes a shower area with broken switch pipes and a sleeping area which is not segregated between the sexes. The Trustees of the St John's Ambulance may be the direct employers but their operation of the ambulances is funded by a vote from this House and it is important that we ensure that the scrimping and saving also does not affect them. Theirs is one of the most important jobs in our community. Their terms and conditions of employment cannot fall foul of employment legislation in particular in relation to the structuring of their holiday pay, and their terms of their working Bank Holidays, Christmas Days and Good Fridays. That leads me to my contribution in respect of my responsibilities for employment, where I shadow the Hon Dr Linares.

Mr Speaker, this is the first time that I have an opportunity to address myself to the Minister of Employment unrestrained by the formalities of having to formulate my contributions towards him as a question. I have known Dr Linares most of my life. He is one of the people who I regard as having nurtured my development as an individual. He is one of the people who watered the seeds of my political commitment. You may be surprised to hear that and Government Members might wish they could get into a time machine and undo what he did, but that is the truth. I sit opposite him today but I cannot imagine that we have widely divergent views on what a Gibraltar Minister for Employment needs to be doing. We may have different views of what is happening, or how to solve the problems, but I am sure that we cannot disagree about what the aim of policy must be, namely, that the Gibraltar Government must do whatever it can within the law to ensure that priority of employment should be for Gibraltarians. Of course that presupposes that we agree that the same Government must do also everything it can to stimulate the growth of the job market. Perhaps we do not agree on that, given that in his intervention yesterday, the Minister suggested that that was an issue which needed to be left to the market.

But the desire to ensure priority of employment for Gibraltarians is not a jingoistic, nationalistic or racist one. It is simply what we are elected to do by the Gibraltarian people. We are not elected by residents of the Campo or by Poles, or Lithuanians to promote their employment prospects. We are elected by our people to manage our community in a manner designed to deliver the greatest good to the greatest number. That includes necessary appearance to the legal principles we are all signed up to in the Common Market, and the moral obligations we may have, as well as the legal obligations we may have to non-EU workers such as our Moroccan friends, who have been members of our community since the 1960s. So I believe genuinely that there will be very little between me and the man I shadow on this portfolio, as to the substance of the aims we would wish to see fulfilled. I was very surprised however, by two things that he said. The first was his praise for the principle of employer and employee registration. This was one of the things most criticised

in fact, by the Hon Mr Caruana and Mr Vasquez when they sat on these benches. Then, they liked to refer to the ETB and the registration requirements, as growing bureaucracy making business progress in Gibraltar impossible. The second surprise was the suggestion that the computers are in place to enable information to be provided at the touch of a button. How can this be? If we are regularly told at Question Time that five days notice of questions is not long enough to provide the answers and that an extra ten days are required. I cannot reconcile those two principles.

From all sides of the House we would all wish to see full employment, and I think we all recognise that the absence of full employment may some times have more to do with the shortcomings of the individual than the unavailability of jobs. That is undeniable. But I do not think that there are as many unemployables in Gibraltar as there are unemployed. In fact, the Hon Mr Caruana and the Hon Dr Linares now claim we have reached full employment, although with lower unemployment figures in May 1996, the Chief Minister was crying about an unemployment crisis.

Mr Speaker, the fact is that some people will not be qualified to work in the online betting industry or in the insurance sector, and for those this Government has done very little. I have had careful regard to the words of the Chief Minister last year, when answering my Colleague Mr Baldachino, on his contribution. The Chief Minister told the House then, that unemployment in Gibraltar hovered around 300 and that these were principally people who were not really looking for jobs at all, they are just registered as unemployed because it is a precondition to get social assistance, that is a quote directly from last year's Hansard. The Chief Minister went on to say that if Spaniards or anybody else were taking jobs at the expense of Gibraltarians, that Gibraltarians were remaining in increasing numbers in unemployment whilst jobs went to outsiders and that would be a serious matter but that is not the case. Again, that is a quote from page 248 of the Hansard if the Chief Minister would rather forget those words. Well, I do not accept that this is the case. A

large number of people remain unemployed because jobs are being taken by outsiders. I have already been consulted myself by a number of individuals who complain that they are made redundant and that shortly afterwards, a Spanish worker is recruited to the same job, with a different job description, but doing the same work. On some occasions the redundancy comes just before the employee has been employed for a full year, or just three months from the dismissal. The employer in that way ensures that the employee is at least at first blush, unable to take action in the Industrial Tribunal. So the issue in the number of unemployed is not as cut and dried as the Chief Minister would have this House think, and I call on the Minister for Employment to have regard to the potential that unscrupulous employers should be acting in this way. In fact the statistic of 6,903 vacancies filled is not, I am sorry to say, seen by the Opposition Members as evidence of a vibrant labour market. In fact, we see it as evidence of the churning of contracts and the abuse of employees on fixed term employment contracts. Otherwise, a third of the employment population would be getting a new job every year. In effect therefore, I can assure the Chief Minister that he was totally wrong in fact when he said at page 249 of Hansard for last year's Budget debate, at column 2 in case he wants to check it instead of snooze, that it is wholly misleading to suggest or to pretend that non-residents are taking the jobs of residents or Gibraltarians. It is simply not the case. The Minister tried the same argument from a different angle by saying that the percentage of Spaniards employed in our economy is static at about 13 per cent. That is simply wrong. It is not true. It is happening all the time and I hope that the Chief Minister does not just deny it for political ends. The proper thing to do is to investigate such problems. The statistic which the Minister refers to of course, relates to registered employment, and so many of the frontier workers who take local jobs are unregistered. Otherwise, how could we account for the divergent numbers that come through the frontier and who are registered as employed.

But employees have other problems short of being made purportedly redundant in favour of cheaper immigrant labour.

Many are presently employed without the benefit of constructive dismissal legislation. The Government have withdrawn their own Employment (Amendment) Ordinance, which would have made amendments required to give effect to the changes after the Equal Opportunities Ordinance. That deprived the Opposition of the opportunity to proceed with our proposal to the effect that the introduction of constructive dismissal legislation should happen immediately and be put on a statutory footing. I agree with the Minister responsible that in effect we now suffer an Equal Opportunities Ordinance without the necessary consequential amendments of the Employment Ordinance, and employees continue to be deprived of the right of constructive dismissal. I am therefore delighted to hear that the consultation process on this is now totally at an end. My own consultation process indicated that there was general approval of the Opposition's proposal to introduce the principles of constructive dismissal on a statutory footing, certainly from all the Unions. I now hope we shall see such legislation brought to this House and in place before the end of the calendar year, because I have heard immediately and shortly too often from this Government. Please, I implore the Government, for the sake of the employees that need it, move on this quickly. I have, in fact, already drafted the necessary simple, short amendment to this legislation and they can rely on me to assure them that it is very easy and it can be done without taking much Parliamentary time.

I would also wish to remind the Minister that both Charles Bruzon and I, in our contributions on the Equal Opportunities Ordinance, stated that we believed that the rules on discrimination on grounds of age and disability, should be brought about as soon as possible. I will pause there to reply to the suggestion that the draft of the constructive dismissal legislation proposed by us and prepared by us is not to be relied upon. In fact, we have seen that it is the legislation which is brought to this House by the Government that is not to be relied upon and which requires consistent amendment.

We were told by the Chief Minister then, at the time that we were bringing about the provisions for the Equal Opportunities

Ordinance as it is now, that the transitional provisions in relation to age and disability allowed the Government time until 2006. Later at Question Time, the Chief Minister told us that the Government would try to move on these anti-discrimination provisions this year. We welcomed that change of timetable. Indeed, it is the Equal Opportunities Ordinance that brings me to the next part of my address on employment.

The Ordinance creates many new areas of recourse to the Industrial Tribunal. The Tribunal is already cracking under the weight of the cases which are pending before it. An adjourned matter cannot be brought on again for four or five months. In order to fix a date, diaries have to be coordinated not just between counsel for the parties, but also with the Chairman who is also a lawyer in private practice. That can add to the problems in fixing a date. I therefore believe that the post of chairman of the Tribunal should be made a permanent appointment, that would ensure the daily availability of the Chairman and would also add the consistency of a single decision-maker, like we have in relation to all matters relating to this Government, leaving less to chance when one lawyer or another is appointed as ad hoc chairman. Moreover, as we were at pains to point out during the debate on the Bill for the Equal Opportunities Ordinance, the Tribunal should have the resources to deal with a potential increase in cases. Now, it is also important to put the results of the Employment Survey in their proper context.

The Survey is perhaps more accurate than is usually the case, given the very high response rate from employers. The preface to the Report evidences that 1,290 employers out of 1,298 sent the survey actually replying to the questionnaire. For that reason the figures are not capable of exact comparison with earlier years, where many less employers have replied to the survey. For that reason, the results of the Survey cannot be spun to show record numbers of employment helping the defeat of the spectre of unemployment. In fact whatever the position in October 2003, the figure for Gibraltarians out of work in the first three months of 2004, has gone up compared with the same period a year ago. Analysing that in detail and dealing with the

loss of 26 jobs is neither demagoguery nor pettiness, it is real concern. The February 2004 figure is the highest for that month since 1998 and is above the February 1996 total. Taking the average for the first three months of unemployment, taken the average, the first three months unemployment has risen by 7.4 per cent compared to last year's average for the same period. This must obviously be a source of serious concern across the board and is a statistic from which the Government cannot hide and I am sure that the Minister has that concern related to that statistic despite what he told us, and I understand the need to say it politically, yesterday. But this may explain why quarterly unemployment figures have not been published timelessly at the end of each quarter, as the Government had committed themselves, of their own volition, to do. Certainly, the results of the Employment Survey show that there has been an increase in employment largely attributable to the growth in offshore betting, where industry-led growth has opened many new vacancies. Again, this is an area where all the relevant legislation and infrastructure had been put in place by the first socialist administration, and where this Government would be hypocritical to try and take credit for having created an industry, although I accept of course that they have nurtured it. We must be keen, however, as a people not to have too many of our own eggs in one basket and rely only on one industry to grow our employment, as appears to be the case with this Government, is an unacceptable gamble, if they will excuse the pun. But the growth in employment appears principally to favour frontier workers given that there were almost 1,000 new Spanish entrants registered in the local labour market in 2003. The exact number is 945 according to the answer provided by the Minister to Question No. 250 of 2004. At the same time local unemployment reached record highs for the month of February as I have just told the House. The answer to Question No. 257 of 2004 is also relevant. That shows that out of 358 part-time jobs taken by males in the year 2003, only 132 went to Gibraltarians and 226 went to workers of other nationalities. Of 754 female part-time jobs, only 297 went to Gibraltarians, whilst 467 went to workers of other nationalities. Maybe that is the price of membership of the EU. But returning to the Chief

Minister's analysis last year that Gibraltarians were not being left unemployed whilst other nationals got jobs, there is the imperical evidence that he is wrong. Spanish workers are gaining advantages and taking posts from local workers who remain unemployed. When the Hon Mr Netto was Minister for Employment, his press releases on the quarterly unemployment statistics used to end with a Government call for employers to do more to source employees from the pool of locally resident workers. That phrase has disappeared from the press statements now issued with the quarterly, but usually too late, employment statistics. If that phrase was necessary then, it is even more called for now that the February headline figure is 7.4 per cent up. I call on the Minister for Employment to renew the call for employers to source employees from the pool of resident labour and to take any other measures possible to promote the employment of Gibraltarians.

Mr Speaker, another area worth highlighting is that which relates to local expenditure of £210,000 for the Construction Training Centre, and that appears at page 113 of the green pages of the Book of Estimates. What results have we to show for this expenditure? The number of Gibraltarians in the construction industry is actually down, even in the Employment Survey which Government appear to be so proud of. The whole point of the expenditure is to promote and create local skills in construction, yet now the numbers employed in construction are at the highest levels ever, but the number of Gibraltarians employed is down. The number of Gibraltarian males in the industry is down from 2002 to 2003, from 491 to 463 in a year. So, how can that expenditure on construction training be said to be delivering results. Despite their words of gratitude and praise for the employees of the ETB, the amount we are being asked to vote under Head 1B for the Employment and Training Board will actually be one third less than last year, £300,000 less than the £900,000 voted last year. In fact, in the year 2002/2003, the Appropriation was for £1.4 million. This year it will be £600,000. I guess that reduction in budget evidences the reality of the gratitude of Ministers. As I have already alluded membership of the EU requires us to have a job market open to nationals of all

Member States but some action can be taken to control numbers. Most Member States have, for example, been able to negotiate derogation from specific freedom for transitional periods in respect of nationals of the ten new Accession States. Those are included in the accessions. The UK has not done so in relation to the right to work but has done so in relation to the right to remain within the UK if unemployed. We now hear and welcome, that Gibraltar will invoke the benefit of the transitional provisions in the Accession Treaties, in respect of applications for employment from nationals of the ten new Accession States. Given the evidence that already exists of large numbers of migrant and frontier workers taking up employment in Gibraltar, this is actually very welcome. In fact, Government's failure to act earlier may account in part for the increased number of Gibraltarians unemployed, priced out of their own job market by cheap labour the Government have not been astute enough to control. I say that because the accession of these ten new states happened on 1st May of this year but we have not yet invoked those provisions, we have left ourselves open to the obligation to grant permits for over two months.

I want to turn now to an area which I think has not been touched upon before in this House and which relates to the interplay between employment and the issues that concern us all about law and order. I understand from a number of people who have consulted me in my capacity as Opposition Spokesman with responsibility for Employment, that in many application forms for jobs in both the private and public sectors, employers are requiring disclosure of an applicant's previous convictions. That is understandable. An employer should know if he is recruiting a person who has a recent conviction for any offence, particularly an offence related to drugs, an offence relating to violence or an offence relating to dishonesty. But similarly, an individual who has been convicted and sentenced for the commission of a particular offence and who has not re-offended after a prescribed and lengthy period of time, may also be entitled to say, I have put that behind me it should not be held against me any more. That is a difficult balancing act but it may help many long-term unemployed break down the barrier to their employment, if it is a

previous conviction that is preventing them for securing employment. The Minister has told us about the Job Club helping people back to responsibility, but how can this help if employers are prejudiced against those who have formed. In the United Kingdom, legislation providing for this has been in place since 1974 in the form, of the Rehabilitation of Offenders Act. This Act prescribes the type of offence involved and provides the period by which it is to be considered spent. That relates both to the prosecution in its rights to refer a court to a previous conviction, and importantly, gives the offender the right not to have to make reference to a conviction after the relevant period for that offence has passed. Of course, some convictions for very serious offences can never be considered spent, and that is right. But this is particularly relevant to young offenders, who may have offended as juveniles but who have turned over a new leaf. Their chances of employment in life should not be conditioned by mistakes made when they were teenagers. That is the case at the moment, especially in relation to the public service, where the RGP Records Office do, as I understand it, release details of previous convictions, even of juveniles, upon application for employment to the public employers. Although the manner in which this may be done now may have been affected by the implementation of the Data Protection Ordinance. I would call on the Government now, to consider seriously the introduction of a Rehabilitation of Offenders Ordinance, closely modelled on the UK Act.

I want to highlight in my contribution this year also, the confusion that appears to have arisen on the Government side during previous budget debates, on the apparently draft Protection of Young Workers Employment Ordinance. When he held responsibility for employment the Hon Mr Netto announced that such an Ordinance had been drafted to make provision for the protection of young workers who are not otherwise protected by the Working Time Ordinance, which transposes the Working Time Directive 94/33/EC. He said as much on the debate on the Bill in this House in 1999. Subsequently, in answers to questions, it was stated that the Protection of Young Workers Employment Ordinance would be abandoned. The Bill had

apparently been drafted in 1999 but it had not seen the light of day by 2003. Hopes ran eternal, when Mr Corby who is not here with us today, in his intervention last year as Minister for Employment, either shed light or renewed confusion on the issue. At page 116 of the Hansard for this debate last year, at column 2, Mr Corby contradicting the answer given in answers to question, said referring to the Working Time Ordinance, and I am quoting him now, *"much of the latter reflects provisions in relation to the protection of young people at work, and in order to give whole effect to the relevant Council Directive, 94/33/EC, a new Ordinance has been drafted, the Protection of Young Workers Employment Ordinance, which will be brought to the House in the immediate future"*. Well, no such Bill has been promulgated and no such Ordinance has been passed by this House. According to the Hon Mr Netto, in 1999, the Bill was to be brought that year. Later, the Bill appeared to have been abandoned. According to Mr Corby in 2003, the Bill was very much alive and kicking and was necessary to give whole effect to Directive 94/33/EC. Mr Corby had added that the Bill was coming to the House in the immediate future, but we are now told the constructive dismissal legislation will come. So what situation are we in now? Young workers do not have the protection they are entitled to and Directive 94/33/EC has not been given whole effect to, despite the transitional provision having expired. I would imagine that none of this is done in order to purposely deny protection to young workers. I would not imagine laying such an accusation at the feet of the Hon Dr Linares. But I do believe that the failure to get it right on something important like this, does evidence to the slide of inefficiency into which this Government have fallen. Someone has taken their eye off the ball, and on this, it is young workers who are open to suffering the effects. The rhetorical questions to ask are obvious. (1) When will the position be regularised? (2) Will the regularisation now be done by bringing the Protection of Young Workers Employment Ordinance or by amending the Working Time Ordinance? and (3) finally, who is responsible for the five year failure to rectify the position? Certainly, it speaks volumes that the Legislation Support Unit are asked to draft legislation which is not then proceeded with. That is clearly not a

good use of resources. From the point of view of the integrity of our Employment Protection legislation, this problem must be resolved, and quickly, one way or the other.

That leads me to say that the Employment Survey for October 2003, does show in relation to young people that despite the spin, the numbers of young people employed today are much lower than they used to be. The figures speak for themselves. In April 1996 there were 112 full-time, monthly paid juvenile male jobs. In October 2003 the number had fallen to 57. The eight years of GSD Government have therefore produced a 50 per cent fall in full-time, monthly paid jobs for juvenile males. The figures are there at page 22 of the Survey, I am not making it up. In April 1996 there were 16 full-time, weekly paid juvenile female jobs. In October 2003 the number had fallen to 11, having been as low as four in October 1997. The eight years of GSD Government have therefore produced an almost 40 per cent fall in full-time, weekly paid jobs for juvenile females. Again, the figures are there at page 16 of the Survey, I am not making it up. The figures are even worse in respect of full-time juvenile females. In April 1996 the number of female juveniles in full-time, monthly paid employment was 65. By October 2003 the figure was down by over 40 per cent also, down from 65 to 39. They went as low as 21 in October 1998. What is happening? Again, the figures are there at page 23 of the Employment Survey. So much, for this Government being the one that got young people into employment. Forget the spin, look at the figures and allow them to speak for themselves. Employment is about people. It is about real people that are being really let down. On young workers protection and employment prospects, the Government's record is not one that can be commended.

Mr Speaker, in relation to the question of registered and unregistered labour, we certainly believe that there is more room for an increase in the number of inspections carried out to determine whether or not employees are legally registered as required. In relation to the fitting out of the new hospital for example, we have seen how a very small number of inspections were carried out, although it was clear to all and sundry that

there were large numbers of non-EU unlikely unregistered workers on site, well in excess of the numbers dealt with when inspections were carried out. It would be wrong, this year, not to take the opportunity before ending my contribution in relation to employment, and when addressing ourselves to the subject of employment, not to make reference to the threat of contractorisation that has been faced by employees of the MoD in Gibraltar.

Those affected know that they have the support of the Opposition Members, and I hope of the Government also, in seeing off threats to their jobs. Also, MoD employees and hopefully also no longer under threat, are the men and women of the Gibraltar Regiment. I trust there will be no redundancies to speak of there. Losses of jobs in either of those sectors of the MoD would clearly add pressure to the local pool of labour.

I turn now to the expenditure envisaged in respect of our common environment. In this portfolio I shadow my namesake across the floor the Hon Mr Vinet. I must start by saying that very little has happened in relation to the environment since the Hon Mr Vinet and I became Members of this House. In fact, the Government seem to act on this issue only when embarrassed by one of the groups dedicated to the environment, all of which do sterling work in making the environment a real live political issue. As I said during the course of the debate where the Hon Mr Vinet and I appeared together on television some weeks ago, so he cannot say that he was the one to say it first in this House. As yet, despite repeated promises starting in 2000 and the fact that little expenditure would be required, we do not yet have an environmental charter. The fact that this could be achieved easily, without great levels of expenditure, and that nothing has happened, belies the fact that there is very real, very little real commitment there from the GSD to the protection of our common environment. I sincerely believe that this is an area in respect of which the Government pay lip service to policy but really do only what they have to in order to get by. Now we are told that the charter will be ready this financial year. Earlier this year, when the charter became an issue first, we were told it would be ready

within the calendar year, another delay. In fact, most if not all the action taken by the Hon Members opposite, relates to the transposition of EU obligations and not real thought-out policies of the type which our country needs to deal with the environmental problems that we have on our doorstep. I do note that the Estimates Book carries a provision of £130,000 for the provision of an air quality monitoring station or stations. That has been promised many times before but has never been delivered, so I am heartened to see provision being made for it in the Estimates this year.

As we have been told already however, we are to have the monitoring stations in two locations in Gibraltar. I would urge the Government not to try to locate the stations only where they will always give clean readings, but to ensure that the areas addressed are those of real concern and pollution, which existing reports already point to air quality being below the required averages, and note, I have not accused the Government of being about to do that, I have urged them not to do it. This is especially relevant given the SO₂ emissions which have affected our environment in the past weeks and which emanated from the industry in the Bay. It is for that reason that we have proposed that a study be undertaken into the quality of the air that we breathe in Gibraltar, as a result of the heavy industries, and to take action to ensure compliance with European and International Standards on emissions. In the context of these Estimates funding such a study would be feasible and would probably be one of the best investments this Government could make.

One of the most outstanding Heads of Expenditure which grab the reader's attention in reviewing the Estimates for this environmental head, relates to the cost of disposal of fly ash and other items. This was provided for previously under Head 4B. Looking at page 46 of the Estimates, the sums voted for this Head last year 2003/2004, were estimated at £35,000. The previous year the sum actually spent amounted to £82,000. Members need to bear in mind that this expense has been incurred for some time in order to dispose of the ash created by

the incinerator plant at Europa, which was a product of the first socialist administration undeniably. Last year despite an estimated expenditure of £35,000, the forecast outturn is actually more than ten times that, which is an absolutely incredible overspend. It is worse than the overspend at the Social Services Department. If that were not enough the estimate for this year now under Head 4A on page 43, is another £300,000. That expenditure is astronomical compared to the expenses incurred so far, and more details of how and why the sum has grown so inexplicably would be welcome. I am conscious that the reference in the Estimates is to the disposal of fly ash and other items, that is why I am raising the issue, because those other items, if they are the ones responsible for the increase in cost, are not in any way particularised and that is what the Opposition is here for.

Mr Speaker I also note that the cost of control of seagulls is now up to £69,000 per year, but that the seagull population is now actually greater than ever. Are we getting value for money in respect of that expense? One thing that is not provided for, at least specifically, is the provision of noise insulation for the OESCO plant at Europa Business Park, now that a third engine is to be operational by September. This is a serious issue of concern for inhabitants of the South District who find the noise unbearable. Whatever the Government may wish to say about whether there is a noise nuisance or not, when the Hon Mr Britto was the Minister responsible and less than a month before the last Elections, he sent a letter to all who had signed a petition on the reduction of noise pollution in the South District, except me. I have also signed a petition and it was not sent to me, might have been the Post Office.

HON LT-COL E M BRITTO:

Point of order. Point of correction. The letter was sent to every single signatory of the petition and that included the hon Member.

HON F R PICARDO:

I accept that Mr Speaker. I never got the letter and I have here somebody else's because I needed to have it and it was never sent to me. Mr Speaker, the letter of which I have a copy here, contains the Government's commitment to fund the necessary noise reduction works. Given this specific commitment, why are we not voting money for these works to commence this year? The Government say they are committed to recycling also, but they do no recycling themselves. Perhaps on this score the issue is not so much expenditure but that the Government should lead by example. The fact that this is one of the most important portfolios for securing our common futures does not appear to have spurned this Government into action. Very little has been done by this Government to really protect our common environment, at trying to prevent abuse by industrial operators across the way. More action is necessary.

In conclusion, our money is not being spent on the best projects for our people. Our spending on capital projects is not well thought out. That may explain the attempt to do away, perhaps illegally, with the balance to completion column in the Estimates Book. When it comes to cutting recurrent expenditure, the Chief Minister is cutting in all the wrong places. He needs to change his millionaire's lifestyle. The one which he enjoys at taxpayers expense because it is not his money to waste. He needs to deflect cuts from respite care to the cost of parties and Club Class international travel. Turning an estimated surplus of £6 million into a deficit of £7 million cannot have been easy, but now it is done. Where the numbers should have been black, they are now red. The Government has nothing to be proud of in these Estimates. By the Chief Minister's own analysis, net debt is up from £24 million in 1996, to £45 million now. That is an increase of almost 90 per cent, not a comforting thought. Those are my concerns about the Heads of Expenditure for which I hold shadow responsibility.

Finally I want to add only two things. First, yesterday we were accused of scaremongering and abusing the elderly, that is what the Chief Minister said, abusing the elderly, because of our concerns on the level of pension funds. That is a shameful accusation and it is wrong. What the Chief Minister cannot get away from is his repeated remarks in 1995 and early 1996, that Gibraltar was bankrupt. That was scaremongering of the worst sort, abusing the young and the elderly at the same time. In fact, as all his Budgets since 1996 have shown, Gibraltar was far from bankrupt. Secondly, and finally, during the course of his intervention yesterday, he claimed for himself improvements to both the face and soul of Gibraltar. The custodians of the soul of Gibraltar are the Gibraltarians collectively. No one man or group of men in this House should be so arrogant as to claim stewardship of our common soul or of our common identity. Governments steer economies and administrations but nothing else. That he has attempted to take credit for changing Gibraltar's soul, evidences only the grandeur with which he regards himself. Perhaps that accounts for the financial waste over which he presides.

The House recessed at 2.02 pm.

The House resumed at 3.35 pm.

HON L A RANDALL:

Mr Speaker, I think you will be pleased to hear that in view that my Colleagues who have preceded me have mentioned all the salient points that I had included in the opening part of my address, I propose to eliminate the opening part of my address to supporting each and every iota of the contributions made by them and those that will follow me.

Mr Speaker I will therefore now turn to my responsibilities and start with transport. At this time last year, the Hon Joe Holliday informed the House that a new company had been set up which

would acquire the existing bus licences of both the Rock City Services and Calypso the two existing bus operators. Today, and over £800,000 later, Government have only acquired one licence. It appears that they have no intention of now acquiring the licence of Calypso, although this stands to be confirmed. A fleet of new buses acquired is now operating a service. Big and heavy as they are for the geography of Gibraltar, and I say this after having travelled in them. Our neighbours on the other side of the frontier appear to have chosen a smaller type of disability and environmentally-friendly urban bus, with which to provide an improved service. I have been informed that this type of urban bus has a capacity to carry 15 passengers seated and 10 passengers standing. This being the case, and I say this because I have not as yet had an opportunity to check this information out, why did the Government opt for oversized buses, when an alternative existed that was better suited to negotiate the geography of Gibraltar.

When in the past the Hon Juan Carlos Perez raised the issue of public transport in this House and told the Chief Minister that the only way of achieving an improvement in the service was by throwing money at it, the Chief Minister said that in no way was he prepared to subsidise public transport. He stated that improvements had to come as a result of Government initiative with companies but in no way did he envisage pumping any money into public transport. But this is precisely what his Government has done. Late last year my friend the Hon Charles Bruzon and I met with the Chief Minister at the Prospect Christmas party. When the Chief Minister gave us an impromptu lecture on the differences between recurrent and non recurrent expenditure, he stressed the risks involved for Government in increasing the level of recurring expenditure. Well, this is precisely the risk the Government have taken with the new bus service. So much for the prudent public spending policy that the Chief Minister referred to yesterday. Based on the accuracy of the assumptions that I have used in the operating plan I have constructed for the bus company, the bus company may need in its first year of operation, a cash injection by Government that could be in the region of the level of compensation that the

Government pays to AquaGib in lieu of water tariff increases, namely, £1.25 million. I am therefore concerned to note that in the Estimates we are considering the Government have provided a nominal sum of £1,000 for public bus services. In fact, should the Government decide at some point in time to recover the subsidy from the consumer, as the Government were reported in the press to be considering doing with the compensation they pay to AquaGib, and which the Chief Minister more or less confirmed last night in this House when he informed us that the Government proposed to raise water charges, an average fare of £1.75p per paying passenger would have to be levied in order to achieve break even point. Alternatively, the average number of paying passengers transported per day, would have to be increased from the level of 3,000, that I assumed in the operating plan, to just over 10,200. More than the hundreds that the Hon Mr Vinet alluded to earlier today.

In keeping with the style in this House, when he gets the opportunity later in the meeting the Chief Minister will no doubt consider accusing me of petty lies and distorting the truth, or showering me with similar derogatory remarks. Well let me tell him that I do neither one nor the other. I have worked very hard at the reputation which I have for being an honest man and a straight person.

Let me tell him that I have done what he should have asked someone to do for him. Namely, assess the on-going financial consequence of investing in the buses prior to investing in them. I say this because when I asked in this House for Government to state what was the estimated loss in the first year of running the bus service, the reply I received was that the financial performance of the company will depend on the usage of it by citizens, and that it was not possible to assess what it will be at this early stage. I dread to think what two of the Government Members who I have been privileged to have as directors of the company I used to work with, would have said if I had asked them for £2.8 million of capital expenditure for a project and provided them to the question I asked the Minister with the answer he provided me. However, should the Chief Minister so

wish, I am prepared to sit down with whoever he nominates to discuss the accuracy of my assumptions and hence, the level of the estimated cash shortfall of the bus company in its first year of operation. I assure this House that I am a sufficiently humble person to come back to this House and admit to my mistakes if this should in fact be the case. However, we are where we are. The buses are now operating on our roads. I am pleased to inform the House that I recently used the service to travel from Europa Road to Fish Market Steps, and that big and heavy as they are for the geography of Gibraltar, the quality of the service that the company is providing for the people of Gibraltar, is superior to that which was provided previously. However, God forbid if this were not to be the case after the Government have thrown in excess of £2.6 million of non recurrent expenditure, at solving the problem and at the same time inherited a potential risk of a recurrent cash shortfall of £1.2 million per annum.

I will now move to another of my responsibilities, traffic. Traffic congestion is a problem that the people of Gibraltar have to suffer, be they travelling on buses, private cars or any other form of vehicle. In my opinion, the traffic congestion is partly due to poor planning when the Government decided to pedestrianise large areas of our City centre. I concur with my Hon friend Juan Carlos Perez, that pedestrianisation is desirable, but we have to base our decisions on what is possible and not on what is desirable. The programme of pedestrianisation undertaken by the Government has resulted in traffic being pushed to the adjacent side streets, with no proper studies of traffic flows and no proper planning. During the winter months and just before nine o'clock in the morning, it takes me at least 30 minutes to get from my residence in South Barrack Road to my party's headquarters in Watergardens. The problem is exacerbated when it rains, as a greater number of vehicles converge on our roads at the time. The problem is further aggravated when it rains hard and Rosia Road and Queensway get flooded in certain areas, which this Government have failed to resolve during its quasi-nine year old term of office. Dudley Ward Tunnel has been closed to pedestrian and vehicular traffic since the fatal accident that resulted in the tragic death of a young Gibraltarian.

The accident happened over two years ago. Questions that I have posed in this House to establish when, if ever, the tunnel will be re-opened, have received inconclusive answers insofar that they have revealed nothing more than the Government are considering different options. I note that there is a provision in the Improvement and Development Fund in the Estimates, of £750,000 for rock safety, coastal protection and retaining walls. Part or all of which I trust is designed to deal with the re-opening of the tunnel. When and if the tunnel is eventually opened to traffic, vehicular traffic coming from the area of the frontier via Spain and wish to access the southernmost end of the South District, should be encouraged to use the tunnel and thereby help to decongest the traffic flow in Queensway and Line Wall Road. In order to alleviate the chaotic traffic situation there needs to be access to Line Wall Road other than by both ends of it. We need to manage the traffic coming from the Upper Rock. Gibraltar needs periphery arrangements across the Airport for traffic in and out of Spain. We need to use the miles of tunnels available to us better than we are doing today. However, one thing that we do not need is to bring in external experts at substantial cost, to tell us how to improve the problem. We have in our community people with a wealth of experience in traffic matters, prepared to make a civic contribution. I call on the Government to use this wealth of experience to attempt to remedy the problem. The compilation of a short and long-term traffic plan, which is made available to the general public for comment, would not be out of order. Last year the Hon Joe Holliday said that the major road resurfacing programme continues as part of the Government's strategy of improving our road network. The total programme was allocated a budget of £1.25 million. Almost the entire budget was spent during the year. However, when I asked in this House for Government to disclose details of that programme for the resurfacing of Gibraltar's public highway up to and including December 2004, I was informed that the programme has not yet been decided. If the programme has not yet been decided, what has this year's estimate of £550,000 for road maintenance and resurfacing, been predicated on? Or is the term contractor allowed to decide the programme? Let me remind the Government that there are

areas of our public highway that are in desperate need of resurfacing and proper maintenance. One such area is the stretch of South Barracks Road from Brympton to Lamorna and beyond. The areas of this road in worst need of resurfacing have been marked on the ground on more than one occasion. But the resurfacing has as yet not taken place. Also, the road that stretches from just beyond Princess Caroline's Batteries to the Galleries has been closed to vehicular traffic for at least the last six months. It appears that the pillars supporting the platform on the top of the Rock have been deemed to be unsafe to support the weight of vehicles. The site may only therefore be accessed by visitors travelling on foot, which is not a very attractive proposition at any time of year, particularly during the summer months. Additionally, the road from Poca Roca to Rock Gun is subsiding. When does Government propose to do something about this, beyond the concrete columns that have been placed on the affected side of the road? There are other areas of Gibraltar, such as the area of North Mole leading to the Cruise Liner Terminal, where there are areas that are in desperate need of resurfacing and maintenance.

Mr Speaker it is evident that more parking spaces are required to cope with demand. At Budget time last year, the Hon Joe Holliday said in this House that the creation of new car parks was high on his agenda as part of the Government's transport policy. I am therefore disappointed to note that the Government spent only £269,000 of the £750,000 they estimated to spend in the financial year 2003/2004, on the construction of new car parks. If the creation of new car parks was high on his agenda, why did he not deliver? The essence of good management is to deliver projects on time and within budget. I therefore hope and trust that the Hon Fabian Vinet will fare better with the plans for building car parks that he referred to in his address.

I am pleased that obstinacy has given way to common sense, and that the Government has applied the minimum requirements set by the EU for an MOT test every 24 months instead of every 12 months. However, I am concerned that despite this change, the time it takes to obtain an appointment for an MOT test has

not improved. Additionally, I have been informed that only one examiner is available to carry out driving tests for vehicles other than private vehicles. This sorry state of affairs needs to be put right, and once and for all.

I would now like to turn to postal services. As a user of the service it pleases me to note the improvements that have taken place with the delivery of mail. I note with pleasure that the Government intend to continue to maintain this level of service at almost the same cost. However, I am disappointed that the Hon Fabian Vinet did not report on the key targets that the Hon Col Britto referred to in his address last year. He set out a 7 point plan and I would love to see how the Department has fared against the targets set.

I will now turn to the cemetery. Members of the public continue to complain to us about the poor state of the cemetery. The Government have been considering how to improve the situation for too long a time. I am, as I am sure most of the people of Gibraltar are, of the opinion that the least we can do for those of our friends and members of our families that have preceded us, is to offer them an embellished and well-kept place of rest. In this respect I urge the Government to act decisively on the matter once and for all.

I now turn to telecommunications and have to admit to feel like a gamekeeper turned poacher. I welcome and support the major investments that Gibtelecom has made and proposes to make to continue to expand its IP bandwidth. It is essential that the company offers the international gaming and betting sector of our economy, as resilient and failure-proof services as are possible. I am sure that both sides of the House want to see this sector of the economy continue to expand, and the provision of quality services is a sine qua non with the attainment of this target. This sector of the economy employs over 800 people, and growing. It is therefore one of the more vibrant sectors of our economy. The estimated growth in revenue of 22 per cent in gaming tax, from £3.2 million in 2003/2004, to £3.9 million this year appears to confirm that this sector of the economy is climbing at a healthy

pace. However, we must ensure that we do not become complacent and we must therefore leave no stone unturned, to ascertain that the level of growth continues in ensuing years. Although I sympathise with the reasons for the delay in upgrading the mobile switch and network to offer 2.5 G services, the sooner Gibtelecom starts operating such service, the sooner it will be able to attract more of our customers residing in and visiting Gibraltar, to migrate their mobile data requirements onto the network, particularly those from roaming customers. That is to say, customers of visiting networks who are presently compelled to log on to networks operating from Spain, for these services. I welcome the reductions that the company has introduced in respect of international voice services, and the reductions that the company has announced it will introduce with effect from 7th July in respect of ADSL and other internet services. However, I do not think that these reductions go far enough. At this time last year, the Hon Col Ernest Britto, revealed that the turnover for the group had risen to £21.5 million in 2002. However, what he failed to reveal was that the profit before tax was £5.5 million, 25 per cent of operating revenue, but that profit after tax was £38 million, 18 per cent of operating revenue, and that the dividend paid for that year was 3.2 or 15 per cent of operating revenue. This morning I got into work and obtained the results of 2002 of Verizon, and I can tell this House that Verizon have been very pleased to have been able to match the results of Gibtel, and as regards 2003, the results of Verizon are even worse than they were in 2002. So it seems to be that the company has plenty of scope to continue to reduce prices.

The Estimates show that the Government expect to receive from the company for its 50 per cent stake in the equity, a dividend or dividends of £2 million in the financial year 2004/2005. I am sure that the House will agree that the payment of dividends paid by the company constitute an excellent return on investment, and one that most companies in and outside Gibraltar would be envious of. I would therefore strongly encourage the Hon Fabian Vinet, as Chairman of the Company, to use his influence within his Verizon peers on the Board, to ensure the company reduces at a much faster pace, the level of the charges it levies for

providing its services. It is not as if we have to be blindly loyal to Verizon as around two years ago Verizon published in the press their intention to dispose of their interest in Gibtelecom. I was pleased to learn that the company and the Union representing its work force recently signed an agreement regarding pay and conditions. This should now pave the way for both to work in tandem, in order to successfully fend off the threats and capitalise on the opportunities that the company will undoubtedly face in the future. I welcome the companies that have recently entered the market. It is their presence in the market that has no doubt influenced the decision of the incumbent to reduce the charges they levied for international voice services. One of the salient goals that liberalisation was set out to achieve, was that consumers or customers got a better deal. A goal that has just started to be fulfilled in Gibraltar, but which still has a long way to go to reach fruition. In my opinion, fruition will be attained after Gibtelecom faces competition across all of the services that it provides. This is unlikely to happen until the complaints that were filed in 1996 with the European Commission, in respect of roaming and Gibraltar's numbering plan have been settled. While I understand that eight years after having filed the formal complaint, it is now in the hands of the European Court of First Instance. The latter has not reached yet this stage. Yet it is the second complaint that in my opinion has to be resolved in order for Gibraltar to stand a chance of breaking Gibtelecom's monopoly of the local telephone call market. Potential competitors are unlikely to consider entering the local telephone call market unless the Gibraltar Regulatory Authority has telephone numbers to assign to them for this purpose. Regardless of the entitlement that Gibtelecom may have under European Community Directives to rebalance tariffs, in my opinion, it would be immoral if Gibtelecom increased local tariffs, while they continue to pay out such handsome dividends to shareholders, and hold a monopoly of the local telephone call market. Almost three years to the day have elapsed since the telecommunications market was liberalised in Gibraltar with the Telecommunications Ordinance of 2000 coming into force. Yet Gibtelecom still hold on to the local call monopoly. Twelve months ago numbers were very scarce and were expected to run

out by this time. It is thanks to the ingenuity of a number of dedicated people employed at Gibtelecom and the Gibraltar Regulatory Authority that the situation has not yet reached breaking point. But how much longer can they stretch a piece of string? Sooner rather than later, the Government as the owner of the numbering plan, will be compelled to take the bull by the horns in order to resolve the situation once and for all. I trust that when they decide to do this, they remember that an AACR administration got us into the mess that we find ourselves in today, by conceding that voice traffic could be terminated in Gibraltar other than using the 350 access code assigned to Gibraltar by the International Telecommunications Union, and which is recognised by all bar one administration in the world. Hence, I would like to see that the decision, when it is taken by Government, ensures that Gibraltar's numbering plan is fully controlled by the Gibraltar Regulatory Authority, which is where control should rest by virtue of EEC Directives, and that this control is not diluted in any way or form.

Mr Speaker, I would now like to turn to AquaGib. It is commendable that the equity partners of the Government of Gibraltar should have made, and continue to make, a considerable investment in Gibraltar in state of the art technology, to ensure that the quality of tap drinking water that is provided to the people of Gibraltar, is second to none and with very few breakages in the supply. One only has to travel outside the borders of Gibraltar to acknowledge that this is in fact the case. The only downside is the high level of charges and obviously, these are likely to rise during the course of this financial year, as we heard last night from the Chief Minister.

I now turn to the lottery, and I note from the Estimates that Government proposes to continue with the lottery and Opposition Members welcome this. The lottery is very popular with the people of Gibraltar and we should strive to keep it going in its current form, or in an improved form, for as long as we can. I trust that any changes that Government make to the running of the lottery will take into account the interests of the lottery vendors, agents et cetera, who make a living out of the sale of

lottery tickets, and everybody else involved with the running of the lottery.

I now turn to electricity. I am pleased that the contract with OESCO was finally renewed. I trust that the renewal of the contract ensures that Gibraltar's future electricity capacity needs have been secured. Our sources have informed us that the production of electricity at the Waterport Power Station, has been increased without stretching resources. I note from the Estimates that the sale of electricity to consumers is estimated to grow by £1.2 million this year but that the purchase of electricity from OESCO is estimated to grow by, I think the figure is £21,000. Is this because as a consequence of the contract renewed with OESCO, the cost of a unit of electricity bought from OESCO is no longer cheaper than the cost of a unit produced at the Waterport Power Station? This was certainly not the case with the previous contract and the people of Gibraltar have a right to know whether this is in fact the case. All of the ex employees of the Electricity Department have now transferred to the Gibraltar Electricity Authority. Most were enticed to transfer by being offered considerable increase in salary, which the Chief Minister said would be offset by increases in productivity in what was already a very productive sector. Time will be the judge of whether the Chief Minister is right. The feedback that I get, is that one of the first initiatives of the Gibraltar Electricity Authority is the discontinuance of the repairs and maintenance work during night time, as part of a cost-cutting exercise. Traders are thus experiencing interruptions in their electricity supply during working hours, with the inconvenience to traders and their customers that this affects. Is this an example of a benefit that consumers may expect from the creation of the Authority? The Ministry of Defence has announced that it proposes to relocate its generating station to a site in the area on the top of the Rock. If it has not already done so, the Government should approach the MoD to ascertain whether future capacity needs of Gibraltar can be met by the Gibraltar Electricity Authority or its contractor, OESCO, from this environmentally-friendly site. More so as the electricity capacity of requirements of Gibraltar may increase

dramatically if, as I hope, the Government delivers the East Side project.

I now turn to broadcasting. I welcome the statement made by the Hon Clive Beltran that the strategies that have been introduced, has resulted in the Corporation operating within budget. I trust that the results of the ensuing years will continue to uphold this trend. I spent some time in the last two weeks watching GBC. GBC's TV broadcast over the silent hours, over the silent hours of the day, to assess the quality of the programmes. I should be obliged if the Hon Clive Beltran did the same thing, and then act as he deems necessary.

Mr Speaker, in conclusion, I would like to take this opportunity of thanking the people of Gibraltar for giving me the opportunity to serve them in this House. The numbers of the staff covered by the Estimates for the effort and dedication that they put into making their Departments work for the benefit of their country. I have thoroughly enjoyed my first seven months as a Member of this House. Outside my immediate family circle, nothing has given me more pleasure in life than the opportunity to serve the people of Gibraltar.

HON LT-COL E M BRITTO:

Mr Speaker, after the Elections last November, I exchanged my previous political responsibilities in a ministry with a large number of portfolios, to my new post as Minister for Health. The last seven months have been intensive and with a steep learning curve. It has been an experience which I have found extremely challenging, but even more rewarding at a time when the Government are committed to commissioning a new hospital, as well as to a complete overhaul of Gibraltar's Health Services, which once it has taken place, will provide Gibraltar with the Health Service that it deserves and expects.

The House will be pleased to hear that the two most notable and important innovations to be provided at the new hospital, will be

CT Scan services and a Renal Dialysis Unit. There has been long time expectation for these services to be provided in Gibraltar, to all the many patients who at the moment have to travel to Spain to obtain them. The Government are delighted that the availability of these services in the new hospital, will meet these expectations. The Government recognised last year, that our Health Services had reached a crossroads. My Colleague, the Hon Bernard Linares, the then Minister for Health, is to be congratulated for having had the vision and the courage to commission a complete and in-depth examination by the Clinical Governance Unit of the modernisation agency of the NHS in the UK. This major review which is being conducted locally by the Health Care Development Team, still continues under my ministerial responsibility and leadership, and I would also like to take this opportunity to pay tribute to the dedicated work of my predecessor during his term as Minister for Health. But let me unequivocally tell the House that we will implement all those recommendations of the Review which are accepted by the Government in our clear determination to correct the criticisms of the Health Service. At the end of the implementation of these changes, Gibraltar's Health Services will have been transformed beyond all recognition. We gave this undertaking to tackle the Health Services in our manifesto. We reinforced it during the Election campaign and the Chief Minister himself reiterated the commitment to the people of Gibraltar the very same morning we were re-elected into Government last November.

During her contribution on the Budget debate last year, the Opposition spokesman for Health Miss Mari Montegriffo, spoke at length highlighting a number of health issues. Her criticisms covered items which can be summarised under the following six main headings. (a) Complaints and the complaints procedure. (b) Bed and patient management issues. (c) Nursing staff issues. (d) Lack of dialysis in Gibraltar. (e) Waiting Lists and private practice. (f) New hospital issues.

The Hon Miss Montegriffo's contribution last year, was consistently negative and nowhere in her speech did she offer

any practical solutions, or any positive suggestions, on how to tackle and solve the problems she was describing. Well this year the hon Member should not be tempted to do the same thing, if she wants to maintain credibility. The Government have acknowledged that there are problems within the Health Service, and have already taken, already taken positive and far-reaching steps to tackle them. All aspects of the Health Service, including all the issues raised last year by the Opposition Member are being addressed as the result of the work being carried out by the Health Care Development Team in the review that is taking place.

Now the media have recently reported that Miss Montegriffo is about to move to shadow another Ministry, and therefore, if the report proves to be true, this could be her last budget intervention as Opposition spokesman for Health Services. So I would like to take this opportunity to pay tribute to her for her stamina and for her tenacious and motivated style in carrying out her work during the 20 years she has been involved with health matters in this House. I trust that her exit from the Health portfolio will be graceful, and displaying the political honesty and courage to acknowledge that the Government are indeed taking positive and determined action to tackle the challenges to improve our Health Service. Rather than regurgitate her negative criticisms as if the Health Review was not taking place, as if the Government were not already taking positive action to tackle the challenges, as if a new hospital did not exist and was not about to be commissioned.

Let me give the House more details about what is, without doubt, the greatest and most extensive review of our Health Services ever carried out in Gibraltar. The Review started in April 2003, and examines all aspects of health care. It seeks to identify strengths and weaknesses and, without seeking to attribute blame, to focus on changing the ways our health services function, in order to improve them and strengthen them to the level that Gibraltarians have come to expect and indeed deserve. Phase 1 of this Review was made public on 17th September 2003, and received wide circulation, which included publication

on the GHA website. Such transparency by the Government in making publicly available such a detailed diagnostic analysis of our Health Service, clearly shows the political courage and determination of the Government to face the challenges and implement the recommendations that the Review is already producing.

In preparing this diagnostic report, data and information was sought from local residents, and as a result almost 10 per cent of the people of Gibraltar have contributed to this Review. I can assure the House that this will not be a review about which the Government will be criticised for accepting recommendations for change and then not implementing them. The Health Care Development Team has been commissioned to produce a detailed blueprint, based on their finding in the first phase of their work, and to make recommendations on how to improve the way health services are delivered.

Since September last year, work has continued non-stop on Phase 2 of this extensive review, and we are now at the more visible and exciting stage, at which tangible changes are starting to be made. The recommendations of the Health Care Development Team are being presented to the Government as and when their work is completed on any particular aspect of the Health Service. If and when such recommendations are accepted by the Government, they are then implemented over the following weeks and months. Implementation of these recommendations has indeed already started, and the Government are already actively engaged in the process of recruiting a new Chief Executive, who has international experience of health care management. The recruiting process for a Director of Nursing Services and Patient Management, and for a Director of Human Resources, will begin shortly.

Following a process of consultation with the Unions and other interested parties, the Government have already accepted the new Complaints Procedure recommended by the Health Care Development Team. At a later stage of this meeting of the House, I expect to table a Bill which will provide for an

independent review panel, to determine complaints remaining unresolved by GHA, to the satisfaction of the complainant. This second phase of the Health Care Development Programme involves a total of 19 different work streams, which cover all aspects of the services provided by the Gibraltar Health Authority. It also includes reviews by independent clinicians of each of the specialty services provided by our Consultants, with recommendations to the Government on how to achieve improvements in service delivery.

The second phase of the programme can be grouped under the following five headings. (1) Human resources. (2) Processes. (3) Primary Care. (4) Clinical improvement. (5) Clinical Service Reviews. Mr Speaker, when I deal with each of these headings in some more detail, I hope the House will realise what I said a few moments ago, that all the public criticism and all the negative aspects that people highlight about the Health Service, many of which are true and have been identified, are being tackled by all the work that is being done and will be solved as time progresses.

OK, first to take the group of human resources work streams, which look at the different ways in which the GHA staff carry out their work. This group includes not only how they are managed, but also how they are recruited, how they are paid and rewarded, and how their skills and experience is developed. This group of work streams includes firstly proposals for new management arrangements, which are contained in work stream 1 and which recommend changes in the current management infrastructure in the GHA. Management is essential to the implementation of change and to its subsequent operation. The proposed changes in the management structure should not be interpreted as blaming existing management for the current position. It should be seen as a recognition of two facts. First, that modern health care management has become a highly complex and specialised activity. Second, that deep and wide fundamental cultural changes and reform, such as Government are determined to see in our Health Service, is very difficult to bring about entirely from within. The Government has therefore, accordingly accepted the

recommendation to recruit specialised senior health care management from abroad. The new Chief Executive will also be responsible for consolidating services in the new hospital, and for implementing a whole range of changes that we anticipate will be forthcoming. Making this change will enable Mr Ernest Lima to focus on the role of Finance Director of the Health Authority, which is the role that he has for many years been carrying out, in addition to that of Chief Executive. This will ensure that sufficient time and attention is given to the vital function of managing the Health Authority's finances, and enable the GHA and the Government to benefit from Mr Lima's considerable experience and expertise in this area.

We have also accepted the recommendation to widen the recruiting process and to create the new post of Director of Nursing and Patient Management. The role of Director of Nursing has been covered on an acting basis since the retirement of the previous holder of the post, and it is now important that this new expanded post is filled with an experienced Nurse Manager, who can lead the nursing profession and introduce new and further improvements in the delivery of patient care and management. In this vital area of new management arrangements, the Government have also accepted the recommendation to introduce a new post into the executive team. That of a Director of Human Resources, to lead the development and implementation of the many changes in the management and development of GHA's most important asset – its staff. It is essential that GHA has full and autonomous control of its human resources management issues. Before leaving this point, I would like to take this opportunity to specifically record the Government's gratitude to Mr Ernest Lima, who has been carrying out the duties of Chief Executive up to now, for the wholehearted and unselfish way in which he has put aside all issues of personal position in the wider interests of the community and the reform of the Health Services.

Government are already moving ahead to introduce these management changes and interviews have already taken place for the post of the Chief Executive. In the meantime, two

experienced Health Care Directors have been appointed on an interim basis, to strengthen and support the present executive management team. Mr John Langham has been engaged to work as Joint Chief Executive with Mr Ernest Lima, and Mr Frank McGorran has been engaged as Co-Director of Operations with Mr Joe Catania. This last appointment has enabled Mr Catania to concentrate most of his time on the important issue of commissioning and opening the new hospital later this year.

Secondly Mr Speaker, the Health Care Development Team continues to do much work on the medical staff complex and private practice work stream No. 3. This has included a great deal of consultation with the medical staff. They are also examining possible new models, which will change the way the medical staff are recruited, and the way in which they carry out their work. The Government remain determined, as promised in our manifesto and reiterated it during the Election campaign, to break any and all links between private practice by doctors and unacceptably long waiting lists for public patients. The team is expected to recommend drastic changes in the present private practice arrangements, designed to make such waiting lists a thing of the past, so that people will no longer need to seek private care to ensure rapid treatment of their medical conditions.

Thirdly, in this group of work streams, work stream No. 5 is examining the relationship between the GHA and the Civil Service, and is expected to make recommendations regarding the redefinition of this relationship. These recommendations are expected to include, not only the recruitment and management of staff, but also the management of financial resources. They will allow the GHA to modernise the management of its services in ways that will maximise the benefits, both to the staff and to patients.

Fourthly, work stream No. 13 on training needs analysis and staff appraisal, will underpin all the recommendations in the programme. It aims to develop a process for the appraisal and on-going development of all staff working in the GHA. Some change introduced will need to be matched by corresponding staff training programmes.

Moving on to the second group of work streams, that of processes, this group, under that general heading, looks at the different ways that delivery of patient care is supported. This group includes firstly the GHA Complaints Procedure, which was introduced in 1999 and does not have the confidence of the public who believe that it needs to be drastically improved. Complaints process, work stream 2, has produced a new Complaints Procedure that is responsive, effective, requiring quick responses from the GHA and offering an independent right of regress, where this is not forthcoming. The new Complaints Procedure will be fully functional by autumn this year and information about the new procedure and how to use it when necessary, will be widely distributed. The importance attributed by this Government to a proper complaints procedure that works, has the confidence of the public, and which ensures that complaints are given the attention they deserved, will be evidenced by the Bill that I will be tabling during this meeting of the House. This primary legislation will make provision for the appointment, by the Ombudsman, of an independent review panel, as the third stage of the process to consider complaints from users of the medical and health services provided by the Gibraltar Health Authority. This will be the final stage of the procedure and can be invoked by the complainant when he or she is not satisfied with the outcome of the investigation of a formal complaint, or, when a final response from the GHA has not been received within eight weeks of such a complaint being made for the first time. Names of nominated persons, independent of the Authority, will be held on a list by the Ombudsman and he will appoint three members to constitute the review panel on each particular case, and he will do this within seven days of receipt of notice in writing from the complainant to the Ombudsman, to conduct an investigation of their complaint. If the complaint involves a clinical matter, then the Ombudsman will be empowered to appoint clinical assessors external to the Authority, to advise the review panel. For the purposes of any investigation carried out under the proposed Ordinance, the panel will have the same powers as the Supreme Court, in respect of attendance and examination of witnesses, and in

respect to the production of documents. We shall have ample opportunity to discuss the Bill at a later date, and I do not wish to take up any more of the time of the House at this stage, but I would just like to add that this is additional proof, if proof were needed, of the transparency of this Government and the determination with which we are improving public services.

Secondly, the Government have made a commitment to eliminate waiting lists for planned medical procedures. Waiting lists, work stream No 4, explores a number of different options to enable the removal of these lists. A cataract waiting list initiative in November/December 2003, saw over 180 eye patients treated over several weekends, and nowadays patients have their cataracts operated within six weeks of their outpatient appointment. Previously, the waiting list was 14 months. We are determined to achieve comparable reductions for all surgical specialities, with the ultimate aim of a wait of not more than four weeks for an outpatient appointment, and a further four weeks for any elective surgery that may need to be undertaken.

Thirdly, phase 1 of the programme identified the potential for planned, surgical services in Gibraltar, to move away from a waiting list to a scheduled service. A scheduled service is based upon the idea that all the resources that are needed to treat and manage a patient, are identified and reserved when the consultant makes a decision to admit the patient. Scheduling work stream No 8, aims to enable the implementation of a fully scheduled service.

Fourthly, in this group, the current process of discharging patients from St Bernard's Hospital presents the GHA with a number of difficulties. Discharge work stream No 9, aims to develop a discharge process that starts as soon as it has been decided to admit a patient. The Government intend to take firm action on this matter. It is unacceptable that any acutely ill patient should have to wait for a bed, when at the same time, up to a third of all the beds at St Bernard's Hospital are occupied by people who have no medical need to be in hospital.

Fifthly, emergency admissions work stream No 10, completes the review of the whole patient journey, by looking at the process used to admit patients into hospital in an emergency situation, with the aim of rapid assessment and admission into the hospital.

Sixthly, phase 1 of the programme identified the potential for improvement in prescribing practices and processes. The aim of pharmacy work stream No 17, is to develop a more efficient and effective service.

Moving on to the third group, and as could be expected, a group of work streams under the heading of primary care, looks specifically at the way the Primary Care services are carried out. They include firstly the GP services work stream No 19, which covers a full review of all aspects of working arrangements and practices. Secondly, patient re-registration work stream No 6, designed to make recommendations on the issues of entitlement to health care and on the process of re-registration. This is an important exercise because we need to ensure that we have a comprehensive and up to date data base of the entire population. It will lay the foundations for the future introduction of computerisation of clinical data. The Health Care Development team has examined and endorsed recommendations prepared by local management on this subject. GHA is also preparing to introduce a revised health care entitlement card in the form of the familiar plastic credit card, and which will replace the cardboard cards currently being used. It will be issued in tandem with the revised interim E111 Form to be issued in similar format.

Thirdly, phase 1 of the programme identified the need to improve the primary care appointments process, and at work stream No 7, builds upon work that has already been initiated within the Primary Care Centre, and presents a number of different appointment options, all of which are designed to speed up the process to be seen by the appropriate member of the health care team. The group of work streams under the fourth heading of clinical improvement, looks specifically at improving the quality of clinical practices within the GHA. They include, firstly risk management work stream No 11, designed to make

recommendations regarding an organisational process for the identification and management of both clinical and non clinical risk. Secondly, clinical recommendation standards, work stream No 12, makes recommendations about the content of clinical recommendation for primary and secondary care. Thirdly, work stream No 15, is designed to develop a process that will enable the on-going evaluation of the quality of care, using agreed evidenced space standards to promote continuous improvements in patient care. After implementation, doctors, nurses and the professions allied to medicine, will be subject to the ongoing clinical audit process. Fourthly, integrated care pathways, work stream No 16, focuses on the development of protocols of care for the treatment and management of certain clinical conditions. Fifthly, quality awareness training, work stream No 14, is designed to deliver training in quality improvement techniques to staff throughout the GHA, so that they can participate fully in the drive to improve health care services.

The group of work streams under the fifth heading of clinical service reviews, includes 11 reviews of clinical services, which in addition to the reviews of primary care, accident and emergency and orthopaedics carried out in phase 1. These reviews are being carried out by the relevant UK Medical and Nursing Royal Colleges, and other professional bodies, and are designed to look specifically at the quality of clinical care being delivered by the staff of GHA. They cover, obstetrics and gynaecology, general medicine, general surgery, care of the elderly, ear, nose and throat services, oral surgery, pathology, radiology, paediatrics, mental health and ophthalmology. The reports, when presented, will help to guide us in making changes to clinical services, to ensure the highest standard of services are provided to the people of Gibraltar.

Mr Speaker, I will now turn to other important issues, starting with the new hospital. To fulfil our vision on how health care should be provided, we also need new facilities in which to deliver our services, and a workforce equipped and managed to provide the best possible care. St Bernard's has served us well for nearly 150 years, with its varied facilities. However, a new

hospital is undoubtedly needed for this new millennium, and our magnificent new hospital, which will open in the autumn, will be providing excellent, new facilities for patients and for staff, and represents, without doubt, the largest capital investment in health care that Gibraltar has ever seen. The hospital will have a capacity of 211 beds and will incorporate new facilities not currently available at St Bernard's Hospital. These include, CT Scan and mammography services within the Radiography Department, and a renal dialysis unit. These services are currently not available in Gibraltar, as the House knows, and patients need to travel to Spain to obtain them. Other new services will include a day surgery unit, an integrated rehabilitation department, incorporating a hydro-therapy pool, a palaeotive care unit, specially designed infection control units within both medical wards, and assisted bathing and in-patient treatment cubicles, within four walls. Outpatient consultation facilities are considerably improved and include comfortable and spacious waiting and reception areas. On the technical side, a number of services have been included, which have not previously been available at every bedside in every ward. These include air conditioning throughout the hospital, piped medical gases at the bedside, nurse call and emergency alarm systems, as well as a fully computerised building management system. The GHA have reached agreement, in principle, with the Directors of the Dialysis Unit in La Linea, which currently dialyses Gibraltar patients, for the La Linea Unit to assist with the day to day running and resourcing of the new dialysis unit at Europort Hospital.

Draft migration programmes to move the services from St Bernard's to the new hospital were prepared by the appointed specialists, following consultation with the project director and GHA staff. A revised master migration plan has now been finalised. This plan foresees a phased initial move of non-clinical departments, such as management and the School of Health Studies, which is expected to move during the summer. This will be followed by the partial move of departments such as Radiology and Pathology, which will initially provide all outpatient services in the new hospital, while maintaining the emergency

presence at the St Bernard's site. Prior to the main in-patient move, elective outpatient consultations and elective surgery will not be programmed for a pre-determined period. This will ensure that in-patient movement will be limited to those requiring emergency in-patient care. A programme of site visits and department-specific site induction, has continued throughout the year. This has included departmental managers and senior clinical staff. The programme continues with nursing staff visits and will encompass all other departments of the GHA, so that all staff are familiar with the new environment before moving to the new hospital. The exercise will intensify prior to the move, when the programme will include departmental operational functionality, as well as inter-departmental relationships.

Induction and training on the use of newly purchased equipment continues, and comes to a climax during the months of July and August, when major equipment training will be carried out. I would like to take this opportunity to specifically record the Government's gratitude to Joe Catania, the Director of Operations, who is liaising with the design team and who has overall responsibility for commissioning of the new hospital, and also to Derek Alman, the Project Technical Director, who is spearheading the brunt of the technical work. Without their unfailing and unflagging commitment to the new hospital project, the GHA would be struggling to meet the tight time scales involved.

Mr Speaker, the health care that GHA can offer, is only as good as those who deliver it. We have in GHA an excellent work force who are more than capable of delivering that first-rate service. It is essential to good staff motivation that appraisal is an integral part of our activities. It brings form and structure to the efforts expended by our staff and allows for constructive dialogue and feedback. Staff must also have a voice in the affairs of the GHA. They are the health service of Gibraltar, and without their full and active involvement, little can be achieved.

I take this opportunity to pay tribute to the GHA staff at all levels, and in all disciplines, for the dedicated, efficient and productive

way the majority of them carry out the day to day execution of their duties. I will also record the Government's and GHA's appreciation for the enthusiastic and cooperative way in which the staff is participating in the various stages of the Health Care Review.

Mr Speaker, vitally important to achieve efficient health services, is the continuing training and development of our current and future staff, carried out by the School of Health Studies initiated by this Government. The school has continued its sterling work and invested, on behalf of the GHA, some £160,000 in the last financial year, including expenditure on short and long term courses, in training and in overseas courses. The school has also provided all pre-registration students with e-mail facilities. In respect of pre-registrations, nurses training, the culmination of four and a half years work and cooperation with the University of Sheffield, has resulted in the successful completion of the Diploma in Nursing by the first 10 candidates who commenced their training in September 2000. These first nursing grades received their Diploma in Nursing from the University of Sheffield and the Gibraltar School of Health Studies, at a special awards ceremony held here in Gibraltar. Eleven student nurses are currently completing their second year of training and the school is due to recruit a further 15 students this autumn. In March 2003, seven nurses completed their two year pre-enrolment training, to become enrolled nurses, and in June 2003, eight new people commenced on the then new intake that is due to complete in June 2005. The relationship with the University of Sheffield has strengthened at post basic and post registration level, with the development of specialist nursing modules that are delivered in Gibraltar by specialist lecturers from the University. So far, six modules have been delivered for the following areas of health care. In ITU, in A&E, in the Operating Theatres, in surgical and in medical nursing. To date, 58 places have been taken up by the nursing staff.

Let me turn to our mental health services. We will shortly have a brand new hospital and our Primary Care Services bear comparison with the best the UK has to offer. Around one in five

of us will suffer some form of mental illness in our lifetime, and a modern, dynamic and responsive mental health service available within Gibraltar, is necessary to deliver this service to the same comparable standard. Moving to primary care, at the Primary Care Centre a new computerised appointment system for all GPs and nurse practitioner clinics was introduced in the summer of 2003. This has been successfully in operation since then and has improved the process of making appointments. It has also served to update basic patient details. An increase in telephone lines has also made it easier to make appointments by telephone. Nowadays the Records Office keeps the appointment lists open until clinics closing times, without closing down for lunch, so as to enable patients greater facilities in making appointments. Following the increase earlier this year of GPs to a total of 16, there has now been a considerable reduction in the waiting times for patients to see the doctor of their choice. This, and other changes arising from the Health Care Review, will help patients to receive better access for follow-up for referral appointments, less queuing up, friendlier approach and continuous care by the same team members. As part of the continuing programme to improve services at the Primary Care Centre, a new reception and enquiry desk will be operational later this year, as part of the scheme to improve services.

In respect of public health issues, control of infection remains a high priority for this service. The fall in laboratory-confirmed notifiable infections, noted in previous years, has continued and is currently at 184. This is slightly higher than last year but substantially lower than all previous years. In the autumn there was public anxiety over the imminent arrival of the cruise liner Aurora of the P&O line, following news of an outbreak of over 500 cases of novo virus gastroenteritis on board. Fortunately, the liner's efficient outbreak containment protocol procedures, helped to stop the outbreak spreading rapidly and by the time the liner reached Gibraltar, new cases were in single figures. Thus, barring a few persons deemed to carry a risk, most passengers were allowed to disembark, without risk to public health. No impact on local infections was reported, putting into clear

perspective the unjustified and politically motivated frontier closure by the Spanish Authorities at the time.

Protecting the public however is not simply a matter of controlling infection but also of the implementing measures to protect the public. In this area legislative steps are necessary and steps are being taken to regulate, by registration, the professions allied to medicine, which include, physiotherapists, occupational therapists, laboratory staff and many others in related fields. The UK legislated some years ago on improved regulatory arrangements for these groups of staff, and Gibraltar is now following suit. The purpose of the new Regulations is to ensure that where practitioners present themselves to the public using a recognised title, such as for example, physiotherapist, they have undertaken the requisite training for that qualification, or have had their years of experience recognised as equivalent of that training. Thereafter, unless practitioners have such registration, they will not be allowed to practise in Gibraltar.

Mr Speaker, I will end my contribution on the health services by reiterating the Government's intention to implement the massive programme for change that we have initiated and to ensure that health services are of the standard Gibraltar deserves and is entitled to expect. I hope that the House will appreciate that the programme that I have gone to some pains to outline in detail, is not simply another review but is something that is being undertaken in depth and being taken very seriously by the Government and that time should be given to allow for the programme of change, and implementation of such changes to have an effect before continuing the process of criticism that is sometimes apparent in Gibraltar, not least from Opposition Members and which serves, as much as anything else, to discourage and to demoralise members of staff who are seeking to improve those services.

Our forward planning envisages that all of our in-patient specialities will have at least two clinicians, at consultant level, to allow for such specialisation between them, and therefore providing a more rapid treatment of patients and better cover

arrangements for doctors. But we cannot provide unlimited services, nor do we have unlimited funds, and there is a constant balance to be met between what can be safely provided within Gibraltar and what can only be provided in the larger health care settings of the UK, Spain or other bigger country. Medical and surgical services in all Western countries, have over the past decade, become more and more specialised. In contrast, we in Gibraltar need to realise and accept, that Gibraltar's medical services, with their inherent limitations of human resources, have to remain more generalist in nature, with reliance on the Sponsored Patients programme for specialist treatment.

Finally, I will deal with the City Fire Brigade for which I also have political responsibility. During the last financial year, training, development and recruitment have been at the top of the Brigade's priorities. With the introduction of the Ambulance Service in the Brigade, all personnel have attended an extended course in first responders for ambulance attendants. Junior officers have undergone progressive command and control courses at the Fire Service College, together with certain elements of the Fire Safety Section of the Brigade, who have also attended specialist safety courses. Due to the increased security threats, the Brigade has also purchased further decontamination equipment, and various officers attended a local bronze command course through Cranfield College at Bleak House, in conjunction with other emergency services, on command and control in major incidents. The Brigade has acquired a number of important items in the last financial year. We are awaiting the arrival of a new, rapid response vehicle built on a Mercedes Benz chassis, which will replace the existing appliance which has been operational for the last 15 years. The new appliance will be deployed to all fire and rescue incidents, mainly in the Upper Town area. This new appliance will carry a high-pressure pump and a fog attack system, which will greatly enhance our fire-fighting operations and reduce water damage to property.

The Brigade has also purchased a new fire-fighting kit for all members of staff. The PBI Gold, is a lightweight kit and offers

greater protection from heat and flames. The PBI kit will shortly be introduced and will greatly enhance operations, especially in prolonged incidents. The Brigade staff have also carried out extensive refurbishment works to the rear of the Station, on a self-help basis, and have practically completed the construction of a new conference room, kitchen and toilet facilities.

On the operational side, the Brigade has responded to 1,704 calls between January 2003 and 31st December 2003. These were classified as follows. 512 fire calls, 910 special services and 282 ambulance attendances. Finally, the Brigade mobilised the ambulance service on over 4,000 calls. Thank you Mr Speaker, that completes my contribution on the Budget debate.

The House recessed at 5.00 pm.

The House resumed at 5.12 pm.

Debate on the Appropriation Bill continued.

HON MISS M I MONTEGRIFFO:

Mr Speaker, I was intending to start my contribution on health and then I would continue on sport, but I have been told by the Hon Minister for Sport, Mr Beltran, that he has to go to the Special Olympics because he has to give an Opening Address, and therefore, I have no problem in acceding to his request, and I will start my contribution on sport.

In this area Mr Speaker, having heard the Minister earlier this morning talk about sporting issues, there are many issues which worry us. First the Gibraltar Sports Authority which was created by this Government when they brought the legislation to the House in the year 2002 has still not materialised. The next matter is the Sports City. Then we have the long saga of the transfer of the boats to Coaling Island and the other long

standing saga is the Leisure Centre, something which the Government promised they would build in their manifesto in 1996, eight years ago.

As far as the Gibraltar Sports Authority is concerned the House will recall that we expressed reservations as to the Gibraltar Sports Authority. Since the year 2002 we have been continuously asking questions here in this House and still, the matter appears not to have progressed much. If anything it has not progressed at all. The Government have still not come into an agreement with the staff and its Union, and more so, in the last meeting of the House the new Minister for Sport, the Hon Mr Beltran, confirmed that there were no plans yet to sit down with the Unions. It also therefore concerns us, that two years have elapsed and nothing has happened. Hon Members will recall that we have warned the Government about the problems that can easily materialise as a result of having two sporting facilities side by side, and employing staff in them, working with different terms and conditions of employment.

To the Sports City. In the Estimates of 2002/2003 the Government put in £1.5 million and they spent £342,000. In 2003/2004 they put in £3.4 million and they spent nearly £1.6 million. This year they are putting in another £2.5 million. Given that in the last two years the rate of expenditure has been £1.5 million, how can it be ready in autumn, as the Minister has said today, when the amounts already spent, plus the £2.5 million put in this year's Budget, is not going to come anywhere near the final figure which was given by the previous Minister for Sport, the Hon Mr Britto, in his last year's Budget contribution, which he said was going to cost £8 million. Also, even though the Sports City was officially inaugurated last week, we have not yet seen any official advertisements to employ the required staff to run this facility. The Minister for Sport today has confirmed to this House, that it will be fully operational by autumn. So what will now happen? That is what we are interested in knowing. Until we get to autumn is it going to be closed or can it be used, and if so who will man it? Even the hall has not been completely finished, and neither have its adjacent facilities, as the Minister

has also confirmed in his Budget speech that all the facilities related to the sports hall need to be completed by the autumn. Everyone, everyone expects that when a facility is inaugurated, that facility should be fully functioning. I know Mr Speaker, that the Government wanted the Princess Royal to inaugurate the sports hall, but it is rather a strange situation that having done it, the place should remain closed. However, we are by now used to the idea that this Government only works at a very leisurely pace.

As regards the hockey water-based pitch. Here we have also seen delays. The first being the stands. The pitch was officially used three years ago and still the works to the changing rooms and the showering facilities have not yet been completed. More and more delays. Also, last year and during the various meetings of this House, I have asked the Government what arrangements are in place for the upkeep of the water-based pitch. Due to the fact that the Government did not want to use the present groundsmen at the Victoria Stadium they engaged the services of AMCO, and they said in the last meeting of the House in April, that the relevant staff will be employed when the Gibraltar Sports Authority becomes operational. That answer worries us enormously because the Authority, as I have already said, was created two years ago and during all this time the Government have had to contract AMCO and it is costing them quite a bit of money. The Government are also spending a lot of money in the water that is being used. We were told in the last meeting of the House that the potable water expenses were running at about £4,000 a month. However, when we initially expressed concern at the running costs involved, the Government told us the water-based pitch would not be costly to run, because the water used filters and goes back into the tanks. Therefore, we cannot understand why so much money is being spent on the water. Unless the system is not being properly run. It is a pity that the Government did not accept the present groundsmen to carry out this job. I am sure, with the right approach and negotiations, the Government could well have entered into a temporary agreement with them and saved themselves a lot of money in the process until the Sports

Authority got off the ground. On the other hand the present staff has shown cooperation by allowing sports people, and also teams from abroad, who use the new facilities that are still unfinished, to have access to the existing changing rooms and showering facilities that they man.

What can I say about the Leisure Centre, which was given so much prominence by the Government in 1996. The Government took the decision to build the Sports City before the Leisure Centre but the Sports City has taken nearly eight years to come to fruition. I remember in my last Budget speech, I kept questioning the then Minister for Sport, Mr Britto, on the matter. He said the old King's Bastion area would be used but he gave a commitment in answer to questions in this House, that works for the Leisure Centre would commence before the end of his term of office. I remember saying that perhaps we would be seeing some scaffolding going up, some works to clear the building, or some other similar jobs. Not even that has happened. Nothing has happened at all since 1996. During the last meeting of the House, and today, the new Sports Minister, the Hon Mr Beltran, gives us the same commitment that works would commence during his term of office. After eight years of waiting we have not lost our patience at all, so we will still keep on asking and we will see what happens.

I also hope that the new Minister for Sport has learned not to hail victory until the game finishes. Sports people know that until the whistle is blown, winning is not guaranteed. Here, I am referring to the Europa Sports ground, which the previous Minister for Sport announced in a reception with the Cricket Association four years ago, and then he said that he had managed to get the MoD to hand it over to him, and then that he would pass it on to the cricketers. Then of course Mr Speaker, after years and years of questioning the Government on the issue, they now say that they are not going to proceed with negotiations with the MoD because the MoD have changed their minds. I am not too convinced that this is the end of the story, but in view that the Government said that the cricketers were happy with the present situation, then so be it. But it proves that the Hon Mr Britto, then

the Minister for Sport, hailed victory before he actually saw that the agreement had been signed, sealed and delivered.

Mr Speaker, we have also kept a close watch on another long drawn saga, the transfer of the boats at Western Beach to the area of Coaling Island. The Government, in last year's Budget, provided expenditure for the move, they have continued to provide it in this year's Budget, and again, we are talking about a commitment given by the Government nearly eight years ago. Last year they confirmed that they had been negotiating with the MoD for the past six years. How can I not be constantly criticising in this House the Government, for the slow pace in which they work. Works lack momentum, quickness, impetus are works alien to this Government.

Finally sport. I always end up my contribution by applauding the achievements of our sports people. They are one of our best ambassadors, they represent us as a country, they fly our flag and the outside world, through their participation, get to know the people of Gibraltar, and they realise that we have our own special identity. A large number of our associations have fought well and have won against Spain, putting all sorts of obstacles in their way so that they would not be able to achieve international status, and hence Gibraltar would be accepted as a country in its own right. With a lot of lobbying and hard work a lot of our associations have won these battles. We still need to assist the GFA and the Gibraltar Olympic Movement, but I am sure they will eventually also succeed, because I know they will battle on until they do so. Also, Mr Speaker, because of our sporting associations achievements in sport, they must be warmly congratulated. A few months ago for example, the Gibraltar Football National Team won a tournament at the Victoria Stadium, where the Isle of Man and the Isle of Wight participated. It gave us all some measure of satisfaction that they beat the Isle of Man especially because during the Island Games of 1995, they happened to beat us. The Island Games was a huge success because of the GSLP Government and it was hailed as one of the best Island Games ever by the international committee of the Island Games.

I would like to start my contribution on health by speaking on the spending of the Gibraltar Health Authority. If, during the year that has just finished, the budget fell short of what was required, by £4.2 million, do the Government think that this is slack budgetary control? The control of the spending in the GHA is not the control of the House. The usual control, as laid down in the relevant legislation, as far as Government Departments are concerned, does not apply to the Health Service, because all we do in this House is to vote the subvention. The GHA can spend more than what has been approved by the House consequently. The Health Services spend more money because there is a demand. If the demand required last year was £42 million instead of £38 million, and if this year there is an extra £1.25m for rents for the new hospital building, how then do Government expect the move to the new building to take place if they are not budgeting for more money? More so, how do Government also expect to carry out the relevant improvements, if again, more money has not been provided. Or, could it be a case that the Government are working on the assumption that the current financial year will finish up with another deficit for the Gibraltar Health Authority. After having heard the contribution made by the Hon Mr Britto, the Minister for Health, I am afraid that the GSD can still do better but to continue to come up with their same old strategy, propaganda about all the plans they now have, propaganda about the Europort hospital, and propaganda about the miraculous cure the Clinical Governance Audit will bring about. Eight years down the road and the Government definitely still need more time, and we still need to see whether they can eventually reverse the process of decline which started soon after 1996. The reality is that since 1996 the Government have not been able to get to grips with the problems that have materialised, and consequently, as we predicted, they were bound to escalate. Last year I remember quite clearly the Chief Minister telling me that improvements were imminent. He said that last year, that improvements were imminent and that no longer would I be able to continue criticising the Government. So, who really is living in cloud-cuckoo-land, who is the real Alice

in Wonderland in this House Mr Speaker? Eight years down the road and we still have the same problems.

Today everybody in Gibraltar accepts that the problems that came about after 1996 are still there, still unresolved. These problems are purely and simply problems which the Government have created as a result of their policies. Policies which we have tried to convince them not to implement because we foresaw the adverse consequences they would bring about. The Minister has spoken today of the changes that have already been implemented, and as I speak, no one appears to have seen any quantifiable improvements, and the patients are still coming to our offices with the same old problems. The Government have kept trying to exonerate themselves for this important deterioration. It is an inescapable fact that they, and only they, are totally responsible for the decisions they have taken and the measures they have implemented and I will prove this during my Budget speech. And they cannot keep on forever trying to pass the buck on to others. They cannot expect people to continue having to wait for years, and years on end before they see any tangible results, in the meantime being constantly bombarded with endless announcements on the part of the Government, on the wonderful and wonderful things they are intending to do. A lot of statements, press releases, interviews about what they intend to do, and then it takes them years and years to take any action. In many instances they take no action at all. The GSD love using impressive and fancy words but the record now clearly shows that they lack initiative, foresight and remedial action is not taken by them at the appropriate time. As I have just said, the problems have kept on escalating and the situation we have reached, is the worse ever seen in our Health Services.

As to the clinical governance, when are Government going to realise we are against it. When are they going to realise it, after all the reasons we have given for us being against it. Last year, I said that the clinical governance had been officially announced by the Government on about 12 occasions. Since June of last year I believe it has been announced again on just about the same number of times, if not even more. The Government would

want us all to believe that the audit is going to be like a magic wand, and we beg to differ for the reasons that I gave last year, and will give again this year.

The Government have already commissioned expert after expert, and the problems have not been resolved. Yet again we have been proved right when we said that this audit, since it was first announced, until we see what recommendations the Government accept and implement, about seven years, seven years will have elapsed. So even as I speak, we still need to wait for a few years to be able to judge the final results of the mother of all audits. Remember, the experts will advise but the Government have already confirmed, and the Minister has done so today in this House, that it is up to them to implement or not implement that advice. Whether the advice is correct or not, is yet another matter. So many years wasted by the GSD and such huge sums of money expended in the process on experts. And why the Government have found it most convenient to wipe their hands and let the experts find the solutions to the problems. If they cannot, I suppose then they can also blame the experts for not finding the solutions. Then, they pass on the bill to the taxpayers, and in addition, the patients suffer for the many years wasted in the process.

In the end, we all suffer for this sheer incompetence on the part of the Government. There is already, more than ample proof which clearly suggests that the Government have been incapable of finding answers to the solutions required. Just, for the clinical governance audit, the Government have confirmed to us in this House, that they expect to spend about £1 million. One million pounds because of their sheer incompetence. I can assure the House that more and more people in Gibraltar have started to see through the GSD propaganda machinery, and their patience is starting to reach the end of the line. As the famous saying goes, you can fool some of the people some of the time, but you cannot fool all of the people all of the time. Proof of this is that months before the General Elections were called, a local newspaper in an opinion poll said, the GSD would take 62 per cent of the votes. In last year's General Election, they got 51 per

cent. The Chief Minister himself, in the morning after the votes had been counted, said in his speech that he had accepted the electorate had reprimanded his Government because of health and housing. For once, for once, we hear the Chief Minister accept some form of responsibility, and the mood around town, is that the people of Gibraltar will no longer tolerate these two issues to continue unresolved within the next four years. Otherwise, the reprimand, I can assure the Government Members opposite, next time round will be even greater.

Last year I gave a detailed account of what had transpired during the two terms of office, when the Hon Keith Azopardi and the Hon Dr Bernard Linares were Ministers for Health. Now, it is the turn of the Hon Mr Britto. He took his new portfolio at the end of last year and I am convinced that he could only have been shocked and awed, at the enormity of the task ahead of him, immediately after he sat on his new chair at Johnstone's Passage. I have kept a very close watch at the performance of previous Ministers for Health, and of course, I have done the same with the present one. The third Minister for Health under a GSD Government. I am afraid, that the Hon Mr Britto did not have the best of starts as Minister for Health. Already he too has committed quite a number of blunders. In an interview with GBC in January this year, he made the most incredible and unbelievable statements. Even the interviewer could not resist the temptation of questioning the logic of his arguments. Then we had the situation of quite a number of people waiting in the corridors of the Accident and Emergency Department, until there was a bed available. These patients even had to stay there overnight lying on stretchers waiting for a bed. The Minister had this to say when interviewed and I quote, *"as is usual at this time of the year, the number of admissions into the hospital increases, and this has a consequent effect on the number of beds that are available for admission."* He said, as is usual at this time of the year. No wonder the interviewer then asked the hon Member, and I quote, *"have these things happened in the past?. You have also mentioned that this time of the year, there is an increase of patients. You make it sound as if there were no winters pre 1996."* The Hon Mr Britto then does nothing but

waffle. He says, *"no Richard, let us not turn things round."* Then he goes on to try and explain why there are shortages of beds but he did not answer the question. Therefore, I put this question to him in the last Question and Answer Session in the House, as a supplementary to Question No. 832, which was at the end of this April. I was able to prove to the Hon Member, with the figures provided by the Gibraltar Health Authority, by his Department, that in previous Januarys there had not been an increase in the number of patients, not even in January of 2003, Mr Speaker. The Minister then changed his tune and said that during last January, for some unknown, inexplicable reason, there had been more patients requiring admission. So I ask myself why did he not give this very same explanation, both in his press release and interview of 12th January. Then, he said something completely different. I will remind hon Members of what he said then, *"as is usual at this time of the year, the number of admissions into the hospital increases, and this has a consequent effect on the number of beds that are available for admission."* I recall that the Hon Dr Bernard Linares, the previous Minister for Health, used to quote Shakespeare. He quoted from the play "As You Like It", and I ended the phrase by quoting what I thought said a lot about him. *"Each man in his life plays many roles."* I think Mr Speaker, that the phrase that comes very quickly to my mind today about the new Minister for Health, which befits him, is, *"a man for all seasons"*, Mr Speaker. A gallant man, yes, a gallant man for all seasons.

There are even more statements Mr Speaker, the Hon Mr Britto has made, which again do not make sense at all. How can anyone, seriously accept the Minister's view that there are 100 patients in St Bernard's Hospital that should not be there. We now have a situation when he is not only blaming the elderly. Given the number of the elderly in hospital, the new Minister for Health believes that about two thirds of the people who are presently in St Bernard's Hospital, do not need medical treatment. Does the Minister for Health really believe that the people of Gibraltar want to be in hospital rather than in their homes. Do the people of Gibraltar really consider St Bernard's Hospital to be such a fantastic holiday camp? Who really wants

to be there when patients are constantly either being transferred from one ward to another, female and male patients are mixed in all the wards, and others are being placed in beds in the TV rooms, or in beds which are cramped one beside the other. The Hon Mr Britto continues with the absurd, by further stating that the experts have told him, that in a place like Gibraltar less than 100 beds are required for a hospital. I quote what he said, *"the experts tell us that in a place like Gibraltar, we need less than 100 beds."* Then he continues to say that because of the 100 patients which are non-medical patients, if all those were not there, only 67 beds would be used. So he said that the expert figures cannot be far out. That is what the new Minister for Health said.

If, the Minister says that only 100 beds are required, then why have the Government built a hospital with 211 beds? How is it that during the four years when Dr Bernard Linares was Minister for Health, he said the very opposite in this House. He said, in answer to Question No. 1,083 of 2001, that the number of beds for the Europort Hospital would be arrived at using the statistics I was asking about the admission figures into St Bernard's Hospital, and the average length of stay. The mind boggles, even though by now we are used to hearing so many contradictory statements from different Members of the Government.

In the last meeting of the House, I naturally asked a question on the subject, and the Hon Mr Britto, confirmed what he had earlier said in his statement that the experts had come to that conclusion and he agreed with them. In supplementaries, I therefore asked, if when the new hospital is fully operational, whether its occupancy level will then have dropped to a situation when there are about 67 patients hospitalised, as the Minister for Health had said in his statement.

Very quickly, the Chief Minister stood up and came to the rescue of the Minister for Health. But what he said totally contradicted everything his Minister had said only seconds earlier. The Chief Minister did not agree at all with the Hon Mr Britto's opinion.

This is what the Chief Minister said in answer to Question 863 of 2004. *"Almost every UK expert that has come to look at our health service has expressed the view that this community does not need a hospital with 211 beds in it and they apply UK benchmarks. UK benchmarks are that if in the UK, a population of this size would have a hospital with "x" number of beds, for a start, the UK is hardly a benchmark in this respect to be followed. Secondly, I will keep on pointing out to them, Gibraltar is not comparable to the UK."* and then the Chief Minister went on to explain that if there is an overflow there are always more hospitals down the road at some number of kilometres further away. In Gibraltar, whatever we cannot provide here, there is nowhere else." That is what the Chief Minister said. Some months ago, I recall that during a session of the House, when the Chief Minister was getting a bit agitated, which is not uncommon with him, and his hand were all over the place, he nearly slapped the Hon Mr Britto on the face who sits next to him, had he not ducked. In theory, the Chief Minister's reply to the new Minister for Health's statement, was indeed a real slap on the face if there ever was one. And surprise, surprise the Chief Minister was in fact agreeing with the point we always make, that experts from abroad evaluate situations in Gibraltar with norms and procedures which bear no relevance to us at all. I especially liked the phrase in which the Chief Minister said, and I quote, I will keep on pointing out to them (meaning the experts), Gibraltar is not comparable to the UK. So much for the experts which the Government Members rely so much on and which they are praying will solve all of our health service problems.

There is no doubt, after all the evidence that I have produced in this House during the past years, plus the complaints publicly voiced by the users, the different entities, individuals and even comments made in official Government reports, that our health services have unquestionably suffered enormously at the hands of the GSD Government. The Chief Minister when he knows that his Ministers cannot defend the indefensible, he gestures to them to sit down, he then stands up and immediately resorts to making personal attacks at the Opposition Members. He constantly

accuses us with his favourite phrases, which by now are completely out of context. They have always been out of context. Hundreds of times we have by now heard that we are living in cloud-cuckoo-land, we are inventing things, we are politically dishonest cowards, he questions our intelligence levels, insults after insults. Even when we produce evidence in this House to back our arguments, the Chief Minister says that we have either invented it or we conveniently got a doctor to produce it, even though the evidence I have brought to the House had the letterheaded paper of the Gibraltar Health Authority, and was signed by its management. That is the extent that the Chief Minister goes to. Therefore, is it that the letters sent to me by the UKCC and Sheffield when I was Minister for Health, which I also produced in this House as evidence, were also cooked. When the Government find it difficult to come up with replies, then we do all the cooking, how very convenient. I think that the Government Members react in this manner because they do not like having to eat their words. Remember they never wanted to admit that for the first time ever there were acute shortages of beds at St Bernard's Hospital. When they had no option but to admit it, they then blamed the patients. For the first time ever in the history of our health services, wards had to be mixed with male and female patients. Again, initially, they did not want to admit that private practice was a total failure. They took the same attitude with the fiasco of the Complaints Procedure. For the first time ever again, very, very few of our nurses have been sent to the UK for specialist training, and consequently, for the first time ever, we have a record high level of contract nurses. In the meantime the Government continue blowing their own trumpet about the wonders the School of Nursing was doing. But the important thing, is that the evidence that I bring to this House is reported in Hansard and the Government Members will not detract us from doing our job properly as an Opposition, which is to bring to the notice of the Government, areas where there are real important problems that need tackling. The truth is that this Government do not like to hear what we tell them, so they think that if they accuse us of inventing things or they try to rubbish everything we say, that they will succeed in deterring us to continue saying what they do

not want to hear. They also think that by clouding the issues with insults, the electorate will forget what the issues were in the first place. But their tactics are no longer working, as I can assure the House that everybody in Gibraltar today is absolutely convinced, that our health services are declining and have declined to the worst levels ever. This year is again no exception. I have here more evidence to prove to the House that what I say is the absolute truth. I am referring to the Complaints Procedure of the GSLP, the one the Government have on many occasions vehemently said again and again that we did not have one when we were in Government. As their complaints procedure has been such a complete fiasco, they have again tried to defend their abysmal record by saying, *"well, at least we have one and you did not."* I am afraid to disappoint the Government Members because as I have said previously, we certainly had one, and here it is, more evidence to the House. The Complaints Procedure of the Gibraltar Health Authority when we were in Government, I thought it was quite an opportune moment to bring it here to the House during my Budget contribution and show it.

We took a policy decision on the matter as soon as we came into office in March of 1988, because then, before we came into office there was no complaints procedure. It was drawn out by the management of the Gibraltar Health Authority and it is dated 31st October 1988. This, is a public document that was circulated to the staff of the GHA by the then Hospital Manager, Dr John Cortes. For the record may I add, that it did not gather dust as theirs did and neither were there so many people using it or criticising it as being useless, as has been the case with the GSD's complaint procedure which in everybody's opinion, except the Government's, it has been a complete disaster. So, this business about us not having had this or the other is quite frankly nothing else but smokescreens on the part of the Government. In any case, even if all the things the GSD have said about what we did or did not do, or had or did not have, even if it was factual, the Government are here to defend their record. They cannot continue indefinitely going back to years and years ago desperately trying to find excuses for their failings. I honestly

think that if the Government continue with this tactic, looking for another pretext, they are going to end having to go back to the Stone Age, when there were no health services and no houses, only caves and witch doctors. Then, then can they easily defend their record. Only then. Today, the vast majority of the people of Gibraltar agree that our health services are riddled with all sorts of problems. The people are now saying that the GSD have been eight years in Government and that they are therefore no longer willing to give them another four years after this term of office expires, if significant improvements to the present situation are not seen by them. The people no longer want to hear what we are going to do, on the part of the Government. They want to see results and so, the GSD have a huge task ahead of them for the simple reason that it is extremely difficult to produce in four years, what they have failed to do in the eight years they have been in power.

How can the present Minister for Health say today, that the problems that I highlighted for years are only a few. I highlighted problems and I actually detailed the problems and I think they came to about nearly 30. Today, as I speak, I am highlighting even more than what I did last year. The Government Members, when we first started to highlight the many complaints we were receiving on matters of health, they started by denying their existence. So we produced a dossier. Then they said that we the Opposition, were inventing the complaints, that we were exaggerating. When that did not work, they said that the users were too fussy, and then that the complaints were the normal every day ones in every hospital. Today, they are going down a route never before adopted by any previous Gibraltar Governments. Basically, what they are saying is, *"either you do as we say or you are out."* That is what they are saying. This new attitude by the GSD Government was already clear for everyone to see in their manifesto of the last Elections. These are two quotes from their last manifesto: *"No one in the Health Service will be allowed to obstruct or undermined the changes we want to implement, and doctors that deliver that service will be valued, well remunerated members of*

the GHA staff. Those that do not, will be invited to pursue their careers elsewhere."

HON LT COL E M BRITTO:

Absolutely correct Mr Speaker.

HON MISS M I MONTEGRIFFO:

These are, very, very strong words. What happens then if the staff do not agree with those changes the Government want to implement? Are they going to be told to go? If they do not, what are the Government going to do next? Are they going to sack them? Their latest style of Government falls short of putting a pistol behind peoples' heads. This is democracy a la GSD Mr Speaker.

It is now no longer a question of voting for the GSD can seriously damage your health, but also, voting for the GSD can seriously damage the prospects of keeping your job. We believe the Government are going down a very dangerous route, but it is their policy and we will do what we always do, wait and see what results the new policies produce. Last year, as I have said earlier, I listed 24 areas which we had identified within our Health Services, where there were serious problems. Not problems about the staff and their delivery of service, but problems emanating specifically from policies or lack of policies from the Government. For example, the Complaints Procedure. The Complaints Procedure, nothing to do with the staff, Government policy. Waiting lists shooting up to unprecedented levels, nothing to do with the staff but rather due to the effects of private practice arrangements and not enough patients being sponsored abroad. Introduction of private practice, nothing to do with the staff, Government policy. The long saga of the dialysis facilities, nothing to do with the staff, Government policy. Nursing staff publicly denouncing the conditions they are having to work in and the lack of basic equipment, nothing to do with them. The failure

of the Government's new bed management system, nothing to do with the staff. The adverse effects of their having introduced the new prescription charges, nothing to do with the staff. Never, ever, have I questioned, not once, the delivery of service or said that this is the reason why our health services are in a state of chaos. Something which I have on occasions been accused of by the Government. What I have questioned is not the delivery of the service, but the policies of the Government. That is why I have specifically mentioned some of the issues that I highlighted. Therefore, the public statements we make and the examples we give to point out the many, many problems which exist in our health services, always refer to the incompetence of this Government, whose policies have either not worked or have made matters worse. That is why we make them fully, fully responsible for what has transpired in our health services from 1996 onwards. On the other hand, I want to emphasise the fact that it is the Government who have made public statements which clearly imply that it is indeed the staff who are to blame. I would refer hon Members to some of those statements. I quote, "the Minister does not take the temperature of the people, or fails to take the temperature of people in wards at night. He does not administer medicine. He does not operate or not operate on people well or badly." These are words by the Government.

What is the Government getting at? Are they not implying that because Ministers are not nurses or medical practitioners, they are completely exonerated from any responsibility? Is it not then this Government who are linking the deterioration of our health services to the delivery of the service? The responsibility for the deterioration of the health services is not due to the staff, or their delivery. The issues we have highlighted as I have demonstrated earlier, prove beyond doubt that it is due to Government policies having failed miserably. There is not one single instance when I have raised an issue which purports either to mismanagement by the staff, or questions their professionalism. It is the Government who have, and continue to question it. Another clear example is their new policy, to replace local managers with outsiders. We believe this to be again another error of judgement on the part of the Government. They

are implicitly inferring that they believe outsiders are better than Gibraltarian managers. It is nonsense to say that because harsh decisions have to be taken, outsiders are better. Better at what? Using the axe? This, is but another instance of the Government trying to put the blame on others. Gibraltarian managers, for the record have never, ever failed in their duties. I was working side by side with them when I was Minister for Health and I had my office inside St Bernard's Hospital and I was accessible to everyone, patients and staff. They were very efficient and very committed to their job, and they do a good job also because they naturally love their people and they know how they think, and they know how they react. Outsiders do not, they come from a different culture. Furthermore, it has been tried before, prior to 1988, and by hon Members.

When we came into office in March of that year, 1988, the AACR had already engaged the services of a UK general manager, and without wanting to go into much detail, I will only say one thing. He spent more time playing golf in Sotogrande than in Gibraltar. When his contract expired, we replaced him with a Gibraltarian general manager. His commitment and dedication was first class. Unfortunately for our health services, he took advantage of an offer which enabled him to pursue his career in the area in which he had qualified in the UK. That person, we then replaced with another Gibraltarian, who happens to be the present, or should I say, the ex local chief executive of the Gibraltar Health Authority. He, also carried out his duties impeccably. So both of them have served under different administrations, and they have unquestionably carried out Government policies successfully. It is now the height of hypocrisy on the part of the Hon Mr Britto, to thank him for his past services and now give him the axe. The height of hypocrisy. But, what it all really boils down to, is the nature of the policies they are asked to implement. Therefore, for all the reasons I have just given, we believe the Government are once again very mistaken in their policy of replacing Gibraltarians with outsiders.

The problems within our health services, I have demonstrated year after year in this House, have unquestionably materialised

because this Government have not bothered to be on top of the situation. Government Members have created a very bureaucratic system, which alienates them from the staff, and the users of their respective departments. Hence, they have been quite oblivious to what has been happening. This has been very evident during Question Time in this House, when on many occasions different Ministers for Health have not even been aware of certain problems we have pointed out to them. I now wish therefore, to turn to an exercise I have carried out in order to record the accuracy of the problems we have brought to the attention of the Government. I will refer to our questions and the replies we have been given by the Government, and then I will quote from other official reports which comment on the very same issues. Hon Members will recall that in September of last year, the report of the Gibraltar Health Care Development Team was published. The summary of which was given publicity by GBC as they said it had been leaked to them. There is still a very big question mark in our minds as to whether the report would have been published by the Government had the summary not been leaked to GBC, especially just before the General Elections were called. Anyway, what I have done is compare apple with apple, a phrase I already know the Minister for Health likes using a lot. I will be demonstrating that when it comes to the Government's apple, it is somewhat rotten inside.

Let us start with the complaints procedure. We have put in questions after questions, warning the Government they were too bureaucratic and that the complainants themselves were coming to see us, telling us that it was not working at all. A lot of people were not even receiving replies to their complaints and then naturally, ask the Government whether they are going to change the system they have implemented. This we did just months after it had been implemented, when we had a good feedback from the users.

In April of 2001, answering Question 666, the Chief Minister took over from his then Minister for Health, Dr Linares and as I have mentioned earlier, waffled his way through saying that I never had a complaints procedure. Something which is false because I

have brought it here to the house. And he said the following, and I quote:

"How ever badly off the hon Member may think people are now, it strikes me that they must necessarily be better off than they were when she had the stewardship of the health authority." False again, Mr Speaker, we had a complaints procedure, and nobody went to Government Members then when they were in opposition complaining about it.

The Chief Minister continued by saying that in so far as the Ombudsman makes policy suggestions, the Government will be digesting at leisure, at leisure, he said, which of his policies the Government would wish to adopt.

A year then transpired with no action being taken. More leisure prevailed involving an issue to which the Government should have given more priority.

Then in answer to Question No. 582 of 2002, the Hon Dr Linares confirmed that he had discussed the complaints procedure with the Ombudsman. The Ombudsman had already been critical of it in his three annual reports.

Dr Linares, further confirmed that the Ombudsman's suggestion, and I quote: "is not being at presently considered by the Authority. What we are doing is looking at the actual complaints procedure as it stands in order to ensure that it is made more effective." This he said in May of 2002.

We proceed to March 2003, again nearly a year after. In answer to Question No. 263 of 2003, the Minister says that the Ombudsman went over his remit suggesting to the GHA how the complaints procedure should function.

In any case, I quote, "there will be comfort to the Hon lady to know that along the lines, not exactly the same idea that the Ombudsman had over completely independent external type of complaints officer, but along the lines of keeping a certain arm's

length by the officer who will be designated to process complaints that is being taken up by the Authority, and we will shortly be advertising to contract a dedicated officer with full-time responsibility, quality assurance. This Mr Speaker, the previous Minister for Health said in the year 2003. In March of 2003. "The advert", he continued, "will soon be coming out with a very definite job profile as to the terms of reference of the performance of that officer."

I went on to remind the Minister, the previous Minister, that three years had elapsed during which time the Ombudsman had been critical of the procedure. In fact in his third report he had complained that the Government had said they were going to review it and that by the end of 2002 the expected changes had still not materialised. What happens next, Mr Speaker? The usual, the Chief Minister gets up and takes a totally different position.

Again he falsely refers to the non-existent complaints procedure when we were in office. But wait for it, Mr Speaker, he says that this issue is in the brief of the clinical governance and they have asked them what would be an appropriate complaints procedure. After years and years of saying they were going to do one thing and the other and they never did it, they now say, ah, the clinical governance audit will take care of it. As on so many occasions, which are recorded in Hansard, the Minister for Health takes one line, and the Chief Minister takes a totally different one.

Yet another year goes by, six years down the road, and this time in May of this year I am told by the new Minister for Health the following, in answer to Question No. 888 of 2004.

"The Government accept that the complaints system introduced in 1999 has not been as effective as is required or as the Government would have wished. That is why we are establishing a new one."

Mr Speaker, six years on, and the Government have the cheek to say it has not been as effective as it should have been. And now eight years on, they have still not established a new one. They say they are going to do it but they still have not. There is a Spanish saying, Mr Speaker, that very aptly describes this Government: - siempre van *"a paso de tortuga"*

The new Ombudsman says in his report of December 2003, the following, Mr Speaker. *"Without a doubt, the GHA's complaint procedure has proved and continues to be an abysmal failure."* He continues:- *"The majority of complaints that are brought to the Ombudsman's attention are concerned with the inefficiency of the procedure. On one instance, a complaint was received this year (March 2003) from a lady who, not being satisfied with the explanations she has received, asked for her complaint to be taken to stage 3. The request was made as far back as May 2002. By the time it was brought to our attention no action had been taken to address her request. It was only as a result of our intervention that a reply was eventually received (November 2003). One and a half years later and thanks to the Ombudsman."* These were the words of the Ombudsman. The Gibraltar Healthcare Development Team report of September 2003 has this to say about the complaints procedure.

"The GHA complaints process is ineffective from everybody's point of view." (Except the Government's of course, Mr Speaker – they just want to fine tune it)

The report continues: "It involves a multitude of access points ranging from the Chief Minister to the ward clerk. Can involve up to 10 people. Does not routinely involve face-to-face contact with the complainant – complaints can take years to be resolved. Everything we have been telling the Government for the last six years. Six years on, and now we have the new Minister for Health saying that the new one is imminent. We have heard that word so often before. Imminent. Let us wait and see what the Government bring to this House, again, through legislation as far as the complaints procedure is concerned. Eight years down the

road and they bring another piece of legislation on the complaints procedure.

Nearly two months just before the last elections, the Chief Minister, accelerated his propaganda machinery and delivered a statement which begins quite frankly, with an incredible statement.

He said: "Since 1996 the Gibraltar Government has embarked on a series of major policy initiatives to modernise and improve Gibraltar's health service". What a cheek, Mr Speaker.

And I say to the Chief Minister the following: *"since 1996, the Government has embarked on a series of policy initiatives which have taken our health services back 20 years and instead of improving them they have led them to a deplorable state."* That is my statement. That is my answer to his statement.

Just the one example I have just given, on how the Government have handled the complaints procedure, completely destroys the Chief's Minister's words. Of course, he was then going to an election and he needed more spin and more propaganda, so in his statement he again lists all the wonderful things the GSD intend to do. After eight years they still say they intend to do wonderful things which they have not done in the last eight years they have been in Government. Nobody can really believe them any more.

The Chief Minister also said that he is going to eliminate the remaining defects within our health services. But, are the Government still not listening to what everybody else is saying, the patients, the staff, and all the different reports, who talk about our health services being full of all sorts of defects? One has to be a politician with no scruples when you still try to and paint a different picture to what everybody else is seeing.

I can do the very same analysis I have done with the complaints procedure, with every single problem existing today in our health services since 1996. I will have to go back to some of the areas I

listed in my budget contribution of last year, in order to be able to continue with the exercise.

Complaints about private practice. In this area, the Government defended private practice by saying they were regulating it. We, on the other hand when in Government, were phasing it out. The Government took the view that there was a need for private practice, and they said this in this House, and they said they were going to introduce a system of control.

In answer to Question No. 561 of 1999, the Hon Mr Azopardi, the first Minister for Health of the GSD, said that if we regulate it and make people aware of when, and if, and how they can visit a doctor privately, I think it will be easier for us to account and control waiting lists. I asked him if he would agree with me that private practice will have the effect of increasing the waiting lists. His words, the Hon Mr Azopardi's words, and I quote, "no, is the answer to that question."

Then in May of 2002 in answer to Question 564, the second GSD Minister for Health, Dr Linares said when I asked him in supplementaries the following question:

"Will the Minister accept that patients are being coerced by medical practitioners as regards the question of going private because they have to wait longer than if they go public?" I quote "no", was his reply.

Let us now look at what the report of the healthcare team of September 2003 has to say about private practice. It talks of the failure of the current private practice agreement, and that it can and should be quickly remedied. The report even sets out in table form the agreement struck by the Government and the consultants. And the Government had refused to our previous request soon after the agreement was struck to provide us with this information. One simple glance at the agreement in the report convinced us why it had been a complete failure. The system did not allow the GHA to control the situation at all. So much for the prominence initially given by the Government to

their well regulated, controlled private practice agreement. Another case of us telling the Government – “*we told you so years and years ago, we told you so.*”

And what of the latest position taken by the Government? We only need to read their last election manifesto again, to realise what they are on to. It is a complete reversal to what their position has been in this House for the last eight years. In their manifesto the GSD even link private practice to public waiting lists. They use it as one of their headings on health. They accept their policy has not worked and say that under the current reform initiatives, the matter will be dealt with more radically. I quote: “*private practice will simply not be allowed until there are public waiting lists.*” This particular sentence being in bold and underlined, Mr Speaker.

Well, Mr Speaker, this can only mean one thing and one thing alone. Private practice might just as well be eliminated if they go about what they said in their election manifesto. Because, if it can only be allowed once there are no public waiting lists, who is going to be stupid enough to pay for it if they could have been seen to previously by the consultants. So, we will now have to wait and see what effects their new policy on private practice will result. Now, I will compare the GSD waiting lists.

Up to now, the situation of the waiting lists has still not improved, only in the area of ophthalmology. And we all know what happened in that specialty. The Government very conveniently took action on the eve of an election campaign, when they had had plenty of time in which to have remedied the situation, so that patients would not have been unnecessarily subjected to wait for years on end. Is this a caring Government, or a Government that is only interested in vote-catching? And to make matters worse, they said in a press release that they issued, that the problem was brought to the attention of the Chief Minister by the Senior Citizens Association. We had been asking for information on waiting lists for years and years before. What did the Government do with this information, did they not see what we saw? Is it not incredible that they had to wait for the

senior citizens to contact the Chief Minister before the Government took action. A shameful situation. Now let us look at what the healthcare report has to say regarding waiting lists.

They say that they are excessive in almost every area. At Question Time at the end of April this year, just two months ago, the Minister for Health confirmed that there are still 718 persons waiting for elective surgery. Another situation, which continues to be totally unacceptable, eight years on. So again the report agrees with us and with the many, many patients that come to see us asking us to help them because they have been waiting for four and five years for a routine operation. So let us look now, at the GSD's record for waiting lists from 2002 to May of 2004. Based on the information that they have given to us in different meetings of this House.

	2001	2003	May 2004
Gen. Surgery	6 months	6 months	Up to 1 year
Orthopaedics	8 months	From weeks to years	From weeks to years

(In orthopaedics the report says from three months to years). To years could mean as what I have said what the patients say, four, five, six years.

We continue:

	2001	2003	May 2004
Gynaecology	6 weeks	12 to 18 months	8 months

But it should be noted that in this speciality there is no private surgery.

	2001	2003	May 2004
ENT	12 months	18-20 months	18-20 months

The situation, therefore, is still unresolved to say the least. Of course, we look forward to again the imminent improvements that the new Minister for Health has announced in this area.

Let me continue with more problems, which started after 1996. Shortages of beds, the up-trend in having to cancel routine operations. People waiting in TV rooms to be admitted for such operations and then being told to go home. People waiting in the A & E department all night waiting for a bed.

Two cases still stand out in my mind, which occurred only a couple of months ago. An elderly lady having to wait in the ambulance, at the entrance to St Bernard's Hospital for a bed, and an elderly lady waiting in the A & E to be admitted, and being told by a Senior House Officer that there were no beds and that the relatives should take her home. The relatives resisted, stayed there until there was a bed for their mother. That lady, unfortunately passed away about a week after she had been admitted. There are still many instances which are brought to our attention by relatives of patients. Only two weeks ago, there was a lady waiting for a bed in the Intensive Care Unit for four hours. Four hours waiting for a bed for the Intensive Care Unit. Shameful.

This proves that what has been publicly stated, not only by us, but by other persons, is the correct scenario. That there is a very dangerous situation existing today because there are patients either being treated in the wrong environment or there are patients that should be in hospital but are forced to stay at home because there is no bed for them.

These sorts of problems never ever existed prior to 1996. God help us, if they did, as the then Opposition would have used every available opportunity to attack us. And they did not, and it is not recorded in Hansard that they did. For the simple reason that they were not there, as simple as that, these problems were not there when we were in government.

Now, to another Government policy. The new bed management system, that the Government announced four years ago. The one they said in this House, repeatedly, that would go a long way to solve the shortages of beds. As far back as to the year 2000, in answer to Question No. 509 of 2004, the then Minister for Health said:

"We have a designated bed manager monitoring the situation on a daily basis and taking action as necessary in close consultation with the medical staff and other professionals in the hospital and the community. A bed management policy has been drawn up and this will assist in ensuring that cancellation of admissions is kept to the minimum possible level."

Then in 2001, again in this House in answer to Question No. 303 of 2001 the previous Minister stated:

"I am very pleased to say that the situation has much improved with regard to the problem of the shortages of beds in St Bernard's Hospital. Much of the improvement can be attributed to the change that has been introduced in the patient admission procedure."

The story continues, in answer to Question No. 961 of 2002, two years on, the Hon Dr Linares was still extremely optimistic about his new policy. He said the following referring again to the bed shortages:

"I like to think and I hope that it is the new system, the bed management system that we have implemented is yielding some results."

Then in 2003, last year, in answer to Question No. 228 of 2003 he continued saying that the Authority were taking steps in relation to the new bed management system.

During all of these years we, on the other hand kept reminding the Government that it was not improving the situation at all. In fact, if anything, it was worsening it. Patients were telling us that

without any prior warning, having previously been told they would need to stay in hospital for a few more days, suddenly they were being told to get dressed and go home. Patients, continued waiting at home and when in St Bernard's Hospital, they were required to wait in TV rooms. Quite a lot of them were told either do not come in, or were told go home, because there was no bed for them. Another unsatisfactory state of affairs which has continued for years on end and is still continuing today.

Now, let us look at what the report of the healthcare development team has to say about the ex Minister for Health's bed management system that he has said on a number of occasions was working well during the last four years. I quote from the report, page 204:

"The GHA bed management process:

- is straightforward for a simple admission but becomes increasingly unwieldy in the case of unplanned or complicated admissions;
- involves 12 steps if a bed is readily available. This increases to at least 20 steps if a bed needs to be found;
- involves four people if a bed is available, increasing to at least nine if there is no availability;
- means that planned patients are prioritised by the bed manager, and not necessarily by the clinical need;
- is reactive, not proactive. The bed manager only becomes aware of bed unavailability when there is a problem with an admission;
- relies upon ward staff making consultants aware of outliers;

- relies upon consultants discharging patients – there is no nurse led and limited Senior House Officer led discharge."

A complete disaster, the new bed management system introduced by the Government Members, by the GSD Government, has been a complete disaster and it has been said so by the patients, by us and by the healthcare development team. And what left us somewhat dumfounded as well, is the fact that the report points out that since 2000 to 2002, admissions to St Bernard's Hospital declined by almost 10 per cent. They declined by 10 per cent. So admission are down, the bed management system according to the Government, is improving the situation, but the acute shortages of beds continues. So, forget the elderly, forget the clinical procedures, in fact, forget everything the Government attribute to the shortages of beds. It is their policies and the decisions they have taken, which are the root of the problems within our health services. It is a question, that I put to this House. Can this Government get anything right, Mr Speaker?

Let me continue, the Accident and Emergency Department and the problems that have occurred there. Where patients have told us that they have been subjected to wait hour upon hour before being seen by a Senior House Officer. Four years ago, again four years ago, we warned the Government of these problems. We put in a question in the year 2000, No 207. We asked – *"Have Government now taken a decision as to whether a Senior House Officer should be based at the Accident and Emergency Department from 5.00 pm to 9.00 am the following day, as recommended by the nursing review team?"*

The nursing review was commissioned by this Government and its report was made public 2 years after the Government had had it in its possession, after we put a number of questions urging the Government to make it public.

Then, we naturally kept asking the Government which recommendations they accepted and which they did not. They

did not say which they were. They spoke only on percentage terms. For example, they said, we have accepted 40 per cent of them and rejected for example, 60 per cent of them. They did not specifically refer to any recommendations being accepted or not being accepted. This is yet another reason why we are so sceptical about this Government's dependence on reviews, reports, experts and audits. And then, what reply did we get to Question No. 207? That a flat is provided in the hospital quarters for those Senior House Officers on call, and that the number of SHOs on call was increased from one to two. *"So, the answer is no"* – that was my supplementary,

Mr Speaker. The previous Minister for Health then had this to say:-

"Not in the Accident and Emergency Department, but the hon Member will understand that next door in the flat, and it is not actually next door, it is quite many metres away from the A & E, the old nursing quarters, is very much in proximity to the needs of the department".

Then I asked, Mr Speaker: "But I am only asking the question because this is one of the recommendations of the Nursing Review Team. So the Minister is confirming that they are not implementing or have not implemented this recommendation, is that correct?"

The Nursing Review Team made this recommendation because they said they thought it was important to have an SHO continuously based during these hours at the A & E. The fact that the SHO's were based instead in their quarters, or were elsewhere in the hospital, was contributing to more and more delays as patients were having to wait for hours before being attended in what happens to be a very important department of the hospital. This is what the Nursing Review report said. The then Minister for Health said, and I quote,

HON LT COL E M BRITTO:

On a point of order.

MR SPEAKER:

Stop. There was a point of order and I want to hear what the point of order is.

HON LT COL E M BRITTO:

Mr Speaker, actually it is two points of order if you will allow me. The first one is, what is the relevance of the nursing review which happened years ago, and all the other points that the hon Member has been making, on a Budget debate, on the Budget for this year? We are talking about the Budget debate and we seem to be going back to questions back in 2002, and even the year 2000. This is point number one, and point number two, can I ask you Mr Speaker, whether it would be in order for me to repeat my speech because it seems to me that she has listened to nothing that I have said, and all the points that she is addressing have already been raised and she has already been told all the things the Government is doing. So I honestly do not see the relevance of the speech. All these points have been conceded and she is speaking as if I had said nothing and had not made a contribution. Would it be in order for me to repeat my speech for her to listen to what I said.

MR SPEAKER:

First, on the second question, the answer is no, because the Chief Minister will have the right of reply. On the first one, the question is that the House must now adopt it, not the question of Budget speech but a state of the nation address starting from all the Members. This is a big nation so I have got to let her carry on.

HON MISS M I MONTEGRIFFO:

Thank you Mr Speaker. Then I ask, but I am only asking the question because this is one of the recommendations of the Nursing Review Team, so the Minister is confirming that they are not implementing or have not implemented this recommendation. Is that correct? I am referring to the Nursing Review, because this is another review and this is what the Government did precisely, and I want to compare what the Government did with previous reviews and the actual prominence they are giving to present reviews. As I said before, that the Nursing Review Team made this recommendation as I said, because they thought at the time that there were many problems in the A & E, that demand had increased and therefore, they thought that it was necessary. In fact they said that it was important that there should be a Senior House Officer there, and they gave the specific hours in which they had to be there. The then Minister for Health said, and I quote: *"Yes, the recommendation becomes somewhat obsolete and irrelevant because of the increase in the number of SHOs."* He goes on to say the unthinkable, that in any case he thinks what the Government has done is in line with the spirit of the recommendation. Nonsense, the recommendation was quite clear. The reason for it being that there had been delays in getting the Senior House Officer from the nursing quarters and that one needs to have one permanently there because already there is an urgent need to warrant it. The nursing review did not say that the complement of SHO's had to be increased by one, it says, there should be one permanently based there and specifies the hours.

Again, the Chief Minister jumped from his seat and quite honestly, his contribution to the debate demonstrated his style of resorting to ridiculous and childish arguments when he cannot defend a given situation. Arguments which are really completely out of order, when we are speaking about people who are sick. He said *"there are two choices here, the Senior House Officer can sit in the A & E doing crossword puzzles and watching television in an uncomfortable hard back chair waiting for the ambulance to arrive up the hill, or he can be sitting in the comfort*

of his easy chair, watching his own television set in the comfort of being on call down the corridor". I would like to know when anyone has seen a SHO in Casualty either watching television, or doing crossword puzzles. Any patient can say that the A & E Department works constantly round the clock, non-stop. They simply have not got the time for such nonsense. So, the Government completely ignored this recommendation of the Nursing Review Team, and it is their fault and only their fault that matters have worsened in that department.

Let us look at what the healthcare report says about the situation there. Page 214, – *"the accident and emergency process typically takes 50 to 60 minutes to complete."* Then it goes on to give specific examples in the form of a flow chart, showing the time and the process, involving the patient arriving either with injuries, or with chest pains, or having to be admitted. The total time taken for a foot injury is 76 minutes. For the chest pains, the total time taken is 1 hour and 30 minutes. For a surgical admission the number of steps taken is 34 and the total time taken is 63 minutes. Unfortunately, the Senior House Officers, to use a phrase of the Chief Minister, continue today to do their crossword puzzles in the comfort of their quarters. Another example where we can say, *"we told you so"*.

HON LT COL E M BRITTO:

Mr Speaker, will the Hon Member give way.

HON MISS M I MONTEGRIFFO:

I have not finished yet, I will if he waits, but the Minister has the cheek to say that he gives so much importance to the clinical governance report, and he then goes on to say, that I am talking out of context. What I am doing, is actually proving to the Government that everything I have been saying, everything we have been saying about the problems within the health services, is actually being said also by the report. I will give way.

HON LT COL E M BRITTO:

Just to mention something that will be of interest to her because of what she has been saying, is that in the new hospital there will be facilities for the doctor on call in the A & E area. So he is not watching television but he will be able to be there, right next to A & E, and available when he is needed. And he will be able to be resting because the ambulance has not come up the hill.

HON MISS M I MONTEGRIFFO:

Well, he did not say this in his Budget contribution. But in any case, after having been eight years in Government, now the Minister says something which the Government should have done within the eight years that have transpired. Well, I do not believe that the Government have to take action only and when the new hospital materialises. This could have done without the new hospital being fully functional.

Other problems we have kept warning the Government about, and which are vindicated practically word by word by the Healthcare Development Team report, refer to the new prescription charges, insufficient specialist training for our nurses, and recruitment problems.

Mr Speaker will recall that when the Government increased prescription charges from £1.20 to £2.50, we strongly opposed this measure, because we thought the Government were penalising the patients and the chronically ill by making them pay more money for medicines, when on the other hand the Government were spending huge sums of money in less important areas. We said then and we still say today, that their priorities are all wrong. I mentioned in last year's budget session that the Government's defence was to tell us that there was abuse, and it was this abuse, of which they said they did not have proof of, but rather suspected it, that had prompted them to take this decision. They wanted to stop the abuse, hence the increase. That is what they said.

When after a few months, the Government then realised that public opinion was against them, they announced a new system. Medicines would now be free for pensioners, and those patients eligible for payment of items would only need to pay for three items, that is £7.50. Every other item be it 4, 8, 10, or 20, would then be completely free-of-charge.

We could not believe it. The new system was not only going to have the opposite effect of what they intended, but it was bound to eventually increase the number of items. When people know that after three items, everything else is free, what can we expect? Another disastrous measure, and another case of – *“we told you so.”*

Let us look now at what the report said about the cost of pharmaceuticals. It says that the cost of pharmaceuticals to the GHA has shifted significantly over the last five years. Expenditure has increased by a stunning 50 per cent in three years. It gives a number of reasons, for example, a huge rise in the price of generics (another measure the Government introduced), but it also points out to an increase in the number of items per script. Just as we said was going to happen.

The Government in answer to Question 796 of 2004 said that the overall increase from 2000 to 2004 was 34.5 per cent. This means, that they do not agree with what the report says. The Government came up with different figures to those produced by the team of experts. Again, more reasons why we are so sceptical about their reviews and their experts. Again, when I pointed out the increase in items on prescription in the last meeting of the House, something which we had predicted would happen, the Chief Minister in supplementaries, without getting up from his chair said, and I quote: *“I do not know what the hon Member is talking about”*. He said that, Mr Speaker, because he really did not know what to say. Well he now knows what I am talking about, and I think it is a question that he would rather not know what I am talking about.

Another issue I have been pointing out to the Government in this House, and which I also spoke about in last year's budget, were the problems of recruitment. I mentioned all the different specialities where it had taken the Government years in order to employ medical practitioners. There have also been a number of incidents when the Government have not renewed or given contracts to those practitioners popular with the public. That a medical practitioner should now be given a contract for a year does not provide either continuity of service to patients and does not allow that practitioner time enough to be able to settle well in his job.

Even though the GSD created for the GHA its own personnel department, the healthcare report confirms problems in this area as well. I quote "the GHA's recruitment process is complex and lengthy, involving a variety of individuals and departments.

- A five stage process involves the identification of a vacancy, advertisement of the post, vetting of applicants, selection and employment arrangements. It is made up of 40 steps, each generating "hands offs" and communication requirements.
- It is poorly communicated. Even unsuccessful candidates do not receive any notification or feedback."

The more we analyse Government policies the more we see their ineffectiveness and their incompetence.

With Nurse training we have another disastrous situation. For years, we have been asking the previous Minister for Health, how many of our nurses are being sent to the UK for specialist training. Last year, I went through a sequence of different questions I had been asking on this matter. Each time, the then Minister, either was not sure how many there were, or assumed there should be some, because of what he termed as his Government's commitment on further training. Then it took another question in the House for him to confirm that only two were in training in the UK. Only two. Over a year later, when I

asked the present Minister for Health a question on training needs for staff, this is what he had to say: *"historically, during the time when the hon Member was Minister for Health, training requirements were reactive and failed to contribute to a coherent provision of training."* What a cheek Mr Speaker. Again more and more smokescreens. However, he then says, *"the increase in training requirements and the continued desire to produce an efficient and coherent workforce has meant that the school and the GHA recognise the need to further develop a system of staff appraisal. The school now will work closely with the Healthcare Development Team to produce a more systematic and proactive manner of assessing future training requirements."*

Again, eight years down the drain, and now the Minister says they will look to solve this issue, Again, as with previous Ministers, and falling in line with the way the GSD try to defend their errors, the present Minister for Health goes back to 1988.

Mr Speaker, for the record, we used to send many, many more nurses to the UK for specialist training, and the proof of this as well, is that we did not have to contract the number of nurses that this Government today have had to. But, again it is a question that they are in power, and they have been in office now for eight years, and they are answerable for those eight years. Again in the meeting of 30th April, I asked the Hon Mr Britto to confirm how many of our local nurses were training in the UK. He said in answer to Question 839, *"the situation remains as given in answer to Question 178 of 2004."* The answer to this Question was given in the last meeting of January, five months ago, and it was as follows:-

"There are two local nurses training in the UK developing their careers in mental health nursing and orthopaedic nursing." Two, only two again. I would not be in the least surprised if these were the same "two" the previous Minister for Health quoted some years back. Again, eight years down the road, and the Government now have the audacity to say, that the matter is going to be given impetus.

Now, let us look at what the report of the Healthcare Development Team has to say about training needs assessments in relation to our nurses. More importantly, it points out that the staff expressed dissatisfaction with a number of important aspects of their current jobs and working conditions, and one of them happens to be their complete dissatisfaction with training and development. The staff say, they are dissatisfied with the training and development.

The Healthcare Report goes on to say that if changes are not made, it is likely that staff morale and motivation will decline, and that this will have a negative impact on the performance of the quality of patient care. Who is responsible for this situation? Most certainly, not the staff, and certainly, not me. Last January, in this House, the Chief Minister went to the extent of saying that the staff of the GHA were demoralised because of me. Another ridiculous remark. I have to say it again what a load of nonsense. The staff have spoken quite clearly and they have given the reasons for their being demoralised, and the report of the Healthcare Development Team agree with us, and not with the Chief Minister. Yet again, another attempt by the Chief Minister in trying to do what he always tries to do when he is cornered, and that is, trying to convince people that white is black and black is white.

What also lends credence to the lack of training, contrary to everything that the the new Minister for Health, has said today, to the lack of training for our nurses is the next problem, which I have highlighted just earlier on. The very high numbers of contract nurses the GHA have had to employ. As far back as October 2002, the Government confirmed to us in this House that there were 36 contract nurses employed by the GHA. In March of 2003 the figure was 39, in January 2004 it was 49 and at the end of March it was 48. The breakdown we have been asking for in relation to these figures by specialty, show that the bulk of our contract nurses are in the area of midwives, 10, registered mental nurses 5, and quite surprisingly, there are 18 in registered general nursing. That is, Mr Speaker, staff nurses. If we look at the overall complement of nurses, again given in

answer to our questions, we see that out of the 12 midwives in post 10 are on contract. This is a really high figure. So again, in the eight years the Government have done nothing to ensure that our nurses are given the opportunity to be sent to the UK for further training, so that they can specialise as midwives and registered mental nurses, and replace those we have on contract at the moment. And on top of it all, we have already experienced a situation, that the GHA, having engaged the services of a contract officer, sends this officer back to the UK for further training. The opposite of what should be happening. As to the staff nurses, I believe it must be due to the fact that the number of intakes to study for first level training, have not produced enough staff nurses, and hence the GHA have had to resort to contract them as well.

When we first highlighted to the Government the whole issue of contract nurses, they tried to justify the position by saying that they were bringing in contract nurses to cover for what they said was a short-term problem whilst people were training. Well now how many are in training? The Government said, when we highlighted the whole issue of contract nurses, that they were bringing them in to cover for what they said was a short-term problem whilst people were in training. This is not valid any more as quite a number of years has since elapsed, and it is quite obvious that there are not enough people to replace the contract nurses which is what the Government promised they were going to do. The Minister for Health, the Hon Mr Britto, in the last meeting of the House, agreed with me that this was indeed a dangerous situation. I said that if the GHA continue with this trend they might end up employing more contract nurses from outside than our own people. So this is an issue the Government need to tackle and tackle quickly, and we will monitor the situation as we always do.

The other important factor that has to be taken into consideration is the extra expenditure that is required to contract nurses from abroad. To give an example, for the financial year 2002-2003, the Government in answer to Question 814 confirmed that the expenditure in accommodation was £219,692.01. The Chief

Minister in the last meeting of the House, agreed with me that the expenditure seemed excessive and that he would be making further enquiries on the matter. What I am trying to prove is that a series of problems are created when one starts to employ more and more contract nurses.

Also on the question of nurses, we are also concerned that after years and years of asking questions in the House as to the offer to enrolled nurses to apply for first-level training, that in the last meeting of the House and today, the Minister for Health has also confirmed that only nine had applied to take up this offer. We were told in supplementaries that enrolled nurses (a grade which no longer exists in the UK and which we, the GSLP, were successful in retaining when we were in Government through negotiations with the UKCC), do not have to be in possession of the required GCSE's, a condition put by this Government, before one can apply to become a trained nurse. We have been persistently urging the Government to allow those without GCSE's, that had been in employment before the requirement came into being, to be able to train one step further. This now being the case, we are pleased that even though the matter has taken the Government some years to resolve, all enrolled nurses, irrespective of whether they have GCSE's or not, can now apply to train as staff nurses.

However, I hope the Minister will look, as he promised, at the reason why so few have taken up this offer, because it is quite incomprehensible to us why only nine have applied to progress up the ladder.

The House recessed at 1.30 pm.

The House resumed at 2.35 pm.

HON MISS M I MONTEGRIFFO:

Another point I wish to highlight, is the statement made by the Government on various occasions, more so, during their election campaign, that nursing practices and procedures in our health services are currently more than 40 years out of date. At this point in time I wish to point out that there are only two Ministers on the other side of the House listening to me. So, as I always do, I went back and looked at what the Government had had to say on this matter in the House. In answer to Question 183 of 2004, the Minister for Health stated:

“As in other areas of healthcare, nursing practices and procedures are constantly changing. The Government are pleased that the GHA provides facilities to continue to update its staff as per current best practice in the UK and elsewhere.”

My question, therefore, is that if we received excellent reports both from Sheffield and the UKCC, as the Government also received, how can the Government now, after they have been eight years in office, suddenly come up with a statement alleging that present practices are so out-dated. Especially, when it is in complete contrast to what they have been saying during their last eight years in government. Even two months ago, they said they were pleased that the GHA continue to update its staff as per current best practices in the UK and elsewhere. We have said it on many occasions. The Government says one thing and the next minute they say the opposite when it suits them.

Now as to the dialysis facilities and of course I do hear what the Minister says, and I do take note of the contents of his contribution but again, I must say that this has been another long-standing saga.

After years and years of questioning the Government on their commitment, the present Minister for Health in the meeting of the House last January, and today, they have finally confirmed what we have been wanting to hear, that our patients will have facilities at Europort which will not require them to go Spain. So,

after having heard the words of the Minister we will do what we always do, we will keep a very watchful eye. However, we believe that they have left the question of training our staff to use the equipment somewhat late, as we were also told the staff would be coming from Spain, until the GHA trained its own staff.

The Government contracted the services of yet another expert, that of Professor Terry Feest. The previous Minister for Health said that the Government were looking at his report, but he never confirmed whether the Government had accepted his recommendations. In the last meeting of the House, in reply to a question, the Chief Minister told me, that he would check and confirm to us whether or not the recommendations in his report had been accepted, or not. We would like to know because we have not been told yet, whether having decided to commission yet again another review, this time on the question of the dialysis facilities, whether the report has produced value for money. Up to now, what I can say is, that there is no evidence to suggest that the many reports, the reviews, the audits, this Government have commissioned during the last eight years, have produced any real significant improvements. Instead the Government have spent hundreds of thousands of pounds and in the process they have wasted valuable time. Time, which in an area such as the health services can only mean it has been to the detriment of the well-being of the patients. This again, is another reason why we are against the Government now having to spend £1 million on the latest review.

Now, from dialysis facilities to the stress machine at the Primary Care Centre. We took this matter up in the last meeting of the House, and the Government said that it was not a stress machine, but that it could be converted to one by the purchase of some electronic gadgets. The users forum contacted us on the matter after what the Minister had said in this House and that is why originally we raised the issue. We were contacted by the users forum. They then wrote to us after having heard what the Minister had to say and they confirmed that they had consulted with clinicians who undertook stress testing examinations very frequently, and were conversant with the purchased unit at the

Health Centre. The users forum further stated, that according to the clinicians, the purchased unit can be used for stress testing in conjunction with the ECG unit available at the Primary Care Centre. They further stated that most doctors support the idea of having the stress done at the Centre.

HON LT COL E M BRITTO:

Not true.

HON MISS M I MONTEGRIFFO:

Mr Speaker, I am saying what the users forum representatives have told us.

HON LT COL E M BRITTO:

Mr Speaker it is not true, there is no explanation to support this.

HON MISS M I MONTEGRIFFO:

And that none of the doctors in the Health Centre mentioned that the unit was inadequate to perform it. So really, what I would suggest to the Hon Mr Britto, is that it might be a good idea for him to have a meeting with the medical practitioners at the Centre and discuss the matter.

HON LT COL E M BRITTO:

Mr Speaker, will the Hon Member give way and I will answer that point.

HON MISS M I MONTEGRIFFO:

If indeed it is just a question of purchasing a few electronic pieces, we believe this to be a good investment by the Government, which will not cost them a lot of money, and which will go a long way to alleviate the waiting lists at St Bernard's Hospital where patients now have to go for a stress test.

I now wish to turn to another issue, and that is the agreement the Government made with the pharmacists regarding the dispensing of medicines.

HON LT COL E M BRITTO:

Mr Speaker will the Hon Member give way.

MR SPEAKER:

At least pay attention whether she gives way or not.

HON MISS M I MONTEGRIFFO:

At the end Mr Speaker, because otherwise I mean, I am losing my trend.

HON LT COL E M BRITTO:

Particularly on the stress machine, is she willing to give way. Does she want answers on the stress machine?

HON MISS M I MONTEGRIFFO:

The Hon the Chief Minister can answer in his contribution.

MR SPEAKER:

Silence. Order. The question is whether you are willing to give way or not. If you are not willing to give way, you say I will not give way.

HON MISS M I MONTEGRIFFO:

No, I am always willing to give way. I was just thinking that I would give way, I was only considering giving way when I was actually closing, finishing with what I had started.

MR SPEAKER:

He has asked whether you are willing to give way. So you sit down.

HON LT COL E M BRITTO:

Mr Speaker my only purpose in asking the hon Member to give way, is that she said she was going to move on to a different subject. I thought before she moved on to a different subject, I would try to deal with the point she has made on the stress machine. I do not want to turn this into a debate. I will just be as brief as possible. Firstly, at the moment it is an exercise machine. It was donated by the people who donated it. I have had a meeting with the people who donated it, which I think includes members of the users forum, I think we are probably talking about the same person, to clarify the situation. I have asked them to tell me under what conditions they made the presentation, because if the conditions are that it can only be used in the Health Centre, or in the Primary Care Centre, then the Government policy is that there will not be stress testing in the Primary Care Centre, because the UK advice, and the advice from Dr Wynn Davies, the visiting cardiac consultant, is that stress testing should be done under very strictly controlled

conditions, and we need an ITU close by and we need medical back-up and expert back-up close by, to the stress testing, which is very stressful on the heart and these facilities are not available in the Primary Care Centre. That is the medical advice which the GHA has, and therefore it is GHA policy not to have stress testing in the Health Centre. I have put the position to the people who donated the stress machine at the meeting with them and I have asked them to clarify what is the purpose of donating it because it seems to me that there were strings tied to the presentation. The clinicians to which the hon Member has referred to in the plural, seems to be either down to the singular or to a couple. To a couple, not more than that. The remainder or the majority, I am not sure whether it is one or two, I do not want to be then quoted as she normally does in three months time saying, because he said there were only two and now there is three. The majority of the GPs are against stress testing at the Primary Care Centre, and that is the situation. It is not that GHA does not want to do stress testing, stress testing is available under controlled conditions, and that is what we will continue to do. We have asked, or I have asked, the people who donated it, what are the conditions, if the conditions are that they donated it for stress testing to be done at the Primary Care Centre, well, I may invite them to take it back because it is not going to happen. Now, having said all that, when we move to the new hospital, there may be possibilities of doing the stress testing there.

MR SPEAKER:

Now let me be quite clear, this question of giving way is entirely up to you. If you do not want to give way.....

HON MISS M I MONTEGRIFFO:

But you told me to sit down.

MR SPEAKER:

Yes, of course, because you gave way. Now stand up and carry on.

HON MISS M I MONTEGRIFFO:

I do not mind giving way, except that as I said previously, I was continuing with my trend. But I do not mind. What the Minister is now saying, is that in actual fact the machine is indeed a stress machine. Otherwise, how is he saying that a stress test can be carried out, but not at the Health Centre. It has to be done at the hospital. Let me be clear, I have brought out the question of the stress machine because it was brought to our attention. The Minister made certain statements in the last meeting of the House. All I am interested in, is whether the stress machine is going to be used or is not going to be used. What we would like is a situation that it will be used as stress machine. That is all. The Minister is looking at the possibility of it being used as a stress machine, then I am glad because in the last meeting of the House he confirmed to me that the Government were not willing to spend money on the few gadgets that were necessary. He said that in the last meeting of the House.

Now, I wish to turn to another issue. That is the agreement the Government made with the pharmacists regarding the dispensing of medicines. As soon as the Government announced the agreement in 1999, we asked questions in the House and the then Minister for Health said that the agreement was a good one as far as the Government were concerned. The Hon Dr Linares confirmed, a few years ago, that £750.000 was the maximum that the Government would pay involving all the pharmacies that had signed up to this agreement. He told me that he considered the new agreement to be quite a triumph for the Government. But as time went on, we were told in other questions and in supplementaries, that the pharmacies were being paid a 15 per cent addition to the cost of the medicines they dispensed. We asked for these figures and then, the whole

scenario changed. We were able to come to the conclusion, that it was not such a good agreement after all. I honestly believe that the previous Minister for Health completely forgot that the agreement included the Government having to pay an additional 15 per cent on the price of the medicinal products. So on top of the £750.000 in the first year of the agreement the GHA paid the pharmacies nearly £400.000. In the years that followed, the figures increased dramatically:

- 2000/2001 £563,357.94
- 2001/2002 £689,124.41
- 2002/2003 £778,478.42
- 2003/2004 £886,611.45 (this figure being incomplete)

This is the reason why we give so much importance to asking statistical questions in this House. They produce extremely valuable foolproof information and in many instances they destroy the picture being presented to us by the Government.

Mr Speaker, I now turn to the issue of our sponsored patients. We have asked quite a number of questions in the House, and we have seen that there are more people being referred to Spanish medical institutions. We are not surprised at this trend because quite a number of patients that come to see us tell us that our waiting lists are so excessive that having had to wait for years to be seen by a specialist or having been years waiting for an operation, they do not mind being referred there or anywhere else for that matter. However, some patients have wished us to highlight in public the problems they have encountered when they have gone to Spain.

They have complained to us of lack of contact between the GHA and the Spanish hospitals, and that they feel as if they are lost in the woods so to speak. They are finding difficulty in finding appropriate accommodation or difficulty, if they have to stay longer, and then they require, further sponsorship allowance. We put a question again, as usual, on this matter in the last meeting of the House and the Minister for Health said that patients and escorts are given telephone numbers in case they

need assistance, but the patients tell us that at least in the UK there is the Gibraltar Tourist Office who help them a lot, but in Spain, there is nothing of the sort. So we have taken note of the reply from the Government and as usual we will monitor the situation.

Still on sponsored patients, we have also been approached by a number of individuals and their relatives, extremely worried that they are now being told by the GHA, even though they have been referred for specialist treatment or reviews to the UK, that they have been going there for a number of years, that they have been told they will no longer be sent, because the review will take place in Gibraltar. This is naturally creating a lot of concern to the patients who believed that the review should continue to be conducted by the very same doctors and their teams who originally saw them. We issued a press release and asked the Government to come out with a public statement explaining what this new policy entailed, and whether it is driven by a desire to cut expenditure. Not only the physical aspect of a medical condition comes into play, the mental aspect, the confidence of a patient, plays a big part on the recovery of that patient. So the Government must understand that if a patient is sent to the UK and the review is followed up here, patients can be put under a lot of stress when they are suddenly told, that they are not going to the UK. If anything, we believe the Government should implement a policy which gives the patient the option as to whether he or she wants the review to be followed up by the medical practitioners that saw them, in the first place in the UK, or, they are content with being followed up in Gibraltar. That, I believe, is the best and fairest approach and one which fully takes into account the interests of the patients.

Finally, on sponsored patients, after years of asking for information on a formula which is approved by this Government, regarding the payments of our patients, and telling the two previous Ministers for Health that it appeared to be too cumbersome and too bureaucratic, we are now finally told that the GHA are discussing with the Department of Health, a new agreement which will result in a sum of money rather than the

number of people. Again, we were right Mr Speaker, and I must mention that the Hon Dr Linares, when he was Minister, referred to the formula as the notorious formula.

As I have mentioned earlier, we place a lot of importance on statistical information, as we do our homework when we receive the information from the Government. I have found that some statistics conflict with those appearing in other official Government reports. I gave a few examples to the Hon Mr Britto during the last meeting of the House. He asked me to write to him and I did. It is a question of looking at Government answers, given periodically during the course of a calendar year, comparing those figures with the Government's Abstract of Statistics, and then comparing them with the figures which have been produced by the Healthcare Development Team, in their report of 2003 for the same periods. I know the Minister said that one had to compare apple with apple, but the figures I have compiled, relate to the same years and the same category of patients. This is the reason why, during the last meeting of the House, I specifically asked for quite a number of statistical questions covering calendar years, so as to compare apple with apple. So, we look forward to the explanation from the Chief Minister when he replies to me.

I now turn to the new hospital. The House will recall everything we have said in this House on the matter so we have made already our position quite clear. During the meeting of April this year, I put in a question asking when would the hospital at Europort would be fully operational. We heard the Chief Minister's remark – it was not the official reply, Mr Speaker. But he said that we had already asked that question more than once, sounding and looking quite upset. Of course we had and why? Because every time we have asked the same question, we have been given a different date. Does the Chief Minister expect us to keep quiet and forget about when it is going to open, especially when we get three different dates in the course of over a year. There is no question as to the fact that there has been a number of delays, and because of this, we are more than entitled to be questioning the Government, until they get the date of the

opening right. In answer to a question in the last meeting of the House, the new date given by the Government is that the hospital at Europort will be fully operational by the autumn of this year. Today the Hon Mr Britto has said as much, again he has mentioned that date. The Government also confirmed in the last meeting of the House, that they still have not finished their negotiations with the developers of Europlaza for car parking spaces and they have still not concluded arrangements that they want to put into place in the old wine factory building in Waterport, where the meals will be prepared and then transported and supplied to the patients in the Europort building. So it is clear that the Government have encountered quite a number of major problems before the hospital even begins to function and is fully operational. And why because of what we told the Government which my hon Colleague, Mr Fabian Picardo, said this morning. The building at Europort was not designed as a hospital, and a lot of alterations have had to be made, which have even meant that our state of the art new hospital, is lacking in kitchen facilities, parking facilities, and has no wards for the elderly. I do not think I have ever heard any authority transferring a hospital into a building which, for a start, deprives our economy of an important asset which was there for future inward investment. The hospital then ends up without having a proper kitchen, without having car parking facilities, or wards for the elderly. The people of Gibraltar are flabbergasted when they hear that the Europort hospital lacks these facilities. We also trust that the Government have taken steps to ensure that the leak of ammonia which recently occurred there, does not happen again. Otherwise, on the next occasion, patients and hundreds of staff, will have to leave the hospital.

Surprise, surprise, I continue on the subject of yet more experts. The migration team. Something which the Minister today has not mentioned at all. First of all, we are extremely surprised at the fact that the Government confirmed in answer to Question 865 of 2004, end of April, that they had engaged a specialist migration firm to assist with the move from St Bernard's Hospital to the new Europort facility. They even gave us the name, Cyril Swert, migration specialists, which would cost them £90,000.

However, on 22nd June, only two weeks ago, they put an official notice inviting interest from suitably qualified relocation contractors, to provide a migration service from St Bernard's Hospital to the new General Hospital at Europort. I am surprised, that the Minister has not mentioned the fact that this conflicts with the answer that he gave me two months ago. That the Minister has not made any mention in his contribution, as to the tender, the official tender that the Government actually put out on 22nd June.

In any case, I am convinced that the Government will go down in our political history as beating all other Governments as to the number of experts they will have engaged. But again, it is a question of where the migration team will take us for the money the Government have stated that they will cost. They said in the last meeting of the House that they would need to spend £90,000. As to the clinical governance audit it has acted like a mirror. It has mirrored everything we have been saying for the last eight years. And, moreover, we have been bringing to the attention of the Government more problems which were not identified in the report. For example, the report of the Healthcare Development Team also agrees with us on the question of the dental service, which the report says is understaffed to meet the demand which exists today and that both the waiting lists and waiting times for this service are excessive. It also highlights problems in the Primary Care Centre as to the excessive steps a patient requires to take before seeing a GP. For years, the Government have not accepted our concerns about the appointments system at the ICC. Many patients have come to complain to us about it. The Minister for Health, has said that a computerised electronic appointments system was introduced in the summer of 2003. He said he was confident that the new system is better than the old one and that it will continue to improve. So, again, Mr Speaker, we were right. The previous appointments system, in place since the Primary Care Centre was opened in 1999, was not adequate, and the patients were right as well. Another issue we will monitor and we will see whether the Minister's confidence is justified.

The report further highlights problems in:-

- Laboratory services
- X-ray department
- Community nursing
- Mental nursing
- Etc, etc, etc, Mr Speaker.

So, it is quite evident, that there are problems nearly everywhere within our health services. Now, it is a question of, can it get any worse? We shall have to wait and see what the Government will do with the recommendations and what transpires in the different phases, that the Minister has spoken of today. He has said that they require to see what measures they will be accepting and what recommendations they will not be accepting.

We all know, that the Chief Minister has said in this House, in fact in the last meeting of the House, that peoples' jaws will drop when the Europort Hospital opens. The Chief Minister said this in supplementaries. I honestly hope that people's jaws will not drop, because the waiting list in this specialty, in orthopaedics is quite excessive. The Government are completely mistaken in believing that the situation will improve significantly when the hospital moves to the Europort building. It is not what one sees on the outside, and how good it looks, what it boils down to, is what is inside. The packaging of a product can look very pretty, but what counts is what is inside. If the problems within our health services continue after Europort is fully operational, then it will not be a question of jaws dropping, but rather a question of heads rolling and I predict that the heads that will eventually roll will be those of the Government and they will roll with the electorate being completely justified in taking that decision if the problems will simply migrate, with a migration team, from one building to another.

Finally, Mr Speaker, after having listened to the new Minister in his contribution, there is nothing to suggest that there is light at the end of the tunnel but rather that there are more endless tunnels to go through. I take his comment on what he said he

saw in a local newspaper, as a compliment. He had a smile on his face when he said that the report said, in the local newspaper, that I was soon to leave my portfolio as Shadow Minister for Health. I take that as a very, very good compliment, because his smile can only mean, that he hopes that I do and that means that if he does, that I have done a good job in Opposition. Thank you Mr Speaker.

HON J J HOLLIDAY:

Mr Speaker, my ministerial responsibilities cover Trade, Industry, Tourism, Shipping, Telecommunications and Postal Services. I will therefore be presenting the estimates of revenue and expenditure in these fields. I will also wish to highlight various projects, to be funded from the Improvement and Development Fund, which fall under my responsibility.

In essence, my ministerial responsibilities cover a wide range and allow for a one-stop shop in matters of development, investment and promotion of Gibraltar Plc. I am sure that this will be particularly pleasing to both the Chamber of Commerce and the Federation of Small Businesses, as they will now be able to address the issues of interest to their members and bring forward proposals and ideas from these members in discussions with me, under the one roof.

Mr Speaker, before I begin my address on the different areas under my responsibility, I would like to comment briefly on the much criticized by the Opposition, new Bus Service. My Colleague and Friend, the Hon. Fabian Vinet has already commented on this project, as it now comes under his stewardship. However, all I would like to add is that I am proud of the new Bus Service Gibraltar has today. A Bus Service this community needed badly and deserves. The Opposition can continue to rubbish this initiative for as long as they wish, but the service is there for all to see and enjoy. The Hon Lucio Randall in his contribution today informed the House that he has finally travelled on one of the buses and he found the service to be

excellent. I am glad that he has finally started to see the light.

I would firstly like to dwell on tourism. We are at a cross-roads in tourism. The writing is on the wall for traditional travel agents. More and more people are travelling, and choosing to make their own arrangements through the internet. Tour operators are offering last minute discounts, and more and more persons wishing to travel abroad are buying on price at the last minute. International tourism and the aftermath of the shock waves of 11 September are still being felt. Events in Spain may result in a smaller than anticipated number of visitors this year, which will have a knock-on effect on Gibraltar's tourist arrivals from Spain. Other international events may similarly impact on tourism in different regions. Short-term damage is also caused by events such as the recent Spanish refusal to allow cruise ships to call at Spanish ports after a Gibraltar call. We are not immune to such impacts.

However, this does not mean that there has as yet been any fundamental shift in the source markets for Gibraltar's tourism. The UK continues to be our primary source market for overnight visitors. The tendency is for UK visitors to stay for five nights, and the length of stay appears to be on the increase. The Gibraltar Tourist Board will therefore continue to promote short-breaks for the UK market and will additionally run a campaign to promote seven-night stays.

Spain is potentially an interesting market for Gibraltar, but the level of business of overnight visitors is small due in large measure to two basic reasons. Spanish hotels are cheaper (although at the quality end of the market the prices of Gibraltar hotels compare favourably on the basis of value for money), also, getting to Gibraltar from Spain is difficult unless a visitor owns or hires a car. These are issues which need to be addressed and access to Gibraltar from the hinterland is one of the items on the agenda for discussions at a technical level, between officials, with the Mancomunidad de Municipios of the Campo Area. I am aware that, often, coaches from Spain discharge their visitors who cross the frontier on foot, to be

followed by the empty coach. The delays experienced at the frontier, although much shorter than was once the case, continue to be unacceptable.

Visitors from abroad to Spain and Spaniards themselves make up the bulk of the day trippers who access Gibraltar. They are welcome and they make an important contribution to the economy. In 2003, the total number of visitors arriving in Gibraltar through the land frontier with Spain was 7,502,700, an increase of 2 per cent over the previous year.

Cruise visitors are also welcome, as are the crew of visiting cruise ships, and the growth in this sector is most gratifying. There were 165 cruise calls in 2003, with over 143,000 passengers. There were over 200 bookings for 2004. These figures would have been unheard of just a few years ago. However, the recent disruption experienced by cruise ships as the result of the banning from Spanish ports of cruise ships calling at Gibraltar is unacceptable and unjustified. As we all know Spain has since lifted the restriction but has publicly said that the lifting is on the basis of a three month moratorium with an option for another three. This is simply not enough and I urge the United Kingdom again to take a more energetic stand on this issue and ensure Spain declares the lifting of this ban indefinitely. This is important to the future well being of this success sector of the tourism industry.

The yacht marinas continue to do excellent business and enjoy high levels of occupancy all year round.

The Tourist Survey report for 2003 shows that income for the economy of Gibraltar from tourist expenditure was a record £202 million. This works out at roughly £550,000 per day, on average. It also reflects an increase of 14 per cent over visitor expenditure the previous year.

Generally, visitor arrival statistics reflect a pattern of growth and stability. The 7.78 million visitor arrivals in 2003 is once again a record. The 114,500 visitor arrivals by air is the highest since

1990, and up 19 per cent over the previous year. Visitor arrivals by sea, which came to 164,000, was also the highest ever, and up 20 per cent on the previous year. Visitor arrivals at hotels were up by 4 per cent to 61,800, and hotel occupancy was very healthy, at just under 65,000 on a year-round basis. The hotel occupancy figure does not reflect the fact that hotels were sometimes completely full and turning away guests in the peak seasons. I welcome and applaud, and will support, initiatives such as the staging by one of our hotels of an international chess tournament in Gibraltar in February each year, in order to increase visitor arrivals at hotels in traditionally slow months.

Hotels are now graded by the RAC, and they are featured in the RAC guide. Growing hotel occupancy requires more hotel beds for Gibraltar. This does not happen overnight. The plans for new hotels are developing, and it is anticipated that new hotels will be built as part of the East Side project. Other potential sites for hotels are also being considered.

The year 2004 is expected to be an equally successful year for tourism. The new Monarch air service between Manchester and Gibraltar is growing the number of visitor arrivals by air. A record number of cruise ships have booked to call at Gibraltar. The hotels offer a good product. Additionally, there is considerable activity as a result of our Tercentenary celebrations.

The centre point of the Tercentenary celebrations will be the events planned for the evening of 3rd August and for Wednesday 4th August, which will be a bank holiday. There will be a street celebration for all to enjoy, and on the 4th, the Royal Navy will be granted the Freedom of the City of Gibraltar. The main concert will be staged on 10th September, Gibraltar's special day. Sir Elton John will appear in concert. There will also be a classical concert on 4th September. The major events which are being planned could not have taken place without the financial assistance of the Tercentenary sponsors, all of whom I thank.

Our tourism marketing campaign will develop from this year's slogan which is "Gibraltar - Take Another Look". It will now read,

"Gibraltar - Take Another Look and Stay a Little Longer". To successfully attract large numbers of visitors to Gibraltar requires adequate marketing and imaginative strategies that can compete with the multi-million pound budgets available to competitor destinations. The range of elements that will make up the marketing spend of the Gibraltar Tourist Board will be:

- Design, printing and distribution of brochures and literature
- Point of sale material, including posters, videos and updating the picture library
- Familiarisation trips for travel journalists and for the staff of tour operators and travel agents
- Above the line advertising for both travel trade press and consumer press, the internet and teletext, including brochure panels and generic advertising
- Attendance at travel shows and exhibitions
- Support for special events held in Gibraltar
- The cost of public relations and advertising agency support

This is a dynamic programme, which will be assessed on its performance at regular intervals.

Mr Speaker, I now wish to turn to the subject of economic development. The face of Gibraltar continues to change for the better. During the course of this financial year, work on the John Mackintosh Square project will be completed. The Government will then need to consider whether they wish to carry out further beautification projects within the historic city centre. The Catalan Bay project will also be completed. This project was to have been done last winter but work was held back pending the Little Genoa development. The Government could not see any sense in carrying out works at the southern end of Catalan Bay only to have the contractors for Little Genoa deface it as work on that development progresses. The scope of the Catalan Bay works have now been redefined to include just the access hill to the north of the village and the central access route from the area of

William's Way tunnel to the waterfront. Work will commence after the bathing season.

There is one big development project which has just commenced, which is the construction of the Ocean Village. This will generate considerable activity during the construction phase, and will produce at the end of the day, more apartments, commercial units and a new leisure area. There will be a direct pedestrian link from the area of the Coach Park along the waterfront all the way to Marina Bay.

A complement to this will be the Island project at Queensway Quay. These are good projects for Gibraltar because they will offer a complement in terms of leisure activity, for Gibraltarians and visitors alike, to the nearby Casemates area and the Main Street. This will extend the lively centre of Gibraltar, to include Queensway Quay, the whole of the Main Street shopping centre, the newly refurbished John Mackintosh Square, as well as Casemates Square and the Ocean Village and Marina Bay.

The Rosia project is also poised to commence shortly, once a number of issues have been addressed. This will generate housing at different prices in the South District, which is favoured by many. The area of the Rosia Triangle opposite Fortress Headquarters will be better utilised than at present.

There are other projects which are at different stages of development. They include the East side development, the mid-harbour reclamation project and a Western Beach project. Each of these projects offers exciting opportunities.

Negotiations with the preferred bidders for the East side project are at an advanced stage and Government are confident that an agreement will be concluded during the summer. The Government will be pleased to make a detailed announcement on this development at the earliest opportunity. What I can say at this stage is that the Government are looking towards the development of at least one hotel on the site, together with a new marina, a boutique cruise terminal, housing and leisure facilities.

This development will be complemented by an enlargement of Eastern Beach and Catalan Bay and the protection of the beaches with submerged breakwaters. The agreement with the developers will include the construction of affordable homes for local purchasers.

The concept of the proposed mid-harbour reclamation will be progressed during this financial year. There are new opportunities open to the Government in this respect, consequent on the land deal agreed between the Government and the MOD. In the first instance, initial decisions need to be taken on the precise scope of the reclamation which will be carried out, and the different types of development which the Government would wish to see in this prime site. This development area needs to be seen as an element within the wider land available for development comprising the multi-storey car park on Queensway, the Fleet Pavilion, Naval Ground No 1 and the old Generating Station on Queensway. The Government believe in taking an overall view of development, particularly where large parcels of land are concerned, in preference to the piecemeal allocation of land for development. There is only one opportunity to get things right and the Government will ensure that this opportunity is used to maximum effect and to achieve the optimum balanced benefit for Gibraltar in the redevelopment of this important part of the central area of Gibraltar.

With reclamation on the cards in the mid-harbour area adjacent to the rowing clubs, and in front of the Yacht Club, the Government are taking a wider look at potential sites for further reclamation, as it makes commercial and economic sense to carry out all reclamation projects at the same time. The economies of scale which can be achieved are considerable. A further area which has been identified for reclamation is the area off Western Beach, where the pontoons for small boats are today situated. Development of the land mass which can be created at this location will be tempered by the necessary height restrictions which apply close to the airport landing strip. Indeed, in parallel with Government's plans to better utilise this area, I have had approaches independently from developers who wished to

propose developments in this area to the Government. The possible reclamation of land in this area, and the uses to which it can be put will therefore be considered by Government early in this financial year.

The above projects were those which the Government had been planning and on which work has been progressing for some time. Now, a whole new series of opportunities have opened up for the Government, and for Gibraltar as a whole, through the excellent package negotiated between the Government and the MoD which will see the release of large parcels of MoD land. Many potential Government and private sector developments had been held up because of an MoD dimension and these problems have now been overcome. The projects which had been held up can now proceed. The Hon Marie Montegriffo will be pleased to note that the relocation of the small boat facilities at Western Beach to the Coaling Island Basin will finally become a reality in this financial year. In addition, Government will be considering how best to maximise land handed over to the Government by the MoD. Some properties will be sold off and the proceeds of the sale used to fund the building of affordable housing for Gibraltarians. Further industrial parks will be developed as there is obviously a need for industrial units. The demand for units, on every occasion when tenders are invited for such units, has always considerably outstripped the supply. Indeed, I will shortly be carrying out a reappraisal of all the industrial park, with a view to harmonising some of the historical differences which have developed over the years.

With regard to the Ministry for Trade and Industry, I have reviewed the structure of the Department of Trade and Industry, and reassessed and evaluated its various components. These changes will soon start to pay dividends.

An essential part of development and investment in Gibraltar is the planning process and obtaining all the necessary approvals. There have been a number of marked improvements in this field in the last few years. The planning process is now much more transparent than it has ever been. There is public consultation in

respect of certain types of development, there is a right of appeal to a Development Appeals Tribunal in cases where an applicant is dissatisfied with a decision of the Development and Planning Commission, and there has been a general speeding up of the processing of applications. The review of the planning process continues and further improvements will be introduced during the course of the year.

Work continues on the new development plan for Gibraltar, to take account of all the changes that have taken place since the last plan was published. The intention is for the plan to be completed during the course of this financial year.

Mr Speaker, in relation to matters of concern to trade and small businesses in Gibraltar, I wish to say in the first instance that I am pleased with the good working relationship that exists between Government and the Chamber of Commerce and the GFSB. Prominent members of both these trade organisations already sit on advisory committees which I have set up. However, the Government wish to go further.

Already, work has begun on reviewing the Trade Licensing Ordinance, through a consultation process with both the Chamber and the Federation. The trade licensing regime has remained unchanged for many years and no longer meets all the needs of the business community of today. It needs fine tuning and I intend to bring proposals for changes to the Ordinance before this House during the course of this financial year.

Unfair competition is one of the concerns raised with the Government by the business community and the Government will be examining the problems and putting in place solutions, in consultation with trade organisations. Changes to the trade licensing regime will be of material assistance in this matter.

The Government are also considering the views of trade on the question of the re-structure of the social insurance regime. The Government are aware of the issues that have been highlighted in the past and will be addressing some of these concerns in the

coming months. In particular, the Government wish to make it more attractive to get qualified part-time workers economically active, something which is discouraged by the existing social insurance regime.

The Government, in addition, wish to address the issue of occupational pensions for persons employed in the private sector. The views of the Chamber and Federation in this matter are being considered.

I now turn to investment. In the past, the emphasis has traditionally been on what has been termed "inward investment". I wish to change this emphasis. I seek investment in Gibraltar, whether it be from outside entities or from Gibraltar players. Indeed, I believe that more needs to be done to encourage investment and economic development, and there will be large strides taken in this direction during the course of this financial year.

The first steps have been taken. The Department of Trade and Industry has been restructured into two divisions - the Planning and Development Division and the Commercial Division, which both come under the Chief Executive of the Ministry. An Investment Unit has been set up. I wish to put in place stronger links between the various units in the DTI to create a one-stop shop, taking account of the opportunities offered to us by modern technology.

I have set aside a marketing budget for the Investment Unit, and I am now putting in place a strategy for the development of the Unit. I will be moving towards marketing Gibraltar as a jurisdiction, whether the specific investment is in the field of tourism, shipping, trade or development.

The availability of EU funding for business initiatives in Gibraltar will be reinforced through a more proactive approach by the EU Funding Unit. In addition to the Europa newsletters, which are produced quarterly and widely distributed, a short TV film is being finalised which is designed to encourage businesses in

Gibraltar to consider applying for EU funds to assist with new initiatives. I believe that maximum advantage is not being derived by the business community of EU funds and this needs to change.

A further area to which I am devoting time is the development of e-business. There are two particular initiatives which I wish to follow. The first is that of e-procurement. I am studying the opportunities available to the Government to fundamentally review the manner in which the procurement of certain types of goods or services is carried out, with a view to introducing greater efficiency, bigger savings and better results.

The other area is that of the development of an e-business house. This would give the private sector opportunities to develop export activities in Gibraltar through a new type of bonded store, which has significant business opportunity. A blueprint for an e-business house is presently being drawn up and will then be studied by the Government.

Mr Speaker, I will now turn to shipping. There are two completely distinct limbs to shipping: the Ship Registry, which is also the Maritime Administration, and the Port. The Ship Registry continues to grow. The Gibraltar Register has now overtaken the Bermuda Register (also a Category 1 Red Ensign registry) in size. A principal advantage for the prudent ship owner is that Gibraltar is an EU flag, and ships which fly our flag can therefore benefit from EU cabotage. The registry continues to attract favourable comments from ship owners, who are pleased at the way in which information is disseminated to them, and how the requirements under new shipping legislation which affects them is explained to them. Considerable work has been done, and continues to be done, to keep Gibraltar's maritime legislation up to date.

The Ship Register now contains close to 180 ships, many of which are new vessels and quality shipping. The Maritime Administration has, as a matter of policy, struck off the Gibraltar register vessels which were deemed to be substandard. The Maritime Administration carries out port State control on ships,

and this area is functioning correctly, with the necessary percentage of ships calling at Gibraltar being subjected to inspections. The growth of the Register is reflected by increases in the manning levels of the registry. It will be particularly noted that, notwithstanding the additional costs of running the Registry, the revenue from this source has increased and continues to increase to the extent that the registry generates a net profit for Government.

On 1 April 2004, a Gibraltar-trained marine surveyor completed his training, part of which had been carried out within the Gibraltar Ship Registry and part of it abroad, and has now taken up full time employment in this capacity. The young man in question had been appointed initially as a clerk in the registry, and worked his way up the ladder. Through personal contacts established by the Maritime Administrator, another young Gibraltarian is receiving training abroad on board a ship as an officer cadet. The Government are keen to train other young Gibraltarians in maritime disciplines, with a view to offering opportunities in due course to fully qualified Gibraltarians as surveyors, ship pilots, and even the Captain of the Port and the Maritime Administrator.

Insofar as the port is concerned, this year should see the introduction of new legislation to establish the Gibraltar Port Authority and to introduce a licensing regime for port operators. Consequent on a consultation exercise carried out in recent months with all players in the shipping industry, I have now considered the representations made and have reviewed the draft legislation which is now being considered by Government.

The formal establishment of the Port Authority will involve the introduction of changes to the terms and conditions of port personnel and the introduction of new working practices. Some of the changes include the introduction of new technology, a changed approach to clearing arriving ships and a refocus on the way in which yacht reporting is effected. These are issues that have been much discussed with the representatives of port staff at very considerable length. Negotiations continue and should be

concluded during this summer.

In the meantime, the port continues to grow. The Government are very satisfied with the way in which this important area of the economy has progressed during the course of last year, and the forecast for this year is very healthy. There were 7,459 ship calls in 2003 compared with 4,834 in 1996. The tonnage of ships calling at Gibraltar has increased significantly from 92 million tonnes in 1996 to 175 million tonnes in 2003.

The major activity for the port continues to be bunkering. Over 3.58 million tonnes of bunkers were supplied in 2003, which is more than double the 1.7 million tonnes delivered in 1996.

The port, however, continues to provide a much wider range of services. It means that a vessel calling at Gibraltar can obtain maximum benefit from its call by taking on supplies or ship stores, changing crew, carrying out repairs, and so on. Off port limits operations continue to grow. The prospects for the port for this year are healthy.

Direct income to Government from the port continues to grow from berthing charges, tonnage dues, licence fees and the bunkering levy.

Through Gibraltar's membership of the Alliance of Maritime Regions in Europe, Gibraltar continues to gain profile at an international level as a maritime region. I am pleased that a representation of the Gibraltar Ministry with responsibility for shipping was invited to chair one of the four working sessions of the High Level Conference held in Genoa on 13th and 14th May 2004, and that Gibraltar was singled out as the only member maritime region (other than the hosts) for this honour. The Gibraltar representative at AMRIE also chairs the Specialist Working Group on maritime centres of excellence.

Our AMRIE membership is valuable as it allows us to be aware of and influence intended EU directives which impact on maritime matters and therefore to ensure that Gibraltar's interests in this sector are best protected.

The International Ship and Port Safety code came into effect on the 1st July 2004. This is an international code, which applies to all ports. It requires the establishment of security regimes applicable to both ports and to ships. The requirements of the code will mean that the port will now need to be much more closely controlled than has ever been before. Details of the safety plans for the port have been worked on for many months and I am pleased that Gibraltar is compliant with this international security and safety requirement.

Mr Speaker, I turn now to the field of Postal Services. The new management team at the Post Office has delivered what it promised the Government. Letters are delivered promptly. The public is attended courteously by trained, uniformed staff at the General Post Office. Mail services have been improved, mail handling has been speeded up, and new services have been introduced. The business community in particular fully recognized the improvement in this area of the public service.

The Gibraltar Philatelic Bureau continues to produce excellent postage stamps and demand for them is increasing at an international level. The rapport between the Ministry, the Bureau and the Post Office has led to highly successful participation at the London Stampex exhibition last February and to the Tercentenary stamp exhibition held at the Casemates Square exhibition centre last month.

My leadership style involves consultation. It is for this reason that I have set up new advisory councils over and above the Tourism and the Port Advisory Councils. They cover the fields of e-business and commerce. In addition, I meet regularly with trading associations, Gibraltar Hoteliers and the UKGTA.

In conclusion, Mr Speaker, I am happy to report that the different departments for which I hold ministerial responsibility continue to grow and develop for the benefit of Gibraltar. Tourism, shipping, the Post Office, planning and trade and industry are all areas of the economy that have performed well. The public in Gibraltar is

too sophisticated to be misled by some of the hysterical statements sometimes made by the Opposition. The facts speak for themselves. Clear strategies and firm leadership are delivering results.

I commend this bill to the House.

HON DR J J GARCIA:

Mr Speaker I hope he does not accuse me of making a hysterical speech. I think it says a lot about this budget, that the Chief Minister himself in his introduction, had so little to say. In the past years he has given marathon opening speeches and this year we were braced for another such address. The fact that it did not come reflects the fact that there is little to celebrate in this budget. The Tabled Estimates of Revenue and Expenditure confirm the analysis made by the Leader of the Opposition last year.

On a separate point, it is interesting to note that many Ministers have followed a similar strategy in this budget. They have told the House what they have done since 1996, and then compared this to when the GSLP was in office from 1988 until then. This is ancient history in political terms. People want to know what is in it for them in 2004. They want to know what the Government are doing in 2004/2005. They want to know how they will be affected by the state of the economy and of Government finances today. The answer is therefore not very encouraging. Increases in petrol duty for the motorists, and other products for those who use them. The threat of increases in housing rents and essential services like water and electricity in the future. This is why the Government continue to cloud the issue with tales from the past. Many Government Ministers continuously point to the Opposition benches and accusingly use the phrase, *"when the hon Members there were in Government."* This is now wearing a bit thin. In any case, as an anecdote in the interests of accuracy, let me remind them that the majority of Opposition Members have actually never been in government at all.

Like I said before the past is the past. This is 2004 and not 1988. 1988 was not last year or the year before, it was 16 years ago. It is the Government and not the Opposition that have to answer for their actions and their policies in this House. The other curious factor that has emerged from the Budget debate, is the record number of times that Government Ministers have congratulated each other, or patted each other on the back. It was amusing to hear the Hon Mr Beltran congratulate the Hon Mr Britto, the Hon Mr Vinet congratulate both the Hon Mr Holliday and the Hon Mr Britto, and the Chief Minister congratulate the Hon Mr Holliday as well. All very cosy. But nobody has congratulated the Chief Minister.

Mr Speaker, the Government have become a mutual admiration society. However, let me remind the Hon Mr Holliday, as one of the more congratulated Members, to be very wary of this. His two predecessors in the office of Trade and Industry have since both left the Government and this House, after serving one term in that post. Time will tell whether the present Minister will follow in their footsteps.

I now start the more detailed address with Trade and Industry. The Opposition Members have in the past highlighted that the Government have a tendency to announce the same project over and over again, until it finally materializes. In the same way, they also announce projects which fail to materialize altogether. This creates an illusion of activity and investment, which in reality is not there.

Last year I remember pointing to the e-Com project in Lathbury Barracks, where 100 jobs were promised, and which never took off the ground. Cable link projects with Morocco and Lisbon also never appeared on the scene. It is not surprising that this year there are more for the list. In his Budget address at this time last year, the now Minister for Trade and Industry, Joe Holliday, said, and I quote, "the main project that will be carried out is the enhancement of Europa Point. The Government wish to demolish the old Du Farol Restaurant building, which is an eyesore, develop a picnic and leisure area, improve the mound

and create a new car parking area to accommodate visitors to the area.” The Minister added that there are more details which would be made public in the autumn of last year. I saw no further details being made available. What was described as the main project that would be carried out, has not even got off the ground. No doubt the Government will have great fun in making the announcement again and again in the years to come.

The House will recall that at the end of last year, there were front page stories in the media, which suggested that the Government were in discussions with Power Chips Plc, to set up a manufacturing facility in Gibraltar. The impression was given that this project was at an advanced stage and that talks had already been initiated as to potential sites on the Rock. At the first available opportunity in January of this year, I asked the Minister in this House, at what stage discussions were with Power Chips Plc, to set up the manufacturing facility in Gibraltar, and what potential sites were being examined for the project. The Minister replied that there had been intermittent contact over the last two and a half years, but there were still no concrete proposals. Therefore, the Government could not say whether there was any real possibility of any sort of facility being set up in Gibraltar. Since the answer left open the possibility that the project might take off, in the next House in April, I asked the Government again whether any more contact had taken place between them and the company. The answer this time was a flat no. This is another example where expectations are generated that an important industrial project might materialize and in the end nothing happens.

It is a fact that during their time in Government, no major industrial projects have been attracted to Gibraltar, and that the wine bottling plant which originated before they came into office, closed down completely. Also in his contribution to the Budget debate last year, the Minister said that he looked forward greatly to the final product in relation to the Piazza. I could have added and so do we all. By that I mean those who work or live around the Piazza area, or those who have to pass there every day. These people have had to put up with considerable

inconvenience for nearly two years. The time taken to basically flatten a square, and the expense involved, has been considerable. Let us remember that this was not the construction of a skyscraper or the refurbishment of a building which might reasonably be expected to take longer. It was nothing more than the simple demolition and beautification of a square. I can only assume that part of the reason for the time taken was the decision to include underground toilets as part of the project. This obviously added to the expense. We know that a sewage pumping station had to be built at considerable costs. We also know that emergency lighting had to be provided, since the toilets were underground and people using them need to see what they are doing when there is a power cut. And even when there is not.

However, it is curious to note that a further toilet is being constructed at ground level for persons with disabilities, or mothers with prams who cannot climb up and down steep stairs. The cynic might well wonder why a ground level toilet was not constructed for everyone, saving much time and expense in the process. The estimate of over £100,000 spent on a toilet, when this could have been sited somewhere else, or above ground at less expense, is totally illogical and lacking in economic sense. I understand that it is a centre of excellence.

I understand the whole Piazza project was speeded up at the end so that it could be opened by the Princess Royal during her recent visit. May I venture to suggest that we invite more Royals to Gibraltar on a regular basis, in order that the different Government projects are also given the degree of urgency that the people deserve. While on the subject of the Princess Royal let me say that she was very welcome in Gibraltar, and that the visit went very well. However, there can be no doubt that the public mood is that 300 years of British sovereignty merits a visit from Her Majesty the Queen. I share this view. She too would have been very welcome. It has been reported that the Foreign Office in London advised Buckingham Palace against such a visit. If this is so it is appalling and I condemn it.

I will now move on to issues relating to e-Commerce and the internet. Mr Speaker, the Opposition have long highlighted inside this House, and outside it, the lack of computer misuse legislation in Gibraltar. We have passed directives into Gibraltar law which assume, that this framework of computer misuse already exists. Only last month we learned how international hackers had gained access to a number of websites hosted by Gibconnect. A few years back, Trojan viruses were found in Government computers, which opened them up to being accessed and hacked. During the debate of the Data Protection Ordinance last year, the Chief Minister was sympathetic to the call for computer misuse legislation from the Opposition benches, and suggested that it was somewhere in the pipeline. It was therefore disappointing to learn from the Minister for Trade and Industry when I questioned him in May, that he was not aware that such legislation was at any stage of production. The length of the pipeline Mr Speaker, is therefore an unknown quantity. As someone once said, when the Minister sees light at the end of the tunnel, he orders more tunnel. Mr Speaker, this means that hacking computers in or from Gibraltar remains perfectly legal. That is to say, that areas of computer misuse which are against the law elsewhere, are not against the law in Gibraltar. In the context of the development of e-Commerce, and in the context of data protection, which is designed to ensure privacy to data subjects, it is totally illogical that computer hacking is not a crime.

It is relevant to point out while we are looking at internet related matters, that the cost of ADSL remains very expensive in Gibraltar when compared to the prices charged in small territories of a comparable size. This is reflected in the fact that of over 6,000 internet connections in Gibraltar, 5,028 are dial-up and 989 are ADSL. There is no doubt that lower prices will encourage more people to switch to ADSL. When we raised this issue with the Government in the House in April, the Minister said that he did not understand what was meant by prices being more competitive, and added that Gibtelecom prices were competitive in the local market. The Government Minister is the Chairman of Gibtel. They must be aware that prices are not

competitive when compared to the prices offered by other jurisdictions for the same service. In his contribution this morning, the Hon Mr Vinet, said that the reason for lower prices for ADSL elsewhere in Europe, was because companies were multi-nationals and had hundreds of thousands of people as a customer base. Mr Speaker, the Hon Member must also be aware that the Government's partner in Gibtelecom is also a multi-national. Second, the comparison is with smaller territories of a comparable size to Gibraltar. Thirdly, my understanding is that it is cheaper in a small territory of about 3 km to provide ADSL through copper wire, than in larger countries. Having said that, I welcome the Minister's announcement that cheaper rates are to be published on 7th July. Therefore it is essential to address basic issues like computer misuse and cost of access to the internet before we can aspire to develop Gibraltar as an e-Commerce centre. Indeed, there are many in the industry who believe that we have already missed the boat in this respect, and this is regrettable. Any industry based on new technology needs to move fast, to keep ahead of the times. Gibraltar has not done this. When the Electronic Commerce Ordinance was approved by this House in 2001, the impression was given that Gibraltar was going to be flooded by e-Commerce projects. This has not happened. Once in a while a grand policy announcement on e-Commerce is made, and then we hear nothing else on the subject until the next grand policy announcement comes along. The latest was the development of an e-Commerce house project, which the Hon Mr Holliday has referred to in his address a few moments ago.

This was announced in the Budget debate of 2003. The Government said at the time, and I quote, "during the course of this financial year the Government would unfold the details of an e-Commerce proposal, not based on Gibraltar hosting web farms, but logistical support structures to enable Gibraltar traders to retail and wholesale their goods globally, across the whole world on the internet." It may have escaped the Government that traders across the whole world and even some in Gibraltar, have been selling on the internet for years. This would never have happened had they waited for the e-Commerce house project to

materialise.

Mr Speaker, moving on now to heritage matters, and I understand that the Tercentenary comes under the Minister for Tourism not for Heritage, but from the Opposition I do both. The main heritage event of the year is the tercentenary. Defence Minister Adam Ingram, told the House of Commons at the end of June, that, and I quote, “the British Government acknowledges the forthcoming 300th anniversary of the capture of Gibraltar by British forces in 1704.” It is no secret that as far as the Opposition is concerned, the tercentenary marks 300 years of the liberation of Gibraltar from Spanish rule. The capture by British forces is the loss by Spanish forces, and the liberation of the Rock from Spain. I know there are those who do not like us to refer to the tercentenary in this way. However, it is a historical fact.

Charles II of Spain had died childless, and named Phillip of Anjou, a grandson of French king Louis XIV as his successor. He became Phillip V of Spain. In short, Britain and her allies, went to war in order to prevent the Bourbon Royal house from controlling, or even uniting, the thrones of both France and Spain. Phillip’s rival claimant to the Spanish throne was the Archduke Charles of Austria, from the Hapsburg Royal house. The Spanish Governor and Garrison of Gibraltar had sworn allegiance to Philip V, and they, and the bulk of Gibraltar’s Spanish population, left the Rock after the Allied Forces had taken the territory. Therefore, it is indisputable that 1704 saw the liberation of Gibraltar from Spanish rule. Indeed, the representatives of the Spanish Bourbons had left the Rock. However, perhaps where there is some justification for confusion, is as to who or what exactly replaced them. The German Prince of Hess, was the representative of the Austrian Archduke. Hess negotiated surrender terms with Gibraltar’s Spanish governor. He took Gibraltar in the name of Charles of Austria. He raised the Hapsburg standard and became the Rock’s first non-Spanish governor. Therefore, Gibraltar was taken by a British admiral, commanding British and Dutch marines, in the name of an Austrian Archduke, who was

represented by a German prince. But as we all know Gibraltar became British and not Austrian. Charles of Austria did not become king of Spain. That would have indeed been a different story.

As I said earlier, Phillip of Anjou became Phillip V of Spain. Therefore, one thing is clear. There was no Spanish control of Gibraltar after the supporters of Phillip V had left the Rock in 1704. Indeed, we are confident that there will not be Spanish control over Gibraltar ever again. I am sure the whole House joins me in that sentiment. Therefore, 300 years ago this August, Gibraltar was indeed liberated from Spanish rule. It may have been liberated by a peculiar alliance of British, Dutch, Germans and Austrians, but liberated it was. And it is a pity there seems to have been such a lack of direction on the part of the Government as to the calendar of events to commemorate such an historic landmark in our development as a people. The Government have failed to generate the kind of public enthusiasm which is necessary for an event of this magnitude. When I asked questions in this House about the budget or the projections for the tercentenary, I have been told that this was not known. When I have asked for dates on which certain events are planned, again, I was given the same answer. When I asked for venues, again, there was no meaningful response. Most confusing of all, was the conflicting impression given by different Members of the Government as to the objectives of the tercentenary events. The Opposition rightly pointed out that tour operators need to know in advance, what the calendar of events is going to be, in order to plan ahead for potential visitors who may be interested in coming here. To this the Chief Minister told me that events were mainly for local people for enjoy, and were not regarded as tourism-marketing events in general. This is in conflict with the statement made by the now Trade and Industry Minister, Joe Holliday, during his budget address of last year. The Minister then said of hotel bookings, and I quote, “I expect demand for next year should be even higher, as the special events being organized to mark the 300th anniversary, will attract interest from many quarters.” I have no doubt that the Minister was referring to attracting tourists around the events that were

being planned. However, because the events have not been finalized until well into the year, some have vanished from the calendar altogether, and others have no venues or dates. I know that the Minister will find it impossible to attract visitors to them on such an ad hoc and disorganized basis.

For what the Chief Minister told the House in May, does not tally with the objectives set by his Tourism Minister. For instance, we found out in the middle of June, halfway through the tercentenary year, that Elton John had agreed to perform in Gibraltar in September, three months later. Had this information been made available sooner, and properly marketed, it could have been used to attract visitors to Gibraltar around the event. Moreover, if the main objective was not to attract tourists, then why on earth is the Government spending £9,000 a month, in advertising the tercentenary on 40 London taxis. Surely not for the benefit of Gibraltarians on holiday in London.

Mr Speaker, the Opposition is appalled at the lavish spending by the Government on tercentenary events in London, at a time when they have been cutting back on essential services spending at home. In answer to questions we were told that a reception at the Savoy Hotel in London, cost over £35,000. This begs the question as to whether a reception at a less ostentatious venue could not have served the purpose equally well. Why the Savoy Hotel Mr Speaker? It cost £937 to house the Chief Minister there, and nearly £1,500 to house two members of his entourage at the Swiss hotel, the Howard. In addition to this, the Government also incurred over £12,000 in travel and accommodation costs in respect of persons from Gibraltar who were invited to London. The items that I have mentioned alone, run up to nearly £50,000. The manner in which the Government have handled the tercentenary events leaves much to be desired. The decision to invite 500 war veterans from the United Kingdom to Gibraltar at public expense is also a questionable decision. The total cost has now been estimated at £210,000. It is not clear how this links in to the tercentenary but suffice it to say that I was stopped by some Gibraltar war veterans the other day who wondered why the

Government had done nothing for them in this special year. It probably would have cost the tax payer considerably less. This is yet another example of the Government throwing money away on badly thought out projects, which are of little benefit to Gibraltar as a whole.

I move on now to tourism issues directly. Last year the tourism marketing budget over run the estimated amount, and passed the £1 million mark possibly for the first time. The Opposition was told the reason for this was the taxi advertising in London, had been moved to this tourism subhead from elsewhere. The estimated marketing budget for the coming financial year has been increased to £980,000, which is £30,000 more than last year's estimate, as the Miss Gibraltar Show has been included in this subhead. It is therefore perfectly reasonable to expect that more money means more tourists, and to measure the results by this criteria.

Mr Speaker in 2002/2003, Gibraltar sent a delegation of nine persons to the World Travel Market, and this cost in total over £44,000. This works out to about £4,888 per person. In November last year, some inexplicable reason, sending less than half the people cost nearly twice as much. In answer to questions in this House, the Minister said that the official Gibraltar delegation to the World Travel Market consisted of four persons. The total cost of the event was £72,000. This worked out at £18,000 per person. At the same time also in November, a further £43,000 was spent in sponsoring the British Guild of Travel Writers dinner. This event also took place at the Government's favourite hotel, the Savoy. The most expensive single item on the menu, was a £15,000 video presentation. The World Travel Market was not the only event where costs have soared from one year to the next. The same has happened with FITUR. In January 2003, it cost nearly £25,000 to send seven persons. This year it cost £44,000 for eight.

Mr Speaker, the figures show that there is a pattern of cost spiralling out of control from one year to the next, in relation to the many conferences and trade fairs attended by the

Government. It has cost over £50,000 more for the Government to attend the same Trade Fairs, compared to the previous time they went. The World Travel Market, FITUR, the London Boat Show, Confex and Seatrade, cost about £178,000, as compared to £125,000 last time round. This is an increase of 42 per cent in one year to do the same thing. It is clear that the results being obtained have no bearing on the huge sums of money being spent. We are nowhere near corresponding 42 per cent increase in tourists.

Mr Speaker, the Government have said that they intend to use value for money as a criteria. How are they measuring whether the £449,000 spent on advertising last year, are yielding results? How do they know whether the £119,000 spent on literature has had any impact? The huge increase in marketing costs is not reflected in a proportional and matching increase in visitor numbers, and this continues to be a matter of concern year after year.

Despite the opening and manning of a Gibraltar office in Madrid, and despite the sums of money being spent in promoting Gibraltar in Spain, the number of visitors coming to Gibraltar by coach continues to fall. The figure for the number of coaches that came here in 2003, is the lowest since 1996. It also represents 951 coaches less than came in 2002. This is a serious downward trend which continues year on year, regardless of the money spent promoting Gibraltar in Spain.

It is obvious that if the number of coaches goes down, then the number of tourists in coaches falls as well. The figures for coach arrivals for 2003 is also the lowest since 1996. There were also about 30,000 less tourists by coach when compared to 2002. In the past the Government have blamed September 11th for the drop. They have also blamed the exchange rate of the pound to the euro, and they have blamed the alleged fall in the number of tourists coming to Spain. They also blame the lack of proper road communications while the Spanish Costa del Sol motorway was being built, and the dual carriageway was being improved. None of these excuses hold water any more. There are more

tourists coming to the Costa del Sol and to Andalucia. The House will recall that the nearby Spanish road network has been vastly improved. We need to know why less and less tourists are making a day trip to Gibraltar.

It is alarming that this downward trend continues into the first quarter of 2004. There are already 78 coaches less, and over 2,000 tourists less by coach than in the same period of 2003. Indeed this is a reflection of the fact that the global figure for all visitor arrivals through the frontier is down in the first quarter of 2004, when compared to the first quarter of last year. There are already nearly 50,000 land visitors less. I need to remind the Government, given what the Hon Member said earlier about the Spanish terrorist attack, that that happened in March, and when looking at the first quarter, even before March, this trend was already there.

The Government have always used the Upper Rock entrance figures as evidence of their claim that tourism is doing well. They tend to do this when the figures go up. However, from 2002 to 2003, the number of visitors to the Upper Rock has gone down by over 24,000. More than that, in the first quarter of this year there have already been over 10,000 less visitors to the Upper Rock than there were in 2003. The number of tourists visiting the Upper Rock is in free fall. It is also a matter of concern that the Moorish Castle remains closed and has been closed now for months. I repeat the point that the comparatively poor results obtained by the Government in respect of visitors by land, therefore, have no bearing on the huge sums of money that have been spent in this field.

I move on now to tourism by sea, and specifically to cruise calls and cruise visitor arrivals. The House will recall that in January, I asked the Minister what the position was in relation to cruise ships calling at Gibraltar from a Spanish port, or sailing to a Spanish port from Gibraltar. The Minister for Tourism replied at the time that this happened frequently and routinely. It was therefore a shock to everyone that in April, on instructions from the Spanish Foreign Ministry, Spanish ports started to deny entry

to cruise ships that sailed there from Gibraltar. This restriction was lifted but we understand that the threat remains in the form of a six months moratorium. The European Commission has asked Spain for an explanation, and obviously, like the Minister we also urge the United Kingdom to resolve this issue. I therefore wish to point out that in analysing the development of the cruise industry in Gibraltar, I will limit myself to using statistics before April 2004. The Spanish restrictions, therefore, have had no effect on the analysis which follows, as the figures used refer to the period before those restrictions started.

The Opposition have long argued that ports around Gibraltar were doing better than Gibraltar, in attracting cruise ships and cruise passengers. Year on year we pointed to Cadiz and Malaga as examples of ports that had started behind Gibraltar in the industry, and which have overtaken Gibraltar both in percentage growth and in actual numbers of ships. Given that cruise passengers are the highest spending tourists, according to the Government's own statistics, it is important to produce a detailed analysis of the facts.

Mr Speaker, the Opposition have now obtained statistics which were not available to us last year, which provide a full picture of Gibraltar's rate of growth, when compared to other ports in or around the Mediterranean. A list of 25 ports was compiled, showing the number of cruise passengers received in 1996, or in the nearest available year, and the number in 2002, the last year for which figures were available. The figures show that in that period, Gibraltar is in position No. 25 on the list, in terms of the rate of cruise passenger growth, which in our case was 21 per cent. Lisbon, for example, had 39 per cent. Malaga 64 per cent. Tangier 135 per cent. Barcelona 204 per cent and Malta 393 per cent. I have specifically chosen those ports, because none of them start from a particularly low base, so the percentage figures are not exaggerated or disproportionate. Gibraltar started the period in question with about 97,000 passengers, Lisbon with 115,000, Malaga with 98,000, Tangier with 54,000, Barcelona with 277,000 and Malta with 72,000. Indeed, the case of Malta is particularly relevant. They have increased from 72,000

passengers in 1996 to 357,000 in 2002. This was at a time when Gibraltar went up from 97,000 to 117,000. Malta started 25,000 passengers behind Gibraltar and in 2002 were a staggering 240,000 passengers in front. This trend is also reflected in other ports. The ports of Andalucia, mainly Malaga and Cadiz, received 591 cruise ships and 375,000 passengers in 2003.

Mr Speaker, the Opposition are not saying for one moment that cruise ships and cruise passengers are not coming to Gibraltar. What we are saying is that other ports are receiving more ships and more passengers, and we are entitled to question the effectiveness of Government policy for that reason. Given that the Government has, over the years, given a variety of reasons as to why this is happening, it is important that they stop the excuses and address the matter once and for all.

The Government rightly said in the past that cruise liners are getting larger and carrying more passengers. The Queen Mary II is an example of one such super liner. Traders in Gibraltar were therefore looking forward to the four calls booked by the ship for this year. The Government encouraged this excitement with the news that the Western Arm of North Mole was going to be dredged in order to accommodate the vessel. A tender notice was published, and although nothing more was heard, the Minister for Tourism was quoted in the media as having said that the works had commenced. Imagine the surprise of the Opposition, when the Minister told the House in answer to questions in May, that the works had not even commenced and that the future was in the balance because of the high cost involved. The first call by the Queen Mary II was due on 27th May. On 17th May, 10 days before, the Government issued a statement in which they said that the cost was much more than had been estimated. Sadly, the Queen Mary did not come to Gibraltar at all on 27th May. Alternative berthing sites, which did not involve the security afforded by the North Mole nor the use of the Cruise Liner Terminal, were not acceptable to the operators of the vessel. It is illogical that a Government that continue to spend millions of pounds on projects which yield no appreciable return, like the Theatre Royal and the Retreat Centre in Lathbury

Barracks, should have been unwilling to make an investment like this, which unlike the other ones, would yield a financial return to Gibraltar. Moreover, it would also be an investment in the future, given the Government's own acknowledgement of the fact that cruise ships are getting larger and larger. The fact is that sooner or later, Gibraltar will have to adapt or get left behind.

It is also relevant to note that the financial return in the first year would not be insignificant. The Queen Mary II carries 2,620 passengers on board. The 2003 Tourism Survey says that cruise passengers are the tourists who spend more money in Gibraltar, and calculated that they spend £46 per person, on average. This means that using the 2003 figures, one visit by the Queen Mary would have generated over £120,000. There were four visits scheduled for the year. It should have generated nearly £500,000 million of tourist expenditure in Gibraltar. This figure does not include supplies for the ship or spending by the 1,253 strong crew. While the Opposition appreciate the expense that the dredging and other works entailed it is surprising that the Government have chosen to give priority to other projects which will not generate any income at all.

While on the subject of expenditure by cruise visitors, it is quite amazing that the Government do not record the number of cruise ship passengers who actually come ashore in Gibraltar. This means that the tourist expenditure figures are based on the number of passengers on board, or the capacity of the cruise ship, as opposed to those tourists who actually disembark and spend money, which is what the survey is intended to record. This was confirmed by the Minister for Tourism in answer to my questions. This is something that needs to be addressed in the interests of producing reliable and accurate statistics. It is also in the wider commercial interests of Gibraltar, to know exactly how many tourists come ashore, and what proportion choose to stay on board, so that we can entice those who may think about staying on the ship, with new products or new tours in the future.

Continuing with maritime matters in relation to the Port Department, I wish to give notice to the Minister that I will be

raising queries in the Committee Stage, in relation to Head 6-C Subhead 4(h), which deals with inspections, Subhead 5(b) which deals with port security, Subhead 5(c) which deals with radio communication system and Subhead 5(e) regarding the estimated £150,000 for waste discharge, Slop Oil Reception and Treatment Limited.

Mr Speaker, there were flights to Gibraltar, between Gibraltar airport and five airports when the GSD came into office in 1996. There are now flights to three. The Government have spent the better part of eight years that they have been in office, trying to replace the air routes that have been lost, before they can move forward from the position that they inherited. The most recent route that was reopened was the Manchester route, which is something that the Opposition welcomed at the time. The regional airlines experiment with the Casablanca route proved to be a complete failure, and air links with Morocco continue to be non-existent. The estimated revenue figures for airport departure tax for 2004/2005 suggest that the Government do not expect any growth in this area. The House will recall that it was a major policy objective of the Government to attract more tourists to stay in our hotels. These are largely tourists who come by air with tour operators, although many also come overland. The Government often points to increased air visitor arrivals as evidence of the success of their tourism policy. This is a misleading picture.

Mr Speaker, the reality is that although more people are coming to Gibraltar by air, more and more of those people go straight to Spain and do not stay in Gibraltar. Indeed, the 2003 figures for visitors by air show that nearly 30,000 more people flew to Gibraltar in transit than those who stayed here. This gap between those in transit and those who remain in Gibraltar has widened. This trend is reflected in the tourism figures of local hotels. Hotel statistics are divided into two categories. These are, all visitors on the one hand, and tourists on the other. All visitors could be anything, from businessmen to military personnel, to crews of sailors waiting to be transferred to a ship. The tourist component relates to people who come here on

holiday, and this is the relevant criteria that needs to be used in order to measure the performance of the Government.

The marketing strategy is aimed at attracting people to come here for a holiday, fly to Gibraltar, and stay in local hotels. The number of tourist arrivals at hotels is down in 2003 from what it was in 2002. The number of guest nights sold to tourists in 2003 is also down from what it was in 2002. Tourist occupancy in hotels is also marginally down. Earlier, I mentioned that the marketing spend of the Government was higher in the last financial year than ever before. This has not resulted in more tourists staying at hotels. The average length of stay of tourist arrivals, and indeed of all arrivals, was lower in 2003 than it was in 1996.

In conclusion in the last financial year the Minister responsible for tourism was away from Gibraltar on Government business for 27 days. This is just under a month travelling to one place or another, at considerable expense to Gibraltar. Government have also spent more money than ever before in order to attract tourists to Gibraltar. It is perfectly legitimate to measure the success or failure of the Government's policy using value for money as a yardstick. While we are not saying that tourists are not coming to Gibraltar it is clear that much more could be done with the money that has been spent. The results, in terms of visitor numbers, do not match the record levels of expenditure which continue to escalate out of control. Gibraltar is spending more and more money doing the same thing and not obtaining results in proportion to the money that has been spent. Particular advantage could have been taken this year of the Tercentenary, as a means to attract more tourists to Gibraltar. This is indeed what the Minister for Trade and Industry said that he wanted to do. Indeed, there has been a total lack of long-term planning. Events have been concluded half way through the year itself. This lack of knowledge of the full programme has severely curtailed the ability of the industry to market the Tercentenary. These things are planned months, if not years in advance. After all, the Government have known since 1996 that the tercentenary would be approaching. Why did they not do

something sooner to capture the public mood throughout the year? Why did they not embark on a marketing drive well in advance to attract more visitors? The liberation of the Rock from Spanish rule is something worth celebrating properly.

To conclude Mr Speaker, a cynic once said that governments are like nappies. They should be changed regularly and for the same reason. I will leave that there. Except that before closing, on behalf of the Opposition, I would like to thank the Clerk of the House of Assembly, Dennis Reyes, the acting Clerk, Paul Martinez and the staff of the House of Assembly, Coral Schembri and Kevin Balban, and you Mr Speaker, for your assistance throughout the last financial year. I would also like to welcome the advent of air conditioning to this House, which means that we are no longer working in a sauna. Thank you Mr Speaker.

ADJOURNMENT:

The Hon the Chief Minister moved the adjournment of the House to Friday 2nd July 2004 at 9.30 am.

FRIDAY 2ND JULY 2004

The House resumed at 9.30 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications

The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities

OPPOSITION:

The Hon Dr J J Garcia
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

The Hon J J Bossano - Leader of the Opposition
The Hon Miss M I Montegriffo
The Hon F R Picardo

IN ATTENDANCE

P E Martinez - Clerk of the House of Assembly (Ag)

Debate continued on the Appropriation Bill 2004 (Item 78).

HON CHIEF MINISTER:

Mr Speaker, it does not surprise me too much that only three Members of the Opposition, four now sorry, four, the Hon Dr Garcia has joined us, has thought it worth their while coming to listen to my response to their addresses of yesterday. In fact, I have to say that for the first time in eight Budget speeches in this House, in eight Budget Debates, I have been sorely tempted not to reply on this occasion. Because frankly, the novelty and substance of the speeches of the hon Members has been so poor, there has been so little new, so little difference to what they said last year, that there is almost the temptation not to reply. A temptation which I have pinched myself to resist, and so here I am on my feet.

Mr Speaker, as I say, the hon Members have limited themselves to regurgitating their same old prepared speeches. To listen to the Opposition, to listen to the party, or one should say parties, that hope to replace the Government, by persuading the electorate that everything in Gibraltar is dreadful, I mean any Gibraltarian that had been listening to yesterday's speeches and the day before, may come to the conclusion.....

HON S E LINARES:

Mr Speaker, on a point of order. I would like to state to the Chamber that the other Members are here now to listen to whatever the Chief Minister has got to say. There are some Ministers still missing on the other side as well.

HON CHIEF MINISTER:

Mr Speaker, there is one Minister in the toilet. The hon Member is a teacher, he should know that one is singular not plural.

Now, Mr Speaker, the message from the hon Opposition benches to the people of Gibraltar is, *"let us all go to the top of*

the Rock, jump off and commit collective suicide, because the situation in Gibraltar is so dire as a result of this dreadful Government that you have elected, for the third time in succession, we do not know what on earth you were thinking of electing this shower again, but as we think it is so dreadful, then we might as well all commit suicide collectively." Then when you strip the hour upon hour, upon hour of prepared speech which made no attempt whatsoever to answer the cases put by Ministers in their own addresses.....

HON F R PICARDO:

Mr Speaker on a point of order. I would like to say that on a number of occasions, specific reference was made to statements made by Ministers in their own addresses, in the replies. So therefore, that statement must surely be incorrect.

HON S E LINARES:

Mr Speaker, point of order. The point of order is that the Chief Minister is saying that we have repeated our speeches and I mentioned my speech, the main thrust was the cuts of the last five months, so it could not have been the last years.

MR SPEAKER:

That is not a point of order, it might be a point of exclamation, but then.

HON CHIEF MINISTER:

Mr Speaker, it may be that the hon Members think that the only tactic left open to them, to disrupt my response to the speech, is to jump up and down on their feet, like nervous jacks in the box. Mr Speaker, it may delay the time that I finish, which they may

not welcome, but certainly it will not deprive me of getting things out. Then when one strips their hour after hour, I mean the Hon Marie Montegriffo was on for nearly two and a half, three hours, the Hon Mr Picardo the same. When one strips their speeches of all the flannel, of all the rhetoric, of all the invention, of all the distortion, and one strips it down to what is the essence of their political criticism of this party in Government, it boils down, more or less, to three things. That they think that spending £35,000 on a cocktail party in the Savoy is frivolous. That there has been a slowdown, not a cut, a slowdown in the rate of increase of respite care to a handful of people, and that we have given away too much money to the tax payer in tax cuts. In other words, that we have cut tax so much, that the Budget surplus has become a tightly balanced budget, or a budget with a minor technical deficit. That is the bottom line of criticism involved in the combined political effects of the Opposition Members.

Mr Speaker, we draw great comfort from their view that everything is therefore well on the ranch. But what it demonstrates, as anybody that listened to their speeches on radio yesterday must have concluded, from their rambling nature, what it demonstrates is that the hon Members, far from being embarked on a political resuscitation, are as bored and uninspired as they have been for the last eight years. That is what their budget speeches demonstrated in this House.

If I could just start with the comments of the Leader of the Opposition, in which he appears not to be interested since he is leaving the Chamber.

HON J J BOSSANO:

If the Chief Minister is going to interrupt his budget speech just because I get up from my seat to go to the Chamber, without knowing what it is that I am going to do. What I do is what I have got to do and I will do for his benefit but he will know that I am not doing it because I do not want to listen to his speech.

HON CHIEF MINISTER:

Well Mr Speaker, I have been on my feet for less than nine minutes, and that is the fifth interruption. Starting with the observations of the Leader of the Opposition. He pretends to the people of Gibraltar that this is the worst economic record by any government in Gibraltar ever, because the performance is £14 million or £15 million worse. Well, I have got 12 year old children at home, who know the difference, not that the Leader of the Opposition does not know the difference, and this is the gravity of the charge, who know the difference between the difference on the one hand, between what one estimates would happen, 12 years in advance, and what actually happened, on the one hand, and the difference between actual performance last year and actual performance the year before last. The record of financial performance is not whether what one prognosticated happened, the proper measure of financial performance and record of performance, is what happened one year compared to what happened the year before last. Mr Speaker, by that obviously correct mathematical definition of record and events, the figures peddled by the Leader of the Opposition, are simply wrong. He can say if he likes, and it would be true and accurate, that a surplus of a few million pounds last year, had become a deficit of £1.3 million. He can say that the deficit, if everybody funded by the public service had brought last year's deficits into this year's Consolidated Fund, last year that has just finished, and not carried forward losses, as I explained in my budget speech, he could argue if he wanted to, and as indeed he did, that the deficit technically should be higher than the £1.3 million that the Estimate shows. And he would be correct, if that were to happen. Statutory bodies have been carrying forward deficits to be cleared up by the Consolidated Fund in future financial years, for some time. It is not as if this has happened for the first time this year. Then, the hon Member says, *"Ah, now as a new statement, the Government say that the elimination of the surplus was deliberate policy, now."* Thereby trying to give the impression to the House that this is an excuse found after the event, for the fact that budget surpluses have been eliminated. Well, there is nothing new about the statement and there is

nothing now about the statement. I invite the House to revisit Hansard on almost each and every one of my budget addresses in past years, when I have carefully explained the four golden rules, underlying each and every one of this Government's economic policies. I have explained the Government's intention to divide the results of its economic resources, and of its economic success, in shares. Part to return to the tax payers in tax cuts, part to invest in capital projects without having to borrow as much capital as otherwise would be necessary for an investment programme of that sort, by using surplus revenue as capital in the next year. Thirdly, to improve public services. Every year I have said that, every year I have done that, and now, when the exercise runs its course, the hon Member says that it is a new statement, and that he now says that the elimination of the policy of the surpluses, is a matter of record. Well, look, I had not thought it necessary to point out to somebody who claims to be versed in economy, that if a government raises expenditure, as he knows we have been doing every year, cuts revenue, as he knows we have been doing every year, by reducing our tax take and therefore not getting our share, the Government's share of the growing economy. It must be plain to him, as I am sure it must be plain to anybody that runs even a household economy, that if one raises ones expenses year after year and cut ones revenue year after year, then, eventually, ones revenue and expenditure will match, and if we carry on, expenditure will exceed revenue. It has been such an obvious, declared, admittedly, not explained as to the consequences. The consequences are so obvious of the policy, that I had thought it unnecessary, but look in the future I will take nothing for granted. But I would have thought that everybody in Gibraltar understands that the Government have been returning money to the people, through tax cuts, and through expansion and improvement of public services. That the consequence of that should be the erosion of the budget surplus, where on earth does the hon Member think all that has been paid for. So there is nothing new in the statement and there is nothing now about the statement. Just as it is not new, that the hon Member just distorts the reality for the purposes of his debating convenience at any given time.

Then, for a man who professes knowledge of economic matters to say, *“well if the hon Member boasts in an interview in a newspaper, that the economy is firing on all cylinders, that must mean that he does not think that it can grow any more than the 6 per cent that it grew that year. If he thought it was already firing on all the cylinders, at a time when the economy only grew 6 per cent, if it turns out that it grew 8 per cent, then he cannot take credit for the 2 per cent because he thought it was impossible.”* Mr Speaker, this is economic theorising reduced to a level which is beneath the comprehension even of economic illiterates. That is the reality of it.

Mr Speaker, one of the principal reasons why I resisted the temptation not to bother to reply, given that there was so little new in their speeches, one of the reasons why I resisted that temptation, amongst others, is that I think that the hon Member did raise a question that deserved an answer. That was their view that the Estimates of Revenue and Expenditure on the one hand, in their presentation, and the presentation and the content of the Appropriation Bill, were not in keeping with the Constitution, or with the Public Finance (Control and Audit) Ordinance. We do not share that view, but if the Leader of the Opposition chooses to express that view in the budget debate, I think it is incumbent of the Government to respond to him.

I think he was making in fact three different points. He did not necessarily make them all together but under that general head, I think he made three points. If I could just pose them as a question. He thought that the Constitution may not allow, I cannot remember whether his view was that it did not allow or that it was not clear or that it may not allow, on this particular point, I was clear on the other two points but on this one I was not certain whether he was actually saying that it did not allow or that it was unclear. The point being the question whether a Supplementary Appropriation Bill could be combined with an Appropriation Bill, or had to be physically two separate pieces of legislation brought separately to this House.

HON J J BOSSANO :

Mr Speaker, I can clear the point if the Chief Minister wants. I did not say that the Constitution did not allow them to be combined. I said, as far as I was aware, since the Constitution came in 1969, it had never happened before.

HON CHIEF MINISTER:

Well, Mr Speaker, that may be true. Our clear view and our clear advice is that it is perfectly constitutional because what the Constitution requires is the House to approve the excess expenditure, by an Appropriation Bill. In the case of excess expenditure, a Supplementary Appropriation Bill. That is a reference to the statutory legislative mechanism that has to be deployed. The Constitution does not require, let me put it this way to more directly address the facts before the House, the Constitution in no way prevents that if the Government have to bring a Bill to approve monies for this year, and a Bill to get the House to approve monies for last year, it can be brought in the same Bill provided that it is separately set out. In other words, providing we do not try and pretend that the money for clearing up last year's excess, is part of this year's expenditure. That would be wrong. But the way it has been done in effect is two Bills, with separate parts showing separately what is money that we are voting now to pay for excess funding, excess expenditure last year, and what is, we are advised, after the event, as indeed we were advised before the event, that this was perfectly acceptable. If the hon Member says it has never happened before, I have no reason to doubt him, he has been here longer than me, I am not aware, personally, whether it has happened before or not, but that is not the issue. The issue is whether it is legal or not legal. There are many things that do not happen before which are perfectly proper. The second issue of a legal nature that he raised, was the question, if I could just summarise it in telegraphic language, just to identify it. Whether it was legitimate in a Supplementary Appropriation Bill, to vote funds to

the Supplementary Funding subhead. In other words. I am just describing it telegraphically, I will go into it now in more detail. In other words, the essence, just so that the record shows that we are discussing the same issue. Some years ago, the Government, in fact it was his government, introduced the what I think is, I do not remember what he expressed at the time, but now that I have been in Government and seen the difficulty of accurate estimating, the perfectly sensible mechanism of adding a new head of expenditure in the Estimates, which generally we could call supplementary. In other words, whereas normally the budget is divided into departmental expenditure, so much for housing, so much for trade and industry, so much for education, so much for health. At the end, so much for the police, so much for the judiciary, at the end, there is an additional head that says supplementary funding. Money goes in there and as a result of the laws that govern Government finances, the Government, through a warrant of the Financial Secretary, can then take funds from that sort of catch-all head at the end, and pass it to any of the departmental subheads. When there is excess expenditure in the departments, there is a sort of netting exercise happens, virements within the heads, and then the Financial Secretary takes money by these warrants, from this head at the end, catch all head, to wherever it is needed. The essence of the hon Member's point is that there is a requirement, when there is supplementary funding, in other words, when even the money in that catch all fund has run out, and the Government need even more money than that, that was authorised for the House, that the Government should set out which of the departmental spending heads originated the need for that extra money, rather than say I need the extra money for the catch all head at the end, and once it is there I will, without anybody seeing what I am doing, pass it to where the actual over-expenditure took place. That is the issue.

Well with respect to the £2.5 million Supplementary Funding Appropriation now being allocated to the Supplementary Funding subhead for the last financial year, I have to tell the hon Member that this follows a precedent established by him in 1995 when he was in government. He did this for the first time. The only

difference is that we have done it for a bit more. I think he did it, we are doing it for 1.7 per cent of total expenditure and he did it in 1994/1995 for 1 per cent. So, fine, it is for a slightly bigger sum now, but it is the same. *[Interruption]* Yes Mr Speaker, I have heard what the hon Member has said that he did not do it before the end of the year. But, that is the same difference, that is a distinction without a difference. What is the difference? One is just as able now to see in the forecast outturn figures, to see where that money has been spent. *[Hon J J Bossano: No we cannot]* Do not worry Mr Speaker, I am going to give it to him now. The only point I am trying to make is that the principle of getting supplementary appropriation authority in this House, after expenditure has been incurred without authority, and not coming to the House to say I need it because the education budget has spent too much, or I need it because the health budget has spent too much. But just to say give me more money to put in the catch all pot at the end, for me to distribute as I like, that principle was not established by us. He established it, and the fact that it is now after the end of the financial year, and when he did it was before the end of the financial year, really makes no difference to the principles. I am putting facts before him in the House. He has raised a question of the legality of certain Government presentation of the Appropriation Bill. He may now feel that he is able to distinguish the behaviour on the facts, but that distinction is irrelevant to the question that he has put before the House, which is the legality. It is not the legality. The legality is whether when the House is asked to vote supplementary expenditure in a Supplementary Appropriation Bill, the law requires the Government to set out there and then, at the time that the House is being asked to provide the extra money, what excess of expenditure generates that requirement for additional funds. That is the legal question, and that practice of not doing that, has not been done by us for the first time, it has been done by him for the first time.

HON J J BOSSANO:

I challenge the truth of that. That is what the Chief minister will not let me do.

HON CHIEF MINISTER:

Well, Mr Speaker, if the hon Member thinks that I am not telling the truth, that is a point of order which I am sure the Speaker will allow him to speak. But I am not willing to give way to him just so that he can keep me on this issue, which as far as the Government are concerned, is a non issue, for the next 25 minutes whilst he debates it with me. As far as the Government are concerned, it is a non issue. Because it is no less in breach of the requirements of statute now, that it was when he did it. He can spend the next half hour trying to explain that it, in his case, was different to it now, by reference to factors which have no legal relevance.

HON J J BOSSANO:

Mr Speaker, on a point of order. First of all if the Chief Minister says that it was no less legal now than it was then, and he is suggesting that if it was illegal then it is perfectly legitimate for it to be illegal now, that seems to me a very strange argument for somebody who purports to know the law, like he says I purport to know economics. The point that I am making is, that that argument cannot be factually correct, because if the Financial and Development Secretary had exhausted the £2.5 million in January, and come to the House and said in February, I want a Supplementary Appropriation Bill because I have now run out of money from the £2.4 million that I had in the supplementary head, after he moved £400,000 from the Pay Review Head, and I know that I am going to need this money but I do not know what I am going to need it for, so I want to top up the supplementary. To me, that is not in conflict with what the legislation and the Constitution says. Because he cannot give us a breakdown by

head, because he does not know where it is going to be spent. But if the Hon Member comes with the law here, three months after the end of the financial year, then he is in a position to say, the money I am asking the House to vote, has been spent on such and such a thing, and there would be a little note which would tell us why it has happened. Since we have not had the opportunity to do that, then what I am saying to the Chief Minister is, well, we expect now that he will be telling us in respect of the £2.5 million how it has been distributed.

HON CHIEF MINISTER:

Well, Mr Speaker, I am glad that I sat down and let the hon Member speak, because it just confirms me in the view that the distinction that he is drawing is wholly irrelevant. Look, it would be a wholly improper for the Government to come to this House in January and say I am going to need more money but I do not know what for. No, that is what he did in 1994/1995. But for the hon Member to suggest that it is legal to come to this House and say, give me more money, and I am not going to tell the House what it is for, because I do not know what it is for, the view that he has just expressed that in his judgement that is legal, but this, which is in principle exactly the same, except that we know what it is for, and that the channelling of it through that route is just for mechanical convenience, is an extraordinary situation. So I am glad that the hon Member has stood up, I am now reinforced in my view that his assessment that this practice is against the Ordinance, which we are being advised is a view which has no merit, actually has no merit, because when the hon Member has explained in this House the thinking behind.....

HON F R PICARDO:

Point of order Mr Speaker. It is not the Ordinance, it is the Constitution.

HON CHIEF MINISTER:

Mr Speaker, it is like debating with sixth formers. What is the difference. Mr Speaker, I have said the law. The Constitution and Ordinances are both laws of Gibraltar. Well, because there is aspects of Ordinance and there is aspect of the statute. Mr Speaker, honestly, it is like debating with first year law students at the university. They rise, just for the sake of interrupting, to make points that advances the debate not one iota. It is all for the sake of interrupting. Mr Speaker, so in summary then, when the hon Member in 1994/1995 wanted the House in January to give him £500,000, he brought a Bill that simply said Consolidated Fund, Head 18 Reallocation and Conventions £500,000. That is in principle, exactly the same thing as the Government have now done. As the hon Members, when we come to the Committee Stage of the Bill, can ask the Government why that money actually was necessary. If they do, we shall give them the information at the Committee Stage. Just so that the hon Members do not think that we have formed the view that it is legal because they did it, and therefore if they did it there is nothing wrong in us doing it now, because they might have been wrong when they did it, that is not the basis upon which we have come to the view that it is legal. The basis upon which we have come to the view that it is legal, is that the Constitution, in article 65 says, that the heads of expenditure shall be included in a Supplementary Appropriation Bill, and the head of expenditure to which the money is being voted, is the Supplementary Funding head. In his case, it was, as it was then called, the Reallocation and Subventions Head. That is the head and that, therefore, is what the Constitution requires the information that the Constitution requires the Bill to contain. Of course it does not say, perhaps, because at the time that the Constitution is written the hon Member had not yet invented the very appropriate practice of having a supplementary head at all. Perhaps if the writers of the Constitution had known that the hon Member was going to be elected Chief Minister of Gibraltar a few years later, they might have been more careful in many more of the provisions of the Constitution, and drafted them a bit more sharply. For example, this one might have said, and the Bill

shall set out the excess of expenditure in the departments which gives rise to the need for extra funding. If that had been the language of the Constitution, then that would have required what the hon Members claim is required. But because the Constitution says Supplementary Appropriation Bill must set out the head of expenditure to which the money is being voted, that is exactly what the Bill does.

Mr Speaker, the third point that the hon Member made was that he believed that it was not in keeping with the requirements of legislation for the Government not to set out the balance to complete figure in the Improvement and Development Fund. Again, we do not share his view. The presentation of the balance to complete has not actually been abandoned, but the information is now presented where it is presented in notes to the Estimates. As can be seen from page 109 of the Improvement and Development Fund, in respect of expenditure on EU programmes. This is in compliance with the requirement of the Public Finance (Control and Audit) Ordinance to show, "the total estimated cost of the project". That is the statutory requirement.

In 1997 the Government moved to presenting more generic subheads, covering numerous projects, and where some of these clearly continued from year to year, the balance to complete was shown. Large projects, like the purchase of the new hospital, were identified separately and carried balance to complete figures. Over the last four years estimates, the number of balance to complete shown in the balance to complete column has varied between six and two. In the 2003/2004 Estimates, there were 52 subheads presented in restructured I&DF fund heads, of which only six had balance to complete figures. Two of these related to EU programmes and continue to be shown in this year's Estimates, albeit as footnotes. One was the Theatre Royal, and as this project is on hold, the balance to complete is not relevant. In two other cases the relevant programme or projects were, I believe, completed. Therefore there is no balance to complete. In the final case of remedial works and repairs to housing stock, the balance to complete was of spurious accuracy, due to the continuous nature of this

programme and the changing requirements year on year. The Government will continue to show, for large individual projects, the balance to complete, but will not be doing so for generic subheads covering many projects, as has been the case now for a number of years.

The hon Members will know that the requirement in the Ordinance, section 28, to show the balance to complete figure, is in respect of each development project for which provision is made. Now, the hon Members will see that the format of the Improvement and Development Fund over the last several years, has moved away from the concept of identifying individual projects, to generic heads. So, for example, now it says repairs to school buildings, or it might say repairs to Government buildings, or it might say tourist beautification projects, or housing maintenance projects, and they no longer identify, in the main, they no longer identify individual development projects. So, this is not to say that it is not entirely legitimate for the hon Members to seek that information. I think they are entitled to say to the Government, for example at the Committee Stage of the Bill, *"what projects does your head £3.2 million tourist projects, what projects do the Government expect, at the moment, to spend that money on?" And what is the total cost of those?"* I mean, it is not that the Government do not want to give the information away, it is just that the presentation, the way that the Estimates, Improvement and Development Fund are set out at the moment, it would be nonsensical. Because, for example, if we say, take the repairs to the refurbishment of Government housing estates, just as an example. Well, what would be the balance to complete figure? It is an annual rolling programme, it is a bit like painting the Forth Bridge. So it is actually nonsensical, but the Government are perfectly happy to answer questions in detail, at Committee Stage for example, of what are the projects and, where the project is not expected to complete in this year, to give an indication of the best estimates at present of how much the project will be, come its end.

Mr Speaker, moving on if I may, the hon Member said also, if the Government do not think that the economy can grow faster, then

the only alternative is to raise revenue or cut expenditure. So why is he doing so now? In other words, the hon Member was saying, *"if you think that the economy can grow faster than it is growing now, you would know that there would be increased revenue to the Government in the future coming from that growth. Therefore, you only raise other revenue heads when you do not think that there is going to be more growth, and therefore when you do not think that more revenue is going to come to the Government from that as a result of that economic growth. Therefore, the fact that you are raising the other revenue now, must mean that you do not think there is going to be more economic growth."* [Interruption] Well, it is not logic Mr Speaker. I am describing his logic. I do not think it is logic and that is the essence of my point, that that is a complete non sequitur of logical associations. First of all, cuts in taxation which the Government have done every year for the last eight years, and intend to resume as soon as possible, cuts in taxation deprive the Government of its share of that economic growth. Because, of course, if we did not cut taxation and watch the economy grow, that would result in more money coming in to the Government, and it would result in my surpluses rising. Well, to the extent that I give away, per year, in tax cuts, more revenue through give-aways than I get extra through the economic growth rate, in previous years reflected through fiscal drags in the taxes that I collect in the subsequent years, that is giving away a share of the Government's share in the economic growth that he is referring to, and the Government can not do both. The Government can not have both a tax cutting agenda and rely on increased revenue from economic growth, to pay for their capital investment programme and to pay for the rising costs in public services. Just as the Government can not rely on growth. The Government think that there is going to be growth. The Government are confident that there is going to be growth. But it would be wholly irresponsible, for the same reason that I think his election manifesto at the last Elections was irresponsible. Even if his judgements were right, which they are not, but to say, *"I promise you all these things, which I can only afford to pay you if there is a 12 per cent rate of economic growth sustainable year on year."* Mr Speaker, economic growth may or may not occur.

There may be external factors, there may be global trends that arrest or interrupt what one thinks is going to be one's economic growth. But if we have established our public expenditure, assuming that there is going to be economic growth, and it does not materialise, then we are left completely and utterly exposed. For the hon Member therefore, to deduce from the fact that we are raising revenue in areas which have not been touched, in one case for 20 years, which we do both as a matter of prudent public financing and to deliver fairness to those tax payers who are now home owners, but who through their taxes are financing both their home ownership and the subsidy of public housing rents, for the hon Member to deduce from that, that the Government do not believe there is going to be economic growth, is simply devoid of logic. I recognise in it the Hon Member's debating style. Because there is an element of truth in it. I mean, if the Government did not think that there was going to be economic growth, then the Government would certainly increase revenues. The corollary of that is not true. The fact that they do increase revenue does not mean necessarily that they do not think there is going to be economic growth. I therefore believe that that argument is completely spurious.

Mr Speaker, the hon Member pointed to the static three years of corporate tax yield and said, *"ah you see, there has been economic growth and this disproves the theory that 10 years ago, or six years ago, or four years ago, whenever it was, that growing tax yields is an indicator of economic growth."* First of all I do not think the hon Member's logic is again sound, but is he still contesting the proposition? That if there is a growing yield in tax, and it is not caused by such thing as collection of arrears, if there were genuine growth in corporate tax yields, does he dispute the proposition? That this must mean either, that there are more companies doing more business, an indication of economic growth, or that the existing number of companies are doing business more profitably. Another indicator of economic growth. So, I am surprised that the hon Member challenges the proposition that rising tax yields, rising company, well so is individual tax yields for that matter, but growing company tax yields is an indicator of economic growth. I agree it may not be

an indicator that is extractible on a straight line basis, so that there is a 20 per cent increase in company tax yields, then there has been a 20 per cent growth in the economy. It is not a straight line extrapolation but there is no rise in, subject to fiscal drag, there is no rise in take from commercial activity, that is what tax is. Corporate tax is the Government taxing profitable commercial activity. Well, in an economy that is not growing, there is no growth in taxable commercial activity.

But then, that to one side, could I just point out to the hon Member, that one of the principal reasons why the Corporate Tax rate take is static, is that as he quite rightly identified, it is now combined with the Exempt Status tax, and there has been a decline in that. But the exempt status tax, that is not a measure of economic growth, because the £200 or the £225 a year that the exempt companies pay, is no reflection, numerically, of any underlying commercial profit or loss, or activity or non activity. But it does reduce the Government's yield from corporation tax. So the reductions in exempt status yield, has masked small increases in domestic, if I can put it that way, corporation tax yield.

The hon Member asked whether the fact that we were not prophesying, we were not predicting or estimating increases in tax yield, whether that meant that we did not think there was going to be economic growth. Well, it does not actually mean that. What it does mean is that the Government are proceeding cautiously in all matters connected with yields from corporation tax, because we are in a transitional period. We are in a period where there is uncertainty affecting our tax, we do not know yet what is going to be the future of the exempt status company in the next five years, therefore we do not know whether our revenue from that source is in jeopardy or not in jeopardy. We just did not think that it was prudent budgeting, to in those circumstances, to actually be predicting increases. We would rather just stand still, a little bit like rabbits caught in headlights, and do not touch anything and await events, rather than start writing in to Government finances predictions of increase, when

really what there is, is a fair degree of uncertainty, for reasons which the Hon Members know.

The hon Member also asked whether, well he speculated that the fact that there was less provision for public sector pay in the Supplementary Funding Head, whether this meant that the Government knew or had indications that pay settlements in the UK in the future were going to be lower or not. It does not mean that. What it means is, and I might if I had thought of it I would have mentioned it in my opening address, what it does mean is that because the current pay deal is three years, and we know what this year's pay increases are going to be, they are already built into the emoluments heads. In other words, we are not relying on that vote to its usual extent. We may rely on it for some things that are not covered, we may rely on it for some elements of the public sector funded pay which is not covered by the three year pay deal. But for the bulk of the public service, the increases that will be due in 2004/2005, are already factored in to the principal provision for emoluments.

Mr Speaker, when the hon Member addressed the question of my remarks during the election campaign, about whether the economy could grow, when he addressed my remarks earlier in the day on that issue, he said, now he is saying only that 12 per cent is not sustainable but that it is possible. Yes. But I am not saying it now. What I said to him in my opening address was a clarification of his misrepresentation of what it was that I had said originally. Well, having told him, if he says, because he said that I had blue eyes, and I say to him, *"no, hon Member, I did not say that you had blue eyes, I said that you did not have green eyes."* When he replies to me he cannot say, now he says I did not have blue eyes. What I had just said to him is that he got wrong the first time, the use that he has made of what I had said. So it is not that I am now saying only that 12 per cent is not sustainable although it is possible. What I have said to him is that from the very outset I said to him, 12 per cent is unlikely, but even if it could be obtained one year, as it could easily be one year, it is not a sustainable rate of growth. So, to make spending commitments based on the assumption that our economy can

year after year grow by 12 per cent, is unrealistic. That is what I said at the outset and that is what I say again, and that is what I believe the hon Member, in the bottom of his heart, understands. He must know that there is no economy in the world that can deliver sustained year on year indefinite 12 per cent increases in economic growth. Now, if he does not think that, then it is another issue upon which we will just have to agree to differ.

Mr Speaker, the hon Member embarked on another classical example of Bossanesque oratorical style, when having heard me go at some length and in some specific detail about the record of the Social Insurance Funds, and when he had heard me out he stands up and says, when he starts his reply, well first of all I am going to deliver my prepared text and then, when I have finished my prepared text, then I will deal with the Chief Minister's inventiveness, his exact words, inventiveness about the record that I had just put straight. So, had I not fallen out of the habit of quaking in my boots at anything that the hon Member says, there was a time, about 10 years ago when I might have quaked in my boots waiting to see how the hon Member was going to demonstrate my inventiveness. Alas. It then turned out to be his usual trick, which is to scatter on the issue in a way that does not address the point that I was making, and I am still none the wiser as to whether I was being inventive or not in what I said, because he never addressed the issue that I said, he addressed some other tangentially related issue. The Hon Member is really the political equivalent of the Gatling gun. The Gatling gun mounted on the back of a ship so that when there is an aeroplane coming in to attack or a missile, one just sprays the air with bullets. None of them actually targeted at the incoming attack, but one fills the sky with bullets in the hope that amongst all the other things that one kills, one kills the attack. The hon Member's political style is really as close to the Gatling gun as I have seen in anybody. But it is a huge waste of ammunition, particularly when not even with the Gatling gun, and despite filling the air with bullets, one actually kills the target. Now, the hon Member addresses as pure inventiveness my analysis that he reduced the Social Insurance contribution going into the Pensions Fund, he describes it as inventiveness, and the reasons why he thinks

it is inventive have nothing to do with the level of pension contributions. It is on the basis of the self evident fact and reality, which I have not disputed, that when he left office in 1996 there was more money in the Pension Fund than he had found in it in 1988 when he arrived. Well, look, that is a self evident reality which my address had nothing to do with. If I had said in my address, well because he eroded the funds, as I once said 10 years ago, when I did not have in front of me the information that allowed me to work out how much of the fund was ODA money and how much was Gibraltar money, but on the occasion that I spoke yesterday, which is the occasion on which he said that I was being inventive, I said nothing whatsoever to do with the amount of capital in the fund. I said, which is an incontrovertible fact, which I will not allow his Gatling gun to shoot down, that he was the first Chief Minister, indeed the only Chief Minister of Gibraltar, ever to have reduced the proportion, the share, the amount, so that nobody thinks I am playing with percentages, the cash amount of the weekly contribution going in to the Pension Fund, no Chief Minister before or after him has ever reduced the amount of money per week from the Social Insurance stamp going in to the Pension Fund. That is not inventiveness on my part. That is incontrovertible fact. If he had wanted to demolish my arguments and sustain his absurd suggestion that I was being inventive, he would have had to show that I was wrong in saying that he had reduced the amount of money going into the pensions contribution. He should remember that I gave him the benefit of the doubt when he said that part of the pension monies he was putting in another fund, the Short-Term Benefits Fund, to protect it from the British. So he cannot say, no, no I did not reduce it, because the bit that I reduced I was putting to one side, it really was pensions but I was hiding it from the British. Because in my analysis I gave him the benefit of that doubt and I combined the both funds, even until 1996, when he carried on paying the £1.44 into the so-called UK theft-proof Short-Term Benefits Fund, the figures are still lower. When he left office in 1996, the amount of money going in to the combined Social Insurance Funds, and definitely going to the Pension Fund, but even the combined fund was less per week than the amount of money that had been going into it when he arrived in office in

March 1988. Of course, he could say if he wishes, that he diverted money away from pensions because he thought the Pension Fund was then over-funded. He could say, well look yes, I reduced the element of pension contribution of social insurance contribution going into the Pension Fund, because I did not think the Pension Fund needs it because after all the capital is rising and as the capital is rising, I do not think we need to put more money into pensions, and as I do not think we need to put more money into pensions I am going to divert it to health, which is what he did. But he has not argued that. It would be, surely, grossly irresponsible given that he now says that it is evident that we are all living longer, and that it is evident for all those things, that there are more pensioners, it would have been only fat cats, to use the phrase that has been used across the way there, only fat cats in the public sector, in the private sector raid into the Pension Fund in the good times because they think it is over funded. Not thinking that the good times provide the fat for the bad times. That is what I have accused him of. I have accused him, which is incontrovertibly true, of being the only Chief Minister, not only did he not grow the level of contributions, well he grew the level of contributions but he reduced the catch share of it that went towards pensions or Short-Term Benefits Fund, or both. That is the case that I made against him. There is no element of inventiveness. There is no element of the Chief Minister does not know what he is talking about. It is a fact. As it is also a fact that notwithstanding his raiding of the Pension Fund it nevertheless grew during the years. Well, no thanks to him. Of course no thanks to him. Thanks to rising interest rates and rising investment income of the capital.

Mr Speaker, nobody that cuts the income of a fund can take credit for its growth. The erosion of capital, which I accept has accelerated since 1996, for the same reason, for the same but opposite reason as it grew in his day. In other words, that there has been a huge fall in interest rates. If the Pension Fund has two sources of revenue, one is contributions and the other is the money earned on interest by the capital in the fund invested in the bank. So if the Fund has £20 million or £25 million and interest rates are 10 per cent, one gets £2.5 million in the Fund

just on interest from reinvesting the capital. But if interest rates fall to 3 per cent, that same amount of capital will pay you a third of the amount of income and that reduces, and it did not start happening in 1996. I do not know if he has examined, if he has had a close look at the figures, but actually it started to happen in 1994/1995. Albeit by small amounts, and another increase but still not very significant amount of erosion occurred in 1995/1996. As the years have passed, and as interest rates have fallen, the hon Member knows that this is the case. When he fixed the terms of the Bond, of the Gibraltar Bond, the £50 million that he floated on the market, at the time he thought it was a good deal to fix it at eleven and five eighths per cent. Because that is where interest rates were at the time.

Well, look the Government have just done a deal which is more expensive than ordinary borrowing for the hospital at 5 per cent. That is the reason and it is true that the erosion has accelerated whilst we have been in office. But it has not been because the contributions have fallen, because they have not, they have risen, it has not been because there are less contributors, because there is not, there are more contributors, the number of jobs in the economy has grown. It is because pensioners are happily living longer, and it is because interest rates and therefore the investment income of the fund. Is the Government aware of this? Of course the Government are aware of this. Does the issue have to be addressed? Of course the issue has got to be addressed. Does it mean that pensions are in jeopardy, and that the Government may run out of money to pay pensions to the pensioners sitting down there in the Lower House should worry about whether at some stage in the future the Government are going to stop paying them their pensions. Answer, obviously not.

Mr Speaker, the hon Member says that one of the things that the Government could do is to combine the Funds again. Indeed it is one of the things that we are considering doing. There was a time, in fact when he came into office, there was a combined Social Insurance Fund and the, yes before he arrived in office in 1988, the position was that there was then a combined Social

Insurance Fund which dealt both with Old Age Pensions and with statutory Short-Term Benefits. That is indeed one of the options that we are considering, but that is wholly different to the question of the level of contributions to the Fund, which at some stage have got to increase. Really we are only waiting to see how much of the capital erosion we can reverse through collection of arrears on a more aggressive basis, although I know the hon Member thinks that our words are paper tiger, well, we want to see how much of the capital erosion can be fixed through just getting people to pay back the arrears they have accumulated over the years, which are millions and millions and millions of pounds. Now that interest rates are creeping up, we want to see what effect that will have as well, and when we have studied that, of course we will take action. It is not true to say, well, it may be true to say it depends when it happens, the hon Member says the next Government will inherit less Pension Fund than he inherited. Well that remains to be seen. Well, that is him speaking so the he there is me not him. He said, I left Mr Caruana, well Mr Caruana if he was that courteous to me, I think it was just Caruana, I left the Chief Minister more money in the Fund than I Joe Bossano inherited, which is absolutely correct. But he, Mr Caruana, will leave to his successor less money in the Fund than he, Mr Caruana, inherited. Well, I do not see, he will have to wait and see whether that is true. I accept that it is certainly true as of this day. But, unless I fall under a bus immediately that I leave this House, yes, one of the buses that are they say too big and therefore there is an increased danger of falling under, I do not intend that judgement to be made today.

Mr Speaker, listening to the Hon Mr Charles Bruzon, it is difficult to come to the conclusion that he is not being sincere. It is difficult to come to the conclusion that he is motivated only by political opportunism. I do not think that that is in his personal nature and I therefore, not only do I not assume it against him, but it is only a judgement to which in his case I would come as a last resort. Because I do believe that he has high levels of personal sincerity and integrity. But of course that is not the same as accuracy of political assessment on his part.

Mr Speaker, the hon Member, Mr Bruzon, and indeed the Leader of the Opposition before him, this is one of the three great criticisms of the Government. I only identified three great criticisms of the Government in the whole budget debate that we lavishly spend £35,000 in the Savoy reception, that we cut taxes too much and hence the elimination of the surpluses and this one, this dreadful cut in respite care. The hon Member the Leader of the Opposition said, *"of course, once you provide a service people get used to it."* In a recent public statement outside of this House, he went further. He said, *"of course if you raise the level of service just before an Election."* Well, Mr Speaker, the number of people benefiting from this huge increase in unauthorised expenditure, are not electorally relevant. Yes, I am going to explain to him the huge increases that there has been.

So I am putting into context. When the hon Member, Mr Bruzon, speaks emotionally about cutting in the help given to the most vulnerable members of our society, of course, he can say, as indeed one of his colleagues there said, *"well, although I am a Member of the GSLP and I think they are the best thing since sliced bread, I am not to be held accountable for what the GSLP did before I joined it or when they were last in government."* Well, this cut in help given to the most vulnerable members of our society, is a service which his allegedly more caring party, thought fit not to have at all, at all. I do not hold the hon Member personally responsible for that. But I think the Government are legitimately entitled, when they are subjected to criticisms from the hon Members, and I know they like to write this off by saying they cannot look back eight years, they have now got to account for their record, but as I say to them every year when they say that, the past record of the person crying wolf, is relevant when assessing the political sincerity and credibility of the criticism when they make it. I do not think I am being hugely unreasonable in saying that people who did not think that a service was necessary at all, are not really the most credible advocate of the view that a small reduction in last year's hugely increased expenditure, is cutting the help given to the most

vulnerable members of our society. I am perfectly happy to be judged by others in the reasonableness of that view.

Mr Speaker, the Leader of the Opposition said, *"yes, but of course, respite is just an estimate and then you get people used to the service and then the Government cannot cut it back."* With the greatest of respect to him, I do not agree with either of those statements. Yes, it is an estimate. But honestly the hon Member must surely not intend to indicate that therefore, when the House votes in this House on an estimate, that that is a meaningless figure. The Government do not view the appropriation mechanism of this House as being a meaningless discussion on an estimate, that the Government are free to ignore. As far as we are concerned, we do not always succeed in keeping to approved estimates, but as far as we are concerned, at least I am concerned, and this is what I mean by budgetary discipline, when the House votes the budget and says, *"you shall spend on education so much"*, or on health so much, there has got to be a real effort to keep to those limits. There are some heads of expenditure where it is not possible. For example, as we often discuss the head for university grants, well, that cannot be done because that decides for itself how many students get a place in university, that is then the amount of grant. How many people get sent to England on sponsored patients, that is not something that one can calculate in advance. People get ill, whoever needs it gets sent. But when there is a budget for a service, the size of which can be designed by the budget controllers, there is an obligation to keep the delivery of the service to within those bounds. It cannot just be demand-led.

Let me say to the hon Member, let me remind the hon Member of what he had to say on these issues, that is the Leader of the Opposition, back in 1993, he will remember that in those days his concern was not about whether he could afford respite care, his concern was whether he could afford to man the home at all. The Dr Giraldi Home was built, this was in 1993, and it remained closed because the hon Member said he could not find the money to run it. There was a demonstration by the Disability Society saying, *"why on earth are you not opening this facility."*

This is what he said to the House, and I do not wish to rely on that aspect, that was just background context. This, quoted from the Hon Mr Bossano when he was then Chief Minister in 1993, is what he had to say generally about the affordability of demand-led public services. The Hon Mr Francis asked him, Mr Speaker is there any indication of when the Government will be in a position to open the extra floor, or provide for the staff and the equipment. Answer, the Hon the Chief Minister, no. No indication. The question of the extra floor and what it involves is something that I am currently discussing with the Society for the Handicapped, but I will make clear to them that the amount of money we can devote to this sector of our community is not unlimited. Therefore, when the Government will be doing what the Government will be doing in this budget, which it started doing in the last budget, is to identify all the money that we spend in support of handicapped people in different heads of expenditure, so that we can finish up establishing of the total money that the people of Gibraltar spend on different things. How much is it reasonable should go as the share of this particular group, which are very deserving, and which we feel a great deal of sympathy for, but we still have to know what is the total amount of money that is available. At the end of that, within that total budget, decisions will have to be taken if there are more demands than there is money, as to what the priority should be. Very sensible, very prudent, very obvious. But why then do they subject, when we do the same, to a wholly different treatment of cutting the services to the most vulnerable members of our society.

Carrying on. It has been made absolutely clear, this is quoting from the Chief Minister in 1993, it has been made absolutely clear to the representative of the society that there is not an infinite budget. Therefore, the only way that we can commit ourselves is by saying that we have got so many hundreds of thousands of pounds a year, and there are so many people. In other words, we divide the money that we are able to provide by the amount of people demanding the service, and we distribute it fairly. Well, in fact, what we have done is not even as stringent as that. Because what we have done is simply to rein in a small

amount of the unauthorised growth last year. But the amount of money provided in this year's budget for the respite service is still much higher than the amount provided in the budget for that service this time last year. They nevertheless at a department level, decided to spend hugely more than that, and what we are saying this year is, *"well we are not willing to allow you to decide what this year's provision should be by simply replicating what you decided to overspend by last year. We are reining in, not the original budget, we are reining in the amount by which you have exceeded the original budget, and still providing you with an increased budget."*

Mr Speaker, in 1995, respite was still not being provided. It is true that a few hours on weekends for a handful of people, work was done on an informal basis. In 1997/1998, after we had introduced a formal structured respite service, a total of 2,338 hours of respite were being provided at a cost of £10,521 per annum. By 2002/2003, three years later, 13,202 hours, that is up from 2,338, 13,202 hours costing £71,158 were being provided. In 2003/2004, 19,054 hours were being provided costing £150,000. In other words, the increase between 2003/2004 over 2002/2003 was over 100 per cent, and considerably more, much more than was approved in this House. The hon Member is mistaken and I am not going to succumb to the temptation to refer to individual cases in this House. The hon Members are mistaken if they think that this huge increase in public expenditure in this area, is benefiting most the people who most need it financially. They are mistaken if they assume that this exponential growth in the provision of respite care, is actually caused by an increased use of it by the people that he and I would no doubt agree, financially are most deserving of Government's help and support. That is another reason why the Government feels that this head of expenditure has to be allowed to grow. Because when the Government say that they are developing social services, and that they are expanding their social services, it includes this one, which we introduced and have grown year on year. So it will continue to grow, as is growing this year, over the approved estimate last year. But what we cannot allow to happen in this, or in any other area of public

expenditure, however worthy the cause might be, is to say, well, departmental managers can decide with the users of the department, how much money they want to spend in the department and next year, the Government in the House of Assembly jolly well finds the money, and jolly well repeats whatever we chose to spend last year. I have never heard anybody articulate the view that it is possible to run public services and public finances on that basis. One thing is for the Government, through a conscious decision, to develop public services and caring services and therefore annually increase substantially the service of respite provided, and another thing is just to allow a handful of individuals to pass costs to the tax payer because they have decided that they want to convert a respite, which is a rest service, into a care service. It is not. Look if somebody thinks that the Government ought to provide a care service on a more permanent basis, that is a debate, but the respite service is not that. The respite service is to give members of the family of disabled people, who we all know live under huge stress and who need respite, to give them the periodic opportunity to go away and rest, to go away and do what the fortunate parents of people without those problems can do. Go out one night, go out two nights or go away for a weekend, or go on holiday. That is what the respite service is for. It is not a permanent care service. This has got to be understood. When the Government say the service must not be used for what it is not, and when the Government say the already increasing authorised provision for this service cannot be exceeded by whatever factor one likes, and the Government just reins that in a little bit, to say to the Government that they are cutting the service to the most needy is, in my opinion, wholly unfair analysis of commentary of what has actually happened, the facts which have caused it to happen. It is not true, I assure the hon Member, the Leader of the Opposition that there has been a conscious decision by the Government at any level, political, to increase this last year before or after the General Election. This is just something that the departmental management has done. No doubt with the best intention in the world under pressure from users. The hon Member must remember what it was like when he was on this side of the floor. This is not a basis upon which

one can hold oneself out responsible for the state of public finances in Gibraltar.

Mr Speaker, the Hon Mr Bruzon, also had something to say in criticism of the Government. Well, first of all he made a remark which frankly sounded awful, but I have no doubt he did not mean in that way. To say that somebody stopped him in the streets to say to him, "Charles, the problem with you is that you are too honest to be a successful politician", is to heed gratuitous insult, I am sure unintended by on all the successful politicians in this House. I mean, winning three elections in a row, is quite a success. I do not think I have achieved it by dishonesty. Well, then presumably they think that when their own leader, the Hon Joe Bossano, achieved two successive election results, he achieved it by dishonesty as well. After all if the view is that in politics one cannot be successful unless one is dishonest, how can one be elected twice as Chief Minister, which is the pinnacle of success in politics, without being dishonest. Therefore, I say that the hon Member I am sure, did not intend to convey the insinuation or implication, which is implicit, in that remark. I would have more clearly understood if he had come to this House and said that somebody had stopped him in the street to say to him, "*Charles, the problem with you is that you are not aggressive enough to be successful, or que no tienes bastante mala leche, to speak in Gibraltarian, to be a successful politician.*" Or that to be a successful politician one has got to be a hard nut and that he is not a hard nut. I mean, there is an element of truth in all of that. But there is a difference between that and honesty. I am glad the hon Member is now confirming from a sedentary position, that that is what he meant. Well, that I recognise more but of course the record now shows, that in their nervous reaction, I mean not realising I suppose that I was going to deal with this in such a gentle and friendly fashion, the hon Members have now placed on record, in Hansard, the fact at least those of them that engaged their jaws before their brains, have now put on record the fact that they think that I am dishonest. Well, I could not care less what the judgement of them are. The people of Gibraltar obviously know. The reason why is that the people of Gibraltar obviously do not share the

view that I am dishonest. Because if they shared the view that I am dishonest, they would not have elected me three times in succession, they would not have given me the considerable satisfaction of having led his entire eight man team, three times in a row to the first eight slots in the ballot paper, and they would not have given me the considerable pleasure of being the only Chief Minister in Gibraltar to have had his team re-elected every year, three years in a row, with more than 51 per cent share of the vote. Therefore, but look, there is only one government that has been sacked from office, under at the very least the suspicion of dishonesty, and that was theirs and not ours. I think the hon Members, those who in sixth formish style just utter words into the air without bothering to think of their meaning or implications, that they should remember the political party that they have chosen to join and support. They should remember the track record of that political party when it was in government. They should remember the reputation for integrity that that political party enjoyed when it was last in government. That they should remember all that before accusing this Government, *[Interruption]* Mr Speaker I think the Hon Member should stick to the rules of the House.

MR SPEAKER:

Order, order. Carry on but relevant to the budget.

HON CHIEF MINISTER:

Well, Mr Speaker, I believe that that is wholly relevant. I am answering what they have said in their addresses. How can it be, this is my right of reply. So I do not accept that replying to what they have said in my reply is irrelevant. Unless, of course, what they said in the first place was irrelevant, in which case it should not have been allowed.

Mr Speaker, I will however move on. I will take your advice. The hon Member then criticised us, that is the Hon Mr Bruzon, then

criticised the Government for reducing by half a per cent, the level of our base rate that pensioner bonds enjoyed in Gibraltar. He refers to it as removing the benefit. First of all he said it is limited to £100,000. Well, the reason why it was limited to £100,000 is that this was a subsidised service. Services that the tax payers subsidise is not for capitalists to take advantage of. The idea that a facility that the Government were making available to pensioners to give them their maximum income on their limited investment, should be available to people to come and invest hundreds of thousands of pounds in, is not something that I, this is why we stopped it. We introduced £100,000 limit let me say, when we heard, when it was reported to me that there was an application by one individual, who to boot was not a resident of Gibraltar, but which frankly I would have had the same view even if it had been a resident, that was going to say, *"ah, well here is the most generous bank in the world. Where else can I get half a per cent above base rate on my deposits"*, and he was going to deposit several hundred thousand pounds. That is not the spirit in which the Government made this facility available, which was to maximise the income, in the context of falling investment interest rates, to ordinary pensioners with modest amounts of capital and savings available to them. We have done it, we have kept it at half a per cent above base rate for as long as we could afford it. The hon Member must know that banks charge more than base rate when they lend money. But when one lends them money, in other words when one deposits money with them, they pay less than base rate. This is how they make their profit. Here was a bank, the Gibraltar Savings Bank, that was paying to depositors more than base rate. No other bank in the world does that. And, we were willing to do that because we were not in the business of making profit. So whilst we could get at least that much return ourselves, so if one comes to deposit £50,000 and I can invest that money at more or less the rate of interest that I am giving, I give it. That is how the Government are able to pay disproportionate rates of interest to depositors. Because the Government say the profit that the bank would have made in lending this money out to somebody else, I am not going to make it I am going to pass it on to my depositors. But of course, it is very difficult to get that

equation completely right, because interest rates are fluctuating, and there was an element of subsidy. In other words, the Gibraltar Savings Bank was very difficult to calculate because all this then comes to roost much later on when the maturity value of bonds that one buys arise, but it was clear that it was actually costing money to pay that much above base rate. So what we did is that we cut it by half a per cent, still much more than anybody could hope to get in any normal commercial bank, and still notwithstanding that it is an unusually high rate, still income tax free. Because that is what has happened. Of course, the elderly want to receive as much as they can and do not like it to be reduced. But to assess what the Government have done by reference only to that factor, is a luxury that one can take in Opposition. It is not a luxury that one can take in Government, when one is responsible for public finances. Government are still hugely subsidising, in terms of giving up any pretence of making money on it, the interest rates payable to pensioners on deposit, and they know this. Because the hon Member may be interested to learn that since February 2004, when this happened, the amount of money in pensioners monthly income debentures has risen, not fallen, risen from £56 million to £60 million. So pensioners still accept and recognise that it is still a hugely good deal, unmatched anywhere else. That is the context in which the hon Member has to form his view. He can say, *"well never mind, you should have carried on paying at this rate"*, though, of course one thing is to subsidise when it is £10 million worth of deposit, but once we start getting £50 million, £60 million of deposit, the cost of the subsidy in terms of lost money becomes more significant. We can take it on the chin whilst it is small amounts of money but as the policy becomes popular and money starts pouring in to these instruments, the amount by which one is subsidising it converts into very substantial sums of money. The Government keep doing it for as long as they feel it possibly can. When they feel that it cannot carry on any more, it cuts a little bit but still it is the most charitable savings bank anywhere on the face of this planet. At least for pensioners. That much we can rest assured on.

The Hon Mr Bruzon, also chastises the Government for taking too long, four years, to build the elderly a swimming pool or moving the prison. Here there is a difference in political style between the Government and the Opposition. I follow politics around Europe, one of my hobbies is just to follow the political process through the media in other countries, I follow very closely in Spain, in the UK, in America and elsewhere in Europe. It is just a hobby. I have to say, that I have never come across an Opposition that makes the essence of its political case against the government of the day, not the facts that they do things badly or the fact that they do things different to what the Opposition would have done, but simply a fact that in the Opposition's view, the Government takes too long to implement its manifesto, full of its policy commitments, that are not even the policy commitments of the Opposition Members. The hon Members did not have the policy of moving the prison from Moorish Castle to Lathbury Barracks. So what difference does it make to them whether the Government takes one year, two, three or four. They were not going to do it at all. So to convert the fact that six months after the Election we still have not moved the prison from Moorish Castle, it is a very weak source of political attack, if he does not mind my saying so.

The Hon Member finished his intervention by saying that the results in social affairs of the GSD since 1996, is not fair on the people of Gibraltar. The results in office of the GSD in social affairs since 1996 is not fair on the people of Gibraltar. *[Interruption]* He said the elderly, the disabled and social affairs. I have to say that I am glad that he is, I accept that clarification and therefore I will not address the points that I was going to address. If the hon Member wants to say that the Government delayed too long the building of houses, for young married couples, well actually that is a criticism that I accept. I regret not having started two years earlier. There are reasons for it but I accept the criticism. But if the hon Member is saying that the Government are being unfair to the elderly in the housing, then he is not entitled to have that. I do not think the facts sustain the view. When before, has a Government built 86 houses specially designed for the elderly, in sheltered accommodation. Answer,

never. When before this GSD Government, has a government spent millions of pounds installing lifts in public housing, so that elderly people are not prisoners in their own home. Answer, never. Not even the alleged socialist party that preceded us thought that genuine care and concern for the elderly required any of that. What was the last government in Gibraltar to almost entirely abolish income tax for the elderly. Never. Not until we have come. What was the last government in Gibraltar to say it is not acceptable that there should be any person in Gibraltar, elderly, who because of his lack of pension or lack of this or lack of that, should not have enough money to live on, and introduced an elderly persons minimum income guarantee, which now ensures that the State will make sure that no elderly person, single, has to live on less than £95 a week or a married couple on £127. What government ever in Gibraltar before us has done that for the elderly? For the hon Member therefore, to finish an address on social affairs by failing to recognise those things, by failing to recognise that no government has done more on a comprehensive policy basis for the elderly of Gibraltar than this Government, his failure not only to recognise those indisputable facts but to actually say that we are being unfair to the elderly, is in my view, the closest that he came to showing lack of sincerity in his entire address. Because the facts speak for themselves. The progress made speaks for itself. He can criticise if he wants that we did not do more, but he cannot criticise that our performance is not a huge improvement on what came before us. Only that could be the definition of unfairness. When he says, which is I think the point that first led him to this line of argumentation, that the Government were not doing enough to help elderly people move to ground floor flats, and he read a letter or he produced, he referred to a case in which the answer had been we are putting in a lift in that block. Mr Speaker, that is not an example of bad administration. That is an example of good administration. That is not an example of an uncaring administration, that is an example of caring administration. Why? Well, look, the Government do not have enough empty ground floor flats to move all immobile elderly people to. Therefore, the one or two that I have.....

HON C A BRUZON:

Would the Chief Minister give way one second? Just for the record Mr Speaker, I did acknowledge the fact that it was a good thing that some lifts had been installed. I did acknowledge the fact that there had been external refurbishment of some Government estates. But what I questioned was the fact that since they came into office, there had been no new buildings to solve the housing problem. Thank you Mr Speaker.

HON CHIEF MINISTER:

Look, I know that the hon Members, because we have not built any new houses for rental, I know that they are trying to convert that into the definition of doing anything for housing. But it is simply not true to say that the GSD Government have done nothing for housing for rental. It is not even true to say that we have not built any housing for rental. It is even less true to make the point in the context of the elderly. The reason why I say all of that is that because specifically for the elderly, we have built, for rental, Bishop Canilla House. The hon Member may want to say, well that is not enough. That is a valued judgement to which he is entitled. But he is not entitled to say we have not built any. It is not true. Nor is he entitled to say that we have done nothing for the rental stock for non senior citizens. Because look, I have no doubt that if the hon Members had been in office when the MoD gave Edinburgh House to the Government, they would have done what they did with every property that came into their hands, which is to offer it for sale. We, not only decided not to offer it for sale and make the quick grab for cash, we decided to add it to the Government's housing stock, and to offer it for rental, and to spend several million pounds in refurbishing it before putting it out for rental. Now, the Hon Member may want to say that adding 186 flats to the housing rental stock is not enough. That is his judgement, I respect his right obviously to make his judgement. What he cannot say is that we have done nothing to improve the stock of the housing for rental. He can say that we have not built for rental any houses other than for the

elderly. That would be accurate. But he still cannot say that we have done nothing for housing, which presupposes that the millions and millions and millions of pounds spent by this Government in refurbishing and beautifying almost every public housing estate in Gibraltar, unless they think that that is doing nothing for housing. I agree, it does not do anything for people waiting on the housing list for a flat if they have not already got one. That is accurate comment. To suggest that the Government have done nothing for housing in the context of all of that, is to falsely create an inaccurate impression. How much housing for rental did the hon Members build in eight years that they were in office? Answer, practically none. And I say practically none, because I recall, I think it was in their time, I think they added a floor in some of the blocks in the Laguna Estate. Yes, two blocks in Laguna Estate where instead of fixing the roof, they very sensibly decided to put in a flat between. That is the only houses they built for rental. Because even when they built Gib V, people who clearly could not afford home ownership were forced into this Option C, which strung liabilities around their neck, which they could not afford and from which we have subsequently had to release them. So, it is all very well criticising this Government for not having built any houses for rental on the waiting list. But they did not build any, except three or four, in the top floor of two blocks in Laguna Estate. The hon Members chose to concentrate their resources in the home ownership sector. Fine, it is a perfectly legitimate decision, but the result of it was no new homes for rental, during eight years of so called socialist government. I think all these facts have got to be brought out and remembered when the hon Members now make wild statements about this Government doing nothing for housing.

The House recessed at 11.30 am.

The House resumed at 11.39 am.

Debate on the Appropriation Bill continued.

HON CHIEF MINISTER:

Mr Speaker, if I could now move on to the contribution of the Hon Steven Linares in relation to mainly education. He started off by referring to the cuts in education, training and culture, have terrible effects on students and staff. Then he said that the Chief Minister's cuts have deprived children of things that they have always enjoyed. What cuts in the education budget? I have here the same figures as he has, which figures that affects what children have always had and enjoyed is there a cut in? As opposed to the reality which is, an increase in. It is true that there is a cut in an attempt to place downwards pressure on it, in the costs under personal emoluments of temporary assistance. The hon Member asked why we have split the temporary assistance vote into all the various things that it pays for, specialists, classroom aides, cover for maternity, paternity leave, and temporary cover for other absences. The reason is the last element. That the principal item of this expenditure, which has been rising significantly, is absenteeism which has to be separately funded.

If the hon Member wants to say that there are cuts, he has got to say where he thinks the cuts are. It is all very well to make general statements, which are both wrong and then not particularise. There is no cut in the education budget. There is an increase in the education budget. So why do I find myself on my feet explaining to people that there is an increase and not a cut, when it is obvious on the face of the document. Answer, because despite what is obvious on the face of the document, the hon Member thinks it is appropriate to simply assert that there are cuts. He referred the funds for maintenance for schools have been cut. Never under any government in Gibraltar, has so much money been spent on the development and maintenance of school buildings, as has been spent by this Government. But of course, if one goes on a binge of maintenance, and on a binge of new building halls and new building sports hall and new building for schools, and one comes to the end of the process and one therefore reduces the amount of the binge, well I suppose that the year in which the Italians

finished building Milan Cathedral, which took several hundred years, I suppose in that year they might have been accused of cutting public expenditure. I suppose the only thing that they could have done to protect themselves from the hon Member's accusation of cutting public expenditure, was to have carried on building cathedrals for ever so that the amount of money spent on building cathedrals was never cut. That way the hon Member would never have been able to stand up and say, they are cutting the money spent on building of cathedrals. Mr Speaker, we can reduce the debate on public finances to that absurd degree. But frankly, the hon Member only has to tot up the amount of money spent by this Government, year after year, on the upgrading of school facilities and school buildings, and the amount of money that they used to spend on the same matter, and the results of who is cutting or not cutting, or driving our educational system to near crisis, he would be able to judge for himself who has the better record in that respect.

The cutbacks in the last five months are now affecting the National Curriculum. Well my goodness, it is just as well I am in this House and that I know a little bit about this, because if I had just been Peter Caruana the lawyer, sitting in his office listening to the debate, I would have said, Oh my goodness, does this mean that my children are not going to be able to do their O levels or A levels. After all if the Government are cutting expenditure to the extent that the National Curriculum delivery is being affected, this is terrible. But then it transpires, as always, that the story never matches the headline. Never. The story never matches the headline. Because what it transpires is that he is referring to the fact that there has been a reduction in the number of occasions and children that are taken to GASA swimming pool. And he is wrong, even then he is wrong. Because the cut that there has been, because of the amount of money that GASA charges the Government for it, which is something that I am going to address by the way, given that that is a publicly funded asset. But awaiting on that, there is no affecting of the National Curriculum. He reacts to that statement of mine as if it is the first time that he has heard it. He heard it from the Minister for Education at the last Question and Answer

Session, he heard it again from the Minister of Education in his speech in this budget, but he ignores everything that he hears and continues to regurgitate the same factually inaccurate allegations, as if he was not being told what the position is. It is most impossible to debate. Yes, the hon Member has been told repeatedly that the element of swimming pool access, which is relevant to the National Curriculum, has not been cut and continues to be funded by the Education Department. So why he uses the swimming and the GASA as the only example that he cited of how the cuts are affecting the National Curriculum, I do not understand. It is not affecting the National Curriculum. There is nothing else in the cuts that is affecting the National Curriculum. He has had this explained to him repeatedly, but he is not interested in the truth or the facts. He is just interested in politically expedient headlines, regardless of whether they are true or false. This is the reality of the hon Member.

The hon Member mentioned, he said, and all of this, when he was referring to the cuts in absenteeism, the attitude of this Government, this is the attitude of this Government to Government employees generally. He said, I have got it verbatim, *"that shows the attitude of this Government to Government employees generally"*, is what he said. I ask myself, could I possibly be hearing this, are my ears failing me. Is the GSLP government, of which of course he is not a part but I mean, when his partners were in government, is he really trying to persuade Civil Servants that this Government, unlike them, has an attitude to them? What attitude? Is he referring to the fact that there is now recruitment to the public service, which there was not in their day in office. So that when people retire it is not a question of the rest of them slaving even more. Is that the attitude of this Government that he is lamenting, or that he thinks Civil Servants are lamenting? Or does he think that the Civil Servants are lamenting the attitude of this Government which now gives them promotion opportunities, of which they were starved for eight year? Does he think that is the attitude, generally, of this Government to Civil Servants, which the Hon Member, or does he think that they are lamenting the attitude of this Government to Civil Service training? When there are now

hundreds and hundreds of Civil Servants undergoing, at Government's expense, training in any area of their choice, compared to the situation before 1996 when there was zero training for the Civil Service. Does he think that is the general attitude of this Government to Civil Servants, that he is trying to persuade them that we have? Or perhaps the attitude of this Government to Civil Servants that he is referring to, is the fact that we have refurbished all their offices, and they are no longer required to work in hovels. That must be the attitude of this Government to Civil Servants that he is referring to. Or perhaps, he was referring to the attitude of this Government, that has led us to make permanent and pensionable Civil Servants that were being exploited on permanent supply terms. Or perhaps he was referring to the attitude of this Government to the hundreds of employees of Government owned companies, that their Government that was supposed to be showing an example, nevertheless had employed without even an occupational pension. Perhaps that is the attitude of this Government to their employees that the hon Member was referring to. They have all got them now, by the way. Hundreds and hundreds of workers. Perhaps the attitude of this Government to their employees that he was referring to, is the fact that we have given hundreds of Government company employee workers a decent contract of employment, with decent terms and conditions, which they did not have before. These must be the general and dreadful general attitude of this Government to its employees. The hon Member either did not know what was going on before, does not know what is going on now, or both, possibly.

The hon Member asked why we were cutting the cover for absenteeism. I think that is a legitimate issue to raise. Well, the answer is that it is the same reason as to why we have sub-divided it. Look, until last year, the heading was just temporary assistance. That conceals a multitude of expenditure. The multitude of expenditure is even more than is listed now. But now at least there are four main heads. Specialists, classroom aides, cover for maternity, paternity and four, temporary cover for other absences. Which basically means sickies. Well, in 1995/1996 he may be interested to know, that the expenditure on

this head of expenditure was £324,000. Last year, it rose to £950,000. A threefold increase in the temporary assistance vote. The Government have done two things in an attempt to put a downward pressure on that figure. Firstly, we have required the Education Department to sub-divide the vote so that the House can see which element of it is going, because of course, look, if the classroom aide vote goes up, because the Government decide to employ more classroom aides, that has an explanation. But if the temporary cover for other absences vote goes up, it may well mean that the incidence of sick leave is increasing. That is something that management can remedy and should remedy. Therefore, there is more transparency of information so that the House can gauge for itself this exponentially rising head of expenditure and if it is reduced from £950,000 to £700,000 because we do not wish to allow the Department simply to grow this figure. So one year we provide an estimate, they spend more. If the following year we make what they spent more the next year's estimate, then next year they will spend even more than that. So that becomes the following year's estimate. On that basis, that ratcheting is simply unacceptable. That is the reason. It is not acceptable to the Government that these heads should continue to increase by these amounts of money, except to the extent that Government policy explains the reason for the increase. As there has been some element in relation to the increase in the number of classroom aides, which is explicable, which explains part of this increase.

Mr Speaker, he referred to the Tomlinson Report, which I have not read and I suspect neither has he. He says, Gibraltar students are getting a raw deal. I say to myself, gosh this is a very worrying state of affairs indeed. Here we are, thinking that we have an excellent educational system and we were all constantly praising our teachers and everything, and here pops up the Shadow spokesman for Education, in the House of Assembly, and says that our students are getting a raw deal. I, who am responsible for the whole Government, sort of immediately perk up in my seat and say, what could this mean? I ask myself, where is the raw deal? Is it in the fact that our exam results are much better than they are in the UK and getting

progressively better still? Is that the raw deal? Or is the raw deal the fact that our children enjoy class sizes and teacher to pupil ratios, that in the UK they do not even dream about? Is that the raw deal? Or is the raw deal that our children are suffering, the fact that the Government have invested millions and millions of pounds in building new halls and new this and new that? That must be the raw deal to which he is referring to. Or perhaps the raw deal is that our university students now get a full grant and that parents are relieved of the need to make a parental contribution? That might be the raw deal that the hon Member was referring to.

The same element of inaccuracy and distortion permeates many of the other points that the hon Member makes. For example, the Theatre Royal has been a big failure. That is a matter of opinion, it has not finished yet. I suppose they can do, like they have done with the buses and with the hospital. They can make hay until such time as the Government either builds those things or does not. The buses, too long, too short, too wide, too high, the wheels go round, the windscreen wipers go swish, swish, swish, and there was all manner of criticism until such time as the facts take over the rhetoric. When the facts take over the rhetoric, the end for vacuous words of the hon Members arise. So, between now and the end of the Theatre Royal, the hon Members can beat the Government over the head with it if they like. But what they cannot do is distort the truth. We did not have a clue what we wanted. There was no consultation process and the agreement was signed after the event, or the consultation took place after the agreement. Well, I said to myself, now, well it might be that he says these things, he might have gone on a Himalayan backpacking holiday that year, for six months, and he may have been away from Gibraltar all of these months, and therefore, the only thing that could drive him to say that there was not a consultation process must be that he was not in Gibraltar to see the extensive press coverage of the extensive consultation process that took place. Nor could he have been in Gibraltar whilst the models and the plans for the Theatre Royal were exhibited in the John Mackintosh Hall, for days and days and weeks and weeks, before the Government

made a decision as to. He could not have known that the Government were in intimate consultation with Thespian groups and other users of the Theatre, and that there was a wide public debate and consultation. At no time during all of that, by the way, did he open his mouth to criticise the project. At no stage then, did any of the Opposition Members say hang on, do we really want a theatre? How many zarzuelas are we going to be able to organise in it and what is the total capacity, and can we bring the props to the backstage door? What about this business of there not being any parking? At no stage during any of that time did any of them open their mouths to say boo to a cat on any of these issues. Now, after the most extensive process of consultation that there has been in Gibraltar in relation to any publicly funded project, now they pretend, and they assert with all the straight face in the world, that there has not been a consultation process. I say to myself, the only explanation for the hon Member's assertion is, that either he is seeking to distort history, or he was in the Himalayas on a backpacking holiday. It cannot be anything else. It can not be anything else. Now he is free to say, well we thought about it more and we think it is a very bad idea and that the Government should not do it. It is a different matter. He is entitled to his view and to change it as often as he likes. But he cannot convert his view, you know people in Gibraltar are getting a little bit tired of this, if there is a new bus service we have got to find something to criticise it, if there is a new hospital we have to find something that the Government forgot the kitchen. Somehow they have to tarnish every project that the Government do. If we are going to build the Theatre Royal, it is the fact that we cannot get the props to the stage door and there is not a multi-storey car park next door. No doubt when we build the new housing they will say, that the colour of the parasols on the balconies is not to their liking. People in Gibraltar now understand the obsession that they have with finding criticism in everything that the Government do. No that is not opposition. Opposition is in faulting what the Government do wrong. But Mr Speaker, nobody in Gibraltar believes, nobody in Gibraltar except the Hon Mr Picardo, as I will remind him in a moment, nobody in Gibraltar believes that everything that the Government does it does wrong. One has

really got to question the offence that the hon Members aim at the people of Gibraltar, and their intelligence, when they pretend that the Government that they choose to re-elect, time and time again, gets everything wrong. Well what is wrong with the people of Gibraltar? Why do they elect governments that get everything wrong all of the time? So might it be that we do not get everything wrong all of the time, and that it is just their destructive, insincere style of opposition that drives them to criticise everything and anything that the Government do, lest it should be popular.

HON F R PICARDO:

Mr Speaker, on a point of order. Perhaps the Chief Minister could at this stage,

HON CHIEF MINISTER:

Well he should identify the issue.

HON F R PICARDO:

Yes, I am identifying it to the Speaker, not to you Chief Minister. Mr Speaker, perhaps at this stage, and dealing with this particular point, the Chief Minister could identify why it was that he put a motion of no confidence when the GSLP was elected with 73 per cent of the vote in 1992. It was directly to that point.

HON CHIEF MINISTER:

Mr Speaker, under the guise of points of order, they do what they like with the Rules of this House, and they interrupt me as often as they like.

MR SPEAKER:

You give way all the time.

HON CHIEF MINISTER:

Well, Mr Speaker, the Rules of the House are there and that is not a point of order, he knows it is not a point of order and he is just consciously abusing the Rules of the House to frustrate their intention. That is what is doing, and fine. He can carry on doing it for as long as Mr Speaker is willing to accept it. I am not going to complain.

MR SPEAKER:

I have got to listen to a point of order to find out what it is.

HON CHIEF MINISTER:

But then you should make the ruling so that at least he learns what points of order are for.

MR SPEAKER:

I will not argue with anyone. Carry on.

HON CHIEF MINISTER:

The issue then of the Theatre Royal is that. Then he says "*even the Chamber of Commerce Business to Business magazine has the same view. You see, it is a white elephant.*" Well, Mr Speaker, it does not mean that at all. What it means is that the

writer of that article has chosen to regurgitate everything that the Opposition has ever said on the project. The article is simply regurgitating the views that they have expressed. That is what the article does, and it remains to be seen the extent to which the authorship of that article, and the content of that article, does not actually more reflect the commercial interests of those people who have existing conference facilities or plans for new conference facilities in Gibraltar, and with which the Theatre Royal would compete. That remains to be established because it is certainly the first time that the Chamber of Commerce has taken such an intense interest in Gibraltar's cultural affairs. They do not worry that I spend millions of pounds refurbishing housing estates but they do worry that Gibraltar should have a theatre. Now we may agree or disagree about whether Gibraltar should have a theatre, but I think we can all agree that it is hardly the most pressing issue for the Chamber of Commerce. Yet they have laid on it in an article and therefore the Government have their suspicions about whose interests that article is actually designed to promote. Although I recognise that there are many people in Gibraltar who are not in favour of the project, for reasons and judgements with which although I do not agree with, I recognise are rational reasons. I do not put the Chamber of Commerce into that category.

Then, just before he sits down, as if he did not think he had already generated enough unjustified headlines, he says, the education system is quickly going down the slippery slope. What is there that he thinks justifies the statement in this House, that the education system is quickly going down the slippery slope? This is just completely sort of intellectually insincere, politically opportunistic vacuous statements.

And so I turn to the contribution of the Hon Mr Picardo. Well, the hon Member appears not yet to have learnt, and I do not give up hope that at some stage he will, that one does not persuade the people of Gibraltar that one is a better alternative for office, by dedicating himself almost exclusively at the personal insult and vilification of his opponent. And, whilst he wishes to continue with that style, this is fine by me. But of course, what I am not

going to allow him to do, is to somehow induce me into his play pen to play with his rattles and his toys with him. That is not what he is going to do. He is not going to do that. I mean, he can stand in his playpen playing with his rattles by himself for as long as he likes until he eventually grows out of that politically. But in the meantime he is not going to draw me onto that ground. So I shall ignore all the personal vitriol, all the personal abuse, what I will not ignore is the falsehoods that he has uttered in this House. That is what I will not ignore. But of course, the hon Member starts his political debating with a huge intellectual disadvantage. That is that what I said before, about the hon Members believing that the Government get everything wrong, in the case of the other Members, it is more or less speculation on my part, but in the case of the hon Member, Mr Picardo, it is not speculation. He has just finished saying the very same thing in an extensive interview in El Faro de Gibraltar newspaper. Where he is asked a question, and the very first line of his answer is, well I will say it in Spanish first, *"yo creo que el gobierno social democrata esta consiguiendo equivocarse en todo lo que hace."* For the sake of Hansard, *"I believe that the GSD Government are achieving making mistakes in everything that it does."* So, in the case of the hon Member, when I say that their political style is to think that the Government get everything wrong all of the time, in his case it is a documented statement. Of course, if one imposes that millstone around ones neck, before one even opens ones mouth, if that is the conditioning that one gives to ones own brain before one even opens ones mouth to participate, it is hardly surprising that he is forced to utter the factual nonsense that he then has to go on to utter, in order to sustain what is unsustainable from the outset. The Government fully understand that they do some things very well, they do some things badly and they do some things okay. But who in Gibraltar does he wish to persuade that the Government get everything wrong all of the time. He has got to understand that this affects his own credibility. This does not damage the Government's political prospects, it damages his.

Mr Speaker, he says, recurring expenditure is growing dramatically and this is snaring the Government. Then the

examples he gives are the Theatre Royal, which is not an item of recurring expenditure, and the party we threw at the Savoy and at the RAC Club. Then he says the Government are spending money on a litany of frivolities. I would like to know which are the litany of frivolities. Of course, if he thinks that it is a frivolity for the Chief Minister of Gibraltar to travel Club Class, let me tell him that it was not me who started that, his own party leader used to travel Club Class. I do not know whether he thinks that Mr Bossano was frivolous as well. Or perhaps he thinks that it is proper that the Chief Minister of Gibraltar should not sit in Club Class. When he speaks about the frivolity of spending money in putting, as the Hon Dr Garcia did, the frivolity of putting up the Chief Minister at the Savoy Hotel, he may be interested in knowing that the Savoy Hotel is cheaper than the Waldorf Hotel, which is the choice of hotel that I inherited from his party leader, the Hon Mr Bossano when he was Chief Minister. When I first went on my first trip to London as Chief Minister, and I asked why am I going to the Waldorf? I was told because this is where your predecessor came and this is where Chief Ministers come. I said well, fine, that is all right. But the Savoy is cheaper than the Waldorf, so I do not know whether that makes me more or less frivolous in my expenditure than them.

Mr Speaker, apparently the Theatre Royal, on which the Government have so far only spent £3 million, is according to the Hon Mr Picardo, "leaving us all vulnerable". Well imagine how much more vulnerable we were not left by their nearly £50 million that this Government have had to invest in correcting the fiasco in the In-town Incinerator, which was a contract, which anybody with a brain in their head who read it at the time would have known was a nightmare for Gibraltar, and so it became, and the millions and millions of pounds that we have had to invest in correcting their fiasco in Harbour Views. So I do not know whether the £3 million so far invested in the new theatre, I do not know, well I do know whether it is making us vulnerable, I know that it is not. But certainly, they are not in a position to allege that it is making us vulnerable. Because it is a drop in the ocean compared to the tens of millions of pounds that have had to be spent to put right their own negligence and their own failure to

conduct public affairs of Gibraltar with even a molecule of common sense. Then, he cannot even read Hansard accurately. This, he says, pointing at me, this is the man, this is when he was in the full flow of his denigrate Caruana, the ogre, phase of his speech. This is the man who complained that Mr Bossano was eating lunch in his office, and now he incurs in the frivolity of throwing a reception in the Savoy Hotel. Wrong. This is not the man that raised in the House of Assembly the fact that the Chief Minister had lunch in his office. Indeed I have lunch in my office. It was not Peter Caruana, it was Peter Cumming. I know there is a coincidence of first names and I know that the second name starts with the first letter, and that both our initials are PC, but somebody who is a member of the legal profession should not be thrown by those similarities to utter something which is wholly false in this House. I have never. So this man, has not done any of the things that the Hon Mr Picardo, with scant regard for the truth and the accuracy of his statement in this House, nevertheless declares. That is the nature of his debating and political style. Just the same observation can be made to his statement, this man is the man who said when Joe Bossano was Chief Minister, that he did not believe in saving for a rainy day. Not true. I have never said that I do not believe in saving for a rainy day. What I do remember telling the Leader of the Opposition, when our roles were then reversed, is that there was no point in saving for a rainy day if one was not also making the necessary investments to ensure that the rainy day could be avoided. That is what I said. I do not know why the hon Member thinks that, even leaving aside his misreading of Hansard for the second time in the five minutes of his address, even leaving aside his failure to accurately represent in this House the content of Hansard, why does the hon Member say that I do not believe in saving for a rainy day, when public reserves now are higher than they were when we came into office. Or has he not heard me say frequently the importance that the Government attach to maintaining a prudent level of reserves. Well, what does he think public reserves are? Or does he think that it is only funds for a rainy day if they are put in an account with a little sticker on it saying, funds for a rainy day, sort of Winnie the Pooh style. Unless it says Owl's House, on top of the tree house, it is

actually not an owl's house. What does it matter? He does not appear to be able to understand the contents of Hansard, and he does not appear to be able to understand the content of financial statistics placed in front of him. This is not a good start to his four years in the House.

Well, anyway, be that as it may. Of course, the sort of inaccurate, to put it at its most generous, the inaccurate characteristic of almost everything that he said continues. When he is talking about the tax reform proposal, because the Chief Minister, of course, what he is trying to do now, typical, this is another example of the buses and the hospital, and the Theatre Royal and the wheels going round and all that. Now, the latest trick, is to try and pin political personal responsibility for the tax reforms situation on the Chief Minister. So how can we do it, ah, well, the first thing we have got to do to make sure that everybody blames Caruana personally, for his incompetence. The first thing we have got to do is to make sure that everybody believes that nobody else took part in the decision. Now let us see, how can we do this? Well we know it is not true, but how can we nevertheless create the impression that it is? I know, they say, we will say, as he did, that he failed to consult widely and that the decision had already been taken. Absolutely false. And he knows that it is absolutely false because important partners in his law firm, were part of that consultation process and indeed, benefited from fees, as no doubt he did, from advising the Government on the consultation process, advising the Government on the legislative process and working for the Government on that account. So unless he was, with the Hon Mr Linares, in the Himalayan backpacking holiday together, he must know that there was a huge consultation process. A huge consultation process by the Government, with all elements of the industry, before a decision was made as to which model the Government should pursue.

HON F R PICARDO:

Will the Chief Minister give way?

HON CHIEF MINISTER:

No I will not. Mr Speaker, giving way is not an alternative. Point of order is not an alternative.

HON F R PICARDO:

Well no, because I would have made the point if the Chief Minister had given way. But seeing as he has not, I think I have to make the point on reflection, given what he has said that any fees which were paid to any law firm in Gibraltar, in relation to the State Aid case, related to instructions given to any such law firm, or partners of such law firms or associates of such law firms, to act on decisions taken by whoever it was that took them. That is the debate we are having. Not in relation to the consultation process, which is what the Chief Minister has said, which is therefore a falsehood. Therefore, Mr Speaker, this is a point of order.

HON CHIEF MINISTER:

Mr Speaker, actually what the hon Member has just said is not true. There were a number of lawyers who were engaged by the Government during the formative period of the proposals. Not just to legislate, it is true that they also did the legislation drafting, it is not true that people were not on fees when during the advisory stages to the Government. It is just not true.

HON F R PICARDO:

Mr Speaker, that is a complete change from what the Chief Minister said. The Chief Minister gave the impression or said, I do not have the Hansard in front of me because we do not have it immediately, that he paid partners or associates of law firms, for the consultation process, not during the consultation process. Now, if you pay for something like that, you are paying for

advice, you are not consulting Mr Speaker. Let the Chief Minister make clear what he is saying and let him not pursue his reply based on falsehoods and that type of bad milk which he referred to before.

HON CHIEF MINISTER:

Mr Speaker, there is no falsehood in what the Chief Minister has said. The Chief Minister will not withdraw it, and if the hon Member wishes to carry on interrupting me to nervously rebut every point that I make, as I said before, he may carry on doing so, for as long as the Rules of this House can be disregarded.

Now, then he goes on to say there is a volte face. There is a volte face by the Government. Now, they are saying that they are in favour of low tax as opposed to no tax. Well, the hon Member is either totally ignorant of the history of the discussions between the Government and the Finance Centre on tax reform, or, as is more likely, he is intimately aware of them and is choosing to misrepresent them. The Government and the industry, from day one, have always considered that there are two ways forward. Indeed at one point there were three ways forward, and following investigations it was dropped as a potential way forward. One was low tax and one was no tax. The essence of the original consultation and discussions between the Government and the Finance Centre Council, was whether the Government should pursue the no tax or the low tax route. The Government accepted the no tax route on the advice of the Finance Centre Council. In my view, correct advice at the time. It is not a question of volte face. The Government and the Finance Centre have always discussed the medium term benefit to Gibraltar of moving to low tax, but the industry advised the Government that it was not yet in a position to do so, and therefore wanted the Government to go for no tax for the time being. That is not a volte face. The Government's position from the outset was that we would go for whatever route the Finance Centre industry advised the Government so long as it ensured the same degree of revenue for the Government. No volte face.

There has been no Government position to change because the Government never had a position of their own. The Government's position, now these are the options, which does the industry want us to pursue. So it is not that there has not been a volte face because there has not been a volte face. There has not been a volte face because there was not a face, and as there was not a face there cannot be a volte of the face. I believe, he said, that the majority of the Finance Centre Council were always in favour of low tax. Untrue. Only one member of the Finance Centre Council then said that his preference was that the Government should even then go to low tax, and that was Tim Revill, who was then not even representing the accountants, he was representing Steppe.

HON F R PICARDO:

I would like to make a point of order.

MR SPEAKER:

I am not accepting more points of order.

HON F R PICARDO:

He is misquoting me, therefore it is a point of order.

MR SPEAKER:

No, it might be a point of explanation.

HON F R PICARDO:

It might be a point of explanation, well or clarification. I said to him in my address, I have it written down, that the Finance

Centre, speaking generically, now the Chief Minister has said that I said the Finance Centre Council and is going through identifying who in the Council said what or said something else. I did not say the Finance Centre Council, and I did not say one person or two persons of the Finance Centre Council.

HON CHIEF MINISTER:

I think it is wholly incredible that the hon Member should now be trying to protect himself by drawing that distinction. Look, there is a Finance Centre which comprises of lawyers and bankers, and insurance operatives and fund managers and people of this sort, and they make up the Finance Centre. They are collectively represented as sectors by a Finance Centre Council, which is composed of the chairman of each of the associations. So, the Insurance Association has its chairman and its vice chairman on the Finance Centre Council. The Bankers Associations has its chairman and its vice chairman on the Finance Centre Council. The Bar Association has its chairman and its vice chairman in the Finance Centre Council. The Company and Trust Managers have the chairman and the vice chairman in the Finance Centre Council. So all of these representatives of the Finance Centre, is the interlocutor with the Government. They speak for the Finance Centre, having consulted, and having debated the issues in their own associations first. In addition to consulting them, the Government also widely consulted directly to individual operators in the Finance Centre. Senior partners of firms, senior accountants, senior lawyers. So, when the hon Member says that he believes that a majority of the Finance Centre were always in favour of low tax, he is simply not telling the truth. When he then adds the vicious twist in the tale, by saying, that the majority of the Finance Centre were calling for low tax, rubbish, nobody was calling for low tax except one individual. Then he adds, but of course, the minority, he said, were well connected because they were members of the GSD Executive. That is what he said. In other words, that the Government ignored the advice of the majority. Untrue. Not satisfied with uttering that untruth, he then invents a dishonourable motive for

the Government's hypothetical and untrue rejection of the majority's advice, namely, that the minority were well connected because they were members of the GSD Executive, and therefore able to get their way. It is lie upon lie, it is distortion upon distortion. That is the inescapable factual reality of the hon Member's representations in this matter.

Of course he was desperately keen to ensure that any failure for Gibraltar, any bad news for Gibraltar in this matter, should be strung around the political neck of the Government of the day. He was so obsessed with trying to do that, that he did not mind the number of inaccuracies that he uttered in order to achieve it. He said the proposals that were rejected were the Government's proposals. Not true. The Government stand by the proposals, but actually the decision to formulate those proposals was a decision taken by the Government upon the almost unanimous advice of the Finance Centre, and Council, both. Not a solitary voice of representation was put to the Government, in any of this period, by any member of the Finance Centre, urging low tax straight away. These are the realities of it. Therefore, the reforms have gone badly wrong, and No 6 is responsible, or Caruana personally. Let us make sure the millstone sticks around. The reforms have gone badly wrong and No 6 is responsible and there is a need for the Chief Minister to have some intellectual humility and accept that the decision has gone badly. Well he cannot conceal his motives in all of this. His inability to conceal his motives destroys his credibility.

Mr Speaker, first of all, it is sad to see the hon Member almost wishing failure for Gibraltar, so that there is some failure that he can attribute to the Government. Not a word of hope that the Government succeeds. Not a word of saying, "well, you know, the Commission has turned down the proposal on material selectivity, and of course that decision is outside the Government's control, and of course we take note that the Gibraltar Government, around whose neck I am already trying to pin this, which I am already describing as a failure, that the British Government's lawyers think that the European Commission's ruling is wrong, that some of the best and most

expert European lawyers, who have addressed this issue, both before the proposal was formulated and after the Commission's decision, have all said that the Commission has got it wrong." Never mind that the Gibraltar and UK Governments are both determined to challenge these decisions, because of the confident that we are that it is wrong, just as we rightly challenge the previous exempt status decision. All of that, is ignored in the hon Member's indecent haste, at the earliest possible opportunity, to describe this as a failure to be attributed personally to the Chief Minister as a result of his lack of intellectual humility. I am sorry, the hon Member says things and they have some natural interpretations. Then he cannot escape from the natural interpretations of the things that he says.

It is not a failure for Gibraltar. It is not yet a failure. It is part of the process. He, as a lawyer, must know. I hope he should know that the fact that somebody is subjected to a decision to an action by others with which they disagree, and that they have recourse to the courts to see who is right or wrong, at that point there is still no failure. The failure is when the court of last recourse says he is right and you are wrong. Even then we have to see what it is a failure of. He thinks it is a failure of intellectual humility. He thinks, obviously, it is a failure of competence. He thinks that it is a failure of the Government having made the right choices. But he says that without any understanding of how these decisions were made and by whom they were made, and after what process they were made. Or rather, he says them despite knowing all these things.

HON F R PICARDO:

Mr Speaker, this is a good point for me to say I have to make a point of clarification, which is that the Chief Minister has said specifically, that I did not wish that the proposals should succeed although that would be bad for Gibraltar. I actually said specifically, I will go further and make clear to the Chief Minister that we wish to see Gibraltar succeed in identifying and implementing a new financial services product, or products, that

will enable our financial services community to develop even more into one of the most able, sophisticated and prosperous. Because of what I said Mr Speaker, I recognised that we all have a stake as a community in those proposals.

HON CHIEF MINISTER:

No he did not. What he actually said.....

HON F R PICARDO:

Mr Speaker, I said specifically, I have my speech written down here. He accused me of reading my speech, I can give him the copy if he likes, and then we can check in Hansard who did or did not say the things we are saying we did or did not say.

HON CHIEF MINISTER:

Well, we have already established the inaccuracy with which he quotes Hansard. I do not suppose the next time he does it will be any more accurate. Whilst he refers to Hansard, let me actually remind him of what he said. After lunging into this tirade on the failed reform that had gone badly wrong, which is a reference to the material selectivity ground, he then said, but on the regional selectivity issue we see the importance and we support the challenge et cetera et cetera. At no stage did he demonstrate any degree of support for the Government on the content of this reform, or which is, by another name, the material selectivity challenge. That is the reality, not what he has just said by way of the twentieth point of order, that he thinks that he can stand up to make every time he is peeved by something that I say.

Mr Speaker, and he is also wrong on his description of the Primarolo Group. Having invented a degree of ambiguity in a non-existent commitment, he then says, why was the

commitment given which did not foresee rejection of the tax reform proposals. Well let the record show that he is nodding his head in agreement with my description of what he has said. Because in case he does not like what I am now about to say, he cannot attack it on the basis that I have misquoted him.

Well Mr Speaker, the Gibraltar Government have made no commitment to the Primarolo Group. The Gibraltar Government's formal position is that the Primarolo Group does not create international legal obligations, and therefore the United Kingdom is not constitutionally entitled to impose that obligation. Let me say that the United Kingdom has a different view of that, of the constitutional aspect of it, but that is as I have explained in this House many times. The United Kingdom Government has chosen to say certain things about Gibraltar and all its other territories, in relation to the Primarolo Group, ignoring the constitutional difference that exists between us as to whether they are entitled to say those things. Now, even the United Kingdom's commitment in respect of Gibraltar, commitment is perhaps too strong a word. Even what the United Kingdom has said about Gibraltar in the Primarolo Group, has taken into account our tax reform proposals, when they have made clear to the Primarolo Group that Gibraltar cannot be expected to roll back the exempt company regime, which the Primarolo Group has adjudged to be harmful, until Gibraltar is able to replace it with something else. And that the Commission, through this finding on both material but particularly regional selectivity, has made it impossible for Gibraltar to replace the exempt status regime. That is the United Kingdom's position on the Primarola Group.

Mr Speaker, in his obsessive concern that nothing that is successful should benefit the Government politically, he says, *"ah, yes, in the Finance Centre there is growth in the insurance sector, but this has got nothing to do with the Government. This is industry led, and the Government can claim no credit for it whatsoever."* Well, if any of the other Opposition Members, other than him had made that remark, I would have written it off as simple lack of familiarity with the details, because none of them

are Finance Centre players, but coming from him, it is an absolutely extraordinary statement. Or does he not know that the growth in insurance derives from insurance passporting into the European Union Single Market, for which the Gibraltar Government fought and obtained, after three long, hard years of effort. Does he not know that? Or what is the matter with the hon Member? Does he not know that? I mean, it is not possible to be a lawyer in practice in Gibraltar and not know that. So why does he come to the House to make remarks which are not compatible with that fact.

But anyway, leaving that to one side, to the statement, to the political philosophy that the Government get everything wrong, we must therefore now add a second string to his political philosophy. Not only do the Government get everything wrong all of the time, but the Government are to blame for things that go wrong but can claim no credit for things that go right. That is the second tier of GSLP politicking style. Good luck to them.

Mr Speaker, the hon Member reached for Hansard with great excitement to quote what I had said on the occasion that the Leader of the Opposition and I, back then debated the merits of the loss of control that the Government of Gibraltar were suffering over financial services, because of the Financial Services Ordinance transfer of the FSC control in effect from the Foreign Office to the Governor. Well, he can if he wants compare that with what he tried to compare it with. But I do not think that he can legitimately with any intellectual legitimacy. There is surely, he must understand, a huge difference between the Gibraltar Government's failure to keep control of an activity that it had always been in control of, and suddenly the Foreign Secretary becomes responsible for the control of our Financial Services Commission, and he must surely understand the difference between that on the one hand, and the Gibraltar Government failing to persuade, despite the most timely pointing of it out to the British Government, of the British Government's refusal to negotiate a derogation for us from a particular EU measure. That is what we failed to do. We failed to persuade the British Government to say, "look, when you are dealing with

Gibraltar in the context of the Taxation of Savings Directive, do not be unfair to us. Do not allow, at the end of the day Gibraltar to be in a worse position than any Member State, and preferably, not even in a worse position than any of the Crown Dependencies. But if you do want to draw a distinction between us and the Crown Dependencies, because at least we are part of the EU and they are not, at least do not put us in a worse position compared to full Member States of the Commission of the Community." Despite us having this at the top of the agenda with them, month after month after month, that is precisely what they did. Mr Speaker, one it is something for which the Government are not responsible and is outside of their control. The other is, keeping control of something which Gibraltar was always in control of. Now, I remember at the time of that legislation that we were all very worried about how negative the money laundering provisions in it were going to be, and we were all very concerned because it was all new. In the event I think that was very helpful and all these concerns that there were at the time about regulation and money laundering and all that, everybody worries about change, in the event I think that aspect of the legislation was very positive. But I do not think that the loss of control over our regulatory mechanism to the Foreign Office was very positive, and that is what was at stake in the debate which he cited in comparing it to my own failure to persuade the British Government to deliver a level playing field for us in the Taxation of Savings Directive. The hon Member also raised the TEP Plan, upon which he appears to have gone on a sort of unilateral political crusade. Let me say that the Government have not been approached, at least I have not been approached, I am both the Chief Minister and the Minister for Financial Services, I have not yet been approached by the TEP Association or by I have had a social conversation at a Divali party last year I think, with one of the affected victims, and there are affected victims in my family, or my wife's family. So I know something about it. But the Government have not yet been approached by anybody representing the TEP investors, with any representations about what the Government can do to assist them. Actually if they ask to see me, I will see them as I see everybody that asks to see me. If there is anything that the

Government can do, properly do, to assist them, the Government will. But of course the starting point is that whatever view one has about what has happened and why it happened, and whether it should or should not have happened, the starting point is that the Government do not indemnify people from failed investments. Now, if ultimately any of the loss that they have suffered is established to have been the result of a failure of Government, in its wider sense. For example, failure of the regulatory machinery, well that would be a different matter. Then the peoples' rights would have easily been established against the State, in its widest terms, and the State will have to suffer the consequences of that adjudication, whatever it might be. But I am sure they are not expecting the Government, at this stage, to insulate them and therefore, when they have decided how it is they think that the Government can help, so far all that I am aware of is that about three or four weeks ago, after the last Question Time, I received a report which has been written for Savignon Insurance Brokers, by some yes, I do not remember the gentleman's name but there is a report and they have sent a copy of it. But that is all that the Government knows officially about the matter at the moment.

Mr Speaker, it is clear that the objective of the hon Member's address was to denigrate and personally attack the Chief Minister, which I think is legitimate politically, I have a different view about whether it is the sort of politics that turns on the electorate or does not turn on the electorate, but that is a matter of judgement. The hon Member's tirade in relation to alleged interference with the press, is extraordinary. Of course it is true that the Government do not have less right than anybody else to complain to the press. The Government are neither in a privileged nor in an under privileged position when it comes to complaining to the press about inaccuracies and about things that they object to. So, the Government are as free to express to any organ of the press their view on a particular output, as the hon Member is, and as anybody else is. The alternative view is to believe that the Government are the only party referred to in the press that is not entitled to express their views to it. I hope that is not the hon Member's position or view. All that said the

suggestion made by the hon Member, that the Government regularly or frequently put pressure on any organ of the press, because of their editorial content of their coverage, is simply not true. No, it is not true, it is true that we have done it on a few occasions, which I personally would limit to fingers of one hand in eight years in office, when we have thought that the excess has been excessive. Sometimes we do it more frequently, when it is not the party's and political interests of Gibraltar that are at stake, of the GSD party that are at stake, but rather the wider political interests of Gibraltar as a whole are at stake. When that happens, and when we think that a report in the local press is unhelpful to Gibraltar, regardless of political divide, we do sometimes approach the press and make these observations in the interests of Gibraltar. We either persuade them that the interests of Gibraltar, or not. Then they do what they like. Well let me tell the hon Member that the same members of the press that he has coffee with downstairs, also talk to me. Presumably the same members of the press that tell him, if indeed anybody has told him and he has not just invented it himself, that the Chief Minister's Press Secretary is constantly ringing up the press and wringing their necks and abusing Government power whilst they do it, these are the same people who tell us that the hon Members on the opposition benches are haranguing the press on an almost daily basis. Not just about what the press says about them, but that they harangue the press when the Labour Party gets interviewed. "Why have you given the Labour Party an interview? They have not got seats in the House. Why have you reported the Labour Party's press release on the front page? They are not even members of the House of Assembly, "and that this is continuous.

So Mr Speaker, I think the first point that I would make is that the hon Member has exaggerated the size of the glass house. The second point that I would make is that whatever may be the size of our respective glass houses, certainly throwing stones in glass houses is a well known danger. Now, the suggestion therefore, that the Government put pressure on the press to say things or not to say them, is wholly untrue. Compared to what used to happen before 1996, perhaps the hon Member was not then

observing the political process in Gibraltar as carefully as he is doing it now, but if he wants to know what governmental pressure on the media actually looks like, what he ought to do is observe the state of the media between 1988 and 1996. Then he will discover what it was to have a press under the attempted intimidation of the government of the day because of course, to their credit, on the vast majority of occasions, the press were professional enough to withstand the pressure. Then as a sort of throw away remark, because the Chief Minister cannot pretend to have kept to his tendering process policy, he does pretend that he has kept to his tendering policy statement, and on the rare, exceptional occasion when it has not been possible, we have said why it has not been possible. He then goes on to say that he does not believe the House does not meet enough. He was expressing a personal opinion, that is his personal opinion. He should know that it meets more now than it used to before, with the exception of last year. But if he compares the number of meetings, the number of sittings, the number of hours of duration of the sittings between 1996 when we took up office and does the same calculation in respect of the period 1988 to 1996, he will notice that there has been a huge increase in the process and sitting of this House. Now, that does not mean that his view is still not right. Notwithstanding that, his view that the House does not meet enough may be right. It is a matter of opinion. But what I can tell him is that any possibility that the House may meet more often, would have to be accompanied by a complete and utter restructure of the way the House conducts its business, and all aspects of it. Because, certainly, what the Government are not willing to do is to come to this House every other week, to be kept by the hon Members in this House for as long as possible answering statistical questions that then never result in supplementaries, so that Ministers have got time to do nothing else. We do not have a back bench. Therefore, that is my view about that, and he said, "ah well, we would ask less questions if the House met more often." Well, ask less questions, but in January they said, I think it was the Hon Dr Garcia, he will correct me if it was somebody else, but I think it was him, the Hon Dr Garcia said that the number of questions then being asked was so high because there had only been one Question

Time the previous year. But when the House met for the second time this year for Question Time, just three months after the first occasion, the number of questions was double the number that were put in January when they said that the reason was that there had only been one sitting the previous year. Thereby giving the lie to the suggestion that the number of questions reflect the frequency of the meetings of the House.

Mr Speaker, if I could just conclude with the remarks of the hon Member. In a two hour speech, I think it was probably more, one hour and forty minute speech, that as the Minister for the Environment that he should have devoted that hour and forty minutes, only six and a half minutes to the environment, in a two hour speech means either that the Government are not doing anything wrong in relation to the environment that he needs to bring to the House's attention, or hold the Government to account for, or that he has no views of his own on the environment. Neither of which will please his very close friends in the Environmental Safety Group, which will not be best pleased by his thinking that the environment only deserves six and a half minutes of a one hour and forty minute speech, despite the fact that he is the Shadow Minister for the Environment.

Mr Speaker, as to whether the House sits too late. Well, I happen to believe that there is much reform of the parliamentary process that we should engage in. There is a lot, I think, frankly the political maturity and the development of the political process in Gibraltar, over the last 25 years but possibly even more so in the last 16 years, I think has outgrown the processes and the procedure of this House. That is my view, and that it would benefit from a root and branch close look, at about how this House can be reformed so that it better reflects the modern political realities of Gibraltar rather than the days when, we all know, that the political realities were slightly different in terms of self government and political awareness and all of that. The Government are certainly willing to convene, in fact I think we have a manifesto commitment to convene a Select Committee of the House to look at things of this sort and talk about them. But just commenting on this business of the late sittings, again I have

to tell him that he may be right. That from time to time the sittings have to go on. But he will have noticed that on the whole I rise the House at a pretty sensible hour. He ought to compare that to what the situation was before 1996, where the numbers of late sittings were much more frequent and the lateness of the sittings were much further into the early hours of the morning and the night. Now, again, that does not disqualify his statement as meaning that whatever happened eight years ago does not mean it is still possible for him to have a view that it sits too late. That might be true, but again it is part of the way the House's business is structured.

Then, the hon Member's last remark when he was returning to the, by the way, inaccurate articulation of the amount of money that had been passed to the Police and the Customs and the Fire Brigade, to the refurbishment of No 6, he has overlooked the fact that it says, including No 6. So, I think he said £500,000, it is nothing like that. There is not £500,000 in that warrant. I think it adds up to two hundred and something hundred pounds.

HON F R PICARDO:

Sorry, will he give way just on that point, because I have the warrant here. I did say during the course of my speech that it was also in relation to the Post Office.

HON CHIEF MINISTER:

But not just in relation to the Post Office.

HON F R PICARDO:

Convent Place, Post Office and the amount is actually £469,000 or £468,000, not £200,000.

HON CHIEF MINISTER:

But Mr Speaker, including the Post Office and No. 6 does not mean only the Post Office and No. 6. It means amongst others, in fact there were 18 Government projects that were the beneficiary of that transfer of funds. But it does not matter the refurbishment work of No. 6, about which the Government are very proud and which was long, long overdue, has cost what it has cost. If the hon Member wants to know what it has cost, he need only ask the question and we will tell him what it has cost. Government are not trying to conceal. The Government think that No. 6 is now a proper, dignified office for the Head of the elected Government of Gibraltar, and that before it was not. Therefore, we have spent money in making it so. But the last use he made or a reference to the sumptuous refurbishment, and he has taken the money from the Police. That is the Chief Minister's commitment to the Police, he takes money away from them to spend it on thick carpets for himself. Well, I have got to give him a little bit of the treatment that I gave the Hon Mr Linares, when he was referring to this Government's attitude to the Civil Service in general. The Police know what this Government's attitude to the police is. They remember what the previous government's attitude to the police was, and they know how to compare one with the other. They know that they are now better paid. They know that much more is now invested on an annual basis on their equipment, than ever was the case in the days of the previous government. They know that they are now allowed to recruit from the general public and not made to make do with every discontented person from every other Government Department. That is what they know. That is what they know of the Chief Minister's commitment to the police. They know that this Chief Minister politically supports their work, as opposed to also remembering that when it came to police versus tobacco smugglers, the government of the day supported the tobacco smugglers. That is what they know.

HON J J BOSSANO:

Mr Speaker, I demand that he withdraws the statement that the government of the day supported tobacco smugglers.

HON CHIEF MINISTER:

Mr Speaker, I most certainly do not withdraw. I most certainly do not withdraw the support. He used to openly say it when he used to go to the sixth form, to talk to the liberal studies group, he used to say to them that there is nothing wrong with tobacco smuggling if it is not illegal in Gibraltar.

HON J J BOSSANO:

That is a complete falsehood Mr Speaker. The Chief Minister is making false statements in the House. I have not openly supported smuggling. He has supported a deal with Spain openly, as the election agent of the PAG

MR SPEAKER:

Sorry, I adjourn for lunch. I will come back at 3.00 pm or 2.30 pm.

HON CHIEF MINISTER:

Well, Mr Speaker, that is one alternative. The other alternative is that you step down from the chair and the Attorney General takes your place.

MR SPEAKER:

I step down.

HON CHIEF MINISTER:

Fine, you step down.

The Speaker of the House, having vacated the Chair without adjourning the House, it is the wish of the Government that the Hon the Attorney General should assume the Chair as provided by the Constitution and by the Standing Orders of this House. Now that you are in it, I beg to move the adjournment of the House until 2.30 pm.

HON ATTORNEY GENERAL:

The House will adjourn until half past two this afternoon.

The House recessed at 1.30 pm.

The House resumed at 2.35 pm.

MR SPEAKER:

My apologies for rushing out, but what has been said cannot be unsaid. Someone asked for an apology but I think everything can be cleared by withdrawing the previous statement. That is the end of it. I am carrying on. Are you willing to withdraw any statement?

HON CHIEF MINISTER:

Mr Speaker, if Mr Speaker is referring to the remark that I made to which the Leader of the Opposition took objection, I most certainly do not withdraw it.

HON J J BOSSANO:

Mr Speaker, I will not withdraw anything that I said in response to that, and the Chief Minister as far as I am concerned, is a liar and he is lying in this Hous

MR SPEAKER:

All right. Can you live with one another as if it had not happened.

HON CHIEF MINISTER:

Why should we live with one another. I have made a statement which I believe is entirely accurate, with which the hon Member disagrees. He has expressed his disagreement in very graphic terms in the last 30 seconds, and I believe that my statement is wholly correct. Perhaps we should both agree to allow listeners to make up their own minds of who is saying the truth and who is not.

MR SPEAKER:

Yes. The thing is this. Whatever you said amounted to an allegation of a criminal offence. Now, as you know, in the law of libel, the bigger the truth the bigger the libel. So, are you quite happy to carry on without I having to adjudicate and then getting into trouble over it.

HON CHIEF MINISTER:

Certainly Mr Speaker. Adjudicate on what? I have expressed a view, by which I stand.

MR SPEAKER:

Suppose I were to say, if you do not withdraw I will name you.

HON CHIEF MINISTER:

Well, Mr Speaker, it depends what it is. Well you can do that and then the House can vote on a substantive motion, as to whether it accepts or does not accept your ruling. That is the procedure. Name me for what? For saying that in my opinion the Leader of the Opposition did not support the Police in the fight against tobacco smuggling. Openly supported tobacco smuggling. Well, all right, same difference, sorry, yes that is the version. Well fine, it boils down to the same thing.

MR SPEAKER:

Anyhow, if you are not prepared to withdraw and he is not prepared to withdraw, I will name you, then we will put it to the motion.

HON CHIEF MINISTER:

Indeed. You can name me.

MR SPEAKER:

You are already named and the motion is whether the House supports the Speaker's motion. All right. We will take it straight away by voting. Question put.

For the Ayes: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon S E Linares

The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

For the Noes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet

Abstained: The Hon R R Rhoda
 The Hon T J Bristow

Absent from the Chamber: The Hon Dr J J Garcia

The motion was defeated.

MR SPEAKER:

All right. We carry on.

HON CHIEF MINISTER:

Mr Speaker, and in any event now that the motion is over, let me say that since it is the view of the Leader of the Opposition, often expressed, that the exportation of tobacco from Gibraltar in the way that it was being done, did not breach any law of Gibraltar, I fail to see how it can be interpreted to be an allegation of committing a criminal offence. But that, just as an aside, to everything else that you have said. I think Mr Speaker's decision to name the Chief Minister in circumstances in which there is no procedure in this House that entitles him to name the Chief Minister for that said, there is privilege in this House, and there is

privilege in this House on terms that the Members make themselves responsible for the statements that they make in it. There is no rule in this House that allows the Speaker to name a Member for expressing his view in it.

MR SPEAKER:

I did it once with the Leader of the Opposition.

HON CHIEF MINISTER:

Well, fine. Therefore you think it is only fair to do it again for me.

MR SPEAKER:

No, no, no. Please do not tempt me again. Carry on.

HON CHIEF MINISTER:

Mr Speaker, look, I am not tempting you but nor am I willing to be curtailed or constrained in the legitimate exercise of my rights and obligations in this House. The procedure is that Mr Speaker can make a ruling, which he has made, and the procedure also is that the House can express its view about whether Mr Speaker got his ruling right, which is also expressed, and has expressed the view that he got it wrong.

MR SPEAKER:

Yes, you want to have the last word.

HON CHIEF MINISTER:

Mr Speaker, moving on

MR SPEAKER:

No, no. Now no. Now I will say, even if the naming has not been passed, whether the House as a whole supports the Speaker in his ruling.

HON CHIEF MINISTER:

We have just voted on that Mr Speaker.

MR SPEAKER:

Yes, but with this implication if the vote is against it will have to take over for ever.

HON CHIEF MINISTER:

Do you want to put it to the vote again?

MR SPEAKER:

I will. Does the House support the Speaker's ruling.

Question put.

For the Ayes:

The Hon J J Bossano
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo

The Hon L A Randall

For the Noes:

The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet

Abstained:

The Hon R R Rhoda
The Hon T J Bristow

Absent from the Chamber: The Hon Dr J J Garcia

The motion was defeated.

MR SPEAKER:

As the Speaker has got no support, I will definitely not vacate the chair but I will be leaving the House quite soon. I am resigning, that is the issue. Carry on now.

HON CHIEF MINISTER:

Mr Speaker, turning now to the remarks by the Hon Lucio Randall in his contribution. He said that I had said, that the Government were not prepared to subsidise public transport, and that despite my having said that, we are now obviously having to subsidise private transport through the new company. Well in fact, I have never said that the Government are not prepared to subsidise public transport. What I said was that the Government were not prepared to pump public funds into the private operators. I was implicit in the fact that the Government were willing all along to make the investment in acquiring the buses

through their own company, and then to stand behind the financial operation of the activity that it sets up, then it is implicit in the Government's position all along that the Government are certainly willing, and often described it as a service that in other places in Europe is publicly funded and subsidised. Indeed, in many parts of Europe the municipal urban transport system is run by the local authority. In UK they started the nationalisation process at a given point in time with due regulation, but this is certainly a service that the Government feel, not only should be subsidised, but indeed needs to be subsidised because given the size of Gibraltar and the number of people which are the client base of a public transport system, no commercial operator could make a commercial success of running a proper, reliable, regular public transport system with the necessary capital investment to keep the equipment up to standard, without charging huge fares. It is just not enough turnover of people. So, if in even larger cities and towns it is necessary for the local authority to subsidise, in a small community like Gibraltar it becomes even more important than that to do so. Then of course, the other aspect of the hon Member's comments that I wish to myself remark on is this. Now that we have done the buses, leaving to one side all his criticisms of the size of the buses, leaving all that issue now which I have commented on to one side, his remarks about the funding and financing of it. We announced the public bus service some years ago, and is quite usual for the way they press the Government on our own manifesto commitments, during the last few years they have been pressing the Government, "when are you going to do the public transport system? What is the delay? Another delay by the Government in one of its policies. " Then when we do it, the criticism is that it requires public subsidy. I think that if the hon Members were of the view, which I do not actually think that they are, subject to anything they may wish to say on it, I do not think that they are opposed, I mean may be opposed to the size of the buses and all of that, but I have not heard them express opposition to the fact of a publicly funded public transport system. But certainly, if they are opposed to a publicly funded public transport system, then of course it rather puts in a different light all the holding to

account of us that there has been for the delay in introducing the new Government public buses.

Mr Speaker, he also raised in his contribution, of when the Government would be re-opening Dudley Ward Tunnel. The answer to that, is that there are schemes in the making, I think that now there is a technical assessment of what needs to be done, and I think also it is true to say that there is a preliminary costing of it which is high, very high. We are not talking about hundreds of thousands of pounds, we are talking about much more money than that. So, he is not right in thinking, or he speculated, whether the £750,000 in the Estimates this time for cliff faces and all of that, whether that might include the cost of the project for the opening of Dudley Ward Tunnel. And it does not. That project, if the Government decide to do it, when and if, if and when, put it whichever way he likes, would be of a much larger order than this figure suggests. The hon Member again, and I think this time just taking up the language that used to be used in this House by his predecessor Opposition Spokesman on these matters, the Hon and in parliamentary terms much missed Juan Carlos Perez, referred to the chaotic traffic situation. Now that used to be his favourite phrase, chaotic traffic situation. The Government do not think that there is a chaotic traffic situation. The Government understand that in Gibraltar, as in every other city and town in the world, there is a rush hour, or two rush hours a day. That when there is a rush hour, traffic is more intense than usual and there are delays, and it takes people longer to do the same trip than it takes at other times of the day. That is called the rush hour. It does not amount to traffic chaos. There is no traffic system that Gibraltar could implement, with whatever degree of consultation with experts, local or international, there is no traffic system that could be implemented in Gibraltar that would relieve the community, particularly in Gibraltar, I think it is true everywhere but particularly in Gibraltar, where we have basically two or three streets running north south, relieve the community of more intense traffic congestion during the rush hour. To suggest that there is something that the Government could do in respect of traffic management, which they are not doing, but which if they

did do would have the effect of relieving what he calls the chaotic traffic situation, is not an analysis of the position with which we agree. Other than in rush hours, the only "chaotic traffic situation" that some times develops is when the Spaniards impose restrictions at the frontier, and the frontier traffic reaches all the way back into Winston Churchill Avenue, clogs up the roundabouts, clogs up Line Wall Road, Devil's Tower Road, Glacis Road and all points leading to the north of Gibraltar. That often results in huge traffic disruptions and delay, but I hope that the hon Member will agree, first of all that the cause of that is not in the Government's control. That there is very little, if anything, that the Government can do about that, except what the RGP already does, which is to operate third lanes up the runway, and deploy a huge and expensive manpower deployment to traffic point control duties around the affected areas. So, the hon Member calls for a traffic plan. The first point then that I would make to him is the points that I have already made, about what such a traffic plan might and might not reasonably be expected to achieve. But the second thing that I would say to him is that of course, Gibraltar does have a traffic plan. The Government have a clear, integrated transport policy, perhaps for the first time ever in Gibraltar, which is a properly resourced, properly run, reliable, frequent scheduled public transport system, so that people have a choice, a real choice about whether or not they use their private vehicles or not. Now, during the day if an individual takes his car out from his home and loses his parking place outside his home, and then struggles to find a parking place at his destination end, it is because he is not willing to wait a maximum of 15 minutes for the bus. Because the buses are every 15 or 20 minutes, I think it varies on the routes. At weekends, I think the schedule gets longer. I think on Saturday and Sunday afternoons, there is more time between the buses to meet demand, to reflect the much lower demand. But that is an important part of what he calls the traffic plan. Another important part of this integrated traffic plan, is the fact that the Government are opening car parking facilities in as many places as possible around the City Walls. So we have done Commonwealth Parade, more recently we have done the Landport Ditch car park and free so that people have the most incentive not to touch

their cars. Of course, because if it was paid parking, the people would say "well, I am going to take the car out of the parking place to save the parking cost." If it is free, and there is a decent public bus service running, and there is plenty of parking for people to leave their cars, all right not outside the front door of their home, but reasonably accessible to their home, then that is an important part of the integrated transport plan. We recognise that there are particular parking problems in the Upper Town area, and in some areas of the South District, and that these are in the process of being addressed as well. That is the combination of buses and parking, is two important parts of the Government's integrated traffic plan. As indeed is the pedestrianisation policy which the hon Member, on the contrary, appeared to think was worsening the traffic situation. I think that an environmentally sensitive, integrated transport plan will strike a proper balance between the needs of the motor car and the needs and the quality of life of the pedestrian. I think it is probably no longer challengeable that as a result of the pedestrianisation of places like Main Street and now the John Mackintosh Square, on three of its sides, and Casemates Square, that these have created large areas which are for the benefit of the pedestrian at most times of the day, and that this is an improvement to the quality of pedestrian life in Gibraltar, which is no less important than the importance of satisfying the needs of the motorist in Gibraltar. So, a decent public transport system, decent parking facilities and the pedestrianisation element, are all elements of the Government's comprehensive traffic management/transport plan.

The hon Member said that the roads are in need of resurfacing, and he gave two or three examples, one of which was immediately outside the front door of his home. It reminded me of this television programme on Wednesday nights, Talk About Town, where it is regularly said, quite unfairly by the way but never mind, it is regularly said that Irish Town is the most frequently scrubbed street, because of course, that is where the Chief Minister lives, and this line is cracked frequently. But it is cracked in jest, and what I would say to the hon Member, is look, there will always be roads that need doing. Even if the

Government were doing six roads there would always be another six roads, given that they cannot all be done every year at the same time, there will always be roads that can be pointed to as being in need of maintenance and refurbishment. But, I do not think the hon Member should overlook what the Government have done in respect of road maintenance, which is, to spend much more money in this area than used to be the case before 1996, and to set up road maintenance measured term contracts with private contractors, to do it on an on-going basis. Of course, wherever there is a rolling programme, the hon Member is free to ignore the roads that are done and point to the ones that remain to be done. I suppose politically that is not an illegitimate technique, but we should not lose sight of the fact that although there are roads that remain to be done, there are many that are being done and the Government dedicate an annual provision of capital, every year, for this process. That is the annual programme that they have had answers in the House and until recently had not yet been decided by those that decide how they want to prioritise the resource that the Government and the House provides to them.

The hon Member raised the question of telephones, where he knows that I particularly welcome his input because I know that he has some expertise at a technical level on this. He said that the real and full competition will not be available until the numbering complaint is resolved. Well, I think the position is even worse than that in the sense that I do not think that we can wait until the complaint is resolved. The European Commission has in effect led us down the garden path since the complaints were first filed in 1996, making statements, and the British Government Ministers making statements in their own Parliament, which amounted to an indication that action would be taken because the remarks that the British Government were saying that it was illegal and the European Commission was writing letters saying that the situation was intolerable, to the Spanish and the British Government and to Telefonica, and saying that something had to be done about it and that the situation could not continue like this any more. So we can imagine everyone's surprise, not just the company but also the

Government, when eventually they decide they are not going to do anything about it and close the dossier. At that point, that is the first point that the company can then say I am litigating them. Because it was not until the Commission finally confirmed that it was not willing to act, which it has now done in respect of roaming but has not yet done in respect of numbering, that the company is able to say, well now I am suing the Commission for failure to act. That court case is now started on the decision that has been made, and will be commenced as soon as the Commission makes the decision, as it will do, not to act, on the numbering complaint as well. But of course that process then has its own time scale. It goes to the Court of First Instance, it is at least 18 months to two years there, and then if either side appeals it could be another two years at the European Court of Justice. And I do not think we can wait another two or four years for the benefit. Well let me give the House an indication. There is a licence, which the Licensing Authority in telecommunications, who is the Minister for Trade and Industry, is about to issue. It is one of the names that is brandied about when the Hon Dr Garcia asks questions of this sort. The Minister is minded to grant the licence and is about to grant the licence. It is for a general service provider of the sort that he believes, and I agree with him, would be in a position to provide real competition to Gibtelecom. But what is that going to mean in practice? Because if the Government, as owners of the numbering plan, are not in a position to give any subscriber numbers to a second telecoms operator, how can they offer a service to the public? All right, technically there is number mobility, the new company could come to him and say, "do you want to be my client instead of Gibtelecoms?." and then I could say to Gibtelecom " my number is now transferred to the new company." That is called number mobility. But it is well known and any regulator will say that number mobility by itself does not provide an adequate basis for competition because it is too difficult, people think it is too much of a hassle. They can not be bothered to go through with it. The only real basis for real competition is, when the regulator, which actually administers the numbering plan, even though it belongs to the Government, the regulator administers the numbering plan on behalf of the Government as he knows, is

able to say to a new licensee, "here is a block of 5,000 numbers allocate them to your clients as and when you can sell your services to them." But of course we are not in a position to do that and will not be in a position to do that until either, the numbering case is eventually won, so that we can go to 350 with as many numbers as we like. Or in the meantime, we manipulate, notwithstanding the Spanish restrictions, we manipulate our numbering system in a way that at least for incoming calls from countries other than Spain, we are able to expand our numbering plan. The only model, and this is an issue in which I personally have taken a huge interest because of the macro economic consequences, when businesses cannot set up in Gibraltar because there are no numbers to issue them.

Well, I am advised that the only way of achieving this is either, to accept some version of the Spanish offer, which includes allowing them to be the primary regulatory authority for the numbering plan, which I have said before in this House and I repeat, has always been, remains and will always be unacceptable to the Government. Or, what is called number shadowing module. Now number shadowing module is said to have technical user unfriendly characteristics. Now, making due allowance for the fact that the Chairman of Gibtelecom is here, and indeed the Chief Executive Officer, one of the things that I need to be clear about is whether Gibtelecom's concerns about the number shadowing module are really technology based, or whether it is just self serving. In the sense that whilst the Government do not implement it, they cannot have any competition, because there are no numbers to award to anybody. There are big Chinese wall issues within the Government about this, making sure that the Government's own assessment of the Gibraltar-wide issue, is not unduly driven by the views that emanate from Gibtelecom, which has interests in there not being competition as opposed to there being competition. I am not saying that that is what is driving their advice to the Government, but the Government have got to be conscious of the fact that it suits Gibtelecom commercially that there should be as little competition as possible, and that the present situation whereby the Government have no numbers to give another competitor,

perpetuates, continues the present system where competition is very difficult to shoe horn in.

There are competitions around the edges. There are companies providing voice over the internet protocol, and there are companies providing this or that peripheral service. I agree with him, real competition of the sort that will drive prices down, as per market, as opposed to unilateral Gibtelecom decision, of which they are making some very big ones, but that will only really happen when there is somebody standing in the market as a, I am not going to say the phrase as universal service provider in its technical sense, but somebody providing a wide range of competition service, both mobile and fixed. Therefore, I think it is only a matter of time before this House has to debate in full, and in substance, whether Gibraltar should move to a number shadowing module system, and for how much longer we should desist from doing that, by managing with the current insufficient number of numbers. And we shall have to present to the House, for the purposes of that debate, whatever technical advice we have about what could be the technical implications of number shadowing. But number shadowing already exists for calls from Spain to pre-paid mobile numbers in Gibraltar. What we are told by Gibtelecom is that if we applied number shadowing more widely, for the purpose which I am describing, that this could have the effect of bringing us back to the days of dropped calls and people ringing from abroad not being able to get through to Gibraltar. Well, obviously I am not technically competent to analyse that, and the hon Member might be, and I would be very happy to pass him the papers and invite him to give me his view about whether he thinks that there is any technical merit to the advice that we are getting. But a solution has to be found before the resolution of the litigation, because that is three or four years ago. So there is no point in failing to address the point. We are going to have to address the matter and the question is which of the options available to us do we select.

HON J J BOSSANO:

May I ask ? If the licence is given and there are no numbers available, would the new operator not be able to also take the matter up with the European Commission?

HON CHIEF MINISTER:

Well, no, the position then is actually better than that and one in which the Government may well find themselves. That is that having licensed an operator, that the operator might turn round to the Government and sue the Government in the courts of Gibraltar, for failure to implement the Gibraltar Telecommunications Ordinance. Then the Gibraltar court can refer the matter directly to the European Court of Justice, for a preliminary ruling on the question. Now, I would like to find a way of doing that, that does not expose the tax payer to a damages award. But from a procedural point of view, it might actually accelerate the placing of the matter before a competent European court. But of course, at the moment we are saying to the licensee, "look you can have your licence but know ye that we have got no numbers to give you." That might make it harder for him to sue the Gibraltar Government. If they sue the Gibraltar Government and we can persuade them not to seek damages, but simply to seek a declaration, we would then support them in their application to the Chief Justice, or to the Additional Judge, whichever one it comes before, to make the reference to the European Court of Justice, because then, Gibraltar is in front of the European Court of Justice with the ability to place before the court the entire saga. So, the opposition might actually be even better from that point of view than the hon Member's question anticipated.

When he was speaking about the Electricity Authority, the hon Member said that this was done on the basis of increased pay which was to be funded by increased productivity in what is already a highly productive sector. Well, some parts of the Electricity Authority were already highly productive. I do not think

we could ask the people in the Generating Station to produce electricity any faster than they were producing it, the machines are always running. Whether or not it was already a very highly productive sector, in the other areas is moot. And moot, not least because a lot of their manpower had been allowed, the Distribution Section, the people who do the work out on the street, a lot of their manpower have over the years, and now during both terms of office of both governments, has been allowed to fall. There were sections of the Electricity Department that simply did not have the manpower to carry out some of their statutory duties. But I want to say to the hon Member that it was not just that it was to be funded from productivity. That was not quite the deal and is not the deal. The deal is that it would be funded from monies that are presently already being spent through overtime payments. In other words, this is not true of the deal that we did with the mechanical section. That is extra new money. Let us not call it the mechanical section, the generation division, the shift workers in generation. That is new money. But the much higher cost of funding the new pay deal for the Electricity Authority for the distribution section and the electrical technical section, and all the non generating sections, that is to be funded almost entirely from money that was presently being paid to them in overtime. The element of productivity increase comes because they have agreed to do, during conditioned hours, the work that they used to do during overtime hours and were paid overtime for. So there is an element of productivity but there is no need for great amounts of new money because they have accepted cuts in their overtime earnings to receive it in respect of conditioned hours instead of what used to be overtime hours. Coupled with the commitment to do the same amount of work, concertinaed so to speak, within the conditioned hours without the need for them to have to come and do overtime hours.

As to the hon Member's remarks about the appropriateness of GBC silent hours broadcasting, I can dispose of that point quickly by saying that I agree with him entirely. I think that to turn on ones television screens and to see somebody being interviewed on it and suddenly it dawns that this interview is 18 months old or

two years old. Frankly, we have got to wonder whether it is safe for us to give interviews now in these programmes. Because of course, the Leader of the Opposition or I, or any of the other Members of the House, may be interviewed, in a discussion programme. It may then be rebroadcast two years from now, again, when the facts may be wholly different, all the remarks that one says sound stupid, because they have been overtaken by events or changing circumstances, but one has still got to suffer the whole community seeing this interview again, and some people not clicking that it is an old can. At least, as I once read in a newspaper, if they put on the screen archives first broadcast in 19.. whatever, at least people would have an indication that it was old. I would have thought that, if one is watching somebody make a pudding, I do not suppose it matters that one first saw them making the pudding two years ago even though one might be tired of eating the same pudding by now, but the same is not true of interviews of a topical nature which are topical at the time that they are recorded but not otherwise.

In fairness to GBC, the reason why they do it. I do not think it justifies them doing it, but this is not an irrational decision on their part. We may disagree with it but the reason why they do it, is that it gives them more advertising slots to sell. Because of course, if they are not broadcasting, they cannot broadcast advertisements, there is no programming to slot advertisements around. If they are broadcasting, albeit old programmes, they might be able to persuade somebody to place an advertisement for Sunday afternoon, during the 16th repeat of the interview with poor old Mario Finlayson, who must be tired by now of seeing himself sketch that etching that he does. Well fine, that is the reason why it is done.

Mr Speaker, what can one say about the contribution of the hon Lady the Spokesman for Health, Marie Montegriffo. Well, I suppose one can say that it was her usual rant on health, and I suppose one could say that given that it was almost identical to the speech that she gave last year, even to the point of rehearsing the 24 alleged points. I suppose at least, the House typist benefits from the fact that with a bit of luck she might not

have to retype this year's speech. With a little bit of cutting and pasting she might be able to make do with her typing efforts last year. Well, I had thought that as she is now denying the rumours, I had thought that this might be her swan song and that before moving portfolios, that she wanted one final time to just get it all off her chest, and put us all through of hearing it all again. But as she is now denying that there is going to be a change of portfolio, I cannot even console myself with that thought.

Mr Speaker, the hon Lady's contribution adds nothing to what she said last year, adds nothing to what she was saying before the General Election, ignores the fact that there has in the meantime been a General Election, ignores the existence of everything that the Government are doing to put right some of the things that she is describing. And then she just regurgitates the same material. Well, that is the hon Lady's right to do so, but frankly, it is all very old hat, very old hat indeed.

For example, she has a sort of systemic tendency to ignore everything that she is told in this House. So she is being told in this House, and indeed in a recent Government public statement, that the Europa playing fields are no longer going to be handed over by the MoD. Does that stop her, at the next opportunity in this House, criticising the Government for the delay in the transfer of the Europa sports field. No. Look, in case she is tempted to raise the issue again, the matter is no longer one of delay, it is not going to happen at all. It is not going to happen at all because the Government have agreed with the MoD that we will have the Naval Ground No. 1, the one without the car park built on it, instead. That is the position. So, please would she no longer ask when the Government are going to get the Europa playing field, or even a criticism at the Government for the delay in obtaining the Europa playing field, because we are not getting the Europa playing field any more.

Then she says, "everything that the Government does takes for ever, delays in all the projects." Well, half the time they are saying that the Government are spending too much and the

other half of the time, they criticise the Government for not spending it fast enough. Well, nor is it true that there are these systemic delays in Government projects. In the last eight years, the Government have deployed £150 million worth of publicly funded projects. That is unprecedented. Never in Gibraltar's political history has Government funded, in eight years, £150 million of projects through publicly executed projects. Therefore the hon Lady has got to understand that there are capacity issues here. Already when we debate the Improvement and Development Fund in this House, the hon Members are always pointing out that we estimate they were going to spend twenty something million pounds, and then when the chickens come home to roost we never manage to spend more than somewhere between fifteen and twenty. There are capacity problems. There is a limit to the design team resources, there are limits to the construction company resources, there is a limit to the number of projects that the Government's own personnel can prudently supervise at the same time. Now, given that we already have a record level of publicly funded expenditure programme, I think that this much repeated statement that everything that the Government do is hugely delayed, has to be seen in the context of the sheer scale of the Government's publicly funded programme and there are programmes and there are things waiting in the queue. Now, the hon Member might say, "well why do you announce them?" Well, Mr Speaker, I suppose she wants us not to announce projects until the day before they go out to tender, that would protect us from the accusation that there is delay. The Government give a long range statement of what their capital programmes are, and yes, there are occasions in which the Government hope and expect to do things in a particular year and says so, and then finds that it is not possible. Then there are occasions which fall more into the category that she describes as policy driven delay, for example, the leisure centre, where the Government's political commitment to do a leisure centre falls by the wayside in terms of delay, for extraneous reasons. The Government want to do it in the King's Bastion. Then that debate gets overtaken by the debate demolish or not demolish the King's Bastion station. Then when the Government make a decision on that, some private

developer comes up with a development scheme for the whole area, and says, "but if you do the leisure centre there it does not work, and I will do the leisure centre for you somewhere else." Then while that negotiation takes place, and possibly fails, there is more delay. The projects where the Government accept that there has been delay of the sort that they apply to all projects in criticising the Government the leisure centre and the other is in the Government's home ownership schemes. Those are the projects in which, for a variety of reasons, there has been delay. For the rest of it the Government do not accept that criticism.

The hon Lady said that the House does not control Gibraltar Health Authority expenditure, because it is not a Government Department and we only vote the subventions so they can spend what they like on services. That is a rather naïve assessment of the position. The Health Authority has its own sources of revenue, from Group Practice Medical Scheme contributions and from one or two other sources but the vast majority of the GHA's revenue is now the subvention. Even if it was not a large proportion of it, anything that they spend as they like, as she says, which is not met from the Group Practice Medical Scheme contributions and from its other sources of revenue which are finite, can only come from the Government subvention. So any overspending flows straight into the Government subvention which is voted for in this House. So to say that the Government should not control the levels of expenditure in the Health Authority, or does not control the level of expenditure in the Health Authority, because we are always voting for the subvention, is not in practice realistic. I mean, if the Gibraltar Health Authority was fully funded from its own sources, without having to have recourse to Consolidated Fund resources, then they could spend it as they like. But that is not the position. The Health Authority depends on the money that we vote in this House, just as any other publicly funded service does. I think therefore that comments do not apply.

Then she said Government wash their hands and allow the experts to find a solution. This was supposed to sound like a criticism of the Government. I think it is entirely meritorious that

the Government, and there are no medical experts sitting anywhere on this bench, that the Government allow experts to find solutions to technical problems in the medical field, and allow experts to find solutions in the engineering field because this goes straight to the core of this, in our judgement, misconceived attitude that Opposition Members have, that somehow relying on experts is bad. I think that relying on experts is good. Perhaps, if the hon Members had relied on experts a little bit more than they did, we would not have had the Harbour Views fiasco, we would not have had the In Town incinerator fiasco.....

HON F R PICARDO:

Point of order Mr Speaker. I think it is appropriate to make a point of order at this stage, because we have had to hear about the Harbour Views fiasco, I think now about 10 times. I think the Chief Minister should be made to accept, when he makes that point, that a lot of the money spent, which he repeatedly says is the fault of the Government, could not have been the fault of the Government because the money was repaid as a result of showing that it was actually a third party, the contractor I believe, not the developer, who had made the mistakes and therefore the money had to be repaid. And all this expenditure resulted in repayment.

MR SPEAKER:

This is not really one or the other. Carry on.

HON CHIEF MINISTER:

Mr Speaker, but you see he is wrong, even when he gets up to interrupt. Because the settlement reached with the contractor, by the way, which was only reached after the Government had invested millions of pounds into the litigation, not millions but

hundreds of thousands of pounds into the litigation, did not produce 100 per cent recovery of the cost. There is still several million pounds, I think four or five or six, but Mr Speaker, it was still the cost. The fact of the matter is that their flagship project, because they did not want to rely on experts, their flagship project which was the home ownership scheme down there, was so disinterestedly supervised by the Government, that it cost more to repair than to build. It is all very well saying it was the contractor's fault. Yes it was. But it was also the fault of those people who were funding the contractor, who were going to become owners of half of each house in it, who looked the other way and showed no interest in supervising the standards of construction that were being built there. If the hon Members have a different analysis of the position, so be it.

Then of course the hon Lady has the whole of Gibraltar believe that the problems in the Health Service started on 16th May 1996. She actually said that much in her address. The problems started to happen in the Health Authority we came into office. So she wants people to believe that. So she wants people to believe that whereas she was so hugely competent that until 1996 the Health Authority had none of the problems that it suffers from now. That the Hon Mr Azopardi, the Hon Mr Linares, and now the Hon Mr Britto, in contrast to her, are incompetent. All of them. And for her to think that she can get away with that analysis, she first of all has to persuade people that she is competent, and then she has to persuade people that every single GSD Health Minister has been incompetent, and then more than that, she has to hope that the people of Gibraltar suffer from instant, simultaneous collective insomnia.

HON F R PICARDO:

Insomnia or amnesia?

HON CHIEF MINISTER:

Yes. Thank you. Amnesia. Well it is one all. I corrected the hon Member on the asbestos and the ammonia so he can correct me on the insomnia and the amnesia. But Mr Speaker, does the hon Lady seriously stand up in this House, and pretend that before 1996 the people of Gibraltar were satisfied with their health service, she says that the problems began in May 1996 and there were none of these problems when she was in office. This is not a question of degree. If she had said the problems have got worse since the GSD came into Government, well, that might be true in some areas and it is not true in others. But that is not the nature of her allegations. The nature of her allegations is not that matters have got worse. The nature of her allegations is that the problems began at midnight, the moment that the Returning Officer had announced the votes, on 16th May 1996. That is the nature of her allegation. So that before 16th May 1996, there was not any problem with private practice, people did not die in hospital when they should not have died, there were no complaints, the staff was terribly high moraled, even though we all know how it used to be run at the time, and all of this starts on 16th May. Well, she can continue to try and persuade the people of Gibraltar of that. She does not have it in her to be sufficiently persuasive to succeed. *[Interruption]* Well Mr Speaker, you see, the hon Member from a sedentary position says, that we got, I know that he is heckling, I know that he is constantly heckling and I know that he is constantly being allowed to do it. That is fine, that is nothing to be proud of. Now Mr Speaker, the hon Member says that we have had a reprimand. Let us assess this reprimand. Incidentally a reprimand, which I knew how to properly interpret, but which I think Opposition Members should draw very little political comfort, because after all, despite bringing the Health Services to the chaotic crisis situation to which they allege we have driven it, as a result of the cumulative incompetence of every GSD Minister since 1996, despite it all being the fault of the political incompetence of the GSD, despite having in the words of the Hon Mr Bruzon, failed the people of Gibraltar to provide them the most basic amenity which is housing, if despite all of that the

people of Gibraltar still preferred this Government to theirs by a margin of 11 per cent, what is going to happen to them when we put these things right? *[Interruption]* Or I see, they think it is electoral fraud. All right.

Well, hon Members should draw no comfort from any alleged reprimand that they think the electorate has given us. Because frankly, if I were them, I would be asking myself, goodness gracious me, if these people have done as badly as I say that they have done, why is it that the people of Gibraltar still prefer them to me? What do we have, political leprosy or what? Because it can only be political leprosy if having presided over the catastrophe that they claim that we have presided over, we still beat them in General Elections. *[Interruption]* Oh, I see, by a whisker. By a whisker. 11 per cent. And of course, when they themselves realise this, they then console themselves by saying, "ah well, but compared to what the polls were predicting, the Government got a much smaller share of the vote." Ignoring the fact that their share of the vote was static. So look, I do not know where the percentage that we lost, through natural wastage, went. But it certainly did not go to them. They have been stuck on 40 per cent of the electoral vote in each of the last three Elections. So it seems that however badly the GSD does things, which according to them, I mean the education system is on the slippery slope to extinction, the Health Authority is in a chaotic state, housing and all these issues, and despite that they cannot persuade more Gibraltarians to vote for them. Look at the rate of 150 votes every four years, I would have to be here for the rest of my life, and I do not want to be here for the rest of my life. . Perhaps in their hearts they have just settled for their Opposition retirement pension.

Then the hon Lady says, Government say that 100 people do not need to be in the hospital, and however many times the Minister for Health explains to her, that it is not the Government, it is not Ministers as she accuses us of saying that 100 people should not be in hospital, It is the doctors who say that 100 people should not be in hospital, because they have chosen to discharge them, or would discharge them. Now she and I, as non medical

laymen, could if she likes, go downstairs and over a pint of beer somewhere discuss whether the doctors are right or wrong in their professional, medical assessment unless of course, she does not like those professional advice either. Perhaps she thinks that the Minister for Health should exercise clinical judgements as well, as I have no doubt it used to do when she was the Minister for Health. That may be what she means. But leaving that point to one side, it is not the Minister that says that 100 people who are in hospital do not need to be in hospital. It is the clinicians who say that.

HON J J BOSSANO:

The Chief Minister has no doubt that my Colleague, when she was Minister for Health, was over ruling doctors' medical decisions. That is another one of the things he has no doubt, and he hides behind parliamentary privilege to say that.

HON CHIEF MINISTER:

Mr Speaker, just as she is persistently wrong when she says, despite the fact that the Minister for Health clarifies the position to the contrary, when she says, the Minister says that only 100 beds are required in Gibraltar, and that Gibraltar does not need a hospital with more than 100 beds. When the Minister has repeatedly said to her that he has not said that, that it is not his view, that all that he has been doing is saying to the House what one of the consultants said, at the same time as telling her that the Government have rejected that advice, as is self evident by the fact that we are building a hospital with about 211 beds. So why does she persist in insisting that the Minister says that Gibraltar does not need a hospital with more than 100 beds, when he has not said that Gibraltar only needs a hospital with 100 beds. He has said that a consultant has said that Gibraltar does not need a hospital of more than 100 beds. I do not suppose it matters on how many occasions we clarify this for her. Next time she gets the opportunity to speak on health I have no

doubt that she will again attribute to the Minister for Health the statement that Gibraltar does not need a hospital of more than 100 beds.

The hon Member says that we do not like eating our own words. It is not that we do not like eating our own words, it is that we do not want to eat our own words after they have cooked our words and decided what our words were. That is what we do not like doing. Government are perfectly happy to be held accountable for the statements that Ministers actually make. What we are not willing to do is to be held accountable for the distorted version of the words that they put in the mouths of Ministers. That is not, not being willing to eat our words. It is not being willing to eat her words, which we are certainly not willing to do.

Then there was a haw-haw over there when I said that staff were expected to cooperate, men and doctors, she extended it to others but we were referring to doctors, were expected to cooperate or leave. There was shock when I confirmed it. Well I do not see why. Look, the hon Members like to hold us politically accountable for the things that are not fixed in the Health Authority, and we accept, even though we are none of us doctors or health administrators, we nevertheless accept political responsibility for the Health Service, for the good and for the bad. But what the hon Lady cannot do, is demand of the political Government that we put right whatever needs putting right, so that she cannot stand up and criticise us every 15 minutes about us, but then expect us not to be able to put right what is wrong unless every last member of staff approves of our remedial action. It suggests to me that what she wants is for us not to be able to fix what is wrong with the Health Authority, so that she can continue to criticise us for it. The Government have made clear, and the vast majority of the members of staff accept, that once the Government, in consultation with the staff, not as a unilateral act of prepotence, but when the Government in detailed consultation with the staff, have established a way forward for putting right what is wrong and needs putting right with the Health Service, the Government will not tolerate individual members of staff usurping the functions of

management, usurping the functions of employer, usurping the political responsibility and commitment of this Government to put it right, by deciding, motivated by God knows what extraneous motive, to sabotage the benefit of the Health Reform for the benefit of the whole community. There is no way that the Government are going to do that. It is true, absolutely true and I repeat it here and now, that any doctor or consultant that does not cooperate with the Government and the Health Authority, in whatever is decided to put it right, will not be allowed to continue to work in the Health Authority. I do not see why the hon Lady finds any of that so shocking. She should be welcoming it. Instead of leading us to believe that she thinks that we should harbour saboteurs within the Health Authority, even at the expense of the quality of the public service that her family and mine, and us all, have to suffer unreasonably, if the Government make a proposal which is not reasonable and the staff, in the consultation process say to the Government, look Government we do not agree with this, or that does not work, how about this. I am talking about what emerges from the consultation process and from the consensual approach to this. Absolutely, they will be shown the door. The front door, not even the back door.

Then, what can I say about her care to repeat, make statements like, I have never questioned the delivery of medical services by staff. I have only ever questioned GoG policy. Not one single instance is there, when I have blamed staff. It is always the fault of Ministers. Does she really expect ordinary thinking, or even unthinking, people to accept that extraordinary situation. It is not even true, because when a young man dies in hospital as a result of alleged poor delivery of service by a doctor or a nurse, or a combination of them all, she does not put out a statement criticising the doctors or the nurses, she puts out a statement criticising the Minister for Health. So even what happens on the ward at four o'clock in the morning, is the fault of the Minister and not the fault of the staff that delivers that service. Mr Speaker, it is an extraordinary, absolutely extraordinary position for the hon Members to hold. They can hold Ministers responsible for lack of resources, for lack of policy, for lack of funding policy, for lack of encouragement of management to manage. For all of that they

can hold Ministers responsible but to hold Ministers responsible for the behaviour of one doctor or one nurse, at a particular time of the day, on a particular day of the week, on a particular month of the year, with a particular patient, whether the temperature was measured when it should have been measured or not, or whether the right medicine was given, or whether the doctor responded quickly enough or did not respond, to hold Ministers responsible for that, whilst at the same time saying that they hold the staff that did it blameless, just raises issues. Does she not understand of the credibility of everything that she says about health.

Then we have again their sort of what I call pseudo-nationalism. Pseudo-nationalism. This business about it has always got to be a Gibraltarian and do not bring experts from abroad because we Gibraltarians, these jobs are for us. Regardless of whether there is competence, regardless whether there is expertise, regardless whether it is what the people want by way of professional management, can only be described as pseudo-nationalism, and an extraordinary view for a so-called international socialist to articulate. I have never seen socialism reconciled with pseudo-nationalism as they try to do.

It is like the Leader of the Opposition's May Day message. First of all he says I am an international socialist, and then in the last paragraph of his May Day message he says, but I criticise the Government for letting so many Spaniards get jobs in Gibraltar. Well I have never heard, look I am not a socialist, international or domestic, but I have never heard somebody who is a genuine socialist articulate views of that sort. No, and all the people whom I recognise in Gibraltar as real socialists are as aghast by their views on nationalism and on pseudo-nationalism, and on all these issues as I am but they do it from an ideological home base, I do it just as an external observer. So, the bottom line for the hon Lady is that the staff is excellent, the management, to quote her words, is impeccable yet because of the incompetence of the Health Minister, one individual, the GHA is in crisis. So, it is quite hard, I do not think it would be possible. Look even if one employed Mr Bean as the Minister for Health, I do not think it

would be possible even for Mr Bean to deliver a chaotic crisis health service if it were true that all the staff were excellent and that all the management was impeccable. It is just not possible.

Mr Speaker, I heard her remarks once again about the new hospital. I have no doubt that the new hospital will be like the new buses. The Opposition will bluster, and will taint, and will tarnish, and will perform the most contorted political summersaults regardless of the damage it does to their credibility, just to get some mud to stick on what is a project that they fear will deliver political kudos to the Government. As they have done with the buses and as they have done with everything. I am surprised they have not yet complained about the colour of the lamp posts in John Mackintosh Square. But of course, as I said before, just as all that gets put an end to when the thing gets up and running and people get on the buses and see the extent to which it is an excellent service and an excellent improvement, I suppose it is no coincidence that the stream of press releases critical of the buses dried up almost on the day that the bus service started. I have no doubt that the same will happen on the hospital. When people start visiting the hospital and see what it is, and that there are no kitchens, I told her before, far from there not being any kitchen, there is a kitchen in every ward, but I tell her all these things and she ignores them and she continues to assert that the Government have not got a kitchen. The Government have forgotten to put a kitchen in the hospital. We have forgotten to put a kitchen in the hospital, we have forgotten to make provision for parking. Well, as I say to her, the risk that she runs is that of course, as happened with the buses, when people see for themselves, people will see for themselves and will know the sincerity of the remarks that she makes in the meantime but I accept and understand that until that day we shall have to continue to suffer her hypothetical, speculative, critical remarks.

Mr Speaker, the Hon Dr Garcia started his address by saying that the Government have become a mutual admiration society because we pat each other on the back and applaud each other for our speeches. Well, so has the Opposition become a mutual

admiration society by that definition but we at least all belong to the same political party. What is absolutely staggering is that he should show the sycophantic political love for a politician whose manifesto he tore up, saying it was a load of rubbish and which Gibraltar could not survive. That is the only strange love-in. That is the only mutual admiration society that is open in town at the moment.

The hon Members wish to continue their pretence that they are different political parties. Look, it is indeed a pretence. I do not know how the Hon Dr Garcia, back slaps the Leader of the Opposition to the point where he drools over his every word, when in fact, only four weeks ago he was telling the people of Gibraltar that voting for the candidate recommended by the Leader of the Opposition was a betrayal of our sovereignty. Well, I do not know whether there has been any even temporary introduction. I do not know whether there was any interruption to the mutual admiration society but he must surely by now have come to doubt the Leader of the Opposition's political judgement because I can understand that there can be differences of policy, even within a party, even within a political party there could be individuals that have different views on the same issue, but it cannot be on something quite as fundamental as that. The Leader of the Opposition says, vote for the Labour Party because bla, bla, bla, whatever reasons he may have had. And the Hon Dr Garcia, sells the people of Gibraltar that a vote for the party being recommended by the man in whose judgement he believes he says he trusts, is a vote for joint sovereignty. Now even if he has not resigned from the political mutual admiration society, at the very least he should by now have begun to question the political judgement of the number opposite.

HON DR J J GARCIA:

Can I raise a point of order in relation to the relevance of this. I understand that the mover is confined to issues raised in my speech. I did not mention the European Elections in my address.

HON CHIEF MINISTER:

Mr Speaker, the hon Member chose to make the quip about the Government having become a mutual admiration society. I do not see how he can think that it is relevant when he raises it, but irrelevant when I reply to it. They can both be relevant or they can both be irrelevant.

HON DR J J GARCIA:

No Mr Speaker. It was actually in his speech. I mentioned specifically that Mr Vinet, Mr Beltran and himself had all congratulated each other. It was in their speeches. The European Elections was not in my speech.

HON CHIEF MINISTER:

As to the point that the hon Member made about the Government, which he offered as the only example of political propaganda, the power chips statement. When the power chips thing did not materialise, I thought that we had already indicated to him that this had been a unilateral statement by the company, that the Government have made absolutely no statement and raised absolutely no expectations. This is just something that appeared, we believe, because the company was about to do a share placement in Canada and we pursued the company for it and said, "why are you making these statements, it is just not true." From that to what the hon Member is saying is yet another example of the Government raising expectations and publishing political propaganda, when we have answered in careful language what the Government were and were not doing at that time, seems to be, again, to disregard everything that we have said that is said to them in this House.

Then pursuant to the hon Member's obvious policy of, "first of all you rubbish the project, then you rubbish the cost and if you do not get away with both of those, you say that it is taking too

long.” The time taken to flatten a square, a simple demolition and beautification of a square. What is the matter Mr Speaker? The Member’s office is round the corner. During the whole construction period he must have passed those works every day. Or did he not see that all the services and all the utilities were replaced. The sewers, the water systems, the telephone infrastructure, the electricity. Did he not see all that happening? So why does he call it just flattening the square as if all that the project involved was sending in the bulldozer to knock down the monstrosity that was there before, and then four days later somebody could have come with a pile of tiles and just laid them on the floor. So why on earth did the project take more than a week? Why does he describe it as a simple demolition and beautification of a square, when he knows that that is not all that the project entailed. It is a rhetorical question. I do not know the answer to it and I do not suppose that he does either.

Then we had his, I enjoyed reading the hon Member’s book, he still has not sent me a complimentary copy by the way of his latest, for my collection. But anyway, he gave us this tour of the Bourbon dynasty and the Hapsburg pretenders to the Spanish throne, but of course, then they wonder why it is that the Government think that it is absurd, politically, for the hon Members to assert that in 1704 we were liberated from Spain. Mr Speaker, in fact, given that he wants to convert everything into a history lesson, in fact, Gibraltar was not taken either for the British or for the Dutch. In 1704, which is what it is the tercentenary of today, Gibraltar was taken in name of the Spanish crown as represented by the Hapsburg pretender to it.

HON DR J J GARCIA:

Mr Speaker, that is what I said in my speech so he has been listening very attentively.

HON CHIEF MINISTER:

All right, but then they must realise the nonsense of saying that it was liberated from Spain. Because I suppose it is an.....

HON DR J J GARCIA:

Charles of Austria did not become king of Spain, so it was liberated from Spain.

HON CHIEF MINISTER:

Well Mr Speaker, I understand that. But then by the same token he must be recognising that if Charles of Austria had won the War of the Spanish Succession, Gibraltar would have been Spanish in 1704 and would never have been British because it was conquered in his name. So if the referee.....

HON F R PICARDO:

Mr Speaker, with respect, as a point of order. Spain would have been Austrian.

HON CHIEF MINISTER:

Mr Speaker he cannot get up every time something occurs to him to say. So by that standard, if the referee had awarded Austria a penalty in the last minute of the game of the War of the Spanish Succession, then the result would have been wholly different. I think, for the Government it is entirely legitimate to say that it is the tercentenary of British sovereignty over Gibraltar. It is entirely legitimate and welcome to say, as we are entitled to do and say, that we are celebrating whatever we want to celebrate of our three hundred year relationship with Britain. But to say that it is the 300th anniversary of the liberation of Gibraltar, in my judgement, is unnecessarily provocative to

Spanish opinion. Absolutely. Wholly unnecessary, wholly pre-meditated, factually wrong and historically wrong. I say more, it weakens our case as colonial people because if our political rights today depend on what they call an act of liberation in 1704, then the liberation did not take place for our benefit because none of us were here. I give way to the hon Member.

HON DR J J GARCIA:

It was actually the Rock that was liberated from Spanish rule. We the Gibraltarians were the descendants of the people who settled here after 1704.

HON CHIEF MINISTER:

Mr Speaker, when I have expressed these views, the hon Members have latterly modified the articulation of the point to refer to the liberation of Gibraltar. Their first articulations of it were not by reference to the liberation of the Rock or the territory, it was by reference to the liberation of the Gibraltarians. That is the reality of the matter. But I am glad at least, that they have recognised the point and I do not think that their modification of it is sufficient, but at least it recognises that the liberation is not normally territory that is liberated. The word liberation usually applies to people not to territories. When territories are liberated, they are normally liberated for the benefit of the people that live in them, not for the benefit of the apes, and not for the benefit of the soldier that just did the liberating. The reality of it is, that in my opinion, it is a nonsensical articulation of our political rights as a people, of the historical facts and it is a nonsense analysis of the facts that occurred.

The hon Members think that spending £35,000 on celebrating Gibraltar's tercentenary event in London is lavish. Well, we do not agree. We think that spending £35,000 on an event of that profile, was entirely appropriate and hugely in Gibraltar's best interests. But of course, that is an example of the hon Members

knowing the cost of everything, or wanting to know the cost of everything and understanding the value of nothing. Because it follows, there is a pattern to their attitudes and their views. Because nor did they think that before 1996 there was anything wrong with Gibraltar's image and reputation.

So if they did not think before 1996 that there was anything wrong with Gibraltar's image and reputation, it is hardly surprising that they consider that everything that the Government do to enhance Gibraltar's image and reputation, is logical that they should think is a lavish waste of money. But if the Government had not done all the lavish wastes of money that we have done since 1996, to slowly reposition international opinion's perception of Gibraltar, we would still be in the dire political situation that we were in 1996 on that front. So the Government reject the view of the Opposition Members that there was anything lavish or unnecessary about that.

Look, the Cayman Islands hold their receptions in the Ritz Hotel. I do not see why that is too lavish for Gibraltar. Perhaps the hon Member would have thought it was more appropriate if we had had it in the Golden Eagle Hotel in Earls Court. He might have thought that was more appropriate. Well, just as they missed the point when they say, it is dubious to invite UK veterans. How is this relevant? And if we invite UK veterans why do we not do anything for local veterans? The PR value for Gibraltar of the two or three hundred thousand pounds that this has cost, is huge value for money. Well he shakes his head, he does not agree. We know that his judgement and his standards are different. He is entitled to have different views. I respect his right to have different views and the fact that he has them but the Government that is elected to exercise these judgements, think that this is an appropriate way to commemorate the, but for goodness sake, how ungrateful can he be? He thinks that these poor guys' ancestors liberated Gibraltar from Spain, and now he is not willing even to throw them a cocktail party, 300 years later, or invite them to Gibraltar to have a few beers on Main Street with us. Well the hon Members have no vision of anything.

The hon Members are like frustrated book keepers. They do not understand that there are things which are of value and of interest to Gibraltar, which one cannot look up in accountants book and attach a balance sheet value to it. The reason that they do not understand that, is the explanation of why the perception of Gibraltar in the world now is so hugely different to what it was before 1996, because they just do not understand what it takes and they do not attach value to doing what it takes. Whatever the equivalent is of little England, or I suppose the little Gibraltarian mentality where the only thing that is of any value, it is only of value if one can touch it. Now let me see, how many bricks are there on top of another, four bricks and cement, that is of value, but throwing parties, where Gibraltar gets a profile, where Gibraltar gets the opportunity to network with important political, economic and military opinion formers in the UK, the very people that are then going to decide whether they cut back MoD expenditure or not, none of that is, according to them, of any value to Gibraltar. Well, we beg to differ and whilst we are in office we will continue to differ with them on that.

Mr Speaker, I have mentioned the point that the Savoy, I think I have already mentioned the point that the Savoy is actually cheaper than the Waldorf. So I am sorry, if he prefers that I stay at the Waldorf as I used to. The reason by the way he may be interested to know why I no longer stay at the Waldorf, well it has gone all modern. The Waldorf was a nice, conservative little hotel, which I am sure is why the Leader of the Opposition enjoyed it as well, given that he really is a closet conservative, but if he revisits the Waldorf he will find, I do not know how long it is that he has not been there, but if he goes he will see that the rooms and the public areas have gone all modern. They have now got sort of pointed chairs like Star Trek and things of that sort. It has gone all sort of avant-garde and it is terrible. So we have moved, to humour my more conservative tastes, we have moved to a hotel which is cheaper than the Waldorf, which I thought the hon Member would welcome.

The Hon Dr Garcia says that there is a downward trend. Every year he has got this sort of impossible mission. The impossible

mission is to somehow manipulate statistics or arguments, to suggest that tourism in Gibraltar is going very badly. First of all, well it causes a bit of a problem this, because visitors in the hotels is up. So how can I convert up into down. Oh I know, I will draw the distinction made in the survey between the various types of visitors. So I now separate visitor into business visitors and tourists, and says, ah, visitors to hotels in Gibraltar are up but the sort that is categorised as tourist is down. Well has it occurred to the hon Member that the reason for that is the internet. That increasingly now people book their own hotel accommodation through the internet. They, therefore, do not get caught as tourists, they get caught in the category that he apparently believes does not matter, the businessmen, the MoD, the visiting crewmen and all these other people that lie in our hotel beds, which he appears to think are less valuable to the economy than tourists. Why are less and less tourists visiting us from Spain? Well, we cannot stand at the frontier asking everybody that crosses the border but what I can tell him is that the number of visitors from Spain are at record levels. But of course, I suppose the hon Member has an obsessive need to convert record visitor numbers from Spain into less and less tourists visiting from Spain. All to give the impression that, whereas the reality is that the statistics of visitors are at record levels, all time record levels, that somehow the very country from where all that record level are coming, nevertheless is down.

Figures for coaches are distorted. He says well why are the figures for coaches, well has he not asked himself why it might be that the figures for coaches are down even though the total is up. Well, it can only be two reasons. Either people are jumping over the frontier, or they are walking over the frontier, or they are coming in private vehicles. But has he not asked himself what might be the explanation why at a time when the level of visitors from Spain is at a record level, the number of people recorded as visiting in coaches is falling. Has he not thought of that? He has not even asked himself this out of curiosity. Well I will give him the reason. He knows the reason. He has been told before. The reason is that because of the queues and other factors, a lot of Spanish coaches are disgorging their passengers on the other

side, the passengers walk to Gibraltar, the coach then drives in, presumably to fill up with diesel, empty and as a result, those passengers are not recorded as arriving in the coach terminal. They are recorded in the figures for.....

HON DR J J GARCIA:

No Mr Speaker, because the number of coaches is also down. So the coaches drop their passengers on the Spanish side, allows them to cross over, the coach still comes in. So the coach still comes in, it gets counted and the number of coaches is down.

HON CHIEF MINISTER:

No Mr Speaker. The coach only gets counted.....

HON DR J J GARCIA:

The Government's own figures and they are down.

HON CHIEF MINISTER:

The coach gets counted if it goes to the coach terminal. If the coach does not go to the coach terminal, it does not get counted. The answer to that is the same as with cruise ships. How does one end up with more cruise passengers but fewer ships? Well it is the same reason as why one ends up with less coach passengers, a steeper fall in coach numbers than passenger numbers. Coaches get bigger all the time, or has he not seen the double-decker coaches arriving in Gibraltar. Of course coaches get bigger and carry more passengers per coach than before. I do not see why he should be so amused that this should be the case with coaches, when they readily accept that it

is the case with passengers with cruise ships. It is the case with both of them.

Then of course, as the final attempt to convert record tourism performance into falls, he says, the fall in cruising. Well, in 2002, 116,918 passengers arrived in Gibraltar on cruise ships, in 2003 it was 143,508, that is an increase of 22 per cent. Of course he has not found a way to convert that sharply upward pointing arrow into the downward pointing arrow for which he has a political need. So how do we deal with that? I know, I will find a long enough list of ports and show that there are other ports growing more than Gibraltar. It is like rather sort of the Joneses. How big is my neighbour's colour television, well he has bought himself a 23 inch screen and mine is only 17, we will change ours immediately and buy a 27 inch screen.

Mr Speaker, 22 per cent growth in an activity which he knows, I think he understands what is involved in this activity, is not to be dismissed as failure. It is all very well for him to compare us to Malaga or Malta, or Cadiz, but these are ports that are servicing huge parts of the Spanish coastline. When cruise ships go to Malaga, the passengers do not just get off and go to "el jardin" or whatever it is called. These people go to Ronda, they go to Granada, which are world heritage trust sites, not world heritage trust, world heritage status sites. In Cadiz, they go to Jerez, they go to Cadiz, they go to Seville. The hon Member's analysis is that little Gibraltar, with the Upper Rock, Main Street and the Cable Car, we are supposed to compete in terms of growth rates with all of this. He may consider, obviously he does, that that is an appropriate bar to set, the Government think that it is ridiculous. Government think that it is absolutely ridiculous that he should do it.

Mr Speaker, in closing, the Government do take huge amount of comfort from the fact that the hon Members have got so little real, credible, true objective to say, about the state of the economy of Gibraltar. Because if they, whose job it is, to criticise as much as possible of what the Government do wrong, are limited to the three and a half points that they make, we regard

that as a huge vote of confidence to the Government's stewardship of the economy.

Question put.

HON J J BOSSANO:

We are abstaining until we clear up this business when we come to the Committee Stage on the I&D Fund, where we are going to be given additional information. Then we will be taking a decision on the Supplementary Appropriation Bill on which we are voting against the £2.5 million.

The House voted.

For the ayes:	The Hon C Beltran
	The Hon Lt Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto
	The Hon F Vinet
	The Hon R R Rhoda
	The Hon T J Bristow
For the Noes:	The Hon J J Bossano
	The Hon C Bruzon
	The Hon Dr J J Garcia
	The Hon S E Linares
	The Hon Miss M I Montegriffo
	The Hon F R Picardo
	The Hon L A Randall

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put. Agreed to.

The House recessed at 4.30 pm

The House resumed at 5.40 pm.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

THE APPROPRIATION BILL 2004

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

Clause 2 – Consolidated Fund Expenditure

HEAD 1- EDUCATION, EMPLOYMENT AND TRAINING

HEAD 1 – A EDUCATION

Subhead 1 - Personal Emoluments

HON S E LINARES:

Mr Chairman, is it Head 1 – A only or are we going to do all the subheads?

MR CHAIRMAN:

It is Head 1 – A only with the subheads.

HON S E LINARES:

As was mentioned in my speech and in the response from the Chief Minister, I would like to enquire as to why there is a breakdown this year of temporary assistance, as in specialist classroom aides, cover for maternity leave, paternity, temporary cover for other absenteeism. So an explanation as to why there is a breakdown and is it because whilst last year it is in No. 4, it seems as if the impression given in the book is that the temporary cover for other absences is £950,000 as opposed to £230,000 this year.

HON CHIEF MINISTER:

That is not the correct interpretation. Last year it was (d) temporary assistance and the estimate was £700,000 and the forecast outturn for that would have been £950,000. What we have done is that we have broken up (d) temporary assistance, into the various constituent parts that it has always consisted of. But it was all just wrapped up in one label. So the previous temporary assistance vote, the monies in it were applied to either the employment of specialists, the employment of classroom aides, cover for maternity/paternity leave and temporary cover for other absences, for example, humanitarian leave or unpaid leave or mainly, sick absences.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, I may be able to resolve that. I think there is a presentation on improvement that we can make when we issue the final estimates, in that I can see the hon Member's point, that it implies that the £950,000 is against (d) little 4, and in fact if we were to move that up and put it against the line temporary assistance, I think it will resolve his problem.

HON S E LINARES:

I appreciate that. I think that would be a good move actually and not only that.

HON CHIEF MINISTER:

We would have to do it for all. In other words, we would have to put the forecast outturn for roman 1, 2, 3 and 4.

HON S E LINARES:

We might not have the problem next year because we have already categorised it this year. Therefore maybe next year it will not arise. But yes, as in presentation, if it were under temporary assistance at the top, it would mean that now that we have categorised the four, that that was a big figure. But going back as well to this item, therefore, what it says here is that the 230 plus the 50, that is, item 3 and 4, is what has been spent for absences, because classroom aides are not absences, since there is full time supplies, and specialist, since there are have full time specialist supplies, So this is my point. The point is that absences really is 230 plus 50.

HON CHIEF MINISTER:

No, for a start, the figures mentioned there, £260,000; £160,000; £50,000; and £230,000 are estimates for the current financial year. It is not what was spent last year. But if we wanted to know and reflect in the forecast outturn column what was spent last year, for each of those items, the £950,000 would become a much lower figure and the three noughts above it would each have a figure in there instead of the nought. Because each of those heads, these are not new heads. Now, the head is temporary assistance which includes all four of those votes.

HON S E LINARES:

Which should have been the £950,000 and that is what the Financial and Development Secretary said.

HON CHIEF MINISTER:

That is what the Financial Secretary has conceded. That the fact that the forecast outturn for what is the four together, is put at £950,000 but against the figure for temporary cover and other absences, it gives the impression that last year £950,000 was spent only on temporary cover for other absences. It was not. £950,000 was the amount spent on temporary assistance which includes those four subheads.

HON S E LINARES:

Yes. But that is not the point I am trying to make. I appreciate that, I agree with that and fine. What I am on about is that have item 3 and 4, which Government have estimated to spend this year £50,000 on one hand and £230,00 on the other. So therefore what the department are actually estimating to spend this year, on cover absences is £230,000 plus £50,000. So

Government are actually expecting to spend £280,000 on absenteeism, which is the issue that I am trying to make.

HON CHIEF MINISTER:

No, because we want to give this further breakdown because not all absenteeism, as he calls it, falls into the same category. The word absenteeism suggests that there is choice about whether one is absent or not. Whereas somebody being absent on maternity leave is a statutory right. In other words, the idea is that the House should know how much it is costing to provide temporary cover for other absences. Because that is the manageable figure, the others are not manageable. The Government could decide to reduce specialists or classroom aides, the Government cannot decide to reduce maternity or paternity leave. But the Government can, through management, or policy, influence the figure of 4 but not 3. We do not want to lump them together.

HON S E LINARES:

Therefore what the Chief Minister is doing is spending £230,000 for absences, which is the point I am trying to make.

HON CHIEF MINISTER:

For other absences.

HON S E LINARES:

Well other absences would be a teacher being ill on a day, or three days which is usually the norm.

HON CHIEF MINISTER:

Or unpaid leave.

HON S E LINARES:

It is very difficult for teachers to get unpaid leave.

HON CHIEF MINISTER:

No it is not that difficult. There is compassionate grounds, there are all sorts of grounds. But the hon Member is right in his analysis but we just do not agree with the conclusion that it leads him to. It is true that maternity and paternity absence is an absence. That is why we say maternity and paternity and then little four does not just say absences, it says other absences, recognising that one type of absence has already been covered by roman three.

Subhead 1 – was agreed to and stood part of the Bill.

Subhead 2 – industrial wages

HON J J BOSSANO:

Is it that there has been an increase in the numbers employed, it goes up to £1.482 million last year on the basic wages. Or is that the effect of last year's pay review.

HON CHIEF MINISTER:

There are two issues, there are two pay reviews in last year's figure. This year the forecast outturn apparently includes two

figures. The current estimate includes the one year's figures on the basis that I explained to him before that we know what the pay rise is going to be, so it is there, and there were some vacancies that have been filled apparently.

HON J J BOSSANO:

So the £1.482 million includes back pay?

Subhead 2 – was agreed to and stood part of the Bill.

Subhead 3 – Office Expenses – was agreed to and stood part of the Bill.

Subhead 4 - School Expenses

HON S E LINARES:

Can the Minister explain in 4(j), this is a new item and it only appears when it comes to school expenses rather than or including office expenses. Is it that the schools will have to pay for the electricity?

HON CHIEF MINISTER:

No, first of all it is not electricity, it is electrical services. In fact it is not the only place that it appears I think it also appears in No. 6 and one other, and Buildings and Works. This is we have moved the Wellington Front electricians, we have moved them into the Authority. But of course they are not engaged in generating or distributing electricity. They are engaged in repairing electrical installations, plugs and systems. So their main clients, in fact their only clients, are going to carry on being

Government Departments as they were when they were a Government Department in Wellington Front but the cost of them is being borne by the Electricity Authority. These are the twenty odd, I cannot remember how many electricians there were in Wellington Front. So the Government are now a purchaser of electrical services, not electricity, of electricians' services from the Electricity Authority, where all these people now are. Now, there is this item for schools, for which extra money is obviously being provided, because the schools are a major user of these electricians services, as is the Buildings and Works Department. Because they do all the electricians work in all the Government housing stock. Other Government Departments also, as a whole collectively, also use the electricians services but instead of scattering them all around every head, because none of the other ones are major users, they have been put in the Head 8A Subhead 13, where there is a new vote of £540,000 electrical services for Government Departments. So the Government is saying we are going to be buying electrical services from the Electricity Authority, and there are three provisions for that. Head 8 A, subhead 13, No 6 Convent Place, for the Government as a whole. There is a provision in the Buildings and Works, which we will see when we get to it, and there is this provision for the Education Department.

HON F R PICARDO:

The 3(b) which is electricity and water under office expenses, is that inclusive of electricity and water for schools?

HON CHIEF MINISTER:

Yes.

Subhead 3 – was agreed to and stood part of the Bill.

Subheads 4, 5 and 6 – were agreed to and stood part of the Bill.

Subhead 7 - Scholarships

HON S E LINARES:

We could have done that. On the assumption that the same number of students would go this year to university from the schools as went last year, it could have been done in that way, yes.

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

Subheads 8, 9 and 10 – were agreed to and stood part of the Bill.

Head 1 - B Employment.

Subheads 1, 2, 3, and 4 - were agreed to and stood part of the Bill.

Subhead 5 – Contribution to Gibraltar Development Corporation

HON F R PICARDO:

The amount voted last year was £900,000, this year it is £600,000. I can see from 113 that the forecast outturn for this year is £900,000. In other words the amount that was voted by those then in this House will be the amount spent. The estimate this year is much lower, it is down £300,000. I can see that the

estimated contribution from the European Social Fund is actually estimated to be £700,000, which would immediately show how we would expect to make up the balance. But I see that the estimate of contribution from the ESF last year was £500,000, where in fact we will only be receiving £140,000. Is there not a risk that by only voting £600,000 there, there could be a considerable shortfall if we are only able to achieve amounts similar to the amounts we are actually going to achieve this year from ESF.

HON CHIEF MINISTER:

The Financial Secretary will address in a moment the question of the European Social Fund but can I just make sure that he draws the right conclusions from the figure. It is not correct for him to assume that the drop in the contribution from the Consolidated Fund is to reflect an expected higher income from the Social Assistance Fund. If he looks below the page, at the bottom where it says training and development courses, (a) EU projects, that is being increased. But other, that is to say projects funded by the Gibraltar Government not the EU, those are falling. There are the £300,000. It is the difference between the £1,284,000 last year and the £870,000 that we are estimating to spend on other as opposed to EU, training and development courses. That is an intended curtailment in that expenditure.

HON F R PICARDO:

Can I just take the Chief Minister to task on that because I see that when we voted £900,000 not £600,000, we had actually estimated a spend of £960,000 not the £1.2 million that we actually reached. Therefore, there might have been a reduction of the difference between £970,000 and £870,000 but not a reduction of £300,000, based on the explanation which has been given.

HON CHIEF MINISTER:

Well, I was not offering him an explanation. I was pointing out to him that we do intend to trim back expenditure on other training and development courses. This is one of those areas where there has been expenditure in excess, department driven, in excess of the amount estimated. So in other training and development courses, (b), we estimated this time last year that we would spend £960,000 and in fact they spent £1.284 million. This year we want them to limit their spending to £870,000. So there is a real intention to try and cut the expenditure there.

HON F R PICARDO:

I understand it but the estimated expenditure was £960,000, he is trying to cut it by this lower vote, I appreciate, down to £870,000. That is a difference of £90,000 but we are slashing it by £300,000 not by £90,000.

HON CHIEF MINISTER:

No because he cannot compare the need to increase or decrease the vote from the Consolidated Fund, which is how we got to this issue, is that he has got to compare the forecast outturn with the estimate not estimate to estimate. He is saying we estimated £960,000, we are now estimating £870,000, we think that that only requires a cut in Consolidated Fund contribution of the difference between £960,000 and £870,000. I think that is a false calculation. To decide whether the contribution next year, or this year, needs to be higher or lower than last year, is a product, amongst other things, of whether this year we want to spend more or less than was actually spent last year, not that we were estimating to spend last year.

HON J J BOSSANO:

Is it not a fact the House in last year's Budget, voted £900,000 which together with other sources provided revenue to the employment and training body of £3,750,000, which they were estimated to spend. Now this year, the over run has been as a result, which is what is shown at the end, £391,000 in excess of the amount provided is shown, is really the difference in the income between the £550,000 and £141,000. If in fact the Employment and Training Board is in deficit to the tune of £391,000, as it is, it is clearly because it got £410,000 less of European money. Not because they spent more, but because they received less.

HON CHIEF MINISTER:

Yes, but remember we cannot spend EU money except on EU authorised projects. So if we want to cut the subvention from the Consolidated Fund, we have got to expenditure that is fundable by the Consolidated Fund and not EU funded. It is true that if we collected the extra money that has not been collected of EU funding, then all those other heads of EU projects, which have had to be funded by the Consolidated Fund, would have been funded to the tune of about £600,000 extra, 700 minus 141, or 550 minus 141, from EU pot rather than from Government pot.

HON J J BOSSANO:

Yes, but the whole point, and that is the point that my hon Friend was making, that in fact the cut is not to reduce expenditure because people spend more than they should have done, but because what was spent and would have been financed from EU funding, was spent but because the EU funding was not there, was financed from, or is going to be financed and at the end what we have got is a final figure over the page of £391,000.

HON CHIEF MINISTER:

Yes, the deficit that he is referring to as appearing at the end, is generated by two things.

HON J J BOSSANO:

Well principally by lower income.

HON CHIEF MINISTER:

Yes by lower income but also by the fact that there was higher expenditure than estimated in the other projects, the non EU projects. If that had not happened there would be no deficit, or there might be a little deficit.

HON J J BOSSANO:

Absolutely. But is that not an indication, when we are talking about training and development courses, and when we are talking about construction training centre, where in both cases we see the EU project side going down and the locally funded side going up. Then surely what we have got is a policy to provide a certain level of training, which if we can get the EU to pay for well and good, and if we cannot we pay for it ourselves.

HON CHIEF MINISTER:

No, what we have is a policy, set by those who set the budget centrally, which said, "the policy is that you should spend £96,000." Then those that administer the policy on a day to day, decided to spend £205,000 instead, for example, on the construction training. This is another example of what I addressed in my speech on the Second Reading of the Appropriation Bill. That the amount of Consolidated Fund

subsidy is fixed by reference to estimated expenses and then those that administer the policy at departmental level, decide to spend as much as they like on this.

HON J J BOSSANO:

Yes, but in this case the bottom line shows that that analysis is not correct. The bottom line shows that there is a figure of £3,750,000 which was expected to require £900,000 from the Consolidated Fund and the balance from other sources. The bottom line now shows that the end result was £3,700,000. The difference, if we look at the penultimate line, is because of what this peculiar system, which now seems to have been abandoned, where the Government gave them money one year and then sought to retrieve it in another year as a reimbursement. Whether it is £516,000 of reimbursement in the estimate originally, which is now not in the forecast outturn. But the point that I am making is that surely, we are talking about training in the Construction Training Centre, training for school leavers who are not able to obtain the possibility of going to the UK. We are giving more money to the Scholarship Fund. Then unless we are saying to the Training Board, we have got a cut on the number of people that they can provide training to, particularly if we look at the Construction Training Centre. In the Construction Training Centre, I imagine, I stand to be corrected, but I imagine that what we are talking about is the number of youngsters that have been doing construction NVQs and the resources that are needed to provide that training.

HON CHIEF MINISTER:

In the case of the Construction Training Centre yes. In the case of the other one, training and development courses, it is a matter of how many courses the Government decide to make available.

HON J J BOSSANO:

But the Chief Minister has just quoted the figure of £96,000 and that is in the other than EU projects Construction Training Centre. So therefore what we are saying is, the Construction Training Centre originally, was supposed to be providing training worth £216,000 for x number of young people in the construction trades. Of that, it was hoped, or expected, or planned that £120,000 of it would come out of the £550,000 ESF contribution. In fact it did not come in. Well, look, it is not an unreasonable thing that if it did not come in, rather than lay everybody off, which would have caused a political problem for the Minister, they used local funds to keep the kids there training.

HON CHIEF MINISTER:

Mr Chairman, looking at the bottom line of that subhead, for an estimate £216,000 lumped in EU and non EU together, there was £216,000 estimate in 2003/2004, they actually forecast £276,000 and were wanting to trim that back to £210,000. Now, that will not be achieved at the expense of turning people out of the Construction Training Centre. It is either achievable or it is not. If it is achievable it will be achieved, if it is not achievable it will not be achieved. Unlike the one above, the training and development courses, which really is a product of the Government saying how much money is there for development and training courses, how many development and training courses do we offer, and as a matter of policy we decide to offer only £870,000. But I agree in the case of the development training in the Construction Training Centre, that it is not the policy of the Government to turf out people from the course, or to take less people in to the course.

HON DR B LINARES:

This is for materials and equipment whereas the trainees are paying on vocational

Subhead 5 – was agreed to and stood part of the Bill.

HEAD 1 – C - TRAINING

Subheads 1, 2 and 3 – were agreed to and stood part of the Bill.

HEAD 2 - HERITAGE, CULTURE, YOUTH AND SPORT

HEAD 2 –A - HERITAGE AND CULTURE

Subheads 1 to 3 – were agreed to and stood part of the Bill.

Subhead 4 – Culture Expenses

HON S E LINARES:

Can the Minister or the Chief Minister explain why the Museum, Knightsfield Holdings Limited, has an increase this year, estimated increase, from the forecast outturn. Is it wages or is it an upping on the wages? Or is it a specific project that Knightsfield Holdings Limited have in mind?

HON CHIEF MINISTER:

I am told that the contract itself contains a provision entitling the company to a 5 per cent up rate and, in addition to that, there is a £12,000 increase for temporary staff, or part time staff.

HON J J BOSSANO:

Can I ask on the £60,000 rent for the Theatre Royal? In view of the fact that the continuation of the project is now deferred, does the agreement with the owners of the place entitling them to this £60,000, say anything about the completion date of the Theatre?

HON CHIEF MINISTER:

No, what the Government can do at any time is buy the site, as I think I have explained to the hon Member before. The contract allows the Government to buy the site at any time for a price calculated under a formula that is established. I suppose that if the Government were to decide, at some stage in the future, as he suspects is the case, not to proceed with the Theatre Royal on that site or anywhere else, which is not the Government's position at the moment. But if that were to become the Government's position, I suppose the Government would be free to buy the site and sell it for some other development purpose, and then presumably the Heritage and the planners will ensure that the façade were preserved. So the Government can either pay the rent, or exercise the option to buy the property, and then use the site for something else or to sell the site.

HON J J BOSSANO:

Is there a time limit to that option?

HON CHIEF MINISTER:

No, I think he is testing my memory now. So subject to that, I think it does not. It runs for the whole duration of the lease. There is now a lease in place it is not just an agreement.

HON S E LINARES:

Is it not a 40 year lease? I think that when they signed it, it was a 40 years lease.

HON CHIEF MINISTER:

The outside limit at the end of the lease. But it is at the end of that period. I mean this is not freehold.

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

Subheads 5, 6 and 7 – were agreed to and stood part of the Bill.

HEAD 2 – B - YOUTH AND SPORT

Subheads 1 to 9 – were agreed to and stood part of the Bill.

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HEAD 2 – C - BROADCASTING

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

HEAD 3 - HOUSING

HEAD 3 – A - HOUSING ADMINISTRATION

Subheads 1 to 3 – were agreed to and stood part of the Bill.

Subhead 4 – Operational Expenses

HON J J BOSSANO:

The cleaning of estates which was an actual £223,000 in 2003, £600,000 last year, £614,000 forecast outturn and then £635,000. I think there was a supplementary estimate where the money was moved to Master Services Ltd. Is that something that is reflected here or is it somewhere else?

HON CHIEF MINISTER:

I understand that the amount reflected there as the forecast outturn is the amount actually spent in financing the contract. That the reason why the actual figure for 2002/2003 was so low, was because it only covered a part of the year. It was introduced two thirds of the way through the year, I think. That is why the actual was £223,000.

HON J J BOSSANO:

I seem to remember having seen that in one of the supplementaries that were Tabled.

HON CHIEF MINISTER:

That might have been for street cleaning expenses where we may have extended the contract to new areas.

HON J J BOSSANO:

I see. Not here.

HON CHIEF MINISTER:

Not necessarily. Well, I do not know what it is that he has seen, but it would not surprise me if he had seen it in relation to the street cleaning.

HON J J BOSSANO:

Additional requirements, that is under the environment. Here, in the £635,000, is there a clause that provides for annual increases in that contract?

HON CHIEF MINISTER:

I think that there is and there is a clause that provides for the financing by the Government of pay rises for the staff. I do not think there is a clause that allows them to more profit or anything like that, or to more revenue for other purposes. Cost increases.

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

Subheads 5 and 6 - were agreed to and stood part of the Bill.

HEAD 3 – B HOUSING – BUILDINGS AND WORKS

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HEAD 4 – ENVIRONMENT, ROADS AND UTILITIES

HEAD 4 – A ENVIRONMENT

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Natural Environment and Animal Welfare

HON F R PICARDO:

Should my friends in the Environmental Safety Group, as they were referred to earlier, complain that I do not have a magnifying glass out on this issue, the paltry amount put in here for air quality monitoring, of £130,000, does that relate to the purchase of the equipment only, or also to the leases et cetera of land, if any, necessary for the equipment to be set up?

HON CHIEF MINISTER:

There is a provision in the Improvement and Development Fund for the purchase of the equipment. This is the running costs of the equipment and the tests that need to be carried out, and the analysis of the results and all of that. So this is a recurrent item. This is the cost of, the annual cost, of having the air monitoring station functional. It is not the cost of acquiring the equipment itself which is provided for in the Improvement and Development Fund.

HON F R PICARDO:

Is this going to be run by the Environmental Agency or by the Government?

HON CHIEF MINISTER:

By the Environmental Agency.

HON F R PICARDO:

But is the Environmental Agency not funded out of the environmental health, (f) of that, environmental agency grant of £1.1 million? Should not therefore that amount be added to that £1.1 million vote?

HON CHIEF MINISTER:

Maybe in future years but at the moment there is no contract. The contract for that is not yet in place. So at the moment it is a Government function, even though they are going to do it. When it becomes a contractual obligation for them to do it, then it would appear, presumably, added under the Environmental Agency contractual cost.

HON F R PICARDO:

So this is in effect then the cost of sub-contracting the Environmental Agency to do that for Government, for this year at least.

HON CHIEF MINISTER:

It is a way of reflecting the fact that it is a provision for air quality monitoring. We cannot book it to the Environment Agency, I suppose, because the contract has not yet been done. But it could have appeared already, I suppose, it could have appeared in (f) as an estimate, in anticipation of concluding that contract with them. So the intention is that they are going to do it. It could easily have already been parked as an estimate under the Environmental Agency vote.

HON J J BOSSANO:

This has not happened yet has it? That is to say, there has been no air quality monitoring yet, because the equipment has not been bought yet. Is that correct?

HON CHIEF MINISTER:

Correct.

HON J J BOSSANO:

So in fact, this is what is estimated to be needed what, in a full year or in the year that remains?

HON F VINET:

For the maintenance for the full year.

HON J J BOSSANO:

The next item, (c), which is Environmental Monitoring - Gibraltar Development Corporation staff services £72,000. The people are doing that environmental monitoring are not capable of doing the air quality one. Is that the position?

HON CHIEF MINISTER:

I wish it were true but I am told that this is a specialist. The environmental monitors are for the litter monitors and people of that sort. I understand that this requires a greater degree of sort of scientific base than that staff would have.

HON F R PICARDO:

I crave everybody's indulgence if it is not the practice to go now to the pink pages where they relate to the white pages. But on page 107, which is the head environmental projects is set out and there is £550,00 voted there on last year's £150,000 and expenditure of £125,000. Is that increase in the estimate from last year to this year, to account for the purchase of the equipment?

HON CHIEF MINISTER:

Yes.

HON F R PICARDO:

Can we safely assume that the difference amounts to that, or is it that this year, that is the one and only project that we are running under that head?

HON CHIEF MINISTER:

That provision includes £200,000 for the purpose of air monitoring equipment.

HON F R PICARDO:

How is the difference made up?

HON CHIEF MINISTER:

The hon Member will see that when we discuss the Improvement and Development Fund.
Subhead 5 – was agreed to and stood part of the Bill.

Subheads 6 and 7 – were agreed to and stood part of the Bill.

HON J J BOSSANO:

Can I just go back one minute Mr Chairman, to the contracted services in the street cleansing. I think that was the one that I was looking for before. It was in supplementary No. 5 from the block vote, the £118,000 was moved. It is Subhead 6 (d) Street Cleansing. There is £118,000 which was provided by Warrant No. 5 dated 25th May, which was added to the original provision to bring it up to £220,000. Given that the explanation is that the amount is extra areas.....

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes that is the explanation Mr Chairman. There were additional contractual requirements which were extending the areas they cover.

HON J J BOSSANO:

And it is just plus annual increase, and the annual increase is what, the wages of the people employed in the street cleansing?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes. We had under provided in the estimates for what was the contractual obligation.

HON J J BOSSANO:

And is the Minister not under providing this year, when he is actually cutting it by £25,000?

HON CHIEF MINISTER:

Well it remains to be seen. Remember that overtime in that company is also a moveable feast.

HON J J BOSSANO:

I see. So is it that, I am not very sure what the nature of the contract is. Is it that they have not got a fixed contract that they get paid so much for cleaning the areas and that if they do overtime they can then pass the overtime on to the Government?

HON CHIEF MINISTER:

As I recall the contract, there are schedules for the frequency with which they have got to clean each street actually named. The schedule sets out the name of each street, whether it has got to be cleaned daily, weekly or three times a week. That is what they are obliged to do with the contract fee. But if the Government ask them to clean, sometimes Ministers walk down Main Street and it is particularly dirty and they want it cleaned, that is extra. Anything extra ordered for may have to be done on overtime and whether it is done on overtime or not it incurs an additional charge.

HON F R PICARDO:

Mr Chairman, on subhead 7 of 4-A can I go to (b) which is those items that I raised during the Second Reading, in relation to disposal of fly ash and other items. Now we have seen that there is a provision for £300,000. The forecast outturn, which used to be shown elsewhere before, was £333,000 but in this House the estimate last time, I was not here, was £35,000 on an actual the year before of £82,000. What is it that has cost that much in relation to the fly ash and what are the other items?

HON F VINET:

It is actually a transportation issue. It used to be the case that domestic refuse used to be transported to the Los Barrios landfill site together with fly ash and other refuse. Since last year Los Barrios has implemented the recycling set up and now we have to segregate the refuse at source. That means that they have to be transported in different manners. That lowers the cost of one and increases the cost of the other.

HON F R PICARDO:

Does this include the cost of segregation? That must be a new cost.

HON F VINET:

I presume it does. It does, I am told it does.

HON F R PICARDO:

But if we are now moving three different types of item rather than one, in one lump, why is the figure not multiplied by three, rather than by more?

HON F VINET:

Because for example, fly ash together with the other refuse, is more voluminous than domestic refuse. So it does not automatically mean that because what used to be transported in one go now is divided into two, it is not a perfect sort of perfect balancing act.

HON F R PICARDO:

I appreciate that. But there cannot be more volume than there was before when it was all transported together.

HON F VINET:

It may be of use if I read out the technical information that I was given. That is the following: those items that could no longer be disposed of with the domestic refuse, as from last year, that is the reason for the higher expenditure last year and for the estimate of this year. The over expenditure in Subhead 7(b)(ii), should have equated to be under expenditure in 7(b)(i). This is not so because domestic refuse has a very high density, whilst items covered under 7(b)(ii) are bulky. Consequently the unit rate increases, since we are not able to pack the waste into the lorry as densely as we are with refuse. In addition to this, there was last year a price increase at source coinciding with the introduction of the new facility at Los Barrios.

HON F R PICARDO:

We are talking about this before we actually transpose the provisions in relation to refrigerators and cars and all that sort. We are talking about all of that being lumped in together in these estimates until they are further divided once the provisions specific to those items are implemented.

HON CHIEF MINISTER:

I do not know whether it will be so, that the estimates will ever show it broken down item by item.

HON F R PICARDO:

I hate to carry on talking rubbish, but seeing as that is what he thinks I have been talking all day. The next item which is skip services. We see an estimate there of £4,000. Is that for the purchase of skips or are we going to be renting skips? On the next item which is the incinerator, water production at Europa Incinerator Limited, there was at (iv) recorded an actual for 2002/2003 of £382,000, an estimate for last year of £152,000, and outturn of £354,000 and now still an estimate of £170,000. Is that one of the items that lacks budgetary discipline that is going to be brought under control?

HON CHIEF MINISTER:

No, I think that the reduction estimates are based on the fact that some of the staff of Europa Incinerator Limited are intended to be redeployed to other Government related employment.

HON F R PICARDO:

That was actually estimated for this year as well, is that right, and did not happen?

HON CHIEF MINISTER:

It did not happen last year.

HEAD 4 – B TECHNICAL SERVICES

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HEAD 4 – C TRANSPORT – ROADS AND TRAFFIC

Subheads 1 to 5 – were agreed to and stood part of the Bill.

Subhead 6 – Public Bus Service

HON L A RANDALL:

Am I right in assuming that is only a nominal sum that has been put in?

HON CHIEF MINISTER:

The hon Member is obviously right in assuming that it is a nominal sum. But he is not right. We do not think to speculate the figure that he speculated in his address on the Second Reading. At the moment and subject, on the basis of the limited information that I have had so far, and somebody that was listening to the debate when we were having it on the Second Reading sent me in a note into the House, at the moment they calculate that if everything carries on the way it is going at the moment, they think the subsidy may reach £300,000 to £350,000. Not the £1.2 million or £1.7 million.

HON L A RANDALL:

Would that include the repayment of principle and payment of interest.

HON CHIEF MINISTER:

There is no repayment of principle. The Government have made their investment through share capital in the company.

Subhead 6 – was agreed to and stood part of the Bill.

Subhead 7 – Traffic Management – was agreed to and stood part of the Bill.

HEAD 4 – D UTILITIES

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HEAD 5 – SOCIAL AND CIVIC AFFAIRS

HEAD 5 – A SOCIAL AND CIVIC AFFAIRS

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Support to the Disabled

HON J J BOSSANO:

The Special Care Abroad, £197,000. How many people do we have under special care abroad in that subhead?

HON CHIEF MINISTER:

It is one and that is the amount that previously used to be shown under the Education subhead, which accounts for the reduction in that subhead.

HON J J BOSSANO:

I see. Is this sort of an open-ended life long commitment of £200,000 a year?

HON CHIEF MINISTER:

Well it is at the moment. One does not want to talk about money and life expectancy in the same breath, but yes at the moment

HON J J BOSSANO:

We will want to see how this compares with the amount that we are providing for respite and for how many people.

HON CHIEF MINISTER:

Yes, the hon Member makes the same point as the Government made when we have considered, does he remember some time ago we were considering the possibility of establishing in Gibraltar something called a Unit for Children, a Challenging Behaviour Unit. At the time of Milbury. The reason when we were discussing that was that we could set up that unit in Gibraltar, repatriate the two students, one here one under the Education vote. By the way it is put under Education if the person is still of school age and Social Services once they become adults. We thought that we would bring those to Gibraltar, create a Unit that could take some of the worse cases also off the Giraldi Home, and at least the money would be spent on creating jobs in Gibraltar. Because that £300,000 sustains a number of jobs, in other words, to have the economic activity, the employment activity in Gibraltar rather than just sending cheques out to sustain nursing jobs in Devon, or wherever it is that this young man is. We have not done it yet because the capital element costs involved, and I think also the initial studies on the manning requirements suggested that one would end up paying more than this. But against that, eventually when we make the final decision, which has not yet been made, one has to offset the fact that even if it costs a bit more, it is money that is staying in Gibraltar through wages in Gibraltar, rather than the whole amount leaking out so to speak, to the UK. That project is still

under consideration. The decision has not been made to do it or not to do it yet.

HON S E LINARES:

The added benefit would be of having these specialists because we would have to have specialists to look after them.

HON CHIEF MINISTER:

That is one of the factors that goes into the decision making process. That this is not just carers. These UK schools give specialist educational occupational therapy and it is not just carers.

Subhead 5 – was agreed to and stood part of the Bill.

Subheads 6 to 13 – were agreed to and stood part of the Bill.

HON J J BOSSANO:

Mr Chairman can I just say, in relation to these contributions that we are making. Obviously we are voting in favour because that is where the money is, and we are in favour of those two agencies getting the money. But we believe a more accurate way of reflecting, given that the money has already been spent and we are not giving them money to spend in the current financial year, that this is in fact part of last year's contribution and as I said in the general principles, if there is going to be an argument about bringing in a Supplementary Appropriation Ordinance for last year, incorporated in this year, then there is even less of an argument for showing this expenditure in this part of the Ordinance as opposed to showing it in the part of the Ordinance that refers to overspending last year.

HON CHIEF MINISTER:

Yes. I am not sure whether the point that the hon Member is making turns on the view that we are teeming and lading with deficits. This figure clears both last year's deficit and provides them with funding for the full current year.

HON J J BOSSANO:

I am aware of that. What I am saying is that the fact that last year's deficit is incorporated as the estimated cost of the service this year, because otherwise if there was no last year's deficit the amount of money that would be there would be

HON CHIEF MINISTER:

The hon Member's point is that it is not recurrent.

HON J J BOSSANO:

That is not the recurrent expenditure for 2004/2005.

HON CHIEF MINISTER:

Yes. The information that the hon Member wants is given broken down in the Appendix, which clearly shows how much of that amount is for and much is for their annual operating cost this year.

HON J J BOSSANO:

It is not that I do not know how much it is. It is that I have already argued in the general principles of the Bill, that if the argument that is used for Part 4 is that there is a supplementary

appropriation of expenditure to clear up the excesses of last year in all the heads of departments, then the logic of that argument applies equally to this particular money paid to those agencies. Therefore, really, we are not voting £3.8 million and giving it to the Social Services Agency to spend in the year 2004/2005. Any more than we are not voting £2.5 million in Part 4 and including it in Part 1.

HON CHIEF MINISTER:

Well it is arguable but it is not as clear cut as the hon Member has persuaded himself. Because the expenditure in the Agency is not subject to the appropriation mechanism of the House. They are entitled theoretically, in terms of the Public Finance (Control and Audit) Ordinance they are free to spend more. If they can go to the bank and borrow money, they could go to the bank and borrow money and spend as much as they like. The appropriation mechanism of the House refers to what is drawn from the Consolidated Fund. What is being drawn from the Consolidated Fund is this and it is being drawn this year to finance what in effect has been financed by a suspense account from the Treasury.

HON J J BOSSANO:

That is precisely the point that my Colleague Marie Montegriffo made in her speech, which was rubbished by the Chief Minister. Because he has just said they could spend whatever they like. Theoretically they could go to the bank. The point is that if he has been telling us that one of the things that we are doing in this Budget is not cutting spending, or reflecting a problem of shortage of money, but in fact, ensuring that there is observance of the budgetary discipline. Well he has just told us that in respect of £5,000,988 the argument about the budgetary discipline does not apply. It applies to the £2.5 million.

HON CHIEF MINISTER:

No. The budgetary discipline in non-Consolidated Fund statutory agencies or authorities, is for the Government to implement. The House could theoretically deny the Government, through refusing an increase in the subventions, if I could just use that word loosely to describe these payments. The House could deny the Government the ability to fund the excess expenditure in the statutory authority by refusing to vote monies from the Consolidated Fund for that purpose. But the budgetary discipline which the Government insists, and which the House should insist on, relates to those items of expenditure which are subject to the appropriation mechanism of the House, which are Government Departments. Also indirectly but not directly, the statutory agencies, because at the end of the day the House, through denying these subventions, could deny them the funds to make up the excess of expenditure of subvention.

HON J J BOSSANO:

The money which has already been spent and has already been advanced to them.

HON CHIEF MINISTER:

And has already been advanced by the Government without a guarantee that the House would then release it through the appropriation mechanism. Obviously we rely (a) on the fact that we have got a majority in this House, and (b) on the fact that provided that the expenditure is for purposes that the hon Members would support, they would not withhold their consent. I did not rubbish the hon Member's point, I rubbished the point that she was making which is different to the point that the Leader of the Opposition now thinks I am contradicting. I rubbished the point that she was making, which was that because it was not a Government Department, they were not subject to the Government's control and they could spend as much as they

liked. That is not a reality for them, actually it is more a reality for them than it is for this because the Health Authority Ordinance does allow them to borrow money. I do not think the Social Insurance Ordinance does the same. But at the end of the day, even if they do that the financing costs of the debt would have to come from the Government. So the Government say, "you cannot spend Health Authority, you cannot spend as much as you like because ultimately you pass the bill to the Government, and I have to come to the House to seek an increase in the grant to the Gibraltar Health Authority from the Consolidated Fund. Therefore I the Government in the first place, and then the House collectively has an interest in the amount that you spend because I pick up the tab of the difference between what you spend and what you collect from your own sources." Since the funding gap is paid for by the Consolidated Fund, those who control the Consolidated Fund which are the Government in the first place, and then the House of Assembly through the appropriation mechanism, have a direct interest in how much the Health Authority should spend or should not spend.

HON J J BOSSANO:

We do. This is why what I am saying is that there are two points really that I am making. That is that whereas in the departmental budgets we actually approve each head, here we are approving a balancing figure.

HON CHIEF MINISTER:

Absolutely. In other words, the Government could theoretically ask for the subvention without giving the information in the Annex.

HON J J BOSSANO:

That is correct. Therefore unlike the rest of the expenditure from the Consolidated Fund, the appropriation legislation in the other cases, requires a Supplementary Appropriation Bill precisely because once we exhaust the £2 million available at the beginning of the year, our view is that to supplement that, if the money has not been spent, we need more money in the Supplementary Fund but if the money has been spent then tell the House where the money has been spent and we vote it head by head. In this case, what I am saying is that it would have been a more accurate reflection of reality if there had been a Supplementary Appropriation in which the £2.8 million of the Elderly Care Agency, and the £2.3 million of the Social Services Agency were supplemented through a Supplementary Appropriation Bill, by the amount of the deficit which would then have shown that the results in this column eventually, when we get the final figure audited.

HON CHIEF MINISTER:

It could have been done that way and there would have been no reason not to do it that way but we do not agree that it is a requirement to do it that way because it is not a Government Department and it is not subject to the appropriation mechanism, it can be funded through suspense accounts. Really this is funding the Treasury. They have been funded already, this is not voting monies now to fund their expenditure. Their expenditure has already been funded, they have received the money from the Treasury suspense account. In a sense what the House is doing here, is funding the Treasury suspense account. In other words, reimbursing, releasing the money lawfully to the Treasury.

HON J J BOSSANO:

Cancelling the IOUs.

HON CHIEF MINISTER:

Yes, cancelling the suspense account. Yes that is the budgetary discipline point I am not sure Opposition Members agree on the Government with. The message to the Authority also is, "look do not spend more than you have been voted for on the assumption that we are always going to provide the money. You are required to keep within your limits."

HON J J BOSSANO:

What the Chief Minister is saying is, do not do it on the assumption that it is going to be approved on 31st March, it will not be approved until 1st April.

HON CHIEF MINISTER:

It could have been done the other way as well. Of course it could have been done the other way. The difference between us is whether it should be done the other way or whether it must be done the other way. That is the difference between us.

HON J J BOSSANO:

I am not making the point that it has to be done or that there is a legal requirement. I am saying it would have been preferable, and it would have been our preference to do it the other way, and it would have given a more accurate reflection of the money that has actually been spent. When the final outturn for the year 2003/2004 appears, it will look as if in fact the.....

HON CHIEF MINISTER:

The same is true of the outturn for the following year which we are to disregard.

HON J J BOSSANO:

Well, assuming that we are going to have a repeat exercise, then next year we shall have the same figure. I suppose that if that keeps on going for ever more, the peculiar jump will only appear in the first year and not in all the subsequent ones.

HON CHIEF MINISTER:

The hon Member is right to this extent. If we had done it by supplementary vote in respect to last year's revenue and expenditure, posterity would record in the forecast outturn column, the amount actually expended by the funded authority during that year. But this is not a column that reflects the expenditure of the Authority. For that he has got to go to the Appendix. This is a recording of the flow of cash from the Consolidated Fund to the Treasury in the year in which the financial transaction takes place for the Government.

HON J J BOSSANO:

Yes, and the Authority has no other source of income other than that. So what the Chief Minister is saying is, that does not show how the money was spent. It just shows how much was spent.

HON CHIEF MINISTER:

Part of how much was spent. In the case of Authorities with no other source of income.

HON J J BOSSANO:

The Elderly Care Agency gets a contribution from residents.

HON CHIEF MINISTER:

The Social Services Agency possibly gets no other revenue. Well, it gets a small contribution from the Improvement and Development Fund. Yes it all comes from appropriated funds in this House.

HON J J BOSSANO:

In the context in fact of the money that we are voting, and the money that we are voting for last year, there is no way of obviously of deciphering where the amount that they actually spent last year on respite care, what that amount actually came to and what we are actually voting being provided for them to spend this year.

HON CHIEF MINISTER:

No because respite care is all an emolument cost. The only costs attached to respite care are, no that is not quite, they eat food and all of that which I suppose increases some of the material other charges votes. The main element of cost for respite care is the extra carers that one has got to bring in as the supply relief cover workers, and supply workers, so the vote that he should be looking at is this on page 120, is relief cover. There may also be a bit of overtime to the extent that the existing staff do it, and there may be some additional cost in the food vote. But the main element of cost is that relief cover, which he has seen has risen from £43,000 in 2002/2003 to £100,000 estimated. We thought last year we were doubling the provision when we estimated. It actually came in at ten times the amount of the previous year. That is not all due, let me say, to increased levels of respite. There is a huge increase in respite care but it is also due to the fact that when the employees were Milbury employees, they did not have the sick leave entitlements that they got when they became employees of a Government Social Services Agency. There has been a huge increase in the

incidence of absenteeism by the very same staff that previously used to work for Milbury and now work for the Social Services Agency. Those have to be replaced. When a member of staff is absent due to sickness, somebody has to be brought in because very often these people are providing one to one care. So if a member of staff of the Social Services Agency goes sick, somebody has to be brought in, a supply worker or another supply carer, has to be brought in to cover the absent person and it is funded under this head. So it would not be correct to assume, it would be incorrect to assume that the whole of the £440,000 is a measure of the increased cost of providing respite care. That is not the case.

HON J J BOSSANO:

This is an important point because in fact when we came out reacting to the news that the level that was operating was being cut back because of excess spending over what the Government intended to provide, we suggested that since it was already happening, the Government should in fact wait till we were able to discuss the matter here in the House, this is why I am trying to find out exactly what it is that we are talking about.

HON CHIEF MINISTER:

I cannot give him across the floor of the House, the factual circumstances behind the explosion in respite care. I have given him, precisely because he cannot deduce the information from the financial figures here, I have given him earlier today the hours of respite care provided so that he can see the amount to which the hours of respite care provided has increased from year to year, and the cost of those hours. He got that this morning. I do not know if he made a note of it, if he did not I am happy to give them to him again, so that he knows what has been the increase in extent year on year of the actual quantum amount of the service provided, and what has been the cost of that increased quantum amount of service. I alluded this morning,

obliquely, to who was benefiting from that mushrooming cost. I did not think it was appropriate to give further and better particulars across the floor of the House in public on that. I do not know whether even the confidentiality arrangements, but speaking personally and subject to any confidentiality arrangement that the professionals in the Department may feel binds them, I do not mind sharing that information with the hon Members, so that they can see the increased hours and who has actually benefited from them, and who has not. But I do not want to have that debate across the floor.

HON J J BOSSANO:

I accept that, but is the implication of the fact that we are voting a contribution from the Consolidated Fund, which will enable the Social Services Agency only to provide £100,000 of relief cover, which was what they had in last year's budget, and which they exceeded by £340,000. How is that going to compare with what has been happening and what the Government intends should happen in the current year.

HON CHIEF MINISTER:

The hon Member means how does that reduction reflect, how are we going to control relief cover given that we have already said that there is only a small decrease in the over expenditure of respite care, which we said publicly. Well, I think the hon lady alluded to her in her address, and I think she may have said so on another occasion, or not, but she certainly alluded to her by the Hon Mrs Del Agua, by saying that there is going to be a management attempt to curtail the abuse of sick leave by introducing an unsatisfactory attendance procedure, which has been very successful in addressing, not eliminating, but in curtailing this very same problem when it happened in the Elderly Care Agency. Now the measure of success that we will have, and whether we shall be so successful to keep the figure down to £100,000 is moot, and that figure may come out when we come

to the forecast outturn of this current financial year, the relief cover figure may be over £100,000. It will be a measure mainly, not of the small cut back in respite care, but it will be a measure of the extent to which we are able to manage the absentee problem, the incidence of absenteeism.

HON J J BOSSANO:

But is the small cut back, a cut back on the level of cover that actually materialised or on the level of cover that was initially intended in last year's budget.

HON CHIEF MINISTER:

No. It is the cut back. If last year the estimated amount, which is not revealed, is not discernible from the figures in front of him, but there was a provision internally, for a certain amount of money that would purchase a certain number of hours of respite care. That was exceeded hugely in terms of numbers of hours. We have cut that huge excess, still leaving a huge increase over the number of hours that were estimated for last year. In other words, there has been a curtailment of the excess.

HON J J BOSSANO:

Fine, then if there is a curtailment of the excess, there ought to be an increase on the original £100,000 even if there is a cut back on the £440,000.

HON CHIEF MINISTER:

Well, yes, possibly. That is just a question of, they have been allowed internally to spend for a certain number of, we mean hours not in pounds here, although the hours are convertible into

pounds. They have been authorised to spend a certain amount of money which provide a certain number of respite hours, which is considerably more than were estimated for last year, and slightly less than the outturn hours for last year, which was a huge over provision compared to the estimate.

HON J J BOSSANO:

Fine, and I am saying that the logic of that, as reflected here, should be that then if that is under other personnel relief cover, then if there was £100,000 last year, before the increase then there ought to be more than £100,000 this year to be able to finance what he has just said.

HON CHIEF MINISTER:

No because the £100,000 estimated for last year was not all for respite care. I just explained, I am not sure whether he was distracted but I just explained that that vote also provides for relief cover when ordinary employees of the Authority go absent, on sick leave, and their services have to be covered. If tomorrow morning one of the carers employed with the Social Services Agency reports sick and does not go into work, leaving aside the question of respite care, a relief worker has to be called in just to give lunch to everybody else. Or to the one person if it was a one to one carer that is missing on sick leave. Therefore, it is not that straight line as the hon Member sees it.

HON J J BOSSANO:

But there are only two personal emoluments heads. There is one which was £1.4 million, right at the beginning, salaries, where the spending was £1.7 million, which is now being reduced to £1.6 million. Then there is the relief cover which is relief for anybody that is in the £1.6 million.

HON CHIEF MINISTER:

No. It is relief cover for people in the £1.6 million that go absent and also for extra staff that needs to be brought in to provide after hours respite care for the respite care service. Both.

HON J J BOSSANO:

So if we have 147 people covered by £1.6 million. Last year we put £1.4 million for the same number of people, and there was £100,000 and that £100,000 was to provide reasonable, not excessive, relief cover for both the level of respite and the £1.4 million covering 147 non industrials.

HON CHIEF MINISTER:

Reasonable, we were estimating to double it.

HON J J BOSSANO:

Well no, he did not double it because it was 43 in relation to 642 because it was only part of the year. The ratios appear to be the same, 43 to 642 and the other is £100,000 to £1.4 million. Now what I am asking is, if the argument that is being put to the House is, that this is something that got out of hand but that within that there are two components, the bit that got out of hand and the bit that was perhaps not an unreasonable increase but not as much as the Government would have wanted. They have taken two steps. One is to try and put something in that will control the degree to which relief cover is necessary to cover absences. Also to cut back on but not back to the beginning, the increase in the level of respite care. I am telling the Chief Minister that that explanation is not consistent with £100,000 being provided to cover both, 147 non industrial workers with absences and provide relief cover which is more than it was at

the beginning of last year because it is exactly the same sum as they provided last year before there was an increase.

HON CHIEF MINISTER:

It may turn out to be right. It depends by what extent we are able to curtail the other sick leave absences because in the £100,000 there was also some sick leave absence. Now, he may be right.

HON J J BOSSANO:

But on the other hand it could only have been the same level of £60,000 as there was in Milbury, because we have already established that it is not an increase of 2002/2003. The point I am making is that since we have argued publicly that when we came to the budget we would say to the Government, "well look, if you have got a problem in not being able to provide from the Consolidated Fund more money after there has been a £1 million overspend, compared to what was provided last year." Here we have a situation where the Government are in fact increasing the amount.....

HON CHIEF MINISTER:

I understand the point that he is making but remember he could say that if this were a head here, if this green page here was a head. But the hon Member I am sure understands, I know he does, that we are not voting these heads of expenditure here. We are voting the element of subvention. The element of subvention for example, might not need to increase even if the figure of £100,000 comes in at more than £100,000, because there might be savings in some of the other heads of expenditure there. So there is not really a vote that the hon Member can propose to increase in order to make his point about the respite care, because the vote that he would have to increase is the £100,000 and we are not voting on that.

HON J J BOSSANO:

I am saying all this because it is the only opportunity that I have to say it because it is when we are voting money into the head. Therefore my argument will be well look, it is our view and this is the opportunity that we have to put it across to the Government, and if the Government were to argue, the level of respite care has to be cut back because we cannot afford to give the Agency more than £2,768,000 this year, then for us there are two other ways of looking at it. One is well, cannot they save off money somewhere else within some other subhead rather than there. Which might be a less urgent or sensitive area. Or alternatively, how much more would that require and could we not see whether it would be better to cut somewhere else. At the end of the day that is what we would be able to do if this were heads of expenditure.

HON CHIEF MINISTER:

I understand that that is what he is trying to dissuade the Government of but I am trying to persuade him that, as a matter of policy, the Government, analyse where all these extra hours are going, the Government have decided that as a matter of policy it should not be accommodated. This is not a question of the Government saying, I have looked at the hours, it is all going to people in circumstances where the policy was intended for, and therefore we should move the moon and the earth to try and leave that level of service. The Government have looked at those hours, have seen why they have increased and have decided as a matter of policy that it should not continue to be accommodated.

HON J J BOSSANO:

I accept that is a different position. I take the point.

HON CHIEF MINISTER:

That is why the cut is relatively small because we are not willing to cut it to the people that we thought were making profit in the respite service, even for more hours. But when the increase in hours reflected what we regard as abuse of the respite service to what the respite service was not intended, that element we believe is what has been cut. That is why the cut is small and is not driven by the desire to reduce the estimate done.

HON J J BOSSANO:

The policy consideration is not a question of the money. It is a question of where the money is going to.

HON CHIEF MINISTER:

Absolutely. It is an attempt to crawl back what we regard is the use of the service, for which it is not intended, rather than cutting back on the growth in the intended use of the service, which we are not trying to cut.

Subhead 14 – Consumer Affairs – was agreed to and stood part of the Bill.

HEAD 5 – B PRISON

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HON CHIEF MINISTER:

Mr Chairman, when I said this before in my earlier address, that some Departments are already very good at budgetary

discipline, the House will have noticed that the Prison is consistently one of the most disciplined administrators of their budget in the whole Government. There are others which I will mention when we come to them.

HON J J BOSSANO:

Can I just ask in terms of the Social Services, which has disappeared now, if we look at the actual that is still there, as a remnant of what there was, on page 56. Is the combination of that and the one that there is shown in the Social Services Agency for that year, what it cost in the transition period when it was moving from one to the other? Or are there any other costs that have moved somewhere else?

HON CHIEF MINISTER:

No, correct. It has not moved anywhere else. I am not sure whether that is the whole year.

HON J J BOSSANO:

The point that I am making is in page 120 and 121, there is an amount which is for part of the year. In page 56 we have got an actual figure which I assume is for the other part of the year.

HON CHIEF MINISTER:

For the whole year. It does not match.

HON J J BOSSANO:

It does not. I know that it does not match but I will phrase my question again. If we spent £2.6 million in the Social Services

Agency in 2003, is it correct to say that that was until the point in the year when people transferred to the Social Services Agency, and that the £1 million on page 120 is what was spent in the remainder of that same year 2002/2003 by the Social Services Agency with the people transferred.

HON CHIEF MINISTER:

Yes from November 2002.

HON J J BOSSANO:

From November on.

HON C A BRUZON:

Mr Chairman, could either the Hon Mrs Del Agua or the Chief Minister just clarify something for me because in her budget speech last year, reference was made to the fact that funds were being provided to improve conditions in the prison. Is this still happening?

HON CHIEF MINISTER:

Improved conditions, that is on page 55. There is not an increase in the recurrent budget, there is a provision in the Improvement and Development Fund for improvements to the prison, on page 105. The hon Member will see that Head 101 Subhead 5, Prison Equipment and Refurbishment, we are providing £50,000, that is, £50,000 for improvements to the prison. Let me say to the hon Member that we are keeping to a minimum the capital works improvements to the prison, because we are hoping to do, as soon as possible, the building of the new prison.

HEAD 6 – TRADE, INDUSTRY AND COMMUNICATIONS

HEAD 6 – A TRADE, INDUSTRY AND COMMUNICATIONS

Subheads 1 to 6 – were agreed to and stood part of the Bill.

HEAD 6 – B TOURISM

Subheads 1 to 5 – were agreed to and stood part of the Bill.

Subhead 6 – Gibraltar Tourist Board

HON CHIEF MINISTER:

The Hon Dr Garcia, applauds the reduction in the marketing vote for the Tourist Office, given that he thinks it is applied to such little use.

HON DR J J GARCIA:

Mr Chairman, the actual marketing vote has been increased, it has not been reduced because the Miss Gibraltar Show has been added into it. So if he looks at the estimates for last time, it was £950,000 and this time it is £980,000.

HON CHIEF MINISTER:

Yes but it is from a forecast outturn of £1.26 million.

HON DR J J GARCIA:

Well because he forced the Hon Mr Holliday to have to pay for his taxis from there.

HON J J BOSSANO:

I take it that the people who actually overspent the approved amount of £950,000 by £76,000 were suitably chastised for lack of disciplinary control in respecting budgetary ceilings.

HON CHIEF MINISTER:

They will be this year where every Department is required to submit a monthly return in this form, in the form of the budget, showing that they are husbanding their vote in a way that will last the whole year.

HON F R PICARDO:

Talking generally about this budgetary discipline. They have overspent by £76,000 but they are getting an extra £30,000. In Social Services Agency, they overspent by £1.03 million and they are getting an extra £500,000. So it is budgetary discipline but allowing them an element of greater expenditure in any event.

HON CHIEF MINISTER:

The amount of the excess that we allow them to keep for the next year as well, depends on the social worthiness of the head of expenditure. If the tourism vote spends more on advertising, and the Chief Executive of the Social Services Agency spends more on genuine respite care, I am more likely to let the Social

Services man keep his increase for next year than I am the Tourism because it is a relative ordering of priorities.

HON F R PICARDO:

Yes exactly. But then it has not just been a question of overspending which results in the sort of reprimand that they are likely to get.

HON CHIEF MINISTER:

The reprimands do not apply to last year.

HON F R PICARDO:

Yes, but this year they are not just being told that they have got to go back to an increased estimate relative to RPI or anything like that. The increased estimate takes account of some of the overspend.

HON CHIEF MINISTER:

This year even for them, the increased discipline this year is that they cannot continue indefinitely. So having allowed them to keep the extra fat that they have put on themselves last year, having allowed them to keep the lions share of that extra fat, they cannot build up on it again this year, and then ask me next year to let them keep on extra fat. In other words, we are drawing the line now, so to speak.

HON F R PICARDO:

That is what I mean. Budgetary discipline is on the basis of the overspend.

HON CHIEF MINISTER:

Part of the overspend, it varies from head to head.

HON F R PICARDO:

Pity the fellow who has to turn up with the monthly estimate that shows an increase.

HON CHIEF MINISTER:

Well that is why they will probably send them by fax rather than bring them in personally.

Subhead 6 – was agreed to and stood part of the Bill.

Subhead 7 – Tourist Sites and Entry Points

HON DR J J GARCIA:

I have a query here in relation to 7(c), which is the security at the sites. The query was in relation to the fluctuation in the actual for 2002/2003, the estimates for that year, the forecast outturn and the estimates for the coming financial year which we are already in. Can the Government explain that fluctuation?

HON J J HOLLIDAY:

This is just increase in the requirements based on tender and therefore adjustments in amounts based on new levels established from year to year.

HON DR J J GARCIA:

It is not that there are more tourist sites now covered than previously or anything like that?

HON J J HOLLIDAY:

Well there may have been additional manpower actually set in some of the tourist sites in order to address some of the logistical problems that may have arisen as a result of possibly more use of certain sites but this is assessed on an annual basis because the tender is renewed every year.

HON J J BOSSANO:

Is this based on, I think when I asked about the Health Service, I was told that it was based on a rate per hour for security guards and that in fact, if the hourly rate changed, then the Government's contract was adjusted accordingly. A similar process seems to apply in the cleaning from what we have just been told. Is this something that applies in this case as well or is there a fixed contract?

HON J J HOLLIDAY:

The security at different sites is specified in the tender notice, which actually specifies the site, the number of hours, the days, cover over the weekend et cetera, and then there are tender submissions that are proposed based on hourly rates, which may fluctuate between this sort of normal working hours and weekends et cetera. But it is based on an hourly rate which is agreed at the beginning of the year and that stays fixed for the duration of the tender. That tender is actually put out on an annual basis.

Subhead 7 – was agreed to and stood part of the Bill.

HEAD 6 – C PORT

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Contracted Services

HON DR J J GARCIA:

There are also some queries which I mentioned in the Second Reading, that we had in relation to Subhead 5. One of them was the security aspect, the port security. Do I take it that it is the same situation that we have just explained for the tourist sites.

HON J J HOLLIDAY:

Yes, it is exactly the same situation but he will recall that we actually awarded a tender and then found ourselves in difficulties with the actual ability to be able to man security due to differences of opinion between Government and staff on that. What we did was that we actually used part of the manpower during the duration of that contract, to cover some of our other necessities in other sites. In fact I must say that Detectives and Security International were actually quite good, in the sense that we were able to cut down a lot, as much as possible and therefore a tender that was worth maybe £120,000 or £130,000 actually was down to £92,000. That over-spill to the following year, where there was an £18,000 spend, and now we have made a provision in the new ISPS Code requires security, which has now been cleared with members of staff there. Therefore we will now possibly be putting into place a tender if we go down the route of actually contracting a security company to take care of that security aspect of the port.

HON DR J J GARCIA:

The next query relates to the next item which is 5 (c). That is the fact that £3,000 seems to have been estimated twice but no money has actually been spent either in 2002/2003 or 2003/2004. I do not know whether the Minister can explain that.

HON J J HOLLIDAY:

Last year we made a provision of £3,000 in order to buy a set of TETRA radio system like emergency services do have. In the light of the fact that we were in the process of implementing the ISPS system for all the port, we decided not to proceed with the purchase of this equipment until we knew whether it actually fitted in with the whole new environment that we were going to put in place. We put a bid in for this year because we feel that it will now be compatible with the system we intend to run within the port.

HON DR J J GARCIA:

In relation to 5(d), the cleaning, Business International and Management, where it was estimated that £16,000 would be spent on the cleaning but only £6,000 was spent.

HON J J HOLLIDAY:

Well this was just the cost. We put an estimate of £16,000 to carry out cleaning, not just port offices but the port area, and we have been using some of our members of staff that actually were in charge of doing some cleaning up in the Upper Rock, to cover some of the areas of the port as well. Especially before the arrival of incoming cruises. So the actual cost of undertaking cleaning by Business International Management has actually been less. This year we have put in a budget which is basically in line with what our expectations are.

HON DR J J GARCIA:

In relation to the next one which is 5(e) this is a new item, Slop Oil Reception and Treatment Limited. Can the Minister explain that estimate?

HON J J HOLLIDAY:

Well, under recent EU Directives, we now have an obligation to have all ships calling at Gibraltar receiving the obligation of recording their waste on board, and actually undertaking the function of discharging some of the slop waste in Gibraltar if they have a certain level on board. A tender went out some time last year, and as from October, there were two applicants for that and Slop Oil Reception and Treatment Limited were awarded this tender. They now have an obligation of, what happens in actual fact is, that ships that call in to Gibraltar are charged by the Port Authority in the same way as we, in fact the charge is incorporated into the tonnage due. Then we in turn have to pay Slop Oil for undertaking the works themselves. So it is mainly a book entry in the sense that this is the cost that we have of actually undertaking this exercise but we actually have income coming in, which we charge. The Port just cover an administrative cost per ship. So the actual revenue to the Government is not significant but obviously it is a service and an EU obligation which we must now undertake because of the competitiveness in the area, and the number of ports in the area that were observing our strategy in what we were going to charge for this service, we have included the charge in our tonnage dues and therefore it does not appear as a separate item. Therefore they have found themselves in a situation of being able to undercut us or feel that they can really compete on this. The market has accepted it well. We have been running this operation now since October and it has been operating quite well to the benefit of the port of Gibraltar.

HON F R PICARDO:

Is Slop Oil a Gibraltar company or an international UK company?

HON J J HOLLIDAY:

Slop Oil Reception and Treatment Ltd is the facility that we see up along the North Mole on the right hand side by the tanks there. Originally it was a UK company, and well the name Sort was changed to Slop Oil Reception and Treatment, that was changed towards the middle of last year, when they joined forces with some of the local operations because they felt that they needed some local involvement and contact. So, it is partly owned by local concerns and partly owned by UK concerns, who really have the expertise in this particular field.

HON F R PICARDO:

Is it registered in Gibraltar or is it registered in the UK?

HON J J HOLLIDAY:

No, I believe it is a fully registered company in Gibraltar.

HON J J BOSSANO:

If this has been going on since October, how come there is no payment to the company in the current financial year? Well in the one that has just finished.

HON CHIEF MINISTER:

We are told that the Port was billed by the company after the end of the financial year.

HON J J BOSSANO:

I see. So the £150,000 will in fact be covering them.

HON CHIEF MINISTER:

Yes, that is for more than one year of operation. If the hon Member looks on the revenue, the blue pages, at the amount of increase in tonnage dues, he will see it is not £150,000. It is less than £150,000. The compensating revenue item is not £150,000.

HON J J BOSSANO:

Did it require sort of an adjustment to the tonnage dues

HON CHIEF MINISTER:

Yes, but as ports increase their tonnage fees regularly, they could not say that the increase was for this or for that.

HON F R PICARDO:

Does the fee we are going to pay, which is not £150,000 per year it is less than that, because it is for more than one year, a fixed fee, or will it depend on the number of vessels that they are required to record?

HON J J HOLLIDAY:

No it is a fixed fee depending on the size of the vessel, there are basically three rates.

HON F R PICARDO:

But the Government have not got a fixed fee obligation to the Company. They will have an obligation depending on the number of vessels the company inspects.

HON J J HOLLIDAY:

Absolutely. It is three fixed fees and it depends on the size of the ship.

HON CHIEF MINISTER:

The tonnage part is also a product of the size of the ship.

HON F R PICARDO:

Yes I understand that but we have to adjust the amount we pay them.

HON CHIEF MINISTER:

We do not know for sure how much we are going to have to pay them because we do not yet know the size configuration of the ships that are going to come into the port during the year, and therefore how much the fee due by the Government to them is going to be.

HON F R PICARDO:

It is on a fixed fee contract.

HON J J BOSSANO:

But then the payment is driven by the same consideration as the revenue and it is not dependant on the amount of waste that they actually handle.

HON J J HOLLIDAY:

Absolutely.

Subhead 5 – was agreed to and stood part of the Bill.

Subheads 6 to 8 - were agreed to and stood part of the Bill.

HEAD 6 – D SHIP REGISTRY

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HEAD 6 – E AIRPORT

Subheads 1 to 8 - were agreed to and stood part of the Bill.

HEAD 6 – F POSTAL SERVICES

Subheads 1 to 7 – were agreed to and stood part of the Bill.

Subhead 8 - Management – Contracted Services

HON J J BOSSANO:

The contracted services, we have seen a number of reallocations of funds taking place during the year, to bring it up to the 2006. Can the Government explain what is the nature of this payment, in terms of the contract? Is the contract permanent contract, does it go up every year, how does it work?

HON CHIEF MINISTER:

It is a contract which is based on the company employing a certain number of people and making their services available for the management of the Post Office. I think there is an inflation linkage. There is a formula for annual increases but it is basically a cost plus contract, with the Government deciding the cost in terms of the manpower resources to be provided.

HON J J BOSSANO:

But this is the contract that the Minister was saying in his speech that the targets that had been laid out had been met. He said it was as a result of them.

HON J J HOLLIDAY:

Yes, as far as the targets that had been set in terms of delivery of mail et cetera those targets have been achieved. Next day delivery.

HON J J BOSSANO:

And those targets have been achieved? I think the Minister attributed the success of that to the management contract. Is that not the case? So I mean, is it that the management contract is dependant on those targets being achieved or not?

HON CHIEF MINISTER:

I do not think so. The targets have been met by a combination of two factors. One, the deal that the Government did with the employees in the Postal Services, the sorters and the postmen, is being honoured by them. They are the ones that do the delivery of the mail and the management is managing the situation and ensuring that that happens. The management is not the one that delivers the mail to ensure that it is delivered on time. That is done by the staff who are honouring the terms of the deal that they did with the Government.

HON J J BOSSANO:

Yes I am aware of that but the point I am making is, that the people who are delivering it are getting paid extra for delivering the stuff and that is why we see the personal emoluments went up in 2003/2004, apart from the normal pay increases. I suppose it went up by more than the average from £1,192,000 to a figure which is £1,530,000 some back pay may be in there. We have got £1.480 million this year. Now, what I am saying is, there is this management contract in place but if there is failure to deliver the objectives, the targets that have been laid down, is there any penalty in the management's contract?

HON CHIEF MINISTER:

I have not got the contract here and I do not recollect but to the extent that I have recollection, I think not.

HON J J BOSSANO:

Can Government say how many full time bodies are covered by the £220,000.

HON CHIEF MINISTER:

We think it is five. The Chief Executive and four others.

Subhead 8 – was agreed to and stood part of the Bill.

HEAD 7 - HEALTH AND CIVIL PROTECTION

HEAD 7 – A HEALTH AND CIVIL CONTINGENCY

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HON MISS M I MONTEGRIFFO:

Mr Chairman, I wonder if we could go back to the contribution to the Health Service because I have got two questions on the Health Service. I would like to ask the Minister for Health why the GHA are providing nearly £1 million less for sponsored patients in this financial year.

HON LT COL E M BRITTO:

What I can definitely assure the hon Member, is that it is not because as has been highlighted by the Opposition, it is not because there is any policy to cut back on sponsored patients. This is due to, the hon Member may remember that she asked me during Question Time earlier on this year, in Question 849 of 2004, about the new arrangements that were being made between GHA and the Department of Health in relation to payments for sponsored patients treatment in UK, the sum of money rather than numbers of people. In relation to that and the arrangements that have been made, DoH has now made available to the Government a sum of money which is held in

credit for us. So payments for sponsored patients this year, once we use up that credit, we will not need to make actual cash payments from here. So the actual credit is of the order, not all is going to be used this year, but the actual credit is of the order to an excess of £2 million. So the vote for sponsored patients does not come down but is in fact much more than what appears in the Appendix, because we have got to add to it that £2.75 million that is available in credit in UK.

HON MISS M I MONTEGRIFFO:

Can the Minister say the extra money that they are getting from the Department of Health, what period it relates to?

HON LT COL E M BRITTO:

Yes it relates to quite a few. It relates on the figures that have been agreed up to 1999 and for projections up to March 2004. So there will be some adjustment at a later date. So she can have here usual fun and ask me questions from now on, have I now received the information and has the figure now been adjusted and what is the final figure, and I will then tell her for the next couple of years, if she is still doing the post, no the information has not been received and has not yet been adjusted, and we do not know what the final figure will be.

HON F R PICARDO:

You are still on voted funds.

HON LT COL E M BRITTO:

No because her pattern of questioning still seems to be the same. So in the last two Question Times and going back, flippancy apart, that is the situation, that is the agreed figure up

to 1999 estimated from then on to be adjusted when the actual costs are known.

HON MISS M I MONTEGRIFFO:

Flippancy apart, in relation to the migration, where is the money for the migration experts?

HON LT COL E M BRITTO:

Where is the money for the migration experts.

HON MISS M I MONTEGRIFFO:

Yes because the Minister confirmed that the money that the Government would be expending would be £90,000.

HON LT COL E M BRITTO:

All matters to do with the new hospital are under the new hospital funding. There is no new hospital funding here.

HON CHIEF MINISTER:

I think the implementation at the moment, is that it will be paid for out of the capital under the private finance initiative as part of the cost of setting up the hospital. There is no provision for it here under the Government. The expectation is that it will be funded as part of the hospital set up costs.

HON MISS M I MONTEGRIFFO:

Is the Chief Minister referring to the new hospital development rental or running.

HON CHIEF MINISTER:

No it would be included in there, because everything that is funded by the PFI provider is then paid for by the Government under the new hospital development rental payment.

HON LT COL E M BRITTO:

Can I also take the opportunity to clarify for the hon Member, when she was speaking I asked her to give way and I never actually got round to explaining. There seems to be some confusion about a recent advertisement for tender for relocation that the GHA had put out. This figure of £90,000 for the migration plan by Cyril Sweets, and for the avoidance of doubt let me clarify for the hon Member. That figure of £90,000 was a contract that was given to a firm called Cyril Sweets, for preparation of what is called a migration plan. Now that migration plan covers all aspects, the planning of the move from the old hospital to the new hospital. At what time, at what day, what particular week, what particular month, the bottles are going to be moved, the beds are going to be moved, the patients are going to be moved. It is a very comprehensive, long programme. That is what that planning migration plan was all about. The advert that went out recently by the GHA, which in the hon Member's mind seems to have been linked, or she appeared to think in her speech that it was instead of the original Cyril Sweets programme, is as well as, because what we are tendering for now is for the lorries and the vans and the wheelbarrows, and the people to drive the lorries and push the wheelbarrows to move the furniture and the patients and everything else that needs to be moved.

HON MISS M I MONTEGRIFFO:

Except that I hope the Minister will understand that if anybody reading the advert sees, qualified relocation contractors to provide a migration service, then we naturally assumed that it was in relation to the migration experts.

HON LT COL E M BRITTO:

Yes, I suppose the use of the word migration, which has the obvious meaning, applies to both. A migration plan is the plan to migrate, and the migration and the relocation experts, is the execution of the plan. But they are two completely separate things.

HON J J BOSSANO:

All the equipment in the hospital is also included in the arrangements with the bank?

HON CHIEF MINISTER:

All the new equipment. Some of the existing St Bernard's equipment is coming down. There is, I think, £4 million, perhaps even as high as £5 million, of new equipment for the hospital. That is in finance through the PFI.

HON J J BOSSANO:

What is the formula for the rental? The rental that is being shown here as £1.25 million as opposed to £3 million, is related to what, to a total capital cost of what it was originally considered to be and what it is now estimated to be?

HON CHIEF MINISTER:

Yes, it all ends up in a rental, because everything that the Government wants to do, new equipment, the refurbishment and all of that, all of that is paid for by the Royal Bank of Scotland. Then when the hospital is up and running, when the hospital is there and all the equipment has been put in by then, even though we are doing the choosing of the equipment and all of that, all of that is funded by them. The amount of that expenditure determines, in accordance with the formula provided in the PFI documentation, how much we have to pay to rent a hospital so equipped. That is the formula. So it all ends up in a rental payment but really it is renting the hospital after they have paid for putting it in the condition that we want to rent it from them in, including equipment.

HON J J BOSSANO:

Does that imply that in fact we could see a higher figure than this, or is that figure already taking account of all those things?

HON CHIEF MINISTER:

No, we think that this is the final figure. It provides for annual adjustments but that is the full starting figure that we anticipate.

HON J J BOSSANO:

The contract provides for what, annual adjustments in relation to what, inflation or something like that? Gibraltar inflation or UK inflation?

HON CHIEF MINISTER:

I do not know, but I think that the Financial Secretary appears to recall that it is a fixed uplift every year. One per cent annual up lift.

HON J J BOSSANO:

And that was also in relation to the original £3 million. I think we were not aware of when the original £3 million was mentioned, we assumed it was a fixed rent for x number of years.

HON CHIEF MINISTER:

That does not change. That is in the original formula too.

HON J J BOSSANO:

The 1 per cent was in the original formula too. Is that 1 per cent already reflected in the £4.25 million or is it once the hospital sort of opens?

HON CHIEF MINISTER:

Well we are already paying but of course we may not already be paying all the full amount because it might not all be ready. I suppose by now most of it should be there, most of the equipment should be procured now. Yes. The full amount.

HON J J BOSSANO:

It is just that it seems to me that if we paid £3 million in rental for a full year in the last financial year, and there has been additional costs, if there was any kind of relativity between the £4.25 million

we have got now and the £3 million, it would mean that the additional cost was between 40 per cent and 50 per cent over the original one that triggered the £3 million payment.

HON CHIEF MINISTER:

Yes, because in addition to the equipment, there were increased costs in the actual construction contract and we drew more capital under the PFI arrangements. The construction contract, has not yet been finalised in terms that the architect has not yet done the final account. We think we have secured enough under the PFI, reflected by that figure, to pay for the fee the contract is going to come in at.

HON J J BOSSANO:

Can the Government say what is the figure that the £4.25 million is related to?

HON CHIEF MINISTER:

It is £54 million including construction costs and the new equipment.

HON J J BOSSANO:

And the £54 million this year we service by the £4.25 million. If there was no increase on the £54 million, then what one would expect would then be a 1 per cent increase on the £4.25 million.

HEAD 7 – B FIRE SERVICE

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 7 – C POLICE

Subheads 1 to 5 - were agreed to and stood part of the Bill.

HEAD 8 - ADMINISTRATION AND FINANCE

HEAD 8 – A No. 6 CONVENT PLACE

Subheads 1 to 11 - were agreed to and stood part of the Bill.

Subhead 12 - Overseas Offices

HON J J BOSSANO:

In the case of the Madrid office, originally it was running at £37,000 and the vote in this case actually was overspent by going up from £37,000 to £85,000, and now, in this case, there is no attempt to find a budgetary control bringing it below the overspending. In fact, on top of the overspending the figure goes up by an extra £5,000.

HON CHIEF MINISTER:

Yes, there is a partial explanation for that. It used to be staffed together through the GDC, it used to be staffed through the GDC, so going to the Estimate for 2003/2004, he would have to add the £37,000 to the £45,000 immediately underneath it. That has become £82,000, that forecast outturn that £85,000 plus £12,000 which is £97,000.

HON J J BOSSANO:

So the change from GDC to Civil Service happened during the year, is that correct?

HON CHIEF MINISTER:

No it is the contracted. Apparently there has been some change of which I am not aware, in the employment model. Whereas before it used to be an employee of the GDC, now it is a self-employed person who is engaged and paid a fee which is now included in the £90,000. So it is not shown as staff any more.

HON J J BOSSANO:

But this is what? Somebody that is employed and contracted in Madrid or somebody who is employed here and sent there?

HON CHIEF MINISTER:

Apparently the person is still employed by the GDC, but I would prefer to give him the explanation in the Ante Room.

HON J J BOSSANO:

I take it that in No 6 Convent Place is where they are going to start this budgetary control business before it spreads to further corners of the empire.

HON CHIEF MINISTER:

No one is exempt from it Mr Chairman.

Subhead 12 - was agreed to and stood part of the Bill.

Subheads 13 and 14 - were agreed to and stood part of the Bill.

HON F R PICARDO:

Is that principally state aid led?

HON CHIEF MINISTER:

I have it here broken down by firm. Yes I can see from the names of the recipients that the state aid accounts for about £250,000 of the £840,000.

HON F R PICARDO:

So there is still about £340,000 under estimate in respect of the forecast outturn.

HON CHIEF MINISTER:

Well there are other items in the £840,000 as well as the state aid.

HON F R PICARDO:

That is what I mean there have been other extraordinary legal expenses that Government did not expect.

HON CHIEF MINISTER:

Does he want to know how many of it was for his firm?

HON F R PICARDO:

Absolutely none because Picardo and Co has not yet received any cheque from the Government General Account, I am sorry to say.

HON CHIEF MINISTER:

I am talking about his real firm not his made believe firm.

HON F R PICARDO:

Mr Chairman, as he will see, if he searches the partnership registry, the only firm which I can claim is now my own, and of which I am the senior managing partner is Picardo and Co.

HON CHIEF MINISTER:

I am sure that is technically correct.

HON J J BOSSANO:

As technical as his departure from Triay and Triay. Given that the state aid is going to be around for a very long time, from the information we have been provided with previously, and that it has already started, is the £250,000 for this year a realistic figure?

HON CHIEF MINISTER:

It depends on how many other cases run. If we have the state aid case and any other major piece of litigation, then there will not be enough.

HON J J BOSSANO:

I think he mentioned that of last year's figure £250,000 was for state aid. Does not leave much change there for this year's figure.

HON CHIEF MINISTER:

Well, a lot of that was for advisory work. The fees for litigation are not normally at such a high rate because once one has prepared the pleadings and sent them in, nothing happens until the case actually goes to hearing for the first time. Whereas on the advisory side it was constant.

HON F R PICARDO:

I have to say that going back to the blue book, the estimate was also £250,000 the year before, where the actual turned out to be £800,000. Is it just customary to put in an estimate of £250,000?

HON CHIEF MINISTER:

I would be very surprised if the forecast outturn at the end of the current year is more likely to be nearer £840,000 than £250,000.

Subhead 15 – was agreed to and stood part of the Bill.

Subheads 16 to 25 – were agreed to and stood part of the Bill.

HEAD 8 – B HUMAN RESOURCES

Subhead 1 - Personal Emoluments

HON J J BOSSANO:

Why is it that there is a Human Resources Manager in the Buildings and Works and a Human Resources Department for the whole of the Government.

HON J J NETTO:

The post of Human Resources Manager in Buildings and Works preceded the changes of the title of the Personnel Department into the Human Resources Department.

HON CHIEF MINISTER:

He is asking why the Buildings and Works Department needs its own Human Resources Manager.

HON J J NETTO:

Well, that explanation was given a long time ago in this House. I remember debating with him the necessities of having a full time Human Resources Manager. So I would not like to regurgitate all those issues again. Suffice to say that we feel it important, to be able to deal with the whole series of numbers of issues within the portfolio of human resources management.

HON J J BOSSANO:

Well since we are having to vote money every year for human resources, and I understand the Human Resources Manager in the Buildings and Works is now past retirement age, I wondered if it was time to reconsider the necessity of having him there.

HON J J NETTO:

Well the Human Resources Manager in Buildings and Works has had his contract extended for one year. But the position is not that, the position is that even when his contract expires, the policy is that we will have another human resources manager to deal specifically with the issues of Buildings and Works, which is not part and parcel of the broader spectrum of the role of the Human Resources Department.

HON J J BOSSANO:

So the Minister believes that there is something about human resources in the Buildings and Works that requires to have a dedicated human resources manager, which no other section of the Government needs?

HON CHIEF MINISTER:

Well, it is not true that no other section, Health Authority has it too and will have it more so in the future.

HON J J BOSSANO:

Yes but that is because the Health Authority is treated as not being a Government Department.

HON CHIEF MINISTER:

And GDC have one as well.

HON J J BOSSANO:

Yes, let me make it clear that it is not that we agree that there is a need for this multiplicity of human resources managers, but that in those other areas the apparent justification is that they are not being treated as part of the Civil Service. So presumably there is one in the Elderly Care Agency, one in the Social Services Agency. Now is it because the Human Resources Manager in the Buildings and Works is in anticipation of it becoming an authority?

HON CHIEF MINISTER:

Well it will become an authority but that was not what the resources maintain.

HON J J NETTO:

But not only that. The thing is that I do not want to keep on coming back to issues we debated in this House. At the time that the restructure of the senior management in Buildings and Works, and the various posts that emanated as a result of that, given the advice that the consultants when they did the review of the Buildings and Works Department, specifically mentioned that there was a necessity and a need to employ someone permanently to do all the various functions within the broad definition of human resources management. Not just, for instance, to ensure that at the lower level of management, we are talking about the front line managers, works supervisors, PTOs manning the depots, they fulfil the function in relation to industrial regulations, to a certain level but they also deal with health and safety matters, welfare matters. In other words, all the various spectrums and that is one of the recommendations we carried out and we implemented.

HON J J BOSSANO:

In terms of recruiting is the Human Resources Department the one that does the recruiting? In terms of recruiting, Government advertise a number of vacancies in the Department, does that go through the Departmental human resources manager or the Government Human Resources Manager?

HON CHIEF MINISTER:

I think the essence of what the Minister is trying to explain to him until now, is that there is more to the function of human resources management than the more limited functions provided by the ex Personnel Manager, now called Human Resources Manager in the Government. The specific answer to his question, training, allocation of staff to various functions, which the Human Resources Manager does not profess to do for the whole of the Government. The answer to his question on recruitment, is that it is taken to a certain point, the planning, the job description, all this is taken by the Human Resources Manager from the Department. But when it comes to actually placing the advertisement and administering the process thereafter, it is done by the Human Resources Manager because these people are Crown employees when they get recruited.

HON J J BOSSANO:

So the selection is done by the Human Resources Department.

HON CHIEF MINISTER:

The selection process and the recruitment process is done as per any other Government Department. That might change if it becomes an authority.

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

Subheads 2 and 3 - were agreed to and stood part of the Bill.

Subhead 4 - Operational expenses

HON F R PICARDO:

There is a new expense there, which is medical examinations, which does not seem to fit or sit well with the type of expenditure we would expect to see here. What is leading that head of expenditure?

HON CHIEF MINISTER:

I suspect it is that from time to time the Government asks for staff that are on extended sick leave to be examined by the Government's own Medical Officer, as the Government are entitled to do under General Orders. In the past it used to be done by the GHA GPs but they are becoming increasingly unwilling to do it.

HON F R PICARDO:

So are Government actually going to resort to private practice for those, in effect? Or is it what appears to be an internal charge GHA Government?

HON CHIEF MINISTER:

Apparently the GHA used to do it for free and take the cost on the chin, but now as we are imposing budgetary discipline on them, I think they now want to charge us for the service that they provide to the Government.

HON F R PICARDO:

And that must be a cost fixed at what it must cost the GHA. It is not that the Government are going to jump the waiting list and go private when it comes to this.

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

HEAD 8 – C CIVIL STATUS AND REGISTRATION OFFICE

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 8 – D FINANCIAL AND DEVELOPMENT SECRETARY

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 8 – E TREASURY

Subheads 1 to 11 – were agreed to and stood part of the Bill.

HEAD 8 – F CUSTOMS

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 8 – G INCOME TAX

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

HEAD 8 – H FINANCE CENTRE

Subheads 1 to 3 – were agreed to and stood part of the Bill.

Subhead 4 – Marketing, Promotions and Conferences

HON F R PICARDO:

That is a lower amount than was estimated last year in respect of marketing promotions and conferences. I will not for one moment pretend that I am going to ask the Chief Minister whether our question on this has finally got to him. Is this to account for the fact that he is now responsible for this Department and therefore there will not be a Minister travelling specifically to these conferences, and he will restrain lavish travel to where it used to be?

HON CHIEF MINISTER:

No, not necessarily. It also reflects the fact that whilst there is uncertainty of the products of the Finance Centre, the Government do not think it is appropriate to market as much. The Government's policy at the moment is to keep the head relatively low rather than stand up in the market place shouting from the rooftop, when actually we are more or less on survival mode until the tax issue is clarified.

HON F R PICARDO:

I accept that.

HON CHIEF MINISTER:

Last year we spent more than estimated for the reasons that I have just explained to him.

HON F R PICARDO:

But we are still going to spend £180,000, even though we want to keep our head down. Is that the cost of keeping our head down?

HON CHIEF MINISTER:

We want to keep our head down as much as we did last year.

Subhead 4 - was agreed to and stood part of the Bill.

Subhead 5 – Gibraltar Development Corporation Staff Services – was agreed to and stood part of the Bill.

Subhead 6 - Contribution to Financial Services Commission

HON F R PICARDO:

We spoke earlier about the fact that the contribution to the Financial Services Commission, I think it was £292,000 this year to fund part of the litigation which was the judicial review. I think that was the x and y judicial review. There is an estimate now of £150,000. Is that because there is other litigation on foot or other types of extraordinary expenses which are coming to the Commission?

HON CHIEF MINISTER:

This is the routine annual subvention which the Government have been paying to the Financial Services Commission for some time.

HON F R PICARDO:

It was £120,000 last time.

HON CHIEF MINISTER:

Well it oscillates because it depends on how much reserves they have carried forward from the previous year.

Subhead 8 - was agreed to and stood part of the Bill.

HEAD 9 – LAW OFFICERS AND JUDICIARY

HEAD 9 – A LAW OFFICERS

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 9 – B SUPREME COURT

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 9 – C MAGISTRATES AND CORONERS COURT

Subheads 1 to 3 – were agreed to and stood part of the Bill.

Subhead 4 – Operational Expenses

HON F R PICARDO:

The security expenses there, that is a new figure it has not appeared before. I note that in the past year we had the event where the magistrate was attacked and a jug thrown at him. I have not seen anything change though in the Magistrates' Court in terms of added security. There appears to be no security guards, no new protective screen or anything like that. What are we going to be paying for?

HON CHIEF MINISTER:

This is only a token vote, as he can see, whilst we decide as a matter of policy whether to fully fund a recent request that we have from the Clerk to the Justices for permanent security guard in the Magistrates' Court room whilst it is in sitting, given the alert state that used to prevail at the time, which has now been reduced, but expressing the view that it should be put even if the security alert is reduced, given that a glass object was recently thrown at the prosecutor.

HON F R PICARDO:

It is an interesting issue because we would all want to ensure that the sanctity of the court room is preserved as much as possible, there is permanently a police officer sitting next to the prosecutor.

HON CHIEF MINISTER:

I agree, that request did not come past my desk. That is why there is only a provision of £1,000. With £1,000 they cannot do it. What we can do is use it as a head to fund from supplementary funding, if we decide to accede to the request. But the request has not been acceded to, it has not come to me. Frankly, subject to anything that the Stipendiary Magistrate may have to say in support of his submission, I would have thought exactly that there is always a policeman there, and this is the job of the police and should not be paid for separately for private security.

HON F R PICARDO:

In fact, if I could add to that, on that day and that time I was not there but the police officer who is daily there, who acts as the usher of the court, and the fellow was actually being taken into custody. So he was actually being escorted himself by two other officers when he threw the object. So we have got to put that into the equation before we start spending on issues like this.

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

HEAD 10 - HOUSE OF ASSEMBLY

Subheads 1 to 8 – were agreed to and stood part of the Bill.

HEAD 11 - AUDIT OFFICE

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Professional Fees

HON J J BOSSANO:

On the value for money audit, is there any particular reason why none took place in the last year? It looks as if they are going to do twice as many this year.

HON CHIEF MINISTER:

It is in effect a hangover from the fact that the forecast outturn is zero and bills in respect of work done last year have not been submitted yet.

HON J J BOSSANO:

There was work done then.

Subhead 5 – was agreed to and stood part of the Bill.

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

Clause 3

HEAD 12 - SUPPLEMENTARY PROVISION

Subheads 1(a) and 1(b) – were agreed to and stood part of the Bill.

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

Clause 4

HEAD 13 - CONTRIBUTIONS FROM CONSOLIDATED FUND - RESERVE

Subhead 1 – Contribution to the Improvement and Development Fund

HON J J BOSSANO:

Mr Chairman, in terms of the fact that we have had a lower use of this Head last year than was originally estimated, if there is less requirement because of lower expenditure. Is it the policy of the Government to cut back on the intended use of the borrowing facility or to cut back on the intended transfer of the money from the Reserves?

HON CHIEF MINISTER:

It is considered from time to time. There is a policy to consider which of the two to effect, but there is not a policy always to effect one rather than the other. It is a question of we do not want to allow, unless and until we are able to negotiate increased borrowing limits, we really do not want to let the borrowing limit get too close to the hundred just to have a little bit there. So it is a sort of balancing act and it might vary from time to time. This year I think it is likely that there will be less from either here or borrowing, because I think that we have under estimated the proceeds of sale from Government properties on the Improvement and Development Fund, given things that the Government are going to offer for sale this year.

HON J J BOSSANO:

I take it that in the £6 million that has been put in, on the sale from Government properties that is going to the I&D Fund, the Government have already assumed that some of the MoD properties are going to be sold.

HON CHIEF MINISTER:

No I do not think so. I do not think that that is factored in, nor is factored in there other things that the Government hope to do in relation to sale of sitting tenants and things of that sort. At the time that this estimate was drafted, the people who put this together did not have any source information about the cash flow graph for the sale of MoD properties vis a vis the handover dates. Therefore the dates in which the sale might reasonably be expected to produce cash.

HON J J BOSSANO:

I know we are not quite there but the revenue is always a problem to decide where one can raise it. Is the £6 million in any way a reflection of the fact that last year half of what was expected was achieved. Last year the property sales were estimated to bring in £3.5 million and in fact they brought in £1.75 million. What I am asking is, is the £6 million partly accounted for because last year Government got half?

HON CHIEF MINISTER:

There are certainly deals in the pipeline being run by my Colleague the Minister for Trade and Industry, which have suffered a delay. Therefore there is a delay in receipt of proceeds of sale and premia and things of that sort. There are a number of deals, apart from the MoD lands deal, there are deals that are currently being negotiated with developers, that will

produce several millions of pounds that are not reflected there either. There is the East Side development, which if it comes off will produce several million. So, there are so many balls up in the air in terms of negotiation that it is either going to be much lower than £6 million or much, much higher, depending on how many of these chickens come home to roost.

Subhead 1 – was agreed to and stood part of the Bill.

Subhead 2 – Resettlement Scheme – was agreed to and stood part of the Bill.

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

Clause 5

IMPROVEMENT AND DEVELOPMENT FUND

HEAD 101 - HOUSING, HEALTH AND SOCIAL AFFAIRS

Subhead 1 – Major Remedial Works and Repairs to Housing Stock

HON J J BOSSANO:

As we go through the Heads, we would want an indication from the Government, given that the final column is not there and that we have been given an explanation for it not being there, of the projects where there is a global label for the projects. I think in the case of the major remedial works and repairs to housing, the explanation we had was that it is a rolling programme and

therefore there is no final completion date, it goes on forever. Is that the case?

HON CHIEF MINISTER:

No it does not go on forever. It goes on for as long as the Government are willing to fund it. That is this year. There are the £3.2 million vote there, is for certain specific projects. Now, it is possible that those projects might change. Unlikely, but we are happy to give the hon Members details of what the provision currently is intended to accommodate, but the hon Members have got to understand that that is not what the money has been voted for, in the sense that we can change it. We can change the projects. That involves mainly, the completion of Varyl Begg Phase 1, Varyl Begg Roofs and Lifts Phase 2. Then there is a provision for the Alameda Estate lifts and shafts and other remedial works and there is a provision there for Upper and Lower Witham's House, and one or two other minor, there is a provision there for window and shutter replacements, this annual expenditure on windows and shuttering, and one or two other more minor houses which do not form part of a large estate.

HON J J BOSSANO:

But then, for example, if there is something like an amount of money included there in respect of the Varyl Begg, is the assumption that when that money is spent in the current financial year, that will be the end of the Varyl Begg Project. So there would still be money expected to have to be spent on Varyl Begg.

HON CHIEF MINISTER:

The project is in phases. Phase 1 we have already done, phase 2 is going to be done this year and as different projects it is extended to other phases. We intend to do it. So it is not so

much a balance to complete, it is only really a balance to complete if we view it as one project. Refurbishment of Varyl Begg. But actually is formally divided into phases and this is phase 1 is more or less finished. I think it has been finished. Phase 2 is the next, I do not know exactly which blocks is phase 2.

HON J J NETTO:

Basically phase 2 encompasses the small blocks as opposed to the big blocks which is phase 1. If I am right, phase 2 will go beyond this financial year. In other words, it will scatter on to the next one as well because there are, at the top of my head, around 18 blocks of the small ones. So it will go beyond one financial year.

HON J J BOSSANO:

In the forecast outturn where there was £1.1 million more than estimated, it was because the programme actually went faster than was originally envisaged. Is it that the contracts for these things allow contractors to move faster and bill more or what? It is an unusual thing.

HON J J NETTO:

No, partly due to the new resources in terms of the extra recruitment being in the City Hall, in terms of the people who prepare the contracts for all the Building Surveyors, the Contracts Officers. They were much able to be in a position to do all the tender documents, the designing and everything put together, so we were in a position to put more tenders out and obviously do more work.

HON F R PICARDO:

Mr Chairman, can I just go back one step to Head 103 Receipts page 112, and look at the EU grant on Konver projects, which this year has a forecast outturn of zero, and an estimate of £900,000 for this year. Is that because the payment is going to come in late? Because it looks like two payments in one year. Except, of course, that where we have estimated previously, I see we have estimated here £900,000 and that may be two £450,000 but where we have previously estimated something like £750,000 we have only got £421,000, which was what we had the year before. I would be grateful for an explanation about that.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think it is the first of your presumptions that there is simply a delay in the payment of EU funds, and I think it also relates incidentally, and I omitted to answer it earlier on in relation to the European Social Funds, that there is a delay from the UK and in the payment of these funds over. If I could also just take this opportunity whilst we are on the revenue, just in case they are figure spotting between estimates next year. Is that the figure in the actual column for 2002/2003 in respect of land and building sales and leases, reads £10,952,351. In fact there is a typographical error there. It should read £10,092,351. So it is just a minor typographical error which we will correct in the Approved Estimates.

HON F R PICARDO:

As a matter for the record, this would be obviously in the blue book.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Yes, we correct it in the approved estimates. In actual fact in the summary, instead of the receipts for that year 2002/2003 being £21,293,250, they will be £19,279,240, which is on page 103. We will correct that in the final book.

HON F R PICARDO:

Mr Chairman, just taking the Financial and Development Secretary back to what he said about the Konver Projects. He said that the delay is at the UK end. The UK has already received those funds and is delaying paying them over to Gibraltar? Or what else could be happening there?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I think I may have misled the hon Member. I think in relation to the European Social Fund, which we are not talking about here, that is definitely at the UK end. The delay at the UK end is in turn caused by delays, I gather, in Brussels in the payments being made to the UK. So that explains that. In relation to Konver Projects, those are claims that we make directly upon EU funds and the rate at which we claim is the rate at which the projects are proceedings. There are certain trigger points at which one can claim. What we thought we would be able to claim last year, we had not claimed but we are expecting to claim in the current financial year. Hence the reason. It is a catching up exercise going on.

HON F R PICARDO:

What is the usual ratio of claim to recovery? Is it 100 per cent of what one claims one gets back?

HON CHIEF MINISTER:

It is a percentage.

HON F R PICARDO:

If one submits a project that has spent 100 per cent expecting to get 40 per cent.

HON CHIEF MINISTER:

We get 100 per cent of what we are entitled. Different projects may have different rates of funding percentage.

HON F R PICARDO:

Are things disallowed routinely?

HON CHIEF MINISTER:

I do not think so.

HON J J HOLLIDAY:

What I can add to that is that I have discovered since I have been in DTI, that claims were being put through maybe once or twice a year, when there was an accumulation of funds. I have now put a system in place in order to put claims through every quarter. I feel that when one puts a claim say stretching over a period of a year, they take much longer in assessing the whole thing coming through. Whilst if one does it in smaller claims over a shorter period of time, the turnaround will be much quicker. That system has only recently been implemented.

HON F R PICARDO:

For the last quarter, so to speak.

HON J J HOLLIDAY:

Well, there will be a claim going in for work at the end of June, covering, which normally would have not gone in until the end of the year.

Subhead 1 – was agreed to and stood part of the Bill.

Subhead 2 – Consultants Fees

HON J J BOSSANO:

These consultants fees are related to the capital works. They are nothing to do with the structure of the Buildings and Works. Is that correct?

HON CHIEF MINISTER:

Yes.

Subhead 2 – was agreed to and stood part of the Bill.

Subhead 3 – Gibraltar Health Authority

HON MISS M I MONTEGRIFFO:

Out of these £200,000, £100,000 is being provided to the GHA for works. Since St Bernard's is moving to Europort in the autumn, can the Government confirm what these actual works involve.

HON LT COL E M BRITTO:

The works are all at KGV and not at St Bernard's.

Subhead 3 – was agreed to and stood part of the Bill.

Subheads 4 to 7 – were agreed to and stood part of the Bill.

Subhead 8 – Social Services Agency – Capital Works

HON J J BOSSANO:

Given that last year we were asked to vote £150,000 and nothing was spent, what is the explanation for the fact that the amount that is being required this year is in fact one third of what was estimated last year, since nothing has been spent.

HON CHIEF MINISTER:

Well, this is what is being allowed this year for maintenance and refurbishment works to Dr Giraldi Home and St Bernadette's Centre.

HON J J BOSSANO:

Yes, but it does not explain, this is not a case of overspending and being cut back.

CHIEF MINISTER:

Well whatever was going to be done with the £150,000 that did not happen last year is now not going to happen this year. Except to the extent of £50,000 worth.

HON J J BOSSANO:

Yes I can work that out for myself. It is just that it seems peculiar that we have a situation where the Government say because of the need to maintain financial discipline, if people go ahead and spend more than the approved element of whatever they bid, then they are going to discover that they are not going to get the money the following year. Here we have got the Social Services Agency getting the approval of the Government to spend £150,000 on capital works. They do not spend it and the result of that is that they finish up with £100,000 less than they would have if they had spent it and I find that peculiar.

HON CHIEF MINISTER:

It was a specific project, which is the refurbishment of the Bishop Healy Home.

HON J J BOSSANO:

And that is not going to be done any more.

HON CHIEF MINISTER:

No.

HON F R PICARDO:

Is there a specific reason why that is not going to take place any more? Clearly it seems like a fairly worthy cause.

HON CHIEF MINISTER:

It is on hold at the moment, because when the project was planned, there was a provision for £150,000 but actually an estimate of £80,000 or £90,000, I think it was for the scheme. When it actually came to materialise, the quotation was £500,000. So the project then takes a different dimension and it has to be re-evaluated.

HON J J BOSSANO:

On the forecast outturn of £168,000 for the relocation of the Civil Prison, since nothing has really happened but we are told it may.

HON CHIEF MINISTER:

Architects fees. Design team fees. The project has been designed to a very advanced stage. It is literally ready to start, ready to go out to tender for construction.

HON J J BOSSANO:

So, in fact, what we are being told is then that even though there is not a head for this, it may actually start in the current financial year.

HON CHIEF MINISTER:

It is not impossible. It depends on our capital cash flow, depending on whether we do the East Side development, how much of these other land sales go through. If we can afford to do it, we would like to start it this year.

Subhead 8 – was agreed to and stood part of the Bill.

HEAD 102 – EDUCATION, SPORT, LEISURE AND YOUTH

Subhead 1 – Refurbishment of Educational Facilities

HON S E LINARES:

As a matter of interest, why is it that St Martin's, I know we are on subhead 1, but why would not St Martin's School playground, which is not a new school building, which is under the new school building not under the refurbishment of educational facilities?

HON DR B LINARES:

The sum of £50,000 has been costed and allocated for St Martin's playground, the resurfacing of the playground to be able to install the equipment. It is a capital expenditure and it is being put together with new school buildings. It is a question of semantics to some extent

HON CHIEF MINISTER:

Yes it could have been under refurbishment, it depends whether the hon Member interprets the new playground project as a new project or as a refurbishment of the old one. If he takes the view it is just a refurbishment of the old one, it might just as easily have gone into subhead 1.

HON S E LINARES:

Within the £500,000 that is for refurbishment of educational facilities, does it also include St Martin's roof?

HON DR B A LINARES:

The £500,000 includes a whole lot of areas of refurbishment. It is something like the Chief Minister's Milan Cathedral. One does not build cathedrals every day so not build new toilets every day, new flooring every year, and the roof of St Martin's will be one of those areas prioritised. The way this works is that Heads present bids for what they think should be done in terms of refurbishment. Then this is surveyed by the technical officers and the administrator in the Department, and things are prioritised accordingly.

HON CHIEF MINISTER:

This is a provision. Whereas in other votes I have here a list in front of me of why what we want to do with that money, here this is just £500,000 which the Education Department decides what they might well they might think more than that is needed. But they get £500,000 and they can apply it to whatever they want to prioritise, whatever they want to do. In other words, we do not impose on the Department a particular programme. We provide them with a sum of money and the Education Department decides what it spends it on.

Subhead 1 – was agreed to and stood part of the Bill.

Subhead 2 – New School Buildings – was agreed to and stood part of the Bill.

Subhead 3 – Educational Equipment

HON S E LINARES:

In the educational equipment, would the £100,000 also include equipment as in computers.

HON DR B A LINARES:

No, computers come under a different heading.

HON S E LINARES:

Which one? Do we know?

HON DR B A LINARES:

In the schools equipment which is in the Consolidated Fund.
Subhead 3 – was agreed to and stood part of the Bill.

Subhead 4 – Provision and Refurbishment of Premises for Clubs and Association – was agreed to and stood part of the Bill.

Subhead 5 – Construction of Swimming Pool for the Elderly, Disabled and Teaching

HON J J BOSSANO:

The token amount of £1,000 is an indication that they have no expectation of proceeding with that in the current year. Is that correct?

HON CHIEF MINISTER:

No. We do expect to proceed with this. I think this is one of the projects that we hope to start towards the end of the financial year with the hope to having it ready for next summer. But we are hoping that the amount of expenditure incurred during this financial year will not be very substantial, and that it will mainly fall into the next financial year. But any that does fall into this financial year, we will try to meet from cash temporary virements from some of the other projects under this Head.

HON J J BOSSANO:

There has been £30,000 spent already in the last financial year, and £3,000 in the case of 2002/2003. So this is a project which is a single project and in which presumably there is a balance to complete.

HON CHIEF MINISTER:

Well we do not know what it is because it has not actually gone out to tender yet. So the tender has not yet been awarded, there is not therefore a known sum because we have not yet chosen the tenderer. But it is not a project, most of the expenditure will fall in the one financial year. In other words, when it does go out to tender, we would expect it not to straddle a subsequent financial year, except for whatever falls into this financial year. So it would be finished next financial year.

HON J J BOSSANO:

In terms of the £30,000 of last year, what has that been paid for and to whom?

HON CHIEF MINISTER:

We think it is the design team. Architects and others. Again, this project has been designed up to a, well it went out to tender with a design, it was not a design and build.

HON F R PICARDO:

If there has been no tender et cetera, how could the £450,000 been estimated last year?

HON CHIEF MINISTER:

Because it was put in as an estimate. The procedure for Government projects is that the Government's in-house quantity surveyors, estimate, give the Government an estimate of what the project is going to cost. On the basis of that estimate the Government decide whether they want to put it into the programme and go out to tender. But what almost invariably happens is that when it goes out to tender, either because there has been under estimation by the estimators, or because there is overheating in the construction market, it is a contractors market, and they quote higher prices, the tenders are almost always, I think are always, and on some occasions by very large margins much higher than the Government have estimated. For example, on this one, where last year it was estimated at £450,000, I think that has risen to £750,000. So the value of these in-house estimates are becoming increasingly less useful and reliable.

HON F R PICARDO:

The amount of £750,000 is the new in-house estimate or what? Because we have just been told there is no tender.

HON CHIEF MINISTER:

If the tenders are in they have figures attached to them. I have not seen them myself, I do not know what those are.

HON F R PICARDO:

So the tenders are in?

HON CHIEF MINISTER:

I am told that the tenders are in. Yes.

HON F R PICARDO:

It has just not been awarded.

HON CHIEF MINISTER:

Yes, not been considered and awarded.

HON J J BOSSANO:

Is it the case that if, for example, when the policy decision on building the pool is taken, it is taken in the context that it is expected to be costing something like £450,000 and is that then reviewed if it turns out to be double?

HON CHIEF MINISTER:

It does sometimes happen. This is what happened with the previous item we discussed. The Bishop Healy Home. There is re-evaluation and Government then have to decide whether, as a matter of policy, they want to go ahead with the project notwithstanding the much higher cost than is now on the table, compared to when it took the previous policies.

Subhead 5 – was agreed to and stood part of the Bill.

Subhead 6 – Improvements to Sports and Leisure Facilities

HON S E LINARES:

In this item I heard the Minister having an interview on GBC, and he was asked how long it would take to complete the new leisure centre, the new Sports City, the new building, and he estimated about two years. Is there a sort of balance to complete here as well?

HON CHIEF MINISTER:

The new sports facility is not in Subhead 6.

HON S E LINARES:

Sorry, I apologise. I meant No. 7.

Subhead 6 – was agreed to and stood part of the Bill.

Subhead 7 – New Bayside Sports and Leisure Facilities.

HON S E LINARES:

What I was coming to is that the Minister said it was going to take two and a half, two years, obviously depending on how the buildings were going. But what would be the balance to complete? How much funding, extra funding, will Government have to put over and above the £2.5 million which is estimated for this year, how much more will be needed for the year and a half approximately left to finish off the whole project.

HON C BELTRAN:

The total cost, as far as I can gather now, is £8.5 million for the totality of the project. The amount used to date is some £4 million. The hon Member has before him the £2.5 million essentially for completing the stands and fitting out the new sports hall, and also some infrastructural work for new phases. So the balance for completion, as an estimate, is £2 million.

HON S E LINARES:

After the £2.5 million already spent plus up to £8.5 million.

HON CHIEF MINISTER:

This is a project for which I think it is appropriate to have a footnote with the balance to complete information in it. (a) It is a specific project and (b) it is on a sufficiently large scale to warrant that information.

Subhead 7 – was agreed to and stood part of the Bill.

Subhead 9 – King's Bastion Leisure Centre

HON F R PICARDO:

When the Chief Minister was talking about why the vision thing is not going to proceed this year, and it is going to proceed another year, he told I think GBC last night and the House yesterday that it was because the reprioritisation meant that the leisure centre was going to go first. We have only got £1,000 booked in for the leisure centre. Is that a nominal amount or is that really evidence of the fact that even this vision thing is not going anywhere this year?

HON CHIEF MINISTER:

No Mr Chairman, it does not mean that. What it means is that as things presently stand, of course it might change again, but as things presently stand it is envisaged that the funding for the building of the leisure centre will not result in Government expenditure. It is not to say it would not be a Government project but it might be taken as a quid pro quo in lieu of premium for a wider land deal. So that the leisure centre will be built by a developer and handed to the Government ready built.

HON F R PICARDO:

And run by the Government?

HON CHIEF MINISTER:

And handed to the Government ready built for running by the Government. Yes. Well for running by the Government or for the Government to make arrangements for the running thereafter.

HON F R PICARDO:

Otherwise are Government going to run the cinema and the bowling alley?

HON CHIEF MINISTER:

No. Exactly not. What I was trying to say was, that the leisure centre would not be built, owned and operated by the developer who will build it. It is rather a provisioning. So the developer will build it, hand it to the Government, and the Government will then presumably make arrangements with cinema operators and other operators, cafeteria operators et cetera, et cetera. The Government are not going to be the operator of the leisure centre but it will be a publicly owned facility.

HON S E LINARES:

Would the Sports Authority have anything to do with the running of, or should I say the management of,

HON CHIEF MINISTER:

That is one of the possibilities. To the extent that there is a residual role for the Government, one of the Government's thinking at the moment is that the logical place to deposit that is in the Sports Authority.

Subhead 9 – was agreed to and stood part of the Bill.

HEAD 103 – ENVIRONMENT, CULTURE AND HERITAGE

Subhead 1 – Environment Projects

HON F R PICARDO;

We were told that out of the provision of £550,000, just over half a million, £200,000 would relate to the purchasing of the air quality monitoring equipment. I was asked to wait until we got to this page to ask what the rest would be for. Can any indication be given? My friends in the ESG would I am sure be delighted to hear.

HON CHIEF MINISTER:

Well, it is a variety of projects. There is a provision there in the balance for improvements and enhancements to the cemetery. There is a provision for parks and playgrounds. There is a provision for wildlife botanical garden project. There is a provision for a conference, an environmental conference.

HON F R PICARDO:

How can a conference be a capital expenditure? A conference centre yes, but a conference?

HON CHIEF MINISTER:

Well the Improvement and Development Fund is for capital and economic projects. So long as we can establish that it has an economic value to Gibraltar and is viable, but I agree. I agree basically with the hon Member's comment that this should better have been placed in the Consolidated Fund under the environment. I think in future years, I do not know if this is a regular conference or a one-off. If it is a regular conference I think in future we should remember to put it in the Consolidated Fund.

Subhead 1 – was agreed to and stood part of the Bill.

Subhead 2 – Rock Safety, Coastal Protection and Retaining Walls

HON L A RANDALL:

We heard earlier that in the £750,000 works not intended to be spent on the Sandy Bay tender. So what do Government intend to spend that money on?

HON CHIEF MINISTER:

This is rather like the schools vote. This is a provision which is made available to the Technical Services Department for them to decide what projects need to be done. Although at an administrative level I am sure the Government have a programme, it is not a politically driven programme. It is whatever the engineers think is of most priority. Yes, as the Minister is reminding me, there is a reactive element in that there are sometimes emergency situations of things that need to be put right and that bites into this. The same would apply to the next Subhead.

Subhead 2 – was agreed to and stood part of the Bill.

Subhead 3 – Storm Water Drains and Sewers Replacement – was agreed to and stood part of the Bill.

Subhead 4 – New Incinerator

HON F R PICARDO:

We were told in answers to questions that the transaction manager had not yet been appointed but that progress was

being made in that respect in relation to the new incinerator and sewage sullage plants. We see now £31,000 estimated cost this year. A manager will be appointed during the course of this year and as a result of his appointment we are expecting to pay design costs or whatever for the new plants. Is that right?

HON CHIEF MINISTER:

Well I think the hon Member is right to assume that this project is going to make progress during this financial year. The papers for the tender of the appointments are in my room, I think coming across from the environment. How much of it will be funded once the project gets under way, both as to design and execution, from Government sources through this fund, will depend on how we decide to fund that project. If we do another PFI for example, it may not feature here just as the new hospital has not.

HON S E LINARES:

Mr Chairman, as a matter of interest. Is the new incinerator, since the Minister said that currently Government are transporting most of the rubbish which is segregated first locally and then transported to Spain, and that the Government have also been interested in recycling it as a concept, what would be the sort of residuals that we would be putting into this new incinerator?

HON CHIEF MINISTER:

Everything is not recyclable there is an element of segregation and there is an element of recycling but there is still refuse for burning basically glass and plastics are taken out. Metals are segregated and can be recycled but there is still burning to be done. Of course all the money that we are presently spending in

disposing of the refuse in Spain, will go towards the annual operating costs of our own incinerator. That is how it works.

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

Subhead 5 – Improvements to Cultural Facilities

HON S E LINARES:

Again I would like to ask where exactly this money is going to be spent as in the improvements, the Ince's Hall, Mackintosh Hall.

HON C BELTRAN:

The Government intend to refurbish the John Mackintosh Hall building, which is in need of refurbishment. At the moment I do not have a figure exactly for that but this is the Government's intention in respect of that money.

HON S E LINARES:

So the £100,000 will be facilitated?

HON C BELTRAN:

I do not know exactly. It is a provision for that kind of thing.

HON F R PICARDO:

Is that what was described I think rather ungenerously last night on a television interview as a town hall, is going to have to serve

as a theatre royal whilst that main project goes into a holding pattern.

HON C BELTRAN:

I did not say that we were going to refurbish the theatre at the Mackintosh Hall. I said we were going to refurbish the John Mackintosh Hall building.

HON F R PICARDO:

Oh I see. The theatre stays as it is.

HON C BELTRAN:

Well it might, depending on the needs.

HON CHIEF MINISTER:

Well it has had quite a lot of refurbishing already in past years.

HON F R PICARDO:

No, I accept that. It is just that I did not describe it as a town hall the Minister did.

HON CHIEF MINISTER:

Well it is. It is a town hall.

Subhead 5 – was agreed to and stood part of the Bill.

Subhead 6 – Heritage Projects

HON DR J J GARCIA:

What projects are envisaged in that expenditure?

HON C BELTRAN:

Yes it is the sum available to the Ministry and there are various projects in hand. There is the Moorish Castle, the Moorish Baths which are undergoing works, the World Heritage Bid. That kind of project.

Subhead 6 – was agreed to and stood part of the Bill.

HEAD 104 – TRANSPORT, ROADS, PORT AND AIRPORT

Subhead 1 – Airlines, Ferry and Hotel Assistance Schemes

HON DR J J GARCIA:

My understanding is that the Airline Assistance Scheme and the Hotel Assistance Scheme have both ended. Is that £10,000 relating to this new Ferry Assistance Scheme which I am not aware of?

HON J J HOLLIDAY:

No the £10,000 are basically, although the Hotel Assistance Scheme as such is now finished, there is an element of the Hotel Assistance Scheme in that there is assistance being given to hotels in respect, I think, of the electricity which is a small

reduction which is being refunded to hotels, so long as their invoices are maintained. I think the provision is just to take account of that. I presume it is also a token in respect of air lines in case there are any possibilities for the future.

Subhead 1 – was agreed to and stood part of the Bill.

Subhead 2 – Road Maintenance and Resurfacing

HON L A RANDALL:

Is this sum of £500,000, are the plans for that expenditure ready or is that just a sum that has been budgeted without any dedicated expenditure?

HON F VINET:

That is the provision for the Department that then decides how best to spend that money.

HON L A RANDALL:

There is no plan to spend it now, or a detailed plan?

HON CHIEF MINISTER:

We do not know what it might be here, but I am sure that the Highways Engineer has a list of things that he wants to do with that £500,000.

HON L A RANDALL:

I ask this because when previously I have asked, I have been told that the plans are not yet ready.

HON CHIEF MINISTER:

Yes, I should have added that, of course, the maintenance term contract is included there. So it is all the sort of small jobs that are done through the MTC, through the Maintenance Term Contract, plus any other project that the Government may do separately and outside that.

HON J J BOSSANO:

But is there an explanation why last year there was £750,000 more provided for this.

HON CHIEF MINISTER:

Yes, the Government redistributes the capital that they spend from year to year on different issues. In past years there has been a higher degree of capital allowed in this project and this year it has been cut back. The Government do not say every year we spend £1.25 million or something like that. Some years it is higher, some years it is lower, this year it is lower.

HON J J BOSSANO:

Yes but when the Government were explaining in the general principles of the Bill the reason for a lower level of appropriation at this stage, one of the arguments they used was the performance, in terms of how much of what was provided they actually managed to spend. Well here we have got a vote where what is actually being spent is very close to what was provided.

So is it that they do not think that there are all that many roads requiring surfacing any more?

HON CHIEF MINISTER:

No, it is that we are willing to spend less money on the road refurbishing programme. The amount of work that needs doing is the same but we are willing to do less of it this year.

HON F R PICARDO:

Of the £1.25 million that was estimated and on the forecast outturn of £1.188 million, I can see in the reallocation of expenditure that money was moved from this Subhead to the Port Infrastructure Facilities and Equipment, which related to £56,000 spent on dredging works at North Mole. Now those, I imagined, when I saw this reallocation, should have or would have related to the QM2 dredging. If that dredging did not go ahead, what did we spend that money on? Or is that the most expensive cost estimate I have ever seen?

HON CHIEF MINISTER:

Where? Which vote?

HON F R PICARDO:

That is in relation to this Head of Expenditure, the statement of reallocation No. 1 of the I&D.

HON CHIEF MINISTER:

Which Head of Expenditure?

HON F R PICARDO:

Road maintenance and resurfacing. The one we are looking at now.

HON CHIEF MINISTER:

Yes, money was reallocated from there to where?

HON F R PICARDO:

To the dredging works at North Mole which never happened, £56,000.

HON CHIEF MINISTER:

That is a different project, that was not to deepen the seabed but to clear the seabed because in addition to, even for normal ships for the normal draft that the harbour can take, there is an accumulation of motor cycles and cars and rubbish there on the floor that the tide brings in or people throw over. From time to time one has got to dredge it all away to remove, I think there was an incident where one ship took a washing machine away with it in its propeller or something. Some cruise ship. There is too much clutter there on the seabed and that is the dredging exercise to which that relates, which was carried out during the course of last year.

Subhead 2 – was agreed to and stood part of the Bill.

Subhead 3 – Road Construction

HON L A RANDALL:

Is that just a nominal sum that has been put in?

HON CHIEF MINISTER:

Yes. The Government have three road projects in the pipeline. Do not please tell me in six months time that we are taking too long to do it. I mean, in the long pipeline. One is the new Westside road. In other words, a road linking the Westside reclamation to Queensway, from the Rowing Clubs across the front of Rooke Yacht Club to the Coaling Island junction. It is likely that that road will not be funded by the Government, that it will be funded by a property developer who, on tender, will do that project. The whole project to which the road will just form a part. The Government also have a project to do a road through the Chatham Counterguard, linking the Reclamation Road to Fish Market Road, through Chatham Counterguard. There is a project also for a relief road in the Upper Town to create a big one way system, Castle Road, Willis's Road to decongest that area, and it requires basically the building of a new road from what I think is Tankerville House, just near the prison, round the back of Tankerville House just at the bottom of Lyonnaise des Eaux reservoir that there is there, linking to Willis's Road at the top, to create a loop there. Both of those projects are at a very advanced stage of design. Indeed one of them is ready to go out to tender. The Government have not yet decided whether we want to press the button this year, so there is a provision. A provision which is nominal, and if we wanted to do it we would almost certainly have to bring a Supplementary Appropriation Bill because I do not think in this vote there is sufficient leeway for virement, given the cost of those projects.

HON F R PICARDO:

Just before we get on to the next Head, but related to what the Chief Minister has said in relation to this Head on construction,

and as a resident of Willis's Road, whether that new road one-way system project and the much wanted, very persuasive, I would not have thought of voting for the GSD on this issue, parking at Willis's Road area going to materialise at the same time?

HON CHIEF MINISTER:

That is one of the issues that is holding back the decision on this. In other words, given the cost, the overall cost of the project, do we just do the road or the parking? Or do we bite the bullet and do the whole lot even though it is several million pounds together? That is the issue.

HON F R PICARDO:

So the vote in relation to the next item does not involve that parking facility?

HON CHIEF MINISTER:

No. It is a provision but what we had in mind for that is a project in the South District.

HON F R PICARDO:

That is the one by Knight's Court area.

HON CHIEF MINISTER:

Yes, which actually the way the project is going to come out is quite urgent in relation to other events taking place in the area, sporting events et cetera and therefore we have got to get on with it quickly if we are going to do it.

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

Subhead 4 – Construction of Parking Facilities - was agreed to and stood part of the Bill.

HON J J BOSSANO:

Last year there was £150,000 and they have actually spent £206,000. There is £150,000 again this year. Are there specific things that they buy out of this vote every year, or is there something that has.....

HON CHIEF MINISTER:

No it is a provision for different things. It is not recurrent, it is not a regular recurrent item in terms of what they do with the money. So there is a long list of bits of equipment that they want to buy. Invariably they need to bid for more, but they get the amount and it is up to them to decide what they spend it on.

Subhead 5 – was agreed to and stood part of the Bill.

HEAD 105 – ECONOMIC DEVELOPMENT, INDUSTRY AND INFRASTRUCTURE

Subhead 2 – EU Objective II 2000/2006 Programme

HON J J BOSSANO:

In the note at the bottom it says that the balance to complete is £9.9 million. It tells us that this balance includes projected

expenditure on EU projects funded under the Improvement and Development Fund heads.

HON CHIEF MINISTER:

That is based on the funds available. Well, it is based on the value of projects that have to be built to that value, access the maximum funding available under the programme.

HON J J BOSSANO:

Yes but the balance to complete is £9.9 million, that is what remains to be spent.

HON CHIEF MINISTER:

But not just the EU element of it.

HON J J BOSSANO:

I see. So what is the EU element of it then?

HON CHIEF MINISTER:

Forty per cent of that figure.

HON J J BOSSANO:

I think last year there was a different figure given in the balance to complete. Is there an explanation for that?

HON CHIEF MINISTER:

This is one of the areas where I said that I would give him details of the projects that we had in mind for the £1.7 million that is estimated. Those projects are the Lathbury Barracks Phase 2, the Industrial Park and there is the Western Beach reclamation and industrial park, which is something new. It is a reclamation in the corner there by the airfield at Western Beach. Where the small boats now are.

HON J J BOSSANO:

And that would be new funding? It would be what, 40 per cent of what the project would cost?

HON CHIEF MINISTER:

In most cases 40 per cent under this Head.

HON J J BOSSANO:

Would the provision that we have got there of £1.7 million is what it would cost in total, that is the whole cost of which the EU would deposit?

HON CHIEF MINISTER:

Yes EU funding.

HON J J BOSSANO:

In terms of the figure that has been put there, is that the departmental estimate of these things?

HON CHIEF MINISTER:

Yes.

HON J J BOSSANO:

It is. So it could be higher. In last year's figure, there was a balance to complete of £9.6 million on top of £2.4 million between the actual, the forecast and the estimate, which makes it £12 million. That is why I am asking how it is. The figures do not add up, that is what I am saying.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

One factor that I am just sort of weighing through my mind is that the value of the programme going forward is changed dependant on the euro/sterling exchange rate. So that will certainly be one contributory factor but I doubt that it explains the difference. There must be another factor.

HON J J BOSSANO:

I can understand that affecting the receipts that we get but the balance to complete the project which is a project that has been tendered for in sterling, I would have thought would not change because of the euro rates.

HON CHIEF MINISTER:

There are occasions in euro rates.

HON J J BOSSANO:

I accept that but if for example, the Chief Minister says the Western Beach reclamation goes out to tender and it is going to cost £100 million, and he spends a quarter, then the balance to complete is another quarter, irrespective of what the euro may be. It may be that we get more or less pounds for our euros but the balance to complete, I am assuming, is based on the cost of the project here.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

No, the balance to complete here is the balance of that programme, not a particular project. It is made up of many projects so the euro/sterling exchange would affect it.

HON CHIEF MINISTER:

The balance to complete is the remaining funds available to us from the EU, levered up by the 60 per cent that we have got to spend, that we have got to contribute to the cost.

HON J J BOSSANO:

I see. So that means that in terms of what this is supposed to be showing, which is the balance to complete so that we know the whole cost of the project according to the explanation that I read out in my original contribution to the general principles of the Bill.

HON CHIEF MINISTER:

It does not read, technically, balance to complete is the wrong terminology. This really should be described as value of projects that would need to be built, or that can be built, in order to

maximise the use of remaining EU funding available. I do not know how we label that but that is what it means.

HON J J BOSSANO:

I see.

HON CHIEF MINISTER:

Another way of just giving information would be just to have a footnote saying how much EU funding is left available in the Objective 2, so that we can follow how much is being spent and how much is not being spent, and not lever it up to include the Government's contribution. If the hon Members prefer the information to be given in that way it can be.

Subhead 2 – was agreed to and stood part of the Bill.

Subhead 3 – Gibraltar Enterprise Scheme

HON F R PICARDO:

This head of expenditure has been estimated at £50,000 less each year for the past three years. I note that the estimate for 2002/2003 in the blue book was £150,000, the outturn turned out to be £61,000. Then an estimate of £100,000 which gave an outturn of £107,000. Now an estimate of £50,000, is that project being run down?

HON CHIEF MINISTER:

Yes, this is Government's own funding. There is less projects being put forward and this is a figure that the Government can

decide how much they are going to devote to as a matter of choice. Because these are exclusively Gibraltar Government monies.

Subhead 3 – was agreed to and stood part of the Bill.

Subhead 4 – Gibraltar Development Plan – was agreed to and stood part of the Bill.

Subhead 5 – E-Procurement Projects

HON J J BOSSANO:

Mr Chairman, can I just ask something about the next note which has disappeared, which shows a Konver expenditure of £168,000 in respect of the financial year 2002/2003. In the light of what we saw on the receipts side where in the section on grants it says that we are expecting £900,000 from Konver, even though we have not spent anything in the current year that just went by. We do not intend to spend anything in the year that started on 1st April, and we only spent £168,000 in the year before that. So if we claim after the event, how long after the event do we claim?

HON CHIEF MINISTER:

Well that programme has finished now. So if we are expecting £900,000 it has to be recovery of monies due in respect of years gone by. I am told there is a final payment due and outstanding to us from the Commission.

HON J J BOSSANO:

For expenditure that happened a long time ago?

HON CHIEF MINISTER:

Some of it may be 2002/2003 but it would not explain for the £900,000, it must be before 2002/2003.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The Government spent in total about £750,000 in 2001/2002. So it is that plus the further spending that is being recovered.

HON F R PICARDO:

So it is the columns that we saw in what is now the blue book, which amount to over £900,000, are the expenditures that we are dealing with.

HON CHIEF MINISTER:

No we are not dealing with expenditures here at all. The Leader of the Opposition has asked a question about the revenue rather than the expenditure.

HON F R PICARDO:

Yes, the receipts will relate to these expenditures.

HON J J BOSSANO:

To expenditures going back to 2001/2002.

HON CHIEF MINISTER:

Yes to expenditure going back to the years as commented.

Subhead 5 – was agreed to and stood part of the Bill.

Subhead 6 – Upper Rock Improvements and Maintenance

HON DR J J GARCIA:

Mr Chairman, can I ask the Hon Member whether the projected expenditure, the estimate, of £150,000 includes any toilets for the Upper Rock.

HON J J HOLLIDAY:

No it does not.

HON DR J J GARCIA:

What kind of thing is that money likely to be spent on?

HON J J HOLLIDAY:

Railings, signage, rubbish bins.

Subhead 6 – was agreed to and stood part of the Bill.

Subhead 7 – Beaches, Improvements and Maintenance –
was agreed to and stood part of the Bill.

Subhead 8 – Beaches Development Scheme

HON J J BOSSANO:

Is this dependant on the East Side?

HON CHIEF MINISTER:

Almost certainly, if it happens at all, will not happen through the Improvement and Development Fund because this will be one of the obligations undertaken by the East Side developer, to do for us this scheme on our beaches. It is not that the beaches are being included in the Development Scheme but as part of the deal we are negotiating with the developer, he has to do certain works to our beaches.

HON J J BOSSANO:

For which there would be no payment because it would be offset against the value of the contract.

HON CHIEF MINISTER:

That is one of the issues under discussion, whether there is going to be an allocation with a payment back, or whether it is going to be netted off. That is part of what is still under discussion. Obviously if there is a payment to us, and we have to pay back, then it has got to be accounted for through here.

HON J J BOSSANO:

It would come in then as land sales and then go out.

HON CHIEF MINISTER:

Yes.

Subhead 8 – was agreed to and stood part of the Bill.

Subhead 9 – Tourist Beautification Projects

HON DR J J GARCIA:

Can the Minister list the projects for which that expenditure has been estimated?

HON J J HOLLIDAY:

Yes, there is the balance of John Mackintosh Square, City Centre beautification Phase 4 that has already happened, Catalan Bay, the World War II tunnels and the frontier canopy.

Subhead 9 – was agreed to and stood part of the Bill.

Subhead 10 – Other Development Projects

HON DR J J GARCIA:

Is this entry with specific projects in mind or is this something there just in case anything comes up?

HON CHIEF MINISTER:

It is public clocks, which never seem to get done, and floodlighting.

Subhead 10 – was agreed to and stood part of the Bill.

Subhead 11 – Employment Service Projects

HON F R PICARDO:

In relation to this particular item £16,000 was estimated last year, of which not a penny has been spent and £46,000 is estimated this year. Is there a specific project for the Employment Service? I see it is in plural, I do not know whether it is more than one.

HON DR B LINARES:

It is two projects. One is a noise and gas monitoring equipment for the Health and Safety Inspectors under the Employment Service. I think this is a statutory requirement and the other one is just furniture and equipment, which has been approved. The equipment is £22,000 and the furniture and equipment is £24,000.

Subhead 11 – was agreed to and stood part of the Bill.

HEAD 106 – PUBLIC ADMINISTRATION AND ESSENTIAL SERVICES

Subheads 1 to 6 – were agreed to and stood part of the Bill.

Subhead 7 – Collector of Customs Equipment

HON F R PICARDO:

Mr Chairman, is this the truncheons?

HON CHIEF MINISTER:

It is specialised equipment. I hope it is not £35,000 for the truncheons. It would be included there, surely.

Subhead 7 – was agreed to and stood part of the Bill.

Subhead 8 – Commissioner of Police Equipment

HON CHIEF MINISTER:

The hon Member will be delighted to hear that that is a re-provisioning of the expenditure that they did not manage to make last year and which was therefore vired for other purposes.

Subhead 8 – was agreed to and stood part of the Bill.

Subhead 9 – Garage, Workshop and Sewers Equipment – was agreed to and stood part of the Bill.

Subhead 10 – Gibraltar Broadcasting Corporation Equipment

HON F R PICARDO:

Is this the digitilisation equipment, which in the report we are told has slowed down?

HON C BELTRAN:

It is a provision that includes a number of digital video editing facilities which they wish to buy, and a further enhancement, including the installation of an enhanced video graphic work station. This is what they require.

Subhead 10 – was agreed to and stood part of the Bill.

Subhead 11 and 12 – were agreed to and stood part of the Bill.

Subhead 13 – Strategic Fuel Reserve

HON J J BOSSANO:

Since the £1,000 keeps on appearing and disappearing and reappearing, are we any closer to reality this year than in any of the previous years?

HON CHIEF MINISTER:

It is a project the nature of which constantly changes. The latest version of it is that we, as part of the MoD lands deal, have secured a piece of land at the north of the runway, on which to build a tank farm there so that the nature of the provisioning for this strategic fuel reserve is changing. It no longer involves the upgrading or the recovery of the Williams Way Tunnel facility.

HON J J BOSSANO:

The Williams Way, which is the initial thing.

HON CHIEF MINISTER:

Yes, the problem with the Williams Way Tunnel is that the access to it cannot be made to comply with health and safety, because it is a severe rockfall area. Although the project involved taking pipes up to it and all that, there is still the question of safe access to workers, literally to access the front door of the Williams Way Tunnel opposite the blind spot there. There are such severe rockfalls there that one would have to spend millions of pounds on the rock face. Therefore other projects are being looked at as other means of providing the strategic reserve.

HON F R PICARDO:

Does that mean that the area presently occupied in front of the entrance of the tunnel by Shell, will form part of the land transfer if the East Side Project goes ahead?

HON CHIEF MINISTER:

No, if the East Side Project goes ahead, it actually involves the realignment of Devil's Tower Road, if anything to take it further away from the rock face.

Subhead 13 – was agreed to and stood part of the Bill.

Question put on clause 5. The House voted.

For the Ayes:	The Hon C Beltran
	The Hon Lt Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares

The Hon J J Netto
The Hon F Vinet
The Hon T J Bristow
The Hon R R Rhoda

Abstained:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

Clause 5 – stood part of the Bill.

Clause 6

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, of the £2.5 million Supplementary Funding that is being voted, and how it would be reallocated based on the forecast outturn the Leader of the Opposition has got the detail by particular subheads. But accounting for just over £2 million of that, it would in order of size materiality, 9-A the Police would get about £406,000, the Secretariat which is 5-A in the old estimates book, would get £355,000. Housing, Buildings and Works, which was the old vote 3-B would get £295,000.

HON J J BOSSANO:

Am I right in thinking that when he was talking about the Heads, in fact it is the Heads as they appeared last year and not as they have been renumbered this year? So one has to go back to last year's figures to find out where they were last year.

HON CHIEF MINISTER:

Well he has given them.

HON J J BOSSANO:

He is giving me the Heads of last year.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

The Supplementary Appropriation relates to last year's estimates. Therefore by Heads, I am telling the House the latest information of how that £2.5 million, the major items, that is, all those items over £50,000.

HON J J BOSSANO:

But in this year's draft estimates, we have had Heads that have been moved from one area to the other, or expenditure that has been moved from one Head to another Head, which is not where it was last year.

HON CHIEF MINISTER:

Most of them are not affected. One is. One big one is.

HON J J BOSSANO:

Is it possible to obtain a copy of that, or not? Or he can say it and we can have it on the record.

HON CHIEF MINISTER:

Well, it is on the record now. It is not in a form that can be handed over. It is a list of nine items.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Let me start again. They are listed in order of materiality, that is, monetary amount and I am only listing all those over £50,000. The Police 9-A would be vired from the additional supplementary funding £406,000. The Old Secretariat Vote 5-A would be vired £355,000. Housing, Buildings and Works 3-B would receive £295,000. Environment 4-A would receive £180,000. Tourism 6-A would receive £147,000. Social Services 5-A would receive £138,000. Customs 8-F would receive £122,000. Housing Administration 3-A would receive £118,000. 6-B Transport, Airport would receive £96,000. 6-D Transport, Port would receive £87,000. Income Tax 8-G would receive £59,000. Those numbers of course, would be subject to departments reconciling their books with the Treasury. Or closing it down within the next few weeks. I think that accounts for just between £2.1 million, and in actual fact, although the supplementary is being pushed for £2.5 million, I think if we added up all the numbers in the book now, only about £2.2 million, £2.3 million is actually needed, as it stands in the forecast outturn. I trust that is helpful Mr Chairman.

Question put on clause 6. The House voted.

For the Ayes:	The Hon C Beltran
	The Hon Lt Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto
	The Hon F Vinet

The Hon T J Bristow
The Hon R R Rhoda

Abstained:	The Hon J J Bossano
	The Hon Dr J J Garcia
	The Hon F R Picardo
	The Hon C A Bruzon
	The Hon S E Linares
	The Hon Miss M I Montegriffo
	The Hon L A Randall

Clause 6 – stood part of the Bill.

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 Appropriation Bill 2004, has been considered in Committee and agreed to by a majority without amendments. I now move that it be read a third time and passed.

Question put.	The House voted.

For the Ayes:	The Hon C Beltran
	The Hon Lt Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto
	The Hon F Vinet

The Hon T J Bristow
The Hon R R Rhoda

THURSDAY 8TH JULY 2004

Abstained:

The Hon J J Bossano
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I beg to move that the House do now adjourn until Thursday 8th July at 3.00 pm. Can I just for the record say that when we finish the business of the House, in terms of the legislation that the Government have to do between now and the end, there will be left over the motions for the Freedom of the City for Lords Hoyle and Bethell, and we will carry that over and when we finish the legislation, I will adjourn the House until 4th August for what I will describe in the adjournment motion as a Tercentenary special sitting of the House. Then I will adjourn the House sine die at the end of that sitting.

Question put. Agreed to.

The adjournment of the House was taken at 9.20 pm on Friday 2nd July 2004.

The House resumed at 3.00 pm.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares

The Hon Miss M I Montegriffo
The Hon L A Randall

IN ATTENDANCE:

P E Martinez - Clerk of the House of Assembly (Ag)

COMMUNICATIONS FROM THE CHAIR

MR SPEAKER:

I have to make an announcement. I want to put the record complete. Previous to my announcement that I would be retiring, I had informally announced to the Chief Minister, the Leader of the Opposition and His Excellency the Governor, that although I had said in the House that I would like to retire as Speaker, on reaching my 80th birthday, I had subsequently realised that it was still a long way off, and wanted to terminate my tenure before that. None expressed surprise or asked me to continue. I said that when there was someone to take my place I would retire as I was getting old. None of the above is connected to the events of 2nd July. Those stand by themselves. I would have retired in any case regardless. To put the record straight again, it was not technically a vote of no confidence, it was lack of support which made my position untenable. I have carried on and will carry on at least until 4th August, because I do want people coming to Gibraltar for the celebrations to take with them a good impression of Gibraltar, which is all that matters. I do not want any delay in the appointment of a new Speaker/Mayor. As I do not intend to speak again, my best wishes to the new Speaker, a he or a she, why not, and plenty of luck. Thank you.

DOCUMENTS LAID

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

- (1) Gibraltar Regulatory Authority Annual Report 2003/2004;
- (2) Import Duty (Integrated Tariff)(Amendment) Regulations 2004.

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 to the First and Second Readings of Bills.

BILLS

FIRST AND SECOND READINGS

THE CRIMINAL JUSTICE (AMENDMENT) ORDINANCE 2004.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Criminal Justice Ordinance 1995 for the purposes of transposing into the law of Gibraltar Directive 2001/97/EC of the European Parliament and of the Council of 4th December 2001, amending Council Directive 91/308/EEC on prevention of the use

of financial systems for the purpose of money laundering and for related matters, 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 main reason for the Bill before the House is to amend the Criminal Justice Ordinance to transpose into the laws of Gibraltar the second money laundering directive. In addition to this, the Government are taking this opportunity to implement one of the recommendations made by the IMF FATF in their assessment of Gibraltar's Finance Centre. If I may take the House through the various provisions in the Bill, the first substantive one is clause 2(2). This clause inserts a new section 2A and creates the offence of failing to disclose money laundering. The offence is limited in scope to those businesses and activities which fall within the scope of section 8 of the Ordinance, and which are in the Ordinance termed "relevant financial businesses". This limitation is important as relevant financial businesses are required to have certain procedures to prevent money laundering, and other sectors of the business community are not required to have these procedures, and it follows that they should not be subject to the burdens of the offence. I should perhaps comment at this point that the reason for inserting the offence into the legislation now, is that it was something of an omission when the legislation was first passed in 1993 because that legislation spoke of defences to an offence that actually did not exist.

The offence is thus committed if three limbs are satisfied. Namely, that the relevant financial business knows or suspects that another person is engaged in money laundering. And,

acquires that knowledge whilst pursuing trade, profession, business or employment, and fails to disclose the information to the Police or Customs Officer as soon as is reasonably practicable. By way of qualification the House will note that subsection (2) exempts a class, which may be described as professional legal advisers, from the rigours of the offence, where those persons receive information on a client in respect of whom they are advising in relation to the client's legal position or in connection with judicial proceedings.

Paragraph (b) of sub-clause 2(2), qualifies the extent to which immunity is provided to a person making a disclosure, by requiring the person making the disclosure to be acting in good faith. That is not new, there is a requirement to make disclosures, and the novelty is the introduction of the element of good faith, the requirement of good faith, so that the defence of legal compulsion is available to the discloser. This qualification is also inserted by sub-clauses 2(b) and 2(8), now renumbered 2(9), into section 3(5) and (24).

Sub-clause 2(4) recasts the existing section 5(4) defence of tipping off, so as to more precisely define who is a professional legal adviser, and when such a person may rely on the defence. By amending this subsection, consistency is achieved with section 2A(2). Sub-clause 2(5) is purely housekeeping and amends some of the definitions in section 6 of the Criminal Justice Ordinance, to bring these into line with developments since that Ordinance was passed in 1995. Sub-clause 2(6) of the Bill amends section 8 of the Criminal Justice Ordinance and is the main reason for this legislation.

Section 8 lists certain businesses or activities which are termed "relevant financial businesses". Relevant financial businesses are required by the Criminal Justice Ordinance to adopt measures and procedures for the prevention of money laundering through their businesses. The directive and thus this Bill, adds to the current list of businesses caught by the legislation and the additions to the list are, to summarise, audited external accountants and tax advisers, real estate agents,

notaries and other independent legal professionals when they participate, whether (1) by assisting in the planning or execution of transactions for their clients concerning (a) buying and selling of real estate property or business entities; (b) managing of client money, securities or other assets; (c) opening or management of bank, savings or securities accounts; or by acting on behalf of and for their clients in any financial or real estate transaction. Controlled activity, under the Financial Services Ordinance 1988, and that is not a requirement of the directive, that is the implementation of the IMF recommendation. The IMF recommended that controlled activities, company management and that sort of thing, should be caught by money laundering legislation. We have agreed to do that, it is not a requirement of the directive. Dealers in all high value goods whenever payment is made in cash, and in an amount of euros, 15,000 euros or more. Casinos, currency exchange offices/bureaux de change, money transmissions/remittance offices.

Mr Speaker, I believe that the list is self-explanatory. I would just comment in relation to the dealer in higher value goods. Business will be subject to the regime where it takes cash payment of 15,000 euros or more, in respect of a single transaction. I suppose it should not come as a surprise to the House, that one of the ways in which money launderers launder their money is indeed by purchasing high value goods, jewellery, cars, things of that sort, and then in turn convert that into cash, resale or just holding it.

Finally, in relation to sub-clause 2(7), that is another housekeeping measure and updates the definition of authorised credit institution. Sub-clause 2(8)(a) adds two further exemptions from compliance with the identification, commonly known as "know your client procedures," set out in section 14 of the Ordinance. So this exemption applies and therefore the application of a money laundering regime to these businesses does not apply, for example, to casinos where either the customers purchase or sells chips of less than 1,000 euros, or if the casino is State supervised and registers and identifies its customers immediately on entry. Also it does not apply to a

customer which is a customer of a credit or financial institution already subject to the directive's requirement, or is based in a country outside the EU that operates a regime at least equivalent to that of the directive. In other words, there are sort of grandfathering provisions if one could very loosely call them that, whereby customers of regulated organisations do not have to be re-assessed here for these purposes. Sub-clause 2(8)(b) inserts a new subsection 14(3), to relax the identification requirements where payment is effected from an account held in a customer's name with a credit institution subject to the provisions of this directive. Sub-clause 2(9), renumbered 2(10), allows for transitional arrangements.

For those businesses or activities which are now set out in sections 8(1),(h), (i), (j) and (m), the requirements under Part 3, measures to prevent the use of the financial system for purposes of money laundering, do not apply until this Bill becomes law. For those businesses or activities which fall within the definition of 8(1)(k), that is to say controlled activities, the extent to which they have to comply with Part 3 in relation to existing business, shall be set out in supervisory or regulatory guidance. Sub-clause 2(10), renumbered 2(11), inserts a new section 45 which provides a regulation-making power, where these are required to give effect to the Ordinance or by virtue of further EU requirements.

Mr Speaker, I have given written notice of two amendments which I will move at the Committee Stage, and which really just correct typographical errors and do not change the meaning of the legislation before the House. Notice will be given to the hon Members, they have not got it in front of them, but one of them is an obvious error and the other is mis-numbering of some regulations. I commend the Bill to the House.

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

HON F R PICARDO:

Yes Mr Speaker, we come to pass the amendments, or to debate the amendments of the Criminal Justice Ordinance of 1995. I note 10 years almost to the day since the first piece of legislation that we are amending was brought to this House, which was the Criminal Justice Ordinance 1995, which was brought to the House and debated on 7th July 1995. It was with some trepidation that the Financial Services sector viewed then, I think it is fair to say, how that Ordinance would operate to possibly restrict legitimate business that was being done. As the Chief Minister of the day and the then Leader of the Opposition indicated in that debate, nobody in Gibraltar would wish to countenance giving services in the financial services sector to those who were seeking to launder the proceeds of criminal activity, whatever those who frequently attack us might like the rest of the world to believe. The Leader of the Opposition as he then was, led his party to abstain on the Bill of the Criminal Justice Ordinance to which these amendments are now brought. I think that with the rest of the financial services sector, we can all happily say that the passing of that Bill into the Ordinance which we are now amending, which was passed by the Government majority then, actually did nothing to restrict the work of the financial services sector but actually enhanced its reputation internationally, leading the Foreign Secretary of the United Kingdom, Mr Robin Cook, as he was in the late 90s, to say that Gibraltar was, "the benchmark jurisdiction for the regulation of financial services and one of the best regulated finance centres in the then, referred to as offshore, world".

Mr Speaker, I think that the introduction of the elements of good faith and the clarification of when professional advisers are required to act under the provisions of the Ordinance will be much welcomed. I think there was an element of trepidation also about how the Ordinance was going to work, and how any individual who found himself with a suspicion, which may not necessarily have been borne out, would have to act to ensure that he protected his own position should things go awry in the long term. I think that concern was cleared with the practice of

the professionals in dealing with the legislation, and it is welcome now that the statute will give even greater clarity, based as it is on the clarification in the new and second money laundering directive. There was, certainly in my view, a gaping gap in the legislation in its failure to apply to bureaux de change and to money transmission institutions, and I think it is very welcome that those should be now shut as firmly in statute as they are in practice in this jurisdiction to the money launderer. I have to say that those who deal in high value goods should themselves have been applying the provisions of the legislation as it was, and in my view have. I think the House would find very few dealers in high value goods in Gibraltar who had been taking in cash in any substantial amounts since 1995, and even before 1995, whatever our international critics may wish to say. I want to add at this stage and before we get to the third reading, that the directive that we are transposing provides the units of currency in euro, and we have provided those units of currency in euro in the amendments that we bring to the principal Ordinance. Much of the principal Ordinance, at least the draft that I have, still refers to ECU which is what the first directive referred to. But obviously it is a different unit of currency and I think, in the long term, it might be a good idea for the Government to amend those pieces of legislation that still refer to that now defunct ECU, clearly in Euro, even if we have passed a directive in another parliament or in this parliament, a regulation to clarify that, I think. The Ordinance on its own is presently referring to two different types of units of currency, we may want to do that tidying up exercise, although if it has been done already by general legislation or regulation, I would urge that it be done to the Ordinance in itself so that it can read as one piece of legislation referring to one unit of currency. Other than that I do not see anything else that I can add which would be useful, or any reason to object to this Bill.

HON CHIEF MINISTER:

Mr Speaker, I am grateful for what I take to be an indication by the hon Members that they will be supporting the Bill. It is true, and I agree with the hon Member, that there was trepidation in

the industry. I do not recall the reasons and I have not gone back in Hansard to check the reason why we abstained. It certainly was not on the question of whether there should be legislation covering money laundering. But it is certainly true that there was trepidation at that time, just as indeed hon Members will recall that money laundering was the first wave of international impact on financial services, and that the next wave related to regulatory standards. I suppose now we are all subject to a third wave of sort of fiscal measures. At each wave there has been a concern as to what effect it would have on financial services. The concern, in my experience, has usually been not on the substance of the legislation but on whether it would operate fairly across all the territories. In other words, are those law-abiding territories that fall into line, are they going to be at a disadvantage, because the more rogue territories do not apply the legislation and siphon off business. I do not think even that has materialised, in fact, and I agree with the assessment of the hon Member that not just our money laundering legislation but indeed our regulatory legislation has been a positive factor for the development of financial services in Gibraltar, and not the negative factor that was more or less feared to varying degrees within the industry. The only other point that I would just like to comment on is his suggestion that we might amend the principal Ordinance at some stage to alter the reference from ECU to Euros. I was just being advised, when he was making the point, that there is an EC Regulation published in 2000, and which has direct territorial application throughout the Community, saying that when any legislation refers to ECU it shall be read as a reference to Euro. I am advised that a Government Notice was published in Gibraltar at that time, to that effect. So in fact there may be a presentational interest in changing it but there is no legalistic requirement, given that for legal statutory interpretation purposes, the change has already been made, but it may assist readers of the legislation in the future who may not know that, and I suppose that next time that the law is updated or consolidated or even reprinted, that that could be taken into account.

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

Mr Speaker, with relation to the Committee Stages on these Bills, it is my intention to the extent if we do not finish some of this business today to come back tomorrow. But of course I do not know how contentious some of this legislation is going to be, I therefore do not know whether we would have time today for some of the Committee Stages. So can I say that I beg to move that the Committee Stage be taken today if there is time, and otherwise on another date.

Question put.

Agreed to.

THE CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Civil Jurisdiction and Judgments Ordinance 1993, consequential to the coming into force of Council Regulation EC No. 44/2001 of 22nd December 2000 on jurisdiction and the enforcement of judgments in civil and commercial matters, to make new provisions as respects jurisdiction and the enforcement of judgments between the United Kingdom and Gibraltar, and for matters ancillary 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 Bill makes the necessary amendments following the coming into force in Gibraltar on 1st March 2002, of Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which I will hereinafter refer to as the regulation. The regulation has direct effect in Gibraltar, as a Council Regulation, and requires no further implementation legislation. In this address on the general principles of the Bill, I will just outline the rules governing jurisdiction put in place by the regulation, and outline the intended effect of the Bill. The regulation replaces the 1968 Brussels Convention as between all Member States of the Community, except Denmark. Relations with Denmark will remain governed by the Brussels Convention, already implemented by the Civil Jurisdiction and Judgments Ordinance. In other words, Denmark has opted out of the regulation, the EC Regulation, and therefore whilst the Ordinance is disapplied from all the other Member States, because that is now covered by the regulation, the Ordinance remains active in so far as the Brussels Convention is concerned, only in respect of Denmark because all the other subscribers to Brussels are Member States of the Community now covered by the regulation. This effect is achieved by amending the definition in the Bill of Brussels contracting state and regulation state inserted into that Ordinance by clause 2(2) of the Bill, and by making a distinction throughout the Ordinance between provisions relating to "regulation States" and those relating to Brussels contracting State. But Brussels contracting State is now defined as being only Denmark.

The regulation does not apply to revenue, customs and administrative matters, to the status or legal capacity of natural persons, matrimonial matters, wills and succession, bankruptcy, social security or arbitration. The regulation does not apply

bilaterally between the United Kingdom and Gibraltar, because of this other Member State point. Nevertheless, by clause 2(11) of the Bill, we are inserting a new Part 5 into the Ordinance. The effect of this is to ensure that the regulation operates as between the United Kingdom and Gibraltar, as if both were separate regulation States. In other words, we re-create the regime of the regulation, which applies to Member States, we as a matter of domestic law choice, choose to have the same regime as between the UK and Gibraltar by what is now domestic law, on the basis that we are treating each other as separate regulation States, so that we do not have to set out the entire substantive provisions again as between Gibraltar and the UK. The fact that Gibraltar is not a separate regulation State under EC law, means that ECJ Case law would not be a consideration in interpreting the regulation as between the UK and Gibraltar. To avoid that being so, clause 39(2) establishes ECJ Case law as persuasive. The regulation does not concern which country's law applies to the substance of a dispute. This is the subject of other legislation, such as the 1980 Rome Convention implemented in Gibraltar through the Contracts (Applicable Law) Ordinance. The regulation's interest is with rules on jurisdiction in civil and commercial disputes, such as where one party sues another for failure to deliver under a contract. Like the rules set out in the Brussels and Lugano Conventions, the rules in the Bill are most likely to come into play in disputes between businesses. They apply equally, however, to consumer contracts and contain special provisions about consumer contracts.

The general rules on the Civil Jurisdictions and Judgments Ordinance remain unchanged. Article 2 of the Brussels Convention, as implemented by that Ordinance, sets the following rule. Subject to the provisions of the Convention, persons domiciled in a contracting State, shall whatever their nationality be sued in the courts of that State. That remains the underlying philosophy of the regulations as well. This means that an individual, including for example a sole trader or a partner in a business, sued in his own respect, can be sued where his principal residence is. Article 60 provides that the domicile of a company or other association including a partnership, is where it

has its statutory seat, that is its registered office, its central administration or its principal place of business. Article 5(1) and 5(5) of the Brussels Convention, which set additional rules for all contract cases, are also unchanged. They provide that a person domiciled in a contracting State, may in another contracting State, be sued (1) in a matter relating to contract in the courts for the place of performance of the obligations in question; and as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated. This provision that I have just read out means, for example, that a case could be heard in the country where a loan was to be repaid. Article 23 of the Convention provides, however, that the parties to a contract are free to agree to depart from the above provisions in article 5. This could be done through a clause in the traders standard contract saying that in the event of any dispute, the Gibraltar courts or the courts of any other country in the world will have jurisdiction.

The regulation introduces alternative rules of jurisdiction with respect to the following matters. Matters relating to contracts but excluding contracts of employment. Matters relating to maintenance, matters relating to tort, a civil claim for damages or restitution following an infringement, the operation of a branch, agency or other establishment, payment of remuneration, claim in respect of the salvage of a cargo or freight. Similarly there are provisions for rules regarding co-defendants, actions on a warranty or guarantee, or a third party proceedings, counter claims and matters relating to a contract if the action may be combined with an action relating to rights in immovable property. Special rules are laid down regarding matters relating to insurance, to consumer contracts, to individual contracts of employment, to exclusive jurisdiction clauses, to prorogation of jurisdiction and to provisional and protective measures. The regulation aims to simplify the formalities for recognition and swift enforcement of any judgment delivered by a court in another Member State, by a simple and uniform procedure. It lays down the basic principle of automatic recognition of judgments, where a party against whom judgment has been given in another

country, contests recognition, provision is made for a special procedure to be followed in order to obtain a declaration of enforceability of a judgment in the other Member State. The procedure is unilateral initially and is intended to be efficient and quick. The Supreme Court would simply make a formal check of the documents accompanying an application. A model certificate, containing all the information needed for a rapid decision on recognition or enforcement, is annexed to the regulation. No additional legalisation in respect of documents is required. No security bond or deposit may be required of a party who applies for enforcement of a judgment, given on the grounds that he is a foreign national or that he is not resident in the Member State in which enforcement is sought. The regulation confers additional jurisdiction over a contractual dispute between a consumer and a business, on the courts of the consumer's country of domicile, when certain tests are met. These articles replace article 13 to 15 of the Brussels Convention and makes certain changes. The rationale for special consumer rules is that the consumer is usually the weaker party, especially if he or she has paid in advance. The consumer rules do not prevent a consumer from suing under article 2 or 5 should he or she prefer. Under article 16, proceedings may only be brought against consumers in the court of the Member State where the consumer is domiciled. Article 17 of the regulation prevents the parties to a consumer contract from agreeing to depart from this provision before a dispute has arisen. So for example, a business would not be allowed to enforce a contractual term in which the consumer had waived the right to be sued in his or her own country's courts in the event of a dispute. Article 15(1)(c) raises a question about when an internet website could be said to be directed to one or more Member States. There are no detailed rules and no case law. The Council and the Commission issued a joint statement, which covers article 15, but it is of limited use in interpreting the provisions. Ultimately, it would be for the European Court of Justice to decide what constituted directed activities. Clause 2(5)(b) and (c) are the only non regulation related provisions of the Bill. In other words, that the only provisions of the Bill that are not required by the regulation. This is a technical amendment to the Supreme Court's jurisdictional

powers, which the Government have agreed to take forward following a recommendation by a leading firm at the Bar, upon which the Government have consulted widely the rest of the Bar, and there is a wide consensus of support for this measure.

The effect of the amendment as introduced by clause 2(5)(b) and (c) of the Bill, is to give the Supreme Court power, which it does not presently have, to grant interim relief in circumstances where such relief would not be obtainable under the legislation as it stands today. In other words, (1) where proceedings are commenced in a non Brussels, Lugano or regulation State, in other words, there are proceedings outside Brussels, Lugano, or now regulation State, the Supreme Court did not have power to make interim relief, injunctive relief in support of any such proceedings and the commercial bar in Gibraltar, particularly feels that it is important that Gibraltar's courts should have power to grant interim relief, even in cases where there are no proceedings in Gibraltar and those proceedings are commenced outside a Brussels, Lugano or regulation State. Secondly, where proceedings are not within the scope of Brussels or Lugano or the regulation, even when the proceedings are commenced in a Brussels, Lugano or regulation State.

Mr Speaker, no consulted party and it was widely, no party consulted expressed the view that this was not favourable for Gibraltar and therefore the Government have happily brought the amendment to the House. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, this Bill as the Explanatory Memorandum clearly states, and as the Chief Minister has clarified, seeks to amend the principal Ordinance by reflecting the fact that except in relation to Denmark, jurisdiction and enforcement of judgments within the EU in civil and commercial matters, no longer and quite contrary to what the present Ordinance states, are

governed by the 1968 Brussels Convention but by the Council Regulation. The regulation is almost an entire reflection of the Brussels Convention. It is only in a few areas, for example, in relation to the performance of contracts, that it differs slightly. But it is somewhat unfortunate that although the regulation entered into force on 1st March 2002, as is provided for by article 76 of the regulation, and was in fact as the Chief Minister has indicated directly applicable from that date, it has taken us over two years to bring the amending legislation to our Ordinance, to reflect what is in fact has been since then the legal reality. In fact, I am told that this has led to some lawyers actually invoking the Convention in its Brussels Convention present Ordinance guise, although the regulation had clearly by then already taken over. Obviously that failure has added cost to parties which is an issue that needs to be resolved elsewhere. But certainly, although the regulation was directly effective, because we have an Ordinance that would appear to contradict it, I would have urged the Government to bring the legislation to amend the principal Ordinance, sooner.

In fact in the United Kingdom, the Civil Jurisdictions and Judgments Order 2001, was brought on 11th December 2001, in anticipation of the regulation coming into effect in March 2002. But perhaps the greatest significance of the legislation is one of the aspects of the Bill that the Chief Minister has alluded to, which is the amendment of section 17 of the Ordinance to enable the Supreme Court to grant free standing interim relief in aid of proceedings commenced outside Convention, as they were, or regulation States. The best way I can think of explaining that is that now, in effect, the Supreme Court will have jurisdiction to act in aid of proceedings issued, for example, in the United States. I think that adds an important string to the court's arsenal in dealing with matters of civil litigation. That, was a power that has been in place in the United Kingdom for over seven years even before these provisions in the Order of 2001 were brought into place.

Mr Speaker, the Chief Minister alluded to the provisions of the new Part 5, which gives, he said, effect for the first time as a

result of a conscious decision on our part to treat the United Kingdom as a separate Member State, but to give effect to the provisions between us. In fact, the existing Ordinance already bore that provision. If I misunderstood him I am sorry but the principal Ordinance that we are amending already bore that provision in relation to the Brussels Convention.

Mr Speaker, I find that the description in what will be the new definitions of domicile, which I have been looking at, in section or paragraph 9 of the Schedule, dealing with the provisions of article 22 of the regulation, may not provide sufficient clarity as to what is the position of companies, I am looking at page 211, the position of companies that are either redomiciled into Gibraltar or Part 9 companies that establish a place of business in Gibraltar. Now that may be something which is provided for in the regulation itself. It may be in relation to redomiciliations in particular that there is no provision in Community law, because redomiciliations are really something that is countenanced only in relation to common law States, other common law States. Therefore that may be a specific UK/Gibraltar animal that has to be addressed. But certainly, I would be grateful if an element of clarification could be provided in that respect, perhaps before we get to the Third Reading, and if we need to make any changes there we can do so in time, to specifically provide for Part 9 companies or companies redomiciled into Gibraltar. Apart from that I do not think there is anything else that I can usefully say.

HON CHIEF MINISTER:

Well Mr Speaker, if I could just start with that point, since it is fresh in everybody's mind. I mean, it is not my reading of article 9 of what is going to be Schedule 10, is not that it suffers from the lack of clarity that the hon Member suggests. The reference in 9(2) and 9(3) is not by reference to the place of incorporation only. It is either (a) it was incorporated or formed under the law of Gibraltar, or its central management and control is exercised in that State, Gibraltar. So in the case of a Part IX company, or a company that has been inwardly redomiciled, its central

management and control may be exercised in Gibraltar, but if it is not exercised in Gibraltar, it would not be caught. In other words, in the case of a company incorporated in Gibraltar, it is caught regardless of where its central management and control is exercised. But if it is a company not incorporated or formed under the laws of Gibraltar, then it is caught only if the central management and control is exercised in Gibraltar. Now these provisions are not made in Gibraltar. These are provisions that, as the hon Member will see, we have lifted from the UK, I do not know if the UK probably does not have an equivalent of Part IX. It may have redomiciliation, I do not know.

But in any event, turning to some of the hon Member's other points, on the question of the two year delay and the fact that lawyers may have been misquoting the legal position, the hon Member rightly himself identifies that there has been no legal consequence because the law of Gibraltar was the regulation from the moment the regulation came in, because unlike a directive which requires to be made law of Gibraltar by this House, whatever the EU issues by way of regulation does not, because that has automatic legal effect on the entire territory of the Community. I have not heard of any case in which a member of the Bar has failed to take cognisance of what the correct law of the land is. That is what lawyers are trained for. It was not done in order to create a trap for lawyers, but when there is pressure on the Government's legislative drafting resources, and there are things which we have to do which place those resources under strain, which do affect what the law of Gibraltar is, it is almost understandable that items of legislation that do not actually affect what the law of Gibraltar is just slip down the priority list. Nothing, well very little of what we are doing here today, actually changes the law of Gibraltar. It really is just bringing our Statute, making it consistent with what is already overriding law, and overrode our Ordinance, namely this overriding EU Regulation.

So whilst I accept that in an ideal world it might have been done on a more timely basis, I think when one has a small administration like Gibraltar, even a disproportionately large

drafting resource, I mean Gibraltar has per capita a much larger legislation drafting resource than other Member States of the European Community. But it is really not surprising that things that do not affect the law sort of slip down the list of priorities. There is however one suggestion which has come to us from the Bar only last week. Therefore it was too late for us to incorporate it into the Bill, and which I think would be a help to whatever lawyer the hon Member had in mind as not being very heartened doing his homework. That is that it would be helpful if the texts of the Regulation of the Brussels Convention, and indeed of the Lugano Convention, were set out in Schedules to this Bill. So that when lawyers of the sort that the hon Member may have had in mind, when he spoke, have to advise clients on this not particularly complicated area of the law, the number of places that they have to have recourse to research is limited to our law. Fine, legislation should be as easy to refer to as possible, and as self explanatory as possible, but we have not wanted to delay this Bill to do that, which is a considerable administrative effort, but we will consider at some future date.

HON F R PICARDO:

If the Chief Minister could give way. Hours of litigation fun can be had on the first issue that we discussed, but can I just point out so the Chief Minister might wish to get back to those lawyers who came to him, that the Lugano Convention and the Brussels Convention already appear at the back of our law. They are on page 77 of the reprint that I have got.

HON CHIEF MINISTER:

Well there we are, the lawyer that wrote to me making this suggestion, did not even know that it was already there. So I think what is generally required is an all round improvement in the research effort rather than anything else. I do think that the hon Member partly misunderstood what I said about the application to the UK being new. I had not intended to suggest

that the previous regime did not apply bilaterally between Gibraltar and the UK on a separate I think it was then called participating State, or something like that, basis when it was the Brussels Convention. What I had intended to indicate is that this, which is now a Community measure, through the regulation, is also being done bilaterally and on a separate Member State regulation State basis. I had not intended to indicate to the Hon Member that there was any element of novelty in the voluntary application of the regime bilaterally between Gibraltar and the UK. And so it should be. I think it would be wholly inappropriate that matters of cooperation and the enforcement of judgments and the recognition of judgments should be easier and more fluid between Gibraltar and say Germany, than it should be between Gibraltar and the United Kingdom. So it is for good reason that it has always been so. So I am glad, which I deduce from the points which he has made, that the Hon Members regard this legislation as uncontentious and will be supporting it.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

With the leave of the House, if I can move the motion in the same terms, given that this is uncontentious legislation, that we can take the Committee Stage later today if there is time.

Question put. Agreed to.

THE INSURERS (REORGANISATION AND WINDING UP) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to implement in the law of Gibraltar Directive 2001/17/EC of the European Parliament and the Council on the reorganisation and winding-up of insurance undertakings, 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, directive 2001/17/EC of the Parliament and the Council, on the reorganisation and winding up of insurance undertakings, provides for coordination within the EC in relation to winding up and reorganisation of insurance companies. The life insurance and non-life insurance directives provide for a single passport of authorisation. It is therefore appropriate that any winding up proceedings or reorganisation measure taken in order to avoid a winding up, should be governed by the law of the home State of the insurance company. The Bill follows closely the UK regulation implementing this directive.

Section 2 provides definitions. In particular, it should be noted that proceedings or reorganisation measures commenced before 20th April 2003, which is when the directive entered into operation, are to be recognised in Gibraltar. Sections 3 and 4 are the core of the Bill. Section 3 prevents a Gibraltar court making a winding up order in respect of an EEA insurer. That is to say an insurer whose head office is in an EEA State but which

has a branch in Gibraltar. That is the core principle that winding up measures and reorganisation measures should be taken in the home State and not in any host State of any branch. That is the underlying principle of this Bill. Except where proceedings were commenced, or a provisional liquidator was appointed before the Ordinance comes into operation. In fact, I believe there are none. It should be noted that this date will be when the Ordinance is passed. Although the directive entered into force on 20th April 2003, we cannot undo proceedings already commenced. So any measures taken in another State, which will be recognised in Gibraltar, will continue in tandem with the Gibraltar proceedings. As I understand it, we believe there are none, so that is just in theory.

Section 4 provides for an EEA insolvency measure to have effect in Gibraltar. An EEA insolvency measure is one made under the directive in the home State of the insurer. Further, a competent officer or a qualifying agent may exercise in Gibraltar powers he would have had in his home State, provided that he follows certain Gibraltar procedures. The likelihood is that a qualifying agent will be appointed in Gibraltar by the competent officer, to act on behalf of the competent officer in relation to the Gibraltar branch. In other words, if there is in the home State a reorganisation measure, the insurance company would appoint a competent officer, who then has authority in all the Member States in which that company has a branch. He can either exercise that authority himself, or he can appoint an agent, a qualifying agent, to exercise them for him.

Sections 5 to 10 deal with notification and publication in respect of winding up proceedings in relation to a Gibraltar insurer. The Commissioner of Insurance will notify all the other EEA regulators of any appointment of a liquidator, or any decision and the general effect of the decision, when it is a Gibraltar insurer, obviously. For instance, appointments of a liquidator will have the effect that any creditors' rights are temporarily frozen and the creditor must prove his claim in the liquidation. The Commissioner of Insurance will inform his counterparts of this. The liquidator must then inform all known creditors in the EEA, of

the effect of the proceedings on their rights in the liquidation. In particular, how to prove their claims. A creditor in the EEA may use his own language in submitting his claim, with the heading, only the heading, being in English. It will then be for the liquidator in Gibraltar to translate the details of the claim into English. The liquidator must send a report, at least every year, or more often if the order appointing him so provides, to all known creditors on how the matter is progressing. If he fails to do so, he is guilty of an offence. All notices may be sent by post or by electronic means if an e-mail address has been provided by the creditor, or the liquidator reasonably believes that an e-mail will reach the creditor. Further, with the agreement of the creditor, notification may be by the creditor himself accessing a website set up for the purpose. Finally, information received by the Commissioner of Insurance is made subject to Schedule 16 of the Insurance Companies Ordinance, which prohibits unauthorised disclosure of information.

Sections 11 to 12 deal with priority of payments to creditors. Depending on the type of insurance business carried on, priority is generally given to preferential debts. That is to say, tax, social security, salaries and contributions to pension schemes. That is an option that we have exercised, set out in the directive. The directive does not require preference priority to be given to these preferential debts, but it allows Member States to give priority to such preferential debts. Since we have a tradition in our existing legislation, of giving priority to these sorts of things, we thought that for consistency we would exercise the option in that way. Then insurance debts and then any others, that is the order of priority. There are specific provisions made for ranking of debts in relation to long term and general business. Essentially, assets relating to long term business, are to be used to settle preferential debts, followed by long term debts. General assets then follow the same priority. The unsecured creditor is left at the end of the queue, but this represents no change in the existing system.

Sections 23 to 33 are concerned with the applicable law in the case of winding up. Section 23 provides that the law of Gibraltar

applies to procedural matters and contractual matters. In particular, the Protected Cell Companies Ordinance is not specifically referred to in section 23, but it forms part of the general law of Gibraltar, which is what there is a reference for in section 23, relating to the assets which form part of the estate of the affected insurer. So hon Members might see that paragraph 3(a) will be subject to the Protected Cell Companies Ordinance and therefore only the assets of the protected cell would be affected. Further, a protected cell company set up under contract, rather than under the Ordinance, will be protected by paragraph 3(e). Sections 23 to 33 deal with the relevant law to apply to employment contracts, rights in rem, reservation of title agreements and such, which essentially fall to be dealt with under the law of the State, where that relationship arose, the property situated or the account or register is kept.

Sections 34 and 35 provide for the Ordinance to apply to a Gibraltar branch of an insurer whose head office is outside the EEA. Although where such an insurer has branches in other Member States, all the branches in each Member State will be treated separately. The Commissioner of Insurance and any liquidator appointed to branches in those various EEA States, will attempt to coordinate their actions with the authorities in the other Member States concerned in such a case. I will inform the House that the industry has been consulted, is content with the terms of the Bill and the Bill goes no further than the directive requires. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, I will start at the end to say that I am very pleased that the provisions of this directive are welcomed by the industry. This is an industry in respect of which the Chief Minister and I had a bit of an exchange during the course of our budget debate. Leaving well enough alone, includes ensuring that our legislative copy book is up to date in relation to the issues that affect this

particular industry, and I am very glad to see that we are doing that. So this Bill will have a fair wind in this House.

I think that one of the issues that is highlighted by this Bill, dealing as it does with the reorganisations and administrations in other Member States, of insurance undertakings that have their head offices there, is that there are no provisions in Gibraltar for reorganisation and administration of companies. I think that that is something that we need to look at, at some stage fairly soon, if the Government are not already looking at it. Certainly it will be an issue that will be very welcome by practitioners in the field of liquidations, where our Companies Ordinance has fallen way behind the provisions of the English Insolvency Acts. Really we need, still, the appointment of liquidators and there is no provision for voluntary arrangements, as I see that there is a reference in the legislation now.

Mr Speaker, the importance of industry specific provision for insolvency, is perhaps evidence of the fact that the Framework Insolvency Directive remains, as I understand it, still caught up with the Spanish failure to accept the Gibraltarian competent authorities. I think it is important to highlight that. Industry specific provisions for insolvency become all the more important because of that, and that just serves to highlight how, I was going to say bloody minded but that is perhaps not the most parliamentary term, our neighbours can be when it comes to Gibraltar, even if that creates a problem for undertakings throughout the rest of the European Union. I also welcome the provisions on priority not just because traditionally our law is expressing those terms when it comes to insolvency, even under the existing provisions in the Companies Ordinance, but because that will have the effect of ensuring that certain debts, which all of us agree should have priority, should be paid first in time and those will be Gibraltarian debts in relation to these insolvencies. So that is particularly welcome. I have nothing else that I can usefully add.

HON CHIEF MINISTER:

I have nothing to say in response directly arising from the hon Member's comments on this Bill, but I will indicate to him that the Government are indeed minded and are engaged in an updating of our laws, to allow for companies being placed into administration, as opposed to having to be liquidated. Indeed, we are also looking and updating Gibraltar's personal bankruptcy legislation, in addition, to bring both up to date at the same time.

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 TAXATION (SAVINGS INCOME) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 2003/48/EC of 3rd June 2003 on taxation of savings income in the form of interest payments, 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, I have to admit that this is a piece of legislation that I move in this House with a heavy heart and a degree of reluctance. Not because we would wish to avoid or be exempt from a measure that has Community-wide application but because we have been treated, I believe, unfairly compared not to other Crown Dependencies and Overseas Territories about which it may be possible to say well they are not in the EU and therefore they are in a different case, but because we have been treated unfairly compared to three full Member States of the European Community. Here we are passing legislation which sets out in gory detail the advantages that have been given to Austria, Luxembourg and Belgium, when in Gibraltar, we would dearly have loved and we had sought to be given the same transitional measure, and the word transitional is something of a misnomer in the directive and in the legislation, because transition is normally fixed in time. This transition is not fixed in time. The transition in favour of Austria, Luxembourg and Belgium, to choose on a client by client basis whether they withhold tax or provide information, exists and persists until Switzerland and other countries agree to exchange information under the OECD Code, on a non request basis. Switzerland, which is one of the 26 full members of the OECD, has not even agreed to sign up to the report on harmful tax practices. So they are much more than seven years away from agreeing to exchange the information. Indeed, this point may become relevant in certain circumstances. Therefore, I think it is important to record in Hansard on the debate in this Bill, although we have had occasion to mention this issue in the House, that I think the United Kingdom has failed to treat Gibraltar even handedly, when it comes to protecting our particular type of finance centre.

However, having turned the whole EU regime on its head to protect London's type of finance centre through the bond market because hon Members will remember that the original EC model for this, was the so-called co-existence model, when all Member States were free to accept to choose between, and that did not suit them for their bond market, so they get the whole of the Community to accept the exchange of information model and then at the eleventh hour give three Member States the right to choose, that we would all have had, had we kept the co-existence model in the first place. It is for good reason that Gibraltar seeks and sought to have its Finance Centre protected from this directive. It is the same reason that has caused Austria, Luxembourg and Belgium to seek it for themselves. That is that their finance centres are set up, doing business much more sensitive to exchanging information than the City of London does. That is the same reason why Luxembourg, Switzerland, Liechtenstein, Andorra, San Marino and all the other sequencing countries as they are called, also held out and obtained the co-existence model. So it is not us who are inventing a sensitivity to exchange of information, all our competitors in Europe have the same sensitivity and have had them protected. We asked the United Kingdom to protect our industry's sensitivity to exchanging information, in the same measure as the United Kingdom was willing to concede to the Crown Dependencies, to the Caribbean territories and to three full partners in the European Community, and they persistently and consistently, without good reason, declined to do so. The reason given was that having argued for the elimination of withholding tax in favour of exchange of information, they now did not want to argue in favour of it for Gibraltar. My view, that reasoning, if ever it was a good reason, which I think it never was, but if ever it was a good reason, went out of the window when the negotiations started to give precisely that choice to the Crown Dependencies and to the Caribbean overseas territories. So the UK did not seem to blush then and that is what it should have done.

Mr Speaker, the policy behind the directive is simple enough. The objective of the directive is that savings income in the form

of interest payments from debt claims, constitute taxable income, or should constitute taxable income for residents of all Member States. And that the directive is intended to enable savings income in that form, made in one Member State to beneficial owners of the income who are individuals resident in another Member State, should be made subject to effective taxation in accordance with the laws of the latter's Member State. The paying agent is defined as the economic operator, who pays the interest to or secures the payment of interest for the immediate benefit of the beneficial owner. So that if the paying agent is in Gibraltar, it matters not that the debt itself, which attracts the interest, is based outside of Gibraltar. What is relevant is not the domicile of the debt, so to speak, but the residence of the paying agent of the interest. The directive requires paying agents to disclose interest payments made to beneficial owners who are resident in another Member State. The proponents of this measure take the view that exchange of information between tax authorities is the best way to ensure that individuals pay the right amount of tax on cross-border income from savings. That is unless ones name is Belgium, Luxembourg or Austria. The practical effect of this will be, that it would be incumbent on beneficial owners to maximise their disclosures to their home tax authorities, or face sanctions. This is because the tax authorities of the beneficial owner's home State, will receive information about savings income to the person concerned, that he may receive in Gibraltar. This will be supplied by the competent authority of the country in which the paying agent is based, so where there is a paying agent based in Gibraltar, the Gibraltar competent authority will have to inform, automatically, the competent authority in the Member State where the recipient, the beneficial recipient, is resident so long as another EU country does not have to do it when the recipient is resident in a non-EEC country. The home tax authority will then be free to compare the information with that which the person has actually disclosed in his tax return and hence it becomes important for that purpose. The Bill follows the provisions of the directive to the letter and where there are options, we have taken the option that best suits the interests of Gibraltar.

Clauses 1 and 2 constitute standard preliminary provisions. Clause 3 transposes article 2 of the directive. Clause 3(1) defines the beneficial owner for the purposes of the Bill. Clause 3(2) states that where a paying agent has information suggesting that the recipient of the interest payment may not be the beneficial owner, it should take reasonable steps to establish the identity of the true beneficial owner. Clause 4 transposes article 4 of the directive. Clause 4(2) defines the paying agent as the economic operator who actually pays the interest to, or secures the interest for, the beneficial owner. Article 4(3) identifies certain entities, which have to be disclosed under the directive. If an economic operator believes, on the basis of official evidence presented by the entity, that it has to be disclosed, and the entity is established in another Member State, it must disclose details of the entity's name and address, plus the interest paid, to their tax authority. This information is then passed on to the competent authority in Gibraltar. This information is then passed on by the competent authority in Gibraltar to the tax authority where the entity is established. These reportable entities are deemed to be paying agents on receipt of interest payments. Clause 4(6) allows such entities the option of being treated as UCITS, that is undertakings for collective investment in transferable securities, for the purposes of the Bill. Article 4(4) of the directive requires Member States to provide rules to ensure that entities, deemed to be paying agents on receipt of interest, receiving payments from economic operators based in the same country, also properly fulfil any obligations they may have as a deemed paying agent. These rules are set out in clause 5. Article 4(5) of the directive provides that two types of Finnish and Swedish legal persons, are to be treated as paying agents on receipt. This is transposed by clause 4(4).

Clause 6 transposes article 5 of the directive. This defines the competent authority for the purposes of this directive. This definition is necessary for interpreting articles 3, 9 and 13. The hon Member will see that we have reserved to a Minister, I do not know it may even be the Chief Minister, because we have not yet decided and we want to consult with the industry, as to whether they regard it as an advantage that our competent

authority should be our tax authority, or whether perhaps they think it should be some other authority. For example, the Chief Secretary or some other authority. When we have finished our consultation with the industry on that point, we will designate one or the other. Clause 7 transposes article 6 of the directive. Clause 7(1)(a) to (d) define the four types of interest payments which are caught by the Bill. Clause 7(4) and (5) provide rules to help paying agents identify what amount to report, if they do not have the detailed information to allow them to identify the precise amount of interest involved. Clause 7(2) limits the definition of interest payment to interest received by an entity that is considered to be a paying agent on receipt of the interest. Clause 7(3) establishes the possibility of excluding undertakings that invest predominantly in assets other than debt instruments. Clause 7(7) changes the debt equity ratio used to define a reportable fund from 1st January. That is a reportable fund when there is a fund that invests partly in debt and partly in non debt investments, what proportion has to be in debt before the whole fund is reportable. That figure, which I think starts at 40 per cent, reduces to 25 per cent in January 2011. Clause 7(8) specifies how the debt equity ratio is to be determined. Article 6(5) of the directive gives Member States the option of requiring paying agents in their territory, to annualise the interest over annual periods for the purposes of reporting. That is when one has a fund that rolls up the interest, there is an option which we have not taken, to require the fund, for reporting purposes, to annualise the interest.

Clause 8 transposes article 3 of the directive. This provides the rules by which paying agents are to identify beneficial owners. Clause 8(2) sets out the minimum requirements for establishing the identity of the beneficial owner. Different rules apply where the beneficial owner has a contractual relationship with the paying agent before 1st January 2004 or after 1st January 2004. That is to say the steps that have to be taken to try and identify the identity of the beneficial owner varies depending on when the contractual relationship began. Clause 8(5) sets out the minimum requirements for establishing the residence of the beneficial owner. Again, there are different rules applicable,

depending on whether the contractual relationship existed before 1st January 2004. Clause 9 transposes article 8 of the directive. Clause 9(1) sets out the information the paying agent must report. Clause 9(2) sets out the details to be reported by the paying agent, concerning the different categories of interest payment. Clause 10 transposes article 9 of the directive. Clause 10(2) sets out the procedures and article 9(2), the timetable for exchange of the reported information between competent authorities. Clause 10(3) transposes article 9(3). The effect of this is that all the provisions, including the confidentiality provisions of the Mutual Assistance Directive, save for article 8, apply to the exchange of information under this directive. Article 8 of that directive only allows the provision of information on a reciprocal basis. Clause 11 transposes article 13(2) of the directive. Article 13(1) only applies to Belgium, Luxembourg and Austria, and they are the special deal that was done for them.

In essence it provides that Belgium, Luxembourg and Austria must set up procedures to allow beneficial owners to opt not to pay withholding tax, either by authorising the paying agent to report the information, or by providing a tax certificate drawn up by their competent authority. Article 13(2) sets out what a valid certificate from the competent authority of the Member State of the beneficial owner must contain. Clause 12 transposes article 15. Clause 12(1) provides that certain negotiable debt securities shall not be considered as debt claims within the meaning of the Bill for the transitional period, or until 31st December 2010, whichever is the earlier. The ensuing provisions of the clause put in place different rules for Government and Government-related entity bonds. Clause 13 enables the Chief Minister to make regulations to the enforcement of the Bill. Clause 14 is a separate regulation, making power to be used to implement arrangements made by the EU with third countries, making equivalent provision to this Directive. Article 14 of the Directive imposes a general obligation on the Member State of residence of beneficial owner to eliminate any double taxation which may result from the imposition of this withholding tax. No specific implementation of this article was considered necessary, in as much as we already comply with it by virtue of rule 26 of the

Income Tax (Allowances, Deductions and Exemption) Rules 1992.

Finally, the Schedules reproduce relevant provisions of the directive for greater ease of reference by the public. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, I have already highlighted in my budget address, how we feel about the failure to secure these derogations for Gibraltar that the Chief Minister has outlined, and where we feel that national, political responsibility for that must lie. But I will not take that any further at this stage because I think the whole House will share the Chief Minister's view that we will legislate in relation to this directive with a heavy heart and a degree of reluctance. I think I am using his words there. Especially, in light of how we can see our competitors, even our European competitors, positioning themselves. Austria, which is the example the Chief Minister has highlighted with Belgium and Luxembourg, not just in relation to the withholding tax option, but also in relation to the lowering of its corporate tax rates to 25 per cent, which I also had occasion to highlight last week. I think it is fair to say that the whole House will join in, what in effect is, a condemnation of the way the United Kingdom has treated Gibraltar in relation to this directive.

Mr Speaker, I also heard the Chief Minister say that he was talking about Gibraltar having, to use his words, seeks or sought, seeks I think is an encouraging word to use because we were told during the budget debate that potentially, the transposition will take effect perhaps not in January but in July of next year, and that still gives us a period of time during which the Chief Minister can say that this is causing him a national political problem, because he is being told it is his fault, and he can go to the UK to tell them to stop interfering in our national politics by

giving him the derogations that everybody else has been able to have. Mr Speaker, I want to highlight two particular aspects of the directive and the Bill.

The first is that specific reference in article 7 of the directive to Gibraltar, although the word Gibraltar is not mentioned. We see in the directive that article 7 says, territorial scope, this directive shall apply to interest paid by a paying agent established, and the interesting words come now, within the territory, singular, to which the Treaty applies, by virtue of article 299 thereof. We do not frequently see that language. I think it is almost unprecedented and when directives do not mention the 299 territory, we have legislated in this House to give them effect as if that were necessary. Perhaps we can now take the view that when they do not mention us directly, we do not have to transpose. But it seems, certainly, a very particular and precise decision to use that language, designed to bring Gibraltar, not just within the UK's definition of what we should be doing, but within the whole Council's definition, the whole Commission's definition, of what we should be doing so that there is no way out without Council unanimity. And that certainly bears highlighting, I think adds to the way that the Chief Minister has highlighted, we have been shabbily treated by the United Kingdom, and that is my word not his, in relation to this directive.

Mr Speaker, the other point I want to deal with is a fairly technical point. It may be that we want to get on to it at the time of Third Reading, but I am looking at section 7(1), and reading it with section 7(5). At section 7(1)(d) when we are dealing with the definition of interest payments, we read that interest payments include income realised upon the sale, refund or redemption of shares, or units in undertakings and entities set out in paragraph (c)(ii), and those are UCITS in effect. In 7(5) in respect of interest payments described in 1(d), where there is no information concerning the percentage of assets, the percentage shall be considered to be above 40 per cent, or where the paying agent cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of sale. That is not intended, as I read it, neither is

any part of the directive intended, to amount to a capital gains tax. But I think that mischievously read, because the word shares appears first, it could be read as income realised upon the sale, refund or redemption of shares, or units in undertakings and entities which are UCITS. For that reason what I would propose to the House, and perhaps the Chief Minister could consider this issue between now and Third Reading, although this wording comes directly from the directive, and it comes directly from article 6(1)(b), where the definition of interest payments is, I think we should not change our obligations in any way so as to put the UK in failure to comply with the directive. But simply clarify the wording by turning 7(1)(d) into this, income realised upon the sale, refund or redemption of units or shares in undertakings and entities set out in paragraph (c)(i). I think that would put even beyond the most mischievous reading, which perhaps is my reading, of what this amounts to and that it is certainly not a capital gains tax on the sale of shares so that it would be impossible to read the shares there, simply as shares at large in any, for example, quoted company. It would be very clear, because quoted companies do not have units, they only have shares, that they would only be shares in UCITS. That is all I think is possible to say at this stage, except to say that of course, the House will certainly approach this piece of legislation with trepidation.

HON CHIEF MINISTER:

Mr Speaker, I think the hon Member is wrong on his first point. I think he has failed to take note that article 7 refers to article 299, not article 299(4) and therefore, it is not Gibraltar specific. The territorial scope clause simply says that it applies to the whole of the territory to which the Treaty applies, by virtue of article 299. Article 299 in its various parts, one, two, three, four, five, is the whole of the Community including the Member State, which are covered by 299(1), Faroes or something 299(2), I cannot remember who is 299(3), Jersey and Isle of Man I think are 299(5). To mean what the hon Member thought it meant, it

would have had to read article 299(4) thereof, and that is not the case.

I hope the hon Member does not tighten up his own belt and braces as tightly as he is suggesting that we should tighten up our belts and braces in this piece of legislation. I would be terribly worried if the hon Member could not easily and properly breathe. Of course the essence of it is, the essence of the directive is, that shares and units in funds are to be treated as income when it is just the way of concealing income. For example, through roll up funds and any other type of fund that postpones, defers or the payment of interest. So there is no doubt that those shares or units are to be treated on sale, or on redemption, or on expiry, as income. I am not sure that the concern that the hon Member's suggestion is intended to safeguard, arises at all. In fact I am certain it does not. I think it is a case of him tightening his belt and his braces too much. Nor do I think that, switching the order of the words, does any safeguarding. But if it makes him happier to change the order of the words, I mean it cannot do any harm, whether we speak of income realised upon the sale or redemption, refund or redemption of shares or units, or whether we speak of units or shares, seems to me to be not germane to the proper interpretation of those words, but nor do I think that the proper interpretation of those words is crucial in the way that the hon Member thinks it might be. But I am quite happy, it does no harm, it certainly does not render the implementation suspect, so if he wants to move that amendment.

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE EMPLOYMENT ORDINANCE

HON DR B A LINARES:

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

Question put. Agreed to.

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this amendment to the Employment Ordinance, which I announced during my budget speech only recently, is to introduce the principle of constructive dismissal in our local legislation. We do so by introducing a new paragraph (c) to section 64 subsection (2) of the Employment Ordinance. The paragraph follows the UK's legislation in this matter, contained in section 95(1)(c) of the Employment Rights Act 1996. We have chosen to proceed in this way in order to enable Gibraltar employees to benefit from the wealth of case law which has been built up on this issue in the UK's courts and tribunals.

Mr Speaker, the House will recall that at an earlier stage the Chief Minister stated that the Government proposed legislation would be submitted to a process of consultation with relevant parties, and this was done at a meeting on 22nd April this year, of the Labour Advisory Board, which represents the social partners, the Chamber of Commerce, the Federation of Small Businesses, the Transport and General Workers Union, Prospect and the Gibraltar Trades Council. Following this process of consultation the Government are now ready to proceed with this piece of legislation which, in a broad social context, is an important element in establishing the rights and the protection of working people in their contractual relationships with their employers.

Constructive dismissal invariably happens where the employer has made the employee's life very difficult and the employee feels that they cannot remain in their job, although he has not been formally dismissed. When this happens, the employee's resignation is treated as an actual dismissal by the employer, so the employee can claim unfair dismissal. This situation can arise, for instance, when the employer commits a fundamental breach of a term in the employment contract, or the employer's conduct is such that an employee could not reasonably be expected to continue working. It is in this spirit that the Government are pleased to propose that the principle of constructive dismissal be incorporated into the Employment Ordinance.

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

HON F R PICARDO:

As I have already indicated publicly, this Bill is very, very welcome in this House by the Opposition Members. It is in terms identical to the amendment which I moved in relation to the Third Reading of the Employment (Amendment) Ordinance which the Chief Minister brought, but did not proceed with, and it is something which is going to be very welcome by employees who now find themselves in the situations in which the Hon Dr Linares

has described, and without a remedy as a result of the clarification by the Court of Appeal of what the statutory provisions in Gibraltar actually did cover, despite contrary practice earlier in the Industrial Tribunal which had been acting as if these provisions were in place, if not by statute certainly by common law. I think the important issue to take now in relation to the legislation, short of welcoming this amendment, is to say that there are other provisions of amendment which are required to our Employment Ordinance and which the Chief Minister provided for in his earlier Employment (Amendment) Ordinance, which need to also come before us as soon as possible so that the Equal Opportunities Ordinance is given full effect, full tooth to, so to speak, in terms of what the Industrial Tribunal can and cannot do, and can and cannot deal with. I think, at the moment, we are left with an element of lacuna. But in relation to this particular provision, it is extremely welcome and I commend the Bill to the House. I know that all the Trade Unions have been wanting this, that most of the employers are not afraid of it, certainly all the Trade Unions that I have consulted with, and I think I have consulted them all, are in favour, including the GTA, the Teachers Union, which I do not think is represented in the Labour Advisory Board, but which has indicated in writing to me already that they are very much in favour. So it is a Bill that is going to have more than just a fair wind in this House.

HON DR B A LINARES:

Mr Speaker, just simply to say that I am glad this piece of legislation meets with the consensus of the House. The question of pending amendments to the Employment Ordinance, flowing from the Equal Opportunities Bill, I did mention in my budget speech drafting is at work at the moment to introduce, particularly in the areas of age and disability discrimination. The GTA Teachers Union is a member of the Gibraltar Trades Council, so they are really represented formally in the Labour Advisory Board.

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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

Question put. Agreed to.

THE WEAPONS OF MASS DESTRUCTION ORDINANCE 2004

HON F VINET:

I have the honour to move that a Bill for an Ordinance to make provision for the purposes of prohibiting the development, production, acquisition and possession of certain weapons of mass destruction; implementing in Gibraltar the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction, signed at Washington, London and Moscow on 10th April, 1972 and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13th January 1993; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill before the House, makes provision prohibiting the development, production, acquisition and possession of certain weapons of mass destruction. The Bill makes equivalent provision to Part 6 of the Anti-Terrorism Crime and Security Act 2001 of the United Kingdom. Part 6 of the Act deals with weapons of mass destruction. It amends the Biological Weapons Act 1974 and the Chemical Weapons Act 1996, and provides for the control of nuclear weapons. The Biological Weapons Act 1974 was extended to Gibraltar by the Biological Weapons Act of 1974 (Overseas Territories) Order 1975. This Order in Council is required to be revoked at the time of coming into operation of this Ordinance. Part 2 of this Bill implements the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, signed at Washington, London and Moscow on 10th April 1972, which came into force on 26th March 1975. This part of the Bill makes equivalent provision to the Biological Weapons Act 1974 (Overseas Territories) Order 1975 and the Biological Weapons Act 1974 as amended by the Anti-Terrorism, Crime and Security Act 2001. Part 2 of the Bill prohibits the development, production, stockpiling, acquiring and retaining of any biological agent or toxin that has no justification for peaceful purposes. In the same way, it prohibits the transfer of any biological agent or toxin to another person, or entering into an agreement or making arrangements for a third person to do so. The penalty for violation has been prescribed for life imprisonment. The prohibition covers not only Gibraltarians but also any person normally resident in Gibraltar.

Part 3 and the Schedules to this Bill implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed

at Paris on 13th January 1993, which came into force on 29th April 1997, insofar as legislative measures are concerned. Part 3 makes equivalent provisions to the Chemical Weapons Act of 1996, as amended by the Anti-Terrorism, Crime and Security Act 2001. Chemical weapons are specified in section 9 and it has been made clear that an object is not a chemical weapon, that their use or intended use is only for permitted purposes. Permitted purposes are peaceful purposes, purposes related to protection against toxic chemicals, legitimate military purposes and purposes enforcing the law. The use, development, production, having in possession, participating in the transfer of, or engaging in military preparations of chemical weapons are prohibited by virtue of sections 10 and 27.

The Governor has been given a wide range of powers for the purposes of this Ordinance. He has been given the powers of dealing with an object that has been suspected as a chemical weapon and order for its destruction. He has also been made a licensing authority under this Ordinance. The Governor may issue an authorisation to carry out an inspection for the purposes of this Ordinance.

Schedule 4 reproduces the Annex on implementation and verification to the Chemical Weapons Convention, which will be very useful for implementing that Convention. Part 4 of this Bill makes equivalent provisions to Part 6 of the Anti-Terrorism, Crime and Security Act 2001, so far as that Part provides for nuclear weapons. The causing of a nuclear weapon explosion, development, production, having in possession of, participating in the transfer of, or engaging in military preparations of nuclear weapons, are prohibited by virtue of section 43, except in the cases authorised by the Governor under section 44. Section 5 of the Bill permits the Attorney General to institute proceedings for biological weapons. Section 39 allows the Attorney General to institute proceedings for chemical weapons. Section 49 allows the Attorney General to institute proceedings for nuclear weapons in cases involving the movement of such weapons across the border.

Mr Speaker, the Bill will help the control of any development, production, acquisition, transfer or having in possession of biological, chemical and nuclear weapons in Gibraltar, and fulfils Gibraltar's international obligations under the above Conventions. I shall be moving some amendments to the Bill during Committee Stage, I believe they have already been circulated to the Members of the House. These are very minor in nature, mainly dealing with numbering issues and with correcting the wording of the headings of certain clauses. They do not affect the substance of the Bill in any way. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. All agreed.

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 Weapons of Mass Destruction Bill 2004;
- (2) The Criminal Justice (Amendment) Bill 2004;
- (3) The Civil Jurisdiction and Judgments (Amendment) Bill 2004;
- (4) The Insurers (Reorganisation and Winding Up) Bill 2004;
- (5) The Taxation (Savings Income) Bill 2004;
- (6) The Employment Ordinance (Amendment) Bill 2004.

THE CRIMINAL JUSTICE (AMENDMENT) BILL 2004

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

Clause 2

HON CHIEF MINISTER:

In clause 2(8)(b) which is at page 403, but actually it is over the page on 204 that is relevant, I wish to move an amendment. The last two words "this Ordinance", should read "the Money Laundering Directive". Because it refers to a credit institution in another country, and in another country it would not be subject to this Ordinance, it would be subject to the same regime under the Money Laundering Directive.

HON F R PICARDO:

Can I just on that say that it may be that I have not found it, but I cannot find the definition of the Money Laundering Directive. It is clear that it is Directive 91/308 but we now have another directive which is also a money laundering directive, which in effect amends 91/308. In other circumstances like this we have a definition in the principal Ordinance which we do not have in this principal Ordinance, of the directive for example, which in this Ordinance should be the Money Laundering Directive which says

Directive 91/308/EEC and any other directives which amend it. We have not got that here. The definition, in particular, of credit institution is actually in the new directive, in the way that it amends the first directive. So perhaps we could consider including such a definition. That is not the only place where the words “Money Laundering Directive” appear. But perhaps I am about to be helped on that.

HON CHIEF MINISTER:

Yes, the hon Member I am sure is not forgetting that this Bill is amending the principal Ordinance. The principal Ordinance has a definition of “the Money Laundering Directive” in section 6(4).

HON F R PICARDO:

The Chief Minister is right. I looked for it at the beginning and at the end, I did not look for it in the middle. I am obliged. But perhaps now we need to change that definition to say “and any Directives which amend it”.

HON CHIEF MINISTER:

Well, “as amended from time to time”. So that would be an amendment not to the Bill, so we would have to amend the Bill to include a new clause to amend the definition of “the Money Laundering Directive” in section 6(1) to add the words “as amended from time to time”.

HON F R PICARDO:

I will move that amendment.

HON CHIEF MINISTER:

Mr Chairman, the hon Member’s amendment might be, to add a new clause 3 to the Bill to read as follows: “in section 6(1) of the principal Ordinance, amend the definition of “the Money Laundering Directive” to add at the end the words “as the same may from time to time be amended”.

There is another amendment to clause 2. A small amendment to clause 2 arising from a replication of paragraph numbers in clause 2(8), clause 2(8) appears twice. There is a clause 2(8) on page 403 and there is another, clause 2(8) again appears on page 404 and the amendment is that the second reference to sub-clause (8) on page 404, should become (9) and therefore present (9) and (10) become (10) and (11). Are the hon Members with me? There are two clauses numbered (8).

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

New Clause 3

HON F R PICARDO:

In section 6(1) of the Principal Ordinance amend the definition of the Money Laundering Directive to add at the end “ as the same may from time to time be amended.”

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

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

**THE CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT)
BILL 2004**

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

Clause 2

HON F R PICARDO:

There is no definition which I can find at that caveat, given my experience a moment ago, in the existing Civil Jurisdiction and Judgments Ordinance, of European Court, which appears in the Bill at the new section 39(2). There are obviously two European courts, the European Court of Justice and the European Court of Human Rights. In fact there are two references to European Court. I just wonder whether in fact we would wish to ensure that it is clear that in relation to this particular piece of legislation, the European Court, without having to refer back to the Regulation, is the European Court of Justice. I do not think that it is a major amendment. I think it just serves to clarify exactly which court it is that we are referring to. The reference is at the new 39(2) and also in section 2(4) the new (c) that is being inserted there.

HON CHIEF MINISTER:

Mr Chairman, I see the hon Member's point but I do not think it is necessary. The European court is something which is established by a supervening piece of legislation, which is the European Treaty and regulations made under it. It has got a fixed meaning and of course, the European court does not necessarily mean the European Court of Justice. It could be the European Court of First Instance. It is whichever is the appropriate European court under the European court procedures and jurisdiction rules. This is a traditional way of doing it, it is the way it appears in other legislation and the

Government do not think it is necessary to define what is the European court.

HON F R PICARDO:

No I will give notice of the amendment because I think I take it differently. I think it would be better to have clarity of definition in relation to the European Court. Obviously that amendment will not have a fair wind but I will put it anyway because I am not happy with it.

HON CHIEF MINISTER:

The hon Member may wish to consider that the reference in (c) is to the European Court under Article 68 of the Treaty establishing the European Community.

HON F R PICARDO:

There yes, but not in the other one. In the other one it is just the European court.

HON CHIEF MINISTER:

Draft it as briefly as possible because it is not going to prosper so do not spend too much time on it.

HON F R PICARDO:

I beg to give notice to add the words "of Justice" after the words "European court" in section 39 (2) of the principal Ordinance, which appears in section 2(10) of the Bill.

Question put. The House voted.

For the Ayes: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

For the Noes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

Clause 2, stood part of the Bill.

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

**THE INSURERS (REORGANISATION AND WINDING UP)
BILL 2004**

Clauses 1 to 36 and the Long Title – were agreed to and stood part of the Bill.

THE TAXATION (SAVINGS INCOME) BILL 2004

Clause 1

HON CHIEF MINISTER:

Yes Mr Chairman, it is not strictly necessary an amendment, because I am not likely to bring this into effect before I have to. But of course the Bill was drafted and published at a time when the commencement date was going to be 1st January 2005, and that is what it says in the commencement clause at 1(2) it says, this Ordinance comes into operation on such date not being earlier than 1st January 2005. I suppose we could say not being earlier than 1st July 2005, in case I should take leave of my senses in this matter and choose to bring it upon us before time. I think it is just as well to make it clear that it should not be brought into effect before it needs to be brought into effect. I would therefore suggest that we change January to July.

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

Clauses 2 to 6 – were agreed to and stood part of the Bill.

Clause 7

HON F R PICARDO:

There were two amendments to move here I think. The first is the simple repositioning of the words “shares and units” where they appear, which is what I suggested during the Second Reading, and which the Government said they would be prepared to agree. 7(1)(d). The next one. I do not think it is necessary to move a formal amendment in relation to either of these, especially the next one, which is that in 7(3), (a) and (b) there is a reference to sub-section 1(c) which I think should be a reference to sub-section (1)(c), that appears four times in those

two paragraphs. If the Chief Minister looks at sub-section (3)(a), there is a reference there to subsection 1(c). That 1 should be in brackets itself, not just the (c). So throughout that paragraph and the next paragraph. I think we can safely call that a typographical error to which I bring the House's attention, rather than move it formally as an amendment.

HON CHIEF MINISTER:

Well, Mr Chairman, on the first amendment, the Government will not oppose it. We think it is wholly unnecessary, we think it is completely to no effect. But if he thinks it is to some effect, we will support it on the basis that it can do no harm.

Clause 7, as amended, was agreed to and stood part of the Bill.

Clauses 8 to 14, Schedules 1 and 2 and the Long Title – were agreed to and stood part of the Bill.

THE EMPLOYMENT ORDINANCE (AMENDMENT) BILL 2004

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

THE WEAPONS OF MASS DESTRUCTION BILL 2004

HON F VINET:

Mr Chairman, if I may, even before clause 1, in the arrangement of clauses, there is a reference to two number 52s. The second of those will of course read 53.

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

Clause 2

HON F VINET:

Mr Chairman, in the definition of “Gibraltarian”, it presently reads “means a person who is registered as a Gibraltarian under the Gibraltar Status Ordinance”. That should read the Gibraltarian Status Ordinance.

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

Clauses 3 and 4 – were agreed to and stood part of the Bill.

Clause 5

HON F VINET:

Mr Chairman, I would like to move an amendment to the heading of clause 5, the deletion of the word “Customs”. To retain the present wording would not be indicative of the contents of the clause itself. The heading of clause 5 presently reads, “Customs prosecutions for biological weapons” and I moving the deletion of the word “Customs”.

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

Clauses 6 to 38 – were agreed to and stood part of the Bill.

Clause 39

HON F VINET:

Mr Chairman, similar to the previous amendment, I move the deletion of the words “Customs and Excise” from the heading of clause 39.

Clause 39, as amended, was agreed to and stood part of the Bill.

Clauses 40 to 47 – were agreed to and stood part of the Bill..

Clause 48

HON F VINET:

Mr Chairman, at subsection (6), the first line presently reads, “a person guilty of an offence under subsection (6) is liable”. That ought to read subsection (5), it refers to the previous preceding subsection.

Clause 48, as amended, was agreed to and stood part of the Bill.

Clause 49

HON F VINET:

Mr Chairman, again the deletion of the word “Customs” in the heading of the section.

Clause 49, as amended, was agreed to and stood part of the Bill.

Clauses 50 to 57 – were agreed to and stood part of the Bill.

Clause 52

HON F VINET:

Mr Chairman, the word “its” at the end of the opening line is unnecessary since it appears in each of the following subsections.

Clause 52, as amended, was agreed to and stood part of the Bill.

Schedules 1 to 4 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 Weapons of Mass Destruction Bill 2004, the Criminal Justice (Amendment) Bill 2004, the Civil Jurisdiction and Judgments (Amendment) Bill 2004, the Insurers (Reorganisation and Winding Up) Bill 2004, the Taxation (Savings Income) Bill 2004 and the Employment Ordinance (Amendment) Bill 2004 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 Weapons of Mass Destruction Bill 2004; the Criminal Justice (Amendment) Bill 2004; the Civil Jurisdiction and Judgments (Amendment) Bill 2004; the Insurers (Reorganisation and Winding up) Bill 2004; the Taxation (Savings Income) Bill 2004; and the Employment Ordinance (Amendment) Bill 2004; were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 26th July 2004 at 10.00 am.

Question put Agreed to.

The adjournment of the House was taken at 6.00 pm on Thursday 8th July 2004.

MONDAY 26TH JULY 2004

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 J J Holliday - Minister for Trade, Industry and
Communications

The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon F R Picardo
The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, before moving the motion and with Mr Speaker's indulgence, could I welcome the Clerk back to the House after, what I think everybody will agree, was the organisation of an event of the usual high standards in Gibraltar, which has been the subject of very positive comment by the Electoral Authorities in the combined constituencies. The European Election was organised to the standard that we have grown accustomed to in Gibraltar and it is pleasing to note that that is thought to be to a higher standard than in the United Kingdom.

I beg to move the motion standing in my name and which reads: "This House resolves, pursuant to Section 4 of the Public Services Ombudsman Ordinance 1998, that a salary of £41,200 (effective from 1st October 2004) per annum be paid to the Ombudsman, with increases in accordance with the annual Civil Service Pay Award, and that an additional sum up to £138,800 be provided to the Ombudsman in respect of the expenses of his Office, including the personal emoluments of staff and other operating expenses,"

Mr Speaker, hon Members will be aware that the amount of subvention of the Ombudsman required from the Consolidated Fund was reflected in the Estimates booklet, albeit that it is a charge on the Consolidated Fund and the House actually did not require to vote on it. Nevertheless, I think the information was included in an annex to the booklet, setting out the expenses, albeit that it was not something that the House could vote on. Nevertheless, the Ordinance establishing the Ombudsman, the Public Services Ombudsman Ordinance, requires this House to approve by motions, such as is before the House right now, the resourcing, the financial resourcing of the Ombudsman, and only when this House has approved it in this form, does it become a charge on the Consolidated Fund. In other words, it is not

monies that we vote in the appropriation mechanism but the House still has to approve the funding of the Ombudsman through this motion.

Mr Speaker, the salary of the Ombudsman, which is dealt with separately in the motion as the hon Members will see, has been the subject of negotiation and agreement between the Ombudsman and the Government, as indeed has his budget. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, may I also preface my remarks by welcoming back our Clerk, and I think it is also worth recording that we are happy with the service that we had with his replacement, while he was otherwise engaged, and I think it maintains the standards that this House is lucky to have had consistently in the Clerk's dedication and in the commitment to serving Members on both sides. Can I say we look forward to receiving the Approved Estimates of Expenditure when the book is finally printed, without incidents. I think, as far as the motion is concerned, it is straightforward and obviously we support it. I just wonder whether the Chief Minister will clarify, given his reference to negotiations that have taken place, whether in fact the £41,200 therefore means that the link is any different from what it was when we last voted the money. Because of course, the wording of this motion like the wording of the last one, implies that the House will not need to vote on a motion every year to give an annual increase. In fact, this is the second time since the Ombudsman Office has been created, that the motion has come before the House, and this one like the other one provides for a salary to be linked to increases in accordance with the Civil Service Pay Award, which seems perfectly reasonable. Therefore I should like clarification whether the £41,200 is in fact what has happened as a result of Civil Service Pay Awards,

which was provided the last time. I think the last time the figure was £38,000 and then it went on to say plus increases. I also wonder whether the ceiling that we put here needs to be so tight in the context of the amount we have in the annex to the Estimates because presumably, up to a point there is an element of contradiction in that on the one hand if for some reason the Office of the Ombudsman have a need to incur additional expenses during the course of the financial year, presumably that will become an automatic charge on the Consolidated Fund without requiring a vote in the House. But unlike any other head of expenditure in the Estimates, it cannot be supplemented from the Head 12 Supplementary Funding vote. So it seems that there is, if the ceiling we place is very close to the figure in the book, it would seem to me that potentially there is a situation that could arise where on the one hand the Ombudsman is entitled to expect the money to be approved by the Financial Secretary as a direct charge on the Consolidated Fund, but we would then have a problem with the ceiling we provide in the House.

HON CHIEF MINISTER:

If I could just start with the last point that the hon Member made. In fact it is not correct that if the Ombudsman requires excess expenditure during the year, he can have it as a charge on the Consolidated Fund. That is not the mechanism created by the Ombudsman Ordinance. The Ombudsman can only spend such monies as this House, through this motion, approves for it. Any expenditure over and above that, remember this is not Consolidated Fund appropriation, so if he spends more because he has got cash left over from a previous year or something, or does not, he can hold his invoices and pay it out of next year's funding. So it is not like the other Consolidated Fund charges where the Financial Secretary or the Accountant General rather, simply pays out whatever payment vouchers come in from that head, pensions, legal aid et cetera et cetera. This only becomes a charge on the Consolidated Fund to the extent that the House has previously approved the amount in this motion so the only sum that is a charge of the Consolidated Fund is the figure. Any

sum that he spends over and above that figure is not a charge on the Consolidated Fund. There is a few thousand pounds leeway, the hon Member will see, the motion does not have to give a breakdown of his salary and the rest of the expenses, it is just given there by way of breakdown on information, and the amount of the leeway is roughly the amount, which is only a few thousand pounds, but which in past years he tends to have a need to overspend.

So the hon Member will see that last year, in this motion, we authorised £162,000 and the forecast outturn for last year says that it is going to be £165,000. So most of his expenses are very fixed costs and it is actually quite unusual for the Ombudsman to have to exceed his expenditure. Frankly, my view after the three or four years that the Ombudsman has now been running, is that for the cost of it, £177,000 a year, it is a very useful addition to the canopy of civil human rights facilities in this small community of ours. So I think the Ombudsman is to be commended for running quite tight ship financially, and the result being that his requests for finance are usually taken seriously rather than submitted to the sort of departmental treatment that there is an assumption that there is a ratcheting up of the bid, in the knowledge that they all think they are going to be cut and therefore they ask for more. It is not that sort of situation. My recollection is that the salary was negotiated in isolation from any analogue and that the analoguing comes in only in its linkage to pay increases. So I do not think the £41,200 is analogued to any Civil Service pay. The question of the analoguing is only in relation to the amount of the annual reviews, in other words, the same percentage increase. I do not think that the increase from this motion to the previous one is accountable only by the application of pay rises, because there was a negotiation, I do not remember the detail of it, but there was a negotiation with the Ombudsman at the time that he extended.

Question put. The motion was carried unanimously.

BILLS

FIRST AND SECOND READINGS

THE DEVELOPMENT AID (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I beg to move that a Bill for an Ordinance to amend the Development Aid Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a short Bill. Section 15A of the Development Aid Ordinance as it currently stands, makes provisions for goods imported for the purposes of a project in respect of which a development aid licence has been granted to be free of duty. Development aid licences are granted for a wide variety of purposes and for varying reasons. It is the Government's view that granting one size fits all privileges without consideration of the wider economic and social context in which the development aid licence concerns will operate, represents an unfair burden on the public purse. The proposed new section 15A therefore, substitutes that regime with a public interest test which the licensee concerned will have to pass. There is some question as to whether this Bill is strictly necessary. The Ordinance as it is presently drafted is couched in the language of the import duty exemption being in respect of

projects which in effect are new or add value to the economy. But in the practice, there has grown to be an expectation that import duty is available as a standard feature of the Development Aid Ordinance. The Government have recently, in the last couple of years, introduced import duty for example on building materials, and we want to make it clear in statute that the exemptions from import duty will be available on a case by case basis, when there is a certification of public interest in the importation of the goods. There is not intended to be any other change in relation to the other elements of the development aid regime, except this one in relation to import duty. A view has been expressed that this could have been achieved by the interpretation of the existing words, but just to make the situation clear beyond doubt, we have decided to proceed with putting it on a more clear statutory basis. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, as the Chief Minister has said the Bill replaces existing section 15A of the Development Aid Ordinance and the existing section which we are replacing reads as follows:- where the conditions of a licence that has been issued to a licensee pursuant to section 10(2)(a)(iv), 10(2)(b), 10(2)(c) and 10(2)(d) have been complied with, the licensee shall not be liable to pay duty on the importation of goods into Gibraltar which the Financial and Development Secretary certifies are required for the purpose of setting up a project in respect of which the licence is granted. The existing section 15A and this amending Ordinance before the House today both deal with the conditions of a licence issued pursuant to sections 10(2)(a)(iv), 10(2)(b), 10(2)(c) and 10(2)(d). Therefore this in itself does not change. Those sections deal with a new project to provide any new industry in Gibraltar which is for the economic benefit of Gibraltar and which will be completed in a given time scale and cost given

amounts, and for which the management shall be such as to be likely to be effective and competent, this remains in the amending legislation. Remember there are obviously a number of differences between the existing legislation and its intended replacement. As the explanatory memorandum to the Bill explains, the exemption from import duty is automatic in all cases that meet the established conditions of the licence as the law now stands. The Bill before the House would change this to make the exemption from the payment of import duty apply when the Chief Minister of the day considers it appropriate to apply it in the public interest. There is however no definition of the public interest.

Mr Speaker, there are a number of other areas where we think the Bill requires some clarification, and one of these refers to the fact that it is the Chief Minister of the day and not the Minister responsible for the rest of the Ordinance that actually is given those powers under section 15A. The original definitions at the front of the original Ordinance referred to the word Minister, meaning the Minister responsible for economic development, and it is the Minister responsible for economic development who under sections 10, 11, 12 and 13 who considers applications for development aid, it is the Minister who grants the licence and who attaches conditions to the licence and who also makes amendment to the licences. What we would like to know is why the Government have chosen to vest this power in the Chief Minister, or any Chief Minister of the day, and not the Minister for economic development who is the one responsible for most of the rest of the Ordinance.

HON CHIEF MINISTER:

Mr Speaker, if I could deal with the points in the order in which the hon Member has made them. Applicants argue that all new buildings are new projects and I do not think that that is the intention. The intention is that the exemption should be for economic activity of a sustainable, durable type perhaps that creates employment, and this is intended to make it clear that

any denial of import duty exemption to somebody who wants to build a block of luxury flats, is not challengeable on judicial review as being a discriminatory exemption, perhaps because an import duty exemption has been given to somebody to build low cost housing, for example. Precisely the quotes that the hon Member made from the existing law, is the area where there is not, as I said it is open to interpretation, and the existing words are capable of being interpreted to mean that the Government are free to decide which projects they allow and which projects they do not allow. But it is on interpretation and this is perhaps an unnecessary piece of legislation but we have wanted to put it in to prevent the Government from legal challenge. I think the hon Members will probably agree with the underlying sentiment of the legislation, which is exemption from import duty should be limited to those projects that Gibraltar really should be making fiscal concessions to, and not simply available as a run of the mill to property developers in what is a pretty frothy market anyway, that is the basis. His second point was why has this power been given to the Chief Minister and not to the Minister that administers the Ordinance, the Minister for Trade and Industry. The reason for that is that this is basically a matter of public revenue, and import duty is one of the Government's important sources of revenue and the decision whether one cuts or does not cut public revenue, or whether public revenue froze on this scale, ought to be taken centrally. Of course it goes without saying that the Chief Minister of the day could really only make this judgement on the basis of consultation with and advice from the Minister, because by necessity the Chief Minister would not have in front of him the details of the application or the analysis of the economic case, although Gibraltar is a small place and most people get to hear about things including the Chief Minister even though he may not be dealing with it. It is not appropriate, the Government feel, to delegate to a department, to a Minister, the ability to affect the levels of public revenue in this way and that is the reason. I do not think there has been any great change in that, to the extent that the Financial and Development Secretary has an involvement in the administration of the Ordinance, one has to assume that he would take into account the implications on public finances before he does it. I do not

think that anything sinister turns on. I know that the hon Members for some reason think that giving the, the Chief Minister is after all a Minister, therefore there is nothing objectionable in principle in giving powers to the Chief Minister. Especially not when they affect a centralised function such as overall control of public finances and the state of Government revenues and expenses.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

Abstained: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon L A Randall

Absent from the Chamber: The Hon Miss M I Montegriffo
 The Hon F R Picardo

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 EUROPEAN COMMUNITIES (AMENDMENT) (ACCESSION COUNTRIES) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the European Communities Ordinance in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, 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 hon Members will have noticed from the Long Title to the various Bills, that several of the Bills before the House this morning result from the accommodation in our legislation of the recent enlargement of the European Community and do not actually represent a great substantive change, either by EU compulsion or indeed by domestic policy. The Bill

amends our legislation to accommodate the 10 new States. Those countries will form part of the European Union as from the 1st May 2004, of course a date that has passed.

The Bill thus amends the European Communities Ordinance to make the following provisions for those States. Clause 2(1) amends the European Communities Ordinance. The main amendment is to insert a reference to section 2(1) to the Treaty concerning the accession of the 10 accession States. The hon Members may remember that in previous accessions, there has been similar amending legislation locally. The effect will be that the definition of the Treaties, or the Community Treaties will include that Accession Treaty. Clause 2(2) and 2(3), insert a new Schedule 3 to the Ordinance setting out a list of all the European Economic Area States, for the convenience of users of the legislation. I commend the Bill to the House.

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

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 the same day.

Question put. Agreed to.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Interpretation and General Clauses Ordinance to include a definition of the Agreement on the European Economic Area, 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 is another in the batch of Bills dealing with enlargement. The Bill introduces one amendment to our existing Ordinance, which is clause 2, which amends the Interpretation and General Clauses Ordinance, by inserting a new section 5A. The new section 5A provides that references to the European Economic Area Agreement shall be construed as referring to the Agreement as adjusted or amended. The amendment is needed as a result of the 10 new European Union Members, who as a result of an Agreement dated 11th November 2003, will also become Members of the EEA and party to the EEA Agreement. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

**THE SUPREME COURT (ACCESSION COUNTRIES)
(AMENDMENT) ORDINANCE 2004**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Supreme Court Ordinance in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, 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, here again, it follows in the series of the other Bills. The purpose of this particular Bill is to add the description of the respective titles for legal practitioners that have to be

recognised by our legislation, in respect of each of the new Accession countries. The hon Members will see that they are published as the Accession Treaty requires, in the language of the country concerned, which makes it somewhat unintelligible to the Members of the House, but they are the sort of the equivalent of barrister-at-law or solicitor in the various Accession States. They are the professions that those particular regulations that we are amending, require to be recognised and that is the purpose of the legislation. This legislation obviously already exists in respect of those equivalent titles for the previously existing other 14 Member States of the Community.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE WORKING TIME (AMENDMENT) ORDINANCE 2004

HON DR B A LINARES:

I have the honour to move that a Bill for an Ordinance to amend the Working Time Ordinance 1999 to implement in Gibraltar the provisions of Council Directive 94/33/EC on the protection of

young people at work and Council Directive 2000/34/EC amending Council Directive 93/104/EC on certain aspects of the organisation of working time, and Council Directive 2000/79/EC on the working time of workers in civil aviation, be read a first time.

Question put. Agreed to

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill brings into the ambit of the current Working Time Ordinance 1999, regulations affecting the working time arrangements for certain categories of workers not covered entirely by the existing legislation, that is young workers between the ages of 15 and 18, mobile workers in road transport and civil aviation and doctors in training. The arrangements for the working time of young persons come under Directive 94/33. New sections 4A and 5A deal with this and provide that no young worker, of at least 15 but under 18, works more than a 40 hour week and does not work during the so-called restricted period, that is to say, between 10.00 pm and 6.00 am. Directive 2000/34 amended the original Working Time Directive to bring in certain mobile workers within its provisions and also to lay down the hours of doctors in training.

The Bill adds new sections 17A and 17B to the Ordinance. Section 17A deals with mobile workers not covered by the specific directive dealing with mobile workers in civil aviation, to which I will refer in a moment, and in road transport activities and provides for them to receive adequate rest. Mobile workers in rail transport, inland waterway transport and sea fishermen, while covered in this directive, are not included in our Ordinance, given Gibraltar's lack of railways and inland waterways and commercial

sea fishermen. Section 17B deals with the working time of doctors in training. These were originally exempted from the directive but are now included but with longer hours permitted until 2009. This came about mainly at the UK's insistence. It is not envisaged that the gradual reduction in working hours will cause any difficulties in Gibraltar. There is a new Part 2A which inserted by clause 3, which reflects Council Directive 2000/79, and it deals with the working time in civil aviation. Given that at present the only airlines coming to Gibraltar are UK-based, and these rules already apply in the UK, there will be no practical effect on Gibraltar. Essentially, the provisions are that there should be a minimum of four weeks paid leave, regular health assessments, which may lead to a reduction in night work, health and safety protection, including organising patterns of work so that adequate rest is afforded. Annual working time is restricted to 2000 hours, which includes being on stand-by and lot flying time, that is the time actually spent on the aircraft from moving off to parking. This must not exceed 900 hours. In addition, a crew member must have at least seven days rest in every month, and not less than 96 rest days in a year. The remaining provisions in this Ordinance deal with offences. I commend the Bill to the House.

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

HON S E LINARES:

Opposition Members will be voting in favour of this Bill since it transposes Council Directives as stated in the title. But when this Bill was introduced in 1999, my hon Colleague Pepe Baldachino brought out the fact that there seems to be a bit of a contradiction between the Employment Ordinance and the Working Time Ordinance. It is to do with the fact that the Employment Ordinance defines young people, as the Minister has just said, from the ages of 15 to 18. But when we come to the Working Time Ordinance there is one clause, that is the clause which in this Bill now which we are presenting, states that section after section 12, meaning that section 12 is going to stay

and stand and section 12 says employment in dangerous industries, no person under the age of 16 years. So it would have been a good opportunity because the argument then between the Hon Pepe Baldachino and the then Minister for Employment, the Hon Mr Netto, was that there would seem to be some contradiction between one law and the other. So it would be beneficial if the Minister can either explain why he has not used this opportunity where all these amendments have come in, to have either repealed that section, or could have amended it by saying no person under the age of 18. So basically we will be voting in favour but we still, as the Hon Pepe Baldachino had at the time that problem with the ages, we still have that problem with the ages.

HON CHIEF MINISTER:

Mr Speaker, the Government could have done what the hon Member has suggested. He can change any age related provisions, particularly when they are domestic legislation driven, can be changed, and the provision to which he is relating is a historical domestic provision and could have been changed. The Government Bill before the House is to implement a directive requirement. The directive speaks of the ages mentioned in this Bill. If the result is that there are different age provisions for different types of activity, as they affect what we could loosely call young workers, that is not an inconsistency. Whilst the legislation could, if it chooses to, define young person in the same way for all purposes covered by legislation, it is not a requirement or it is not compulsory to do so. Before altering an existing piece of legislation in the way that he has suggested, the Government will have to carry out a lengthy consultation process which has not been carried out, to see to what extent anything may be affected by the change in terms of existing practice. The Government do not have a view, either for or against raising the age in the previous section to 18. But this provides a range of ages as required by the directives. To be entirely consistent, which the hon Member is making really a consistency point, we would have to adopt not an age but a range of ages, because if

we just change it from 16 to 18 there would still be the potential for difference between these two events. So it is just a point which despite the fact that it has been debated across the floor of the House in the past by previous Ministers on both sides responsible for employment, it has not been pursued and when it has come to the legislation it has just been done on the basis of transposing the directive. It is not that there has been a conscious look at it and a decision not to do it has been taken. It has just not been considered at the stage of drafting the legislation.

HON J J BOSSANO:

Mr Speaker, the section in the existing law to which we are referring reads as follows. No person under the age of 16 shall be admitted to any employment which by its nature or circumstances in which it is carried on is dangerous to life, health or morals of the persons employed therein. Now it is difficult why we need to have a lengthy consultation process to come to the conclusion as to whether the morals and the health and the life of 17 year olds should be protected, as well as those of 16 year olds. It appears to us that if we consider that people under the age of 18 require a level of protection, because we consider that at 18 they are adults and therefore they need less protection, I would have thought that protecting them from jobs which are dangerous to health, to life and to morals would be equally applicable. In fact, we did not get a satisfactory explanation for why 16 was there in 1999, and had we had the explanation then we would not have raised it now, that is why we homed in on this one when we were looking at what was being done. Given that if everything that is coming out of the EEC requires us to provide protection at the age of 18, and I do not know whether in fact the protection here was EU driven, but the Working Time Directive 1999 was in fact to implement EU obligations. So we are talking about a law that was done in 1999, a law that was done in respect of working time, we see this new law as coming in on the basis that further progress has been made in the European Union in extending working time freedom in terms of what the

employer may or may not require an employee to do, and I think we need to remember that in fact the Working Time Directive finished up in the European Union being done as a health and safety measure. It is conceivable that one could argue that a particular job might be considered to be more dangerous to a 17 years old than to a 19 years old, but I do not know whether there is any logic to that. But if the implication is that, our school leaving age is 15, nobody is allowed to employ somebody under 15, effectively we are saying once the guy hits 16, after the first year in employment it is all right if he does unhealthy, immoral and dangerous work. I will give way to the Chief Minister.

HON CHIEF MINISTER:

Yes, and I would immediately agree on the immoral but I am not sure there is any age at which immorality is okay. I would not like to debate with the hon Member whether it should be 16, 18 or any age. My view is that immorality is immorality regardless of the age. Now the consultation process that I related to, I think derives the need for it would derive from what I think lies at the bottom of this. It is the words unhealthy or dangerous which could be, by raising the age of the previous section 12 to 18, we could be excluding young persons aged between 15 and 18 from a whole range of activities, jobs in the market, which may be unhealthy and may be dangerous, which is a very relative term which would then have to be very carefully defined to make sure that we are not excluding our 17 year olds for example, from being employed in the Buildings and Works Sewers Department, which is dangerous, I mean going down a drain is not an undangerous thing. If dangerous is anything that imports any degree of danger, there are many jobs that have a degree of danger. Then we would have to have a consultation about just what jobs in the economy fall on the wrong side of the definition of unhealthy and dangerous, from which we would at a stroke be excluding all 16 and 17 year olds. I am not saying that that is an impossible thing to do, but it requires careful consideration. In other words, one would first have to understand the full impact of the effect of what one is doing and it is not the sort of measure

that one could introduce without first being sure, because we cannot just consider dangerous to be things which are obviously very dangerous, the definition of dangerous is I am sure to be struck lower for the purposes of the directive. Whether the Working Time Directive placed this at 16, and I am now speculating, because that is the age at which one can be recruited into armed forces for example, and I suppose if the Working Time Directive was struck at 18, then the concept of the cadets or the boy soldier would be excluded because I suppose whatever debate might take place about what is the definition of unhealthy or dangerous in the context of activities, I think we would all probably immediately agree that serving in the armed forces is intrinsically dangerous. Therefore, before the Government might consider raising the age of restricting unhealthy, immoral or dangerous activities to people above the age of 18, we would have to be satisfied following a careful study, that we were not inadvertently making it unlawful for young people to obtain certain types of employment which they have traditionally climbed onto the ladder of so to speak, at the junior level, post 16 school leaver. The sort of work that school leavers in Gibraltar that do not go into further education, have historically aspired to do. If the House would like further information on this the Government would be happy to carry out that exercise, that study, to see just what the implications of that would be and we can debate it at a later date. But we certainly would not think it safe to amend the legislation in the way the hon Members propose, without that study and without understanding what the exclusion implications would be.

HON J J BOSSANO:

We have not actually moved an amendment, we have just flagged the issue because it seems an obvious thing to do, given that if this is amending an Ordinance that we debated in this House on 21st September 1999, what we have done is gone back to the Hansard of that debate. We find that there is an unaddressed issue that we raised then. Obviously it has been overlooked but I think, given the fact that it is now five years

since we last raised the matter, we are raising it again today because the opportunity exists again. I take the point the Chief Minister has said that why should something that is dangerous to the morals of the persons employed be limited to 18. Well, look, we did not draft this, it was the Government that did so they were the ones who decided, apparently, that they should protect the morals of 16 years old and not 17 year olds. I dare say that there are people who will think that being a soldier is not a very moral thing, apart from it being dangerous to health and to life. So it is a peculiar clause in our legislation, something that the society or the parliament considers affects the morals of the people employed therein should be age barred at 16. It may well be that the 16 years old has come into this law because in other places, particularly in the United Kingdom, compulsory education is until the age of 16, but ours is till 15. So if in fact what we are doing here is saying one cannot employ a 16 years old because we have followed, maybe something comparable in the United Kingdom, where at the age of 16 one cannot be employed at all, then in our case it should not apply because people are able to take up apprenticeships at 15. So everything the Chief Minister has said, which is really speculative because the Government do not really know why it is there, but if one argues "well look, you might be stopping somebody at the age of 16 from entering into an apprenticeship on a building site, or in the ship repair yard, well look exactly the same thing in our case applies to a 15 year old. Given that at the age of 15 people can leave school and enter into vocational training." I believe certainly the Government should take a look at this and try and find a rational explanation and perhaps there is not.

Mr Speaker, my Colleague has drawn my attention to the fact that, which was the point made by Pepe Baldachino by the way in 1999 when we debated it, which is he was arguing then, how can it be that in the Employment Ordinance we put a restriction on employment in industrial undertakings, and we say no child shall be employed in an industrial undertaking which carries activities dangerous to life, health or the morals of the persons employed. Here it is 18. So how can we say in the Employment Ordinance that a child may not be employed in an industrial

undertaking which is carried in a way which is dangerous to life, health or morals. So obviously this is something that has a longer tradition than the EEC and yet in this one, on the Working Time Directive, we are saying no person under the age of 16. Well look, if one employs somebody between 16 and 18 on the basis that one is permitted to do it by the Working Time Directive, one would still be acting illegally under the Employment Ordinance. That was the point made in 1999 and in fact that appears to be the case and I certainly think that needs to be looked at because if that is indeed the case then in fact, even if we do not change the existing law, presumably the Minister's Employment Department would be in a situation where they would have to prosecute employers who would not be in breach of section 12 of the Working Time Directive but would be in breach of section 30 of the Employment Ordinance. If that is indeed the case, certainly it is very peculiar.

HON DR B A LINARES:

Mr Speaker, first of all I am glad the Opposition Members are voting in favour of this amendment because it includes important issues of social legislation affecting the welfare of working people, particularly young working people. My contribution to the debate which has ensued in terms of consistency between one Ordinance and the other, I perhaps rather simplistically take the view that this current legislation that we are putting before the House, is simply protection for young working people in terms of working time. The fact that section 12 of the existing current Working Time Ordinance provides additional protection for under 16s in terms of health and danger to life, I would think it is quite logical. I would say that under 16s are more exposed to these dangers than the 16 to 18 year olds, and one thing does not necessarily contrast with the other. As regards the small point raised by the Leader of the Opposition about vocational training, contrasting it with actual work in say Buildings and Works, vocational training of course is a monitored and supervised and protected form of training rather than just actually being involved

directly in the operation task of a job, which could be much more dangerous. I think that is as much as I have to say.

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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

Question put. Agreed to.

**THE EMPLOYMENT (ARCHITECTS) (EEA QUALIFICATIONS)
(ACCESSION COUNTRIES) (AMENDMENT) ORDINANCE
2004**

HON DR B A LINARES:

I have the honour to move that a Bill for an Ordinance to amend the Employment (Architects) (EEA Qualifications) Ordinance, in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is necessary because of the enlargement of the European Union, to include 10 new countries. The countries, as already stated are, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic. These countries joined the European Union on 1st May 2004 and this Bill amends the Employment (Architects) (EEA Qualifications) Ordinance 1996 in order to make provision for those countries. The amendments are as follows. Clause 2 includes a new section (3), which explains the references to articles in the Schedule as being references to the appropriate articles in the Architects Directive. Clause 3 amends the definition of an EEA State in section 3 of the Ordinance, in order to take into account the new Accession Treaty. Clause 4 has the effect of dividing the Schedule to the Ordinance into two parts. Part 1 is amended to include the entries for the new Member countries, and to explain which qualifications in this field are recognised. The new Part 2 deals with specific aspects relating to qualifications issued in a number of the new countries. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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

Question put. Agreed to.

THE GIBRALTAR HEALTH AUTHORITY (COMPLAINTS REVIEW PANEL) ORDINANCE 2004

HON LT COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to make provision for the appointment of an Independent Review panel to consider complaints from users of the medical and health services provided by the Gibraltar Health Authority, to give such users the right to refer their complaints to the independent review panel, to regulate the function thereof, and for purposes connected therewith, 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 Government have publicly announced that they have accepted the recommendations of the Health Care Review Development Team, for a new transparent, speedy and effective complaints process for the GHA. The first stage of that complaints process is internally operated by the GHA and

provides for two types of complaints. Firstly, an oral, informal complaints process and, secondly, a written, formal complaints process. It requires the GHA to provide a full response to written complaints by a maximum period of eight weeks, in complex cases, and 20 days in non complex cases. This new complaints process is important for patients and their families who rightly want their complaints dealt with thoroughly, effectively and quickly. But it is also important for GHA to ensure that it learns from its mistakes and takes timely and effective remedial action to avoid repetition of errors. The Government are therefore introducing a second stage to the GHA complaints process, a review stage, which will be operated externally to the GHA by an independent panel of people, exercising statutory powers of investigation, similar to those employed by the Ombudsman. This will ensure that the complaints do not remain blocked within the GHA, and are open to external independent review. The aim of this independent review stage is to ensure a truly transparent process, that is subjected to external independent scrutiny. It will allow any person who has made a formal written complaint under the GHA complaints process, to ask for their complaint to be referred to this independent review panel. The conditions of referral are as follows :-

Firstly, failure of the GHA to provide a full and final response within eight weeks. Secondly, dissatisfaction with the outcome. A request for a review panel will not be considered in the following circumstances. Firstly, where the complaint is the subject matter of litigation, or where an intention to litigate against the GHA has been expressed. Secondly, where the complaint refers to an action which reflects, implements or complies with any policy of the GHA or the Government.

Mr Speaker, for this purpose the Bill before the House, if passed, will set up the Gibraltar Health Authority Complaints Review Panel Ordinance, which will give the panel wide-ranging legal powers of access to witnesses and to documents. The main provisions of the Bill can be summarised as follows. Part 2 of the Bill gives the Minister of Health powers to appoint people by notice in the Gazette, to a general panel. Part 3 of the Bill covers

the procedure for the investigation of complaints. Any person who has made a formal, written complaint under the GHA's own complaints process, and who has not received a final response from GHA within eight weeks of having made it, or if not satisfied with the response received and asked the Ombudsman to appoint a review panel to investigate the complaint. Such a request for the appointment of the review panel must be made within 28 days of receipt by the person aggrieved, of the GHA's final written response to the complaint. The Ombudsman may authorise the investigation by the review panel of the complaint not referred within this time period, if he considers that there are special circumstances to be considered. However, the Ombudsman shall not do so more than three months after the date of the GHA's final response to the complaint. On receipt of such a request, the Ombudsman will appoint within seven days, three persons from the general panel appointed by the Minister, to constitute a review panel to conduct an investigation into the particular complaint.

When requested by the review panel, the Minister will appoint an independent clinical assessor to advise the panel on clinical issues arising from the complaint. The review panel so nominated by the Ombudsman must convene and initiate its investigation within 14 days of its nomination, must conclude the investigation within 12 weeks and must send a written report to the parties within 14 weeks. If the review panel is unable to complete the investigation within the time stipulated, it shall nevertheless produce its report stating the reasons why it has been unable to complete its investigation. The review panel will have all the powers enjoyed by the Supreme Court to call witnesses and demand the production of evidence and all records. The GHA has to provide all medical records and cannot claim confidentiality. GHA staff have to cooperate with the review panel. However, the panel is not a tribunal. It will be an offence to obstruct the panel in the conduct of its investigation. 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 of the Bill, as the Minister has indicated and as indeed it makes clear in the explanation on the face of the Bill itself, this is the result of the recommendation of the Health Care Review Development Team, which the Government have accepted and decided to implement. The House is aware that we hold a different view from the Government on the Health Care Review Development Team, and therefore, as far as we are concerned, we shall abstain on this Bill and monitor its progress and see whether in fact it brings about the improvements that the Government are apparently hoping will result from the introduction of this further system of investigating complaints. On the details of it, it is not something we are concerned with, the principles.

HON CHIEF MINISTER:

I think the Government wish to record their views on the position being adopted by the Opposition. In other words, they do not say whether they think it is a good idea or a bad idea that patients of the Health Authority should have the opportunity to have their complaints assessed externally. They express no view on that one way or the other despite the fact that they spent the last four years chastising the Government for not giving them a proper opportunity to do so. They abstain, not on the grounds that they object, that they agree, or that they are not sure whether they agree or not, on the grounds that it is the fruit, it is a recommendation of a review which they do not approve of. In other words, because they do not approve of the Health Review, they are going to abstain on a piece of legislation which does something which can only be positive, because it is the result of the review. I think that public opinion in Gibraltar is entitled to have that extraordinary lack of logic brought into sharp focus.

The Hon Members could abstain on the grounds, for example, that they support part of the principles of the Bill but do not support some of the principles in other parts of the Bill. But to

abstain to legislation designed to give the users of the Health Authority the sort of right of recourse, externally administered and monitored, on the same basis as the Ombudsman has powers, against the administration, to fail to support that, not on the basis that there is something in the Bill that the hon Members do not like, but rather because it is the fruit of the Health Review which they say they disapprove, even though they press the Government to publish the reports. Well look, I do not see how the hon Members can disapprove of the review, nevertheless call the Government to publish the reports, cross-examine, rightly in our opinion, the Government on and ask dozens of questions on the basis of the report. But when it comes to bringing legislation to the House, to introduce one of the measures that were recommended, they abstain. Not because they are opposed to the measure, but simply because it reflects a recommendation of the House. I think that it is regrettable that the hon Members are not willing to consider this legislation on its merits or demerits. The hon Members may have views about this section or that section, or this part or that part, that is what the legislative process is about. But I think that simply to not express a view one way or the other, because this is linked to the review, I think with the greatest of respect to them, is an extraordinary position. Unless the hon Members' inability to comment on the Bill is due to the fact that their spokesman for health happens to be absent from the House today. If that had been the case, the Bill might have been rescheduled for another occasion. In fact, a bit difficult, because we are running out of time now before the August ceremonial. But certainly the Government regret that the hon Members appear not to be willing. It is a matter of regret to the Government that the hon Members do not wish to address the content of the Bill, for the reason that the hon Member has expressed. I will give way to the hon Member.

HON J J BOSSANO:

Mr Speaker, since the Chief Minister has chosen to make reference to the fact that the Opposition spokesman on health is not present, I think for the record and for the information of the

public, my Colleague wrote to you saying that since the Leader of the House had first indicated that we were coming back on 4th August, she had arranged to be away from Gibraltar and that then subsequently, when the date was changed, she was not able to make the arrangements and indeed at the time, this Bill had not been published. Let me say that I am just saying that in case the reference to her absence should be misunderstood or misinterpreted. It would not have altered the position had she been here, and all that I have said is that I understand that because it has been recommended, they have decided to proceed with its implementation. We would not be under any such obligations since we would not have set up the machinery they have set up in the first place. What I have said is that we are abstaining because we will wait and see whether in fact if this works or not. We have our own views on whether it will work but we will give it the benefit of the doubt. It seems that even that is too harsh a judgement for the Chief Minister who feels obliged to attack, even when he is not attacked. So be it.

HON CHIEF MINISTER:

No, that is not correct if the hon Members wish to allow legislation in this House to proceed without them even looking at it, on the basis that they think that the Government are bringing it in some sort of robotic form, as a result of the recommendation of the Health Review Team, I think this House is not doing its legislative work properly. Of course it would get through the House by Government majority. We know that and they know that, and he is wrong when he says this is not a question of attack or not being attacked, I am criticising the Opposition Members for adopting the stance that they have adopted. That is to say, I abstain, not because I agree or disagree with this or that section of the Bill, but I abstain because it is the result of the Health Review Team's recommendations. I think that that posture by the hon Members is worthy of criticism. If the hon Member wishes to use a motion or language to suggest that I have attacked him, if that is his definition of attack, then I think it is attack well made. But he is wrong, even if his reasons, which

are themselves wrong, for the position that he has adopted. This legislation is not brought by the Government because it has been recommended. We have explained in this House, various times now, that the procedure is that the review team after consultation, makes recommendations. The Government receive the recommendations and consider whether they accept them or not. If we accept them we implement them, and if we do not we say why we are not accepting and implementing them. He has had that explanation several times and therefore, this is not brought to the House because it has been recommended, it is brought to the House because it has been recommended and following its recommendations, the Government have considered the recommendations and have made the decision to accept them. Now, that is not converting the House, or rather allowing the recommenders to be the legislators which is what is implicit in the hon Member's articulation of his reason, they make recommendations, for example he will see soon that there is a recommendation that they are making which we are not accepting, and that we would much enjoy explaining to him why we will not be accepting a particular recommendation in a particular work stream. Therefore, all that I would say to the hon Members, despite the fact that they do not appear to wish to address the substantive provisions of the Bill, just to add to what the Minister has said, the hon Members if they have read the Bill, may have noticed that it follows very closely the regime of the Ombudsman legislation. It is really the Ombudsman's Bill tailor made to a medical review panel and in effect, creates a medical ombudsman for complaints but in corporate form rather than in individual form. In other words, instead of a complaints, at the moment one makes a complaint to the Ombudsman against a particular Government department and it is investigated by one person. This is a panel of three people, selected by the Ombudsman on a case by case basis from a longer list of people to be appointed by the Minister. I think that the hon Members, whatever they may think the provenance of the suggestion might be, should welcome the fact that this Bill hugely empowers the user of the Health Service, and their families, when dealing against a much larger and much more powerful body than them. That is something that should be either welcomed or not

welcomed on its merits but not ignored on the basis that it is the fruit of a process that they do not approve of.

HON LT COL E M BRITTO:

I will just reiterate that I share the Chief Minister's opinion in everything that has been said. What I will highlight is my own regrets, for whatever the reason that the Opposition Member for Health is not here, because I would have been looking forward to hearing, she who is so ready to criticise, to hear her opinion on the merits of the Bill. I do not accept the reasons given by the Opposition as sufficient grounds for not addressing the content of the Bill, and I think to boot, to say at the end that the intention is to wait and see if it works, or words to that effect, is just adding insult to injury. Government present a Bill, the Opposition should take a position on the merits of the Bill and on the Bill itself, whether they agree with the principles of it or not. But to abstain is tantamount to saying, although maybe it is not the intention, but it is tantamount to saying, well if it works we will then agree with it and if it does not work we will then criticise it. It is a matter of personal regret because there has been a lot of work put into developing, designing and producing this complaints process and the review stage that we are dealing with. It is being done with the interests of the patients and the interests of the public at large and not with the interests of the Minister or the GHA. Anyone who reads this Bill can see for themselves that it gives the complainant, or the future complainant, great rights, a way of dragging the GHA, and if necessary the Minister, if the Minister is at fault, one would expect that not to be the case, it would be more a question of clinicians or staff, but it gives the future complainant the ability to pursue the complaint to the end and get to the bottom of it. It denies the GHA any possibility of trying to hide or trying to produce any smokescreen. So in that sense, it is a matter of profound disappointment to me as Minister for Health, that the Opposition is not jumping up in glee and accepting the principles of the Bill, and backing it because I stress that it is designed to protect the interests of the patient and the interests of the public.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

Abstained: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon L A Randall

Absent from the Chamber: The Hon F R Picardo
 The Hon Miss M I Montegriffo

The Bill was read a second time.

HON LT COL E M BRITTO:

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

Question put. Agreed to.

THE ANIMALS AND BIRDS (AMENDMENT) ORDINANCE 2004

HON F VINET:

I have the honour to move that a Bill for an Ordinance to amend the Animals and Birds Ordinance to give further effect to Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EC as amended by Commission Regulation (EC) No 592/2004 of 30 March 2004 amending the Regulation (EC) No 998/2003 of the European Parliament and of the Council as regards the lists of countries and territories and for other purposes related to the Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this short Bill amends the existing Ordinance in order to give further effect to Regulation (EC) No. 998/2003 of the European Parliament and of the Council of 26 May 2003, on the animal health requirements applicable to the non commercial movement of pet animals and amending Council Directive 92/65/EC as amended by Commission Regulation (EC) No. 592/2004 of 30 March 2004, amending Regulation (EC) 998/2003 of the European Parliament and of the Council as regards the list of countries and territories. We have also taken this opportunity to modernise and clarify the language of the existing Ordinance. Regulation (EC) No. 998/2003 contains

provisions relating to the movement of pet animals between Member States of the European Union and into the European Union from third States. The term pet animal is defined in the Regulation and is to dogs, cats, ferrets, invertebrates and tropical fish, birds (except poultry), rodents and domestic rabbits. The amendments introduced by the Bill are as follows. Section 2A introduces a number of new definitions in order to reflect the requirements of the Regulation and to modernise and clarify our legislation. The definition of Government veterinary practitioner is consistent with our medical legislation. The definition of vaccination comes from Regulation (EC) No. 998/2003. Section 2B changes the word Governor to Minister for the Environment to reflect the fact that animals and birds are defined domestic matters. Sections 2C and 2D modernise the wording of the old ones. Section 2E clarifies that a dog licence will be required for every dog which is kept in Gibraltar for over three months. Section 2F increases the level of penalties which may be imposed by the Rules made under the principal Ordinance. Sections 2G and 2H contain provisions giving further effect to Regulation (EC) No. 998/2003. In particular, it gives authorised officers the powers to require persons entering Gibraltar with animals to prove that they comply with the Regulation. Section 2I inserts a power to make rules for the purposes of complying with European Union obligations.

Mr Speaker, I give the House notice that rules relating to importation of animals and birds into Gibraltar, contained in subsidiary legislation, will also be changed in order to comply with Regulation (EC) No. 998/2003. We shall be publishing the Animals and Birds Rules (Amendment 4) (Importation of Birds, Poultry and Hatching Eggs) Rules 2004 and the Cats and Dogs Notice 2004. The effects of the Regulation, the Bill and the new Rules to be published in the future, will be that an importation licence will no longer be required to import pet animals into Gibraltar, where those animals comply with the requirements of the Regulation. However, an importation licence will still be required for commercial importation and importation of non pet animals. In addition, a person who seeks to bring a pet animal into Gibraltar, which is under the age of three months and

unvaccinated, will require the written authorisation of the Environmental Agency. To recap, this short Bill will enable us to meet our European obligations with regards to the movement of pet animals within and into the European Union and to clarify and modify our legislation. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, as the Minister has said this Bill stems from an EU requirement and is a straightforward piece of legislation, so the Opposition have no difficulty in supporting it.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) (AMENDMENT) (EU ACCESSION COUNTRIES) ORDINANCE 2004

HON F VINET:

I have the honour to move that a Bill for an Ordinance to amend the Insurance (Motor Vehicles) (Third Party Risks) Ordinance in connection with the accession of the Czech Republic, the Republic of Hungary, and the Slovak Republic to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING:

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this simple Bill introduces one amendment to our existing Ordinance, namely that the words Czechoslovakia and Hungary are deleted from the definition of relevant foreign State. The amendment is needed as a result of the Accession Treaty, by virtue of which the Czech Republic and the Slovak Republic, that is the old Czechoslovakia, as well as Hungary, became Members of the European Union on 1st May 2004. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

THE VETERINARY SURGEONS (EEA QUALIFICATIONS) (ACCESSION COUNTRIES) (AMENDMENT) ORDINANCE 2004

HON F VINET:

I have the honour to move that a Bill for an Ordinance to amend the Veterinary Surgeons (EEA Qualifications) Ordinance 1996, in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is necessary because of the

enlargement of 1st May 2004 of the European Union, to include the 10 new countries just defined. This Bill amends the Ordinance to make provision for those countries. The amendments are as follows. Clause 2 amends the definition of an EEA State in section 3 of the Ordinance, in order to take into account the new Accession Treaty. Clause 3 has the effect of splitting the Schedule to the Ordinance into two parts. The existing Schedule, which lists the titles of recognised qualifications and the awarding body of each Member State becomes Part 1, and is amended to include the new countries. Part 2 deals with specific aspects relating to qualifications issued in a number of the new countries. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

The House recessed at 11.50 am.

The House resumed at 12.05 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 Development Aid (Amendment) Bill 2004;
- (2) The European Communities (Amendment) (Accession Countries) Bill 2004;
- (3) The Interpretation and General Clauses (Amendment) Bill 2004;
- (4) The Supreme Court (Accession Countries) (Amendment) Bill 2004;
- (5) The Working Time (Amendment) Bill 2004;
- (6) The Gibraltar Health Authority (Complaints Review Panel) Bill 2004;
- (7) The Employment (Architects) (EEA Qualifications) (Accession Countries) (Amendment) Bill 2004;
- (8) The Animals and Birds (Amendment) Bill 2004;
- (9) The Insurance (Motor Vehicles) (Third Party Risks) (Amendment) (EU Accession Countries) Bill 2004;
- (10) The Veterinary Surgeons (EEA Qualifications) (Accession Countries) (Amendment) Bill 2004;
- (11) The Income Tax (Amendment) Bill 2004.

THE DEVELOPMENT AID (AMENDMENT) BILL 2004

Clauses 1 and 2 and the Long Title

Question put. The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

Abstained: The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon L A Randall

Absent from the Chamber: The Hon F R Picardo
The Hon Miss M I Montegriffo

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

THE EUROPEAN COMMUNITIES (AMENDMENT) (ACCESSION COUNTRIES) BILL 2004.

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

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 2004

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

THE SUPREME COURT (ACCESSION COUNTRIES) (AMENDMENT) BILL 2004

Clauses 1, 2 and 3 and the Long Title – were agreed to and stood part of the Bill.

THE WORKING TIME (AMENDMENT) BILL 2004

Clauses 1, 2 and 3 and the Long Title – were agreed to and stood part of the Bill.

THE GIBRALTAR HEALTH AUTHORITY (COMPLAINTS REVIEW PANEL) BILL 2004

Clauses 1 to 20 and the Long Title –

Question put. The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares

The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

Abstained:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon L A Randall

Absent from the Chamber: The Hon F R Picardo
The Hon Miss M I Montegriffo

Clauses 1 to 20 and the Long Title – stood part of the Bill.

**THE EMPLOYMENT (ARCHITECTS) (EEA QUALIFICATIONS)
(ACCESSION COUNTRIES) (AMENDMENT) BILL 2004**

Clauses 1 to 4 and the Long Title – were agreed to and stood part of the Bill.

THE ANIMALS AND BIRDS (AMENDMENT) BILL 2004

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

Clause 2

HON F VINET:

There is a minor amendment at sub-section (h). The reference to the words “the EC Regulations” ought to read “or the EC Regulations”. The effect would be that section 23 would read “by

this Ordinance or the EC Regulations”. So therefore, the inclusion of the word “or” prior to the word “the” within the apostrophes.

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 INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) (AMENDMENT) (EU ACCESSION COUNTRIES) BILL 2004

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

THE VETERINARY SURGEONS (EEA QUALIFICATIONS) (ACCESSION COUNTRIES) (AMENDMENT) BILL 2004

Clauses 1 to 3 and the Long Title – were agreed to and stood part of the Bill.

THE INCOME TAX (AMENDMENT) BILL 2004

Clauses 1 and 2 and the Long Title –

Question put.

The House Voted.

For the Ayes:

The Hon C Balban
The Hon Lt Col E M Britto

The Hon P R Caruana
 The Hon Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

Abstained:

The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon L A Randall

Absent from the Chamber:

The Hon F R Picardo
 The Hon Miss M I Montegriffo

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that:

- (1) The Development Aid (Amendment) Bill 2004;
- (2) The European Communities (Amendment) (Accession Countries) Bill 2004;
- (3) The Interpretation and General Clauses (Amendment) Bill 2004;
- (4) The Supreme Court (Accession Countries) (Amendment) Bill 2004;
- (5) The Working Time (Amendment) Bill 2004;
- (6) The Gibraltar Health Authority (Complaints Review Panel) Bill 2004;

- (7) The Employment (Architects) (EEA Qualifications) (Accession Countries) (Amendment) Bill 2004;
- (8) The Animals and Birds (Amendment) Bill 2004;
- (9) The Insurance (Motor Vehicles) (Third Party Risks) (Amendment) (EU Accession Countries) Bill 2004;
- (10) The Veterinary Surgeons (EEA Qualifications) (Accession Countries) (Amendment) Bill 2004; and
- (11) The Income Tax (Amendment) Bill 2004;

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.

- (1) The European Communities (Amendment) (Accession Countries) Bill 2004;
- (2) The Interpretation and General Clauses (Amendment) Bill 2004;
- (3) The Supreme Court (Accession Countries) (Amendment) Bill 2004;
- (4) The Working Time (Amendment) Bill 2004;
- (5) The Employment (Architects) (EEA Qualifications) (Accession Countries) (Amendment) Bill 2004;
- (6) The Animals and Birds (Amendment) Bill 2004;
- (7) The Insurance (Motor Vehicles) (Third Party Risks) (Amendment) (EU Accession Countries) Bill 2004;
- (8) The Veterinary Surgeons (EEA Qualifications) (Accession Countries) (Amendment) Bill 2004;

were agreed to and read a third time and passed.

- (1) The Development Aid (Amendment) Bill 2004;
- (2) The Gibraltar Health Authority (Complaints Review Panel) Bill 2004; and
- (3) The Income Tax (Amendment) Bill 2004.

The House voted.

For the Ayes:

The Hon C A Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

Abtsained:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon L A Randall

Absent from the Chamber:

The Hon F R Picardo
The Hon Miss M I Montegriffo

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 4TH August 2004, at 12.00 noon.

Question put. Agreed to.

The adjournment of the House was taken at 12.20 pm on Monday 26TH July 2004.

WEDNESDAY 4TH AUGUST 2004

The House resumed at 12.00 noon.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

IN ATTENDANCE:

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

MOTIONS

HON CHIEF MINISTER:

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

- (1) Acknowledges the sustained and persistent support over many decades of Lord Hoyle (Douglas Hoyle) and Lord Bethell (Nicholas Bethell) for the aspirations and interests of Gibraltar and its people, and their defence and promotion within and without the House of Lords,
- (2) and in recognition thereof and gratitude therefore resolves to bestow on them the Honorary Freedom of the City of Gibraltar."

Mr Speaker, Lord Hoyle was first elected to Parliament in 1974 as Member for Cole and Nelson in Lancashire. His interest in the defence of the people of Gibraltar can be traced back to his early Parliamentary days and his forthright support in the defence of the wishes of Gibraltar and its people continues to this very day. During his Parliamentary career, both in all the posts that he has held most notably as a member of the Labour Party National Executive, as Chairman of the Parliamentary Labour Party and as a Member of the Shadow Cabinet, Lord Hoyle has always been true to the defence of and respect for the rights and aspirations of Gibraltar and its people. Lord Hoyle, Doug Hoyle to his very many friends in Gibraltar, is a regular visitor to us, and has developed many, many friendships here. Not content with having systematically stood up for Gibraltar and

its interests and concerns, he has made sure that the torch is passed to his son Lindsay Hoyle, Member of Parliament in his own right and who is with us here today. And Lindsay, like his father, has shown a huge respect and support for Gibraltar and its people, and Gibraltar indeed has much to be grateful to the Hoyle family for.

Mr Speaker, Nick Bethell, Lord Bethell, is also well known to the whole of Gibraltar as one of our foremost supporters and defenders, in common and in like manner as Lord Hoyle. He has been known for not just his steadfast issue after issue defence of Gibraltar, its problems, its wishes, its aspirations, but also for the conduct of specific campaigns on behalf of Gibraltar, as has been his almost tireless efforts on our behalf to secure our enfranchisement at the European Elections, and I know that he will have been delighted to have seen us participate in those Elections for the first time in the recent European Parliamentary Elections. Nick Bethell also has, in all the positions that he has held, in all the Parliaments that he has served in, which is not just the House of Lords but also the European Parliament, shown every regard and consideration for Gibraltar and its people, and has always been willing to take up the cause of a people that he has always believed to have been less able to defend their rights than those that would attack them had power themselves and has always sought, to the measure of his ability, to redress that balance.

Mr Speaker, both Lord Hoyle and Lord Bethell have put principle over expediency. Both have put democracy over size or geographical considerations. Both have often put Gibraltar and its interests before their own party political loyalty. Both are true friends of Gibraltar. We can ask no more of people than these two honourable men have done for us over many, many decades. It is right now that we should honour them by giving them the highest accolade the Gibraltarians can give, which is the Freedom of this our Beloved City and homeland, that they should both live for very many years to come to enjoy that freedom, and Gibraltar will be very fortunate indeed if they both continue to defend and protect our interests as they have done

until now. I much look forward, following the adoption of this motion by the House, that on 10th September they will both come in person to receive the Freedom of the City, and thereby enjoy and experience the opportunity of allowing the people of Gibraltar to demonstrate to them gratitude as only the people of Gibraltar know how to express. I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the motion which has been of course the subject of prior discussion between the two sides of the House, is one that gives me enormous pleasure to support, since I happen to have shared much of my years of political involvement in defence of Gibraltar, with both Nicholas Bethell and Dougie Hoyle. In fact, in Dougie Hoyle we have somebody whose interest in Gibraltar has been there through the Trade Union movement and through the Labour Party, even before he was able to help us as a Member of Parliament and now in the House of Lords. It is also very gratifying that Lindsay, his son, has followed in his father's footsteps. It is something that we in Gibraltar attach a great deal of importance to, because we ourselves transmit our views on the future of Gibraltar to our grandchildren and children, as we ourselves have inherited from past generations of Gibraltarians. Therefore, it is a good example that the Hoyle dynasty is giving Gibraltar that we recommend to our many other friends in the United Kingdom, that have defended us over the years.

Nicholas Bethell of course, was coming to Gibraltar, was a close friend of Sir Joshua Hassan, his involvement in Gibraltar I think, was due to Sir Joshua, and he was instrumental in the creation of the Parliamentary representation group that we have in the European Parliament, in all the years that we were seeking the right to vote, which he defended totally. It is also important that the motion before the House represents the fact that the Friends

of Gibraltar in the United Kingdom encompass the whole political spectrum. That is as it should be, because the commitment to Gibraltar and to its people that there is in the United Kingdom, cuts across political affiliation at the level of the people of the United Kingdom, at the level of the electorate, and therefore it is right that Members of Parliament elected by the people of the United Kingdom, irrespective of which party they belong to, should defend what their constituents defend, which is the right of our people to retain our links with the United Kingdom, the links we shall be recognising in the subsequent motion on the Order Paper. Although Lindsay and Dougie Hoyle are our friends as a family, and they have got a family relationship with us, and Nicholas Bethell is someone that has been with us so long that it is long overdue that the recognition be there, they are only two of many friends that we have. In fact, if we were really to recognise all the friends, all the supporters, all the people that are with us in the United Kingdom, we would have to be sitting permanently in this House granting the Freedom of the City to many others. Therefore it is with enormous satisfaction and pleasure that we welcome this motion in the House and we welcome the opportunity to speak in its support and to vote in its favour.

Question put.

The motion was passed unanimously.

JOINT MOTION

HON CHIEF MINISTER:

I beg to move, on behalf of myself and the Leader of the Opposition, the motion standing in our joint names and which reads:

"This House, the Parliament of the People of Gibraltar, with pride and satisfaction, this 4th day of August 2004:-

1. Commemorates and celebrates the 300th Anniversary of British Sovereignty of Gibraltar following the events of 4th August 1704;
2. Expresses its warmest appreciation to Her Royal Highness The Princess Royal for her recent visit to share with the People of Gibraltar this important landmark in Gibraltar's history;
3. Remembers with gratitude the courage of the many generations of British servicemen who from 1704 to date have defended, and served in, Gibraltar and celebrates the close links between Gibraltar and the British Armed Forces;
4. Remembers with gratitude previous generations of Gibraltarians whose suffering, sacrifices, courage and determination established Gibraltar as the homeland of the Gibraltarians;
5. Remembers with appreciation and affection the many fruits of our 300 years of British Sovereignty and the mutually beneficial relationship between Gibraltar and United Kingdom;
6. Pledges to resist and oppose any discussion or negotiation against the wishes of the people of Gibraltar for the transfer to Spain of any part of the Sovereignty of Gibraltar;
7. Asserts the inalienable right to self determination of the people of Gibraltar and calls upon the British Government and the Spanish Government to respect this right, which precludes them from negotiating our future other than at our request and with our consent;

Looks forward to the modernisation of the relationship between Gibraltar and the United Kingdom by the agreement of a new

de-colonising constitution providing the maximum possible level of self government and guaranteeing exclusive British Sovereignty over the whole of the territory of Gibraltar for so long as the people of Gibraltar should so desire it."

Mr Speaker, today is our 300th birthday. The tercentenary of British Sovereignty of Gibraltar and thus a hugely significant anniversary by any measure. Three hundred years is a long time, even in the history of nations. There are few countries in the world that have already celebrated their tercentenary. It is therefore entirely appropriate that this House should mark the occasion by this special tercentenary meeting.

On behalf of the Government I wish to express again, so that it may be recorded in Hansard, our warm appreciation and that of the people of Gibraltar for the recent visit of Her Royal Highness the Princess Royal to participate with us in the celebration of this tercentenary. Her Royal Highness continued with the visit despite the regrettable but usual protest from our neighbours. Gibraltar is part of Her Majesty's Realms and Dominions. Visits by members of her family to Gibraltar, therefore raise no issue which is the business of any foreign country. During the Princess Royal's visit I said to her, that grateful and delighted as we were for her presence as part of our tercentenary celebrations, what the people of Gibraltar wished was for another visit from the Queen, who has not visited here since 1954. Regrettably, I understand that successive British Governments have declined to advise Her Majesty that she should visit us. I do hope that this policy will change. I asked the Princess Royal to convey these sentiments to the Queen, and also to convey to Her Majesty the greetings and best wishes of the people of Gibraltar who are among her most loyal subjects. I understand that the Princess Royal has done exactly what she was asked. In turn, during her visit, the Princess Royal brought us the Queen's personal greetings and congratulations to Gibraltar on the occasion of our tercentenary.

Mr Speaker, history is history. The political and geographical map of the world today reflects the events of history. Some much more recent than 1704. Gibraltar cannot be made an

exception to this. Our history and the natural consequences of it, cannot be denied to us, nor our freedom and natural desire to celebrate and commemorate it. So, on this our tercentenary, we remember those British soldiers and sailors who gave or risked their lives in Gibraltar, in the summer of 1704. We remember also with gratitude the British soldiers and sailors who gave or risked their lives in the heroic defences and reliefs of Gibraltar during the 18th century. Finally, we remember those British armed service men and women, who in more recent decades have served in Gibraltar and formed a valuable part of our community.

The historical and current relationship between Gibraltar and the Armed Forces is legendary. We have been and continue to be a home from home for them. They in turn have provided the foundation upon which the people of Gibraltar have been able to build a viable, prosperous and modern economy and community. The Armed Forces remain a valued and valuable part of our community and of our economy. We hope that it will remain so for many, many centuries and indeed decades and centuries to come.

It is therefore entirely appropriate that we should welcome here today the Secretary of State for Defence Geoff Hoon. I believe that Geoff Hoon knows and understands Gibraltar and the aspirations of its people, and that he is a friend. I believe too that he appreciates the continued value of Gibraltar to the Armed Forces and to British defence interests for which he has the highest ministerial responsibility.

Just as it is appropriate that we should have among us today Sir Alan West, the First Sea Lord, who later today receives the Freedom of the City of Gibraltar for the Royal Navy as part of our tercentenary celebrations. A fitting but curiously overdue honour, given the Royal Navy's importance to every single day of Gibraltar's history, from 4th August 1704 to this very day. No single entity has been more ever present and important in Gibraltar's affairs than the Royal Navy. We welcome also Michael Howard, Leader of the Opposition, and Michael Ancram

Shadow Foreign Secretary. Their support for and commitment to Gibraltar has been well demonstrated and hugely appreciated by the people of Gibraltar. As is the support of so many Members of Parliament, from all its sides and all its political parties. We are blessed to enjoy cross party support in the House of Commons and elsewhere, on the scale that we do. It is important that this should continue to be so. Welcome then to you all, including of course Lindsay Hoyle, the Labour Member of Parliament for Chorley and Chairman of the All Party Gibraltar Group in the House of Commons, for his steadfast unselfish and often courageous stand in our defence.

Mr Speaker, on this very special day we remember also previous generations of Gibraltarians who have suffered and sacrificed much, and shown a resoluteness and determination, which we have inherited, and without all of which we would not have what we have and what we enjoy today. Life for Gibraltarians in a military fortress during the 18th and 19th centuries was not comfortable. There was much hardship. Even during the 20th century our forefathers endured living conditions and standards of living which are but a shadow of what we enjoy today. Let us remember too the war time evacuees. Men, women, children, displaced from their homes for years, often living abroad in wretched conditions, away from their beloved homeland and loved ones, and not knowing when or whether they would ever return. To their love for and commitment to their homeland and their gritty determination to return to it, we owe everything. Even though it is more recent and most of us lived through it, let our younger generations not forget the sacrifices and steadfastness of the closed frontier generations. All of this history has brought us closer together as a people, reinforced our identity and endowed us with a resoluteness and determination which is, to this day, and will always be, our best defensive shield and our guarantee of future prosperity and success as a community.

Gibraltar has always been a beacon of hope and liberty over suppression. It welcomed and provided a haven for Jews when others expelled and persecuted them. It was the only piece of continental Europe that retained liberty and democracy

throughout the entire Second World War. To this day we are, I believe rightly, known for our warmth and hospitality to visitors, for the genuine peaceful co-existence of people regardless of race, religion, ethnic origin or political view. These are things which are in our chemistry as a people and are the result of our history. We should be proud of that. We are a small country with a small population. Despite that, we have established a vibrant, self-sufficient economy in the face of adversity which underpins a just and extensive welfare State. We practice a modern and vibrant parliamentary democracy, we enjoy very extensive self-government. Of all these things too, we should be proud.

Mr Speaker, in our tercentenary year we commemorate and celebrate our 300 years of British Sovereignty and the many, many fruits of our relationship with Britain. Although the relationship has been mutually beneficial over the centuries, our own harvest from it has been huge. To it we owe our democratic values, our mature and vibrant political process, our systems of government, laws, administration of justice and education. To it we owe the huge amount of physical heritage that Gibraltar contains, and also our intangible heritage which we share in common with Britain.

Mr Speaker, to know who you are and where you are going, you must know and understand your history. Indeed, your history establishes your future rights and underpins your aspirations to the future. We are proud of our history. We make no apology for it and we will not allow others to disqualify it. So today, we do not just look back with gratitude to our past, but we also look forward with confidence into our future. A confidence based on the certain knowledge that our aspirations, based as they are in democratic principles and human rights, is unanswerable and right. We are small and lack political, economic or diplomatic power. But these handicaps strengthen rather than weaken our resolve to promote and defend our political rights as a people in the face of challenge and denial. We are fortified in our endeavour by the huge store of support that there is for Gibraltar

in Parliament and amongst ordinary citizens in the United Kingdom.

Gibraltar is not and should not be regarded by anybody as an irritating problem to be solved for reasons of political or diplomatic expediency. It is a case of democratic rights waiting to be fully respected by others. It is simply not the British way to put expediency over principle, to put geography over democracy or to put size over human rights. That is why I believe that Gibraltar enjoys the huge amount of support that it does in all corners of the United Kingdom. Apart from the fact, of course, that we are part of each others heritage.

So Mr Speaker, we will never betray or surrender our right to self-determination as a people. That is the right, our right, to freely and democratically decide our own future. If we choose as we do, to exercise that right to remain British, then all others in this democratic day and age must respect that, however much they may disagree. So today, when it carries the motion that we are debating, this House will have renewed our pledge to resist and oppose any discussion or negotiation against the wishes of the people of Gibraltar, for the transfer to Spain of any part of the sovereignty of Gibraltar. Our inalienable right to self-determination precludes all others from negotiating our future, other than at our request and with our consent. As one of our recent Governors, the late General Sir William Jackson said, and I quote him, "Gibraltar is neither Spain's to have nor Britain's to give away. It is the homeland of the people of Gibraltar".

Mr Speaker, the people of Gibraltar value and wish to retain their British sovereignty and their constitutional links with Britain. Constitutional links that we wish to modernise and thus bring about our decolonisation, which no international treaty prevents. If I could just depart from my prepared text, and report to the House that this morning I had a leading Foreign Affairs spokesman for the Spanish Government explain to the people of Spain over the radio, that there was a treaty, the Treaty of Utrecht, that prevented the decolonisation of Gibraltar unless it was handed over to Spain, that that is a wholly erroneous and

misconceived interpretation even of the Treaty of Utrecht that we regard as democratically irrelevant in the 21st century. The Treaty of Utrecht does not say, whatever the level of its present validity might be, the Treaty of Utrecht does not say that Gibraltar has to remain a colony or otherwise revert to Spain. Indeed Gibraltar was not a colony at the time that the Treaty of Utrecht was signed in 1713. Gibraltar did not become a colony until more than a hundred years later in 1830. The Treaty of Utrecht is simply not concerned with questions of colonisation and decolonisation. It is concerned, I repeat to the extent that it remains valid, it is concerned with sovereignty, not decolonisation. As we feel that it is perfectly possible to decolonise Gibraltar without surrendering British Sovereignty, which in any event we do not want to surrender, the decolonisation of Gibraltar is, not only not prevented by the Treaty of Utrecht, indeed the Treaty of Utrecht is wholly irrelevant to it, and it is symptomatic of the legal, political and democratic weakness of Spain's case in relation to Gibraltar that she has to misquote even the facts, in order to try and win support for her point of view.

Mr Speaker, we therefore look forward to engaging with Her Majesty's Government in such a process of constitutional reform and modernisation in the autumn of this year. We also value friendly and constructive relations with our neighbour, Spain, and are equally willing to work to maximise the opportunities in that regard. But between democratic peoples and countries, relations must be based on mutual respect and we hope that that will be possible in the future. We certainly are happy to commit to that process.

Finally Mr Speaker, I thank all those who have joined us in these celebrations. Particularly those of you who have done so in the face of controversy. No offence is meant to anybody by these celebrations but we cannot help it if offence is nevertheless taken. A clear distinction needs to be drawn between offensive behaviour on the one hand, and inoffensive, reasonable and proper behaviour on the other, from which others anachronistically, controversially and without justification choose

to derive offence where there is none. We will not apologise for our history of which we are proud, nor will we allow it or its celebration in these dignified ways, to be disqualified or spoilt.

Mr Speaker, before sitting down I wish to note and record the fact that this is the last sitting of the House over which you will preside. I wish to record the Government's thanks and appreciation for your eight years of service to this House, and indeed to the community as Mayor, I wish you every health and happiness in retirement. I commend the motion to the House.

Question proposed..

HON J J BOSSANO:

Mr Speaker, in moving this motion jointly with the Government, the text of which has been agreed beforehand, we are following in respect of our rights as a people, a tradition that has been there not just since the House of Assembly was created as a result of the last Constitution, but indeed that was there before under previous Constitutions. The motion gives this occasion the importance and the solemnity that it should have, and that it has, and that is reflected in the presence in the Gallery, the very welcome presence, of our Minister for Defence, Geoff Hoon, and of Michael Ancram and Michael Howard, and of course also of Simon Hughes, of the Liberal Party, reflecting the support that there is in the House of Commons, at all levels, and within all parties in the back benches. They are here to join us in celebrating something that we cannot get away from which appears to be what gives, in our view, unjustified offence to our neighbours.

There is only one thing that happened today 300 years ago. That is that Gibraltar was captured and that the Spanish flag was lowered, and that it has remained since that event, under British Sovereignty and that we, the people of Gibraltar, would not exist if the battle had gone the other way. Indeed, not just our own

history but probably a big chunk of European history would not have been the same. Gibraltar is not just a place that is very important for us but what happened 300 years ago was very important to the whole course of European history and of the history of the United Kingdom. All that has happened is that we came of age a very long time ago. All that has happened is that the course that was followed by successive British Governments in recognising the right of self-determination of the people that were the inhabitants of the British Colonies, whether they were people that were there already when they became colonies, or people that arrived after they became colonies, has led to the exercise of the right of self-determination in all cases except in ours.

We need to remember that in 1964, 40 years ago, the elected representatives of the people of Gibraltar, by unanimity, together with those that had served in the Legislative Council prior to the coming into effect on 10th September 1964 of the 1964 Constitution, jointly signed a document which has since been supported by the House of Assembly, in which in the clearest possible terms it was stated that the people of Gibraltar have the right to self-determination, and that the people of Gibraltar wanted to seek decolonisation by virtue of establishing an association with the United Kingdom which was not colonial and which retained British Sovereignty for as long as that was the wishes of the people. The concluding paragraph of the motion before the House today, effectively shows that in the 40 years we have not changed our mind, and that this House, like all previous Houses, is fully committed to ensuring that the sovereignty of Gibraltar remains exclusively British over the whole of the territory. This House rejects the concept which appeared for the first time in the text of the Brussels Joint Declaration, which purported to distinguish sovereignty as divided into two separate issues.

For us there is one issue and the issue is that this is our homeland, that we are a British people and that we are Gibraltarians, and that absolutely no one has got the right to debate or discuss our future, unless we want it. Therefore, the

United Kingdom Government has to acknowledge that indeed the intention of the Preamble of the Constitution, the spirit of the Preamble of the Constitution requires them not to make any move, however much some people may argue it is good for us, unless it is what we want and what we ask for. Ideally any such request, in our view, should carry the unanimous support of the House. But at the very least, it should have the full support of the majority party in the House, before the United Kingdom sits down with any foreign power to discuss the future of our homeland and the future of our people. The reason why we are taking this opportunity to say that in the context of a motion that celebrates our 300 year history, is because that history we owe to the United Kingdom and particularly, as the motion says, to the events that followed 1704 and to the many, many hundreds of servicemen that put their lives at risk and that sacrificed their lives to ensure the territorial integrity of our country, and to ensure the continuation of the Union Jack over our Rock.

For us it is very clear. Sovereignty is not discussable, let alone negotiable. It is interesting that in the latest statement by the Minister for Foreign Affairs of the Kingdom of Spain, he has just said that no one can deny the Gibraltarians the right to commemorate their own history. Well, it seems to us that that is a step in the right direction. At least they acknowledge that we have got the right to commemorate our own history. But what they do not seem yet to have come round to accepting, is that we have got the right also to write our future history. The future of Gibraltar is entirely in our own hands and the friends and defenders that we have in the United Kingdom, defend us precisely on the basis of that principle.

Mr Speaker, when the negotiating process was launched 20 years ago, in 1984, everything that affects us seems to end in 4 I do not know why. In fact, it was an agreement at referendum to this House, the trigger for that process to start was a Resolution accepting it in the House of Assembly. I think, in that respect, at the very least, the Government of the day were committed not to proceed with that unless there was support for it in this House. The Government of Gibraltar that supported that, we did not on

this side of the House, even then entered a reservation on the fact that it referred to sovereignty and made clear that they were supporting the agreement but they were not in agreement with the sovereignty part of it. So there has never really been, in Gibraltar, other than by people trying to persuade us to move in a direction that we did not want to go, any desire, any request, any wish for the United Kingdom to engage in that area. Therefore, when the United Kingdom tells us what is best for us, if they are really looking after our interests, then we should look carefully at what they advise. But at the end of the day we are now grown up, and they have to accept that as equals, for many years now the United Kingdom has been talking about the relationship between the Overseas Territories and the administering power being one of partnership. We are now in the second decade for the eradication of colonialism. The United Kingdom has no choice but to grasp the nettle this House agreed in 2002, to support unanimously the recommendations of the Select Committee of the House, that have spent a number of years formulating the draft of a new constitution, that has been reaffirmed since the last Election in the first meeting of this year, and therefore, the United Kingdom has to make clear to the Kingdom of Spain that they have the same obligation to this colony as they have to every other one, and that they have to proceed with settling our future with us, exclusively with us. Spain has got no part to play in that process and nothing to say about it. That is not an act of hostility, that is something that Senor Moratinos has to recognise is as valid as what he has just recognised, which is our right to celebrate our 300 years of history. Or does he not think that if we are celebrating 300 years of being British, automatically we are also celebrating 300 years of not being Spanish.

Mr Speaker, the Leader of the House has expressed the strong views in Gibraltar, both of welcome and appreciation for Her Royal Highness on her recent visit, and for the fact that we look forward to the day when Her Majesty the Queen comes again. It is now 50 years again, 1954. Of course, we know what happened in 1954. In 1954 what was then an undemocratic regime in Spain, took offence at Her Majesty exercising her right

to visit one of her possessions and to visit her loyal subjects in Gibraltar. They introduced a number of sanctions, some of which remain to this day. The problems with our neighbours have been there periodically on and off. They signed a Treaty but the ink was hardly dry on a peace treaty, ceding Gibraltar in perpetuity, before they started trying to take it back by force. So much for observing treaties. But when Her Majesty visited us, nobody in Gibraltar questioned the wisdom of that. Nobody in Gibraltar complained about the price that had to be paid for the pleasure of having Her Majesty among us. Nobody in Gibraltar does anything other than welcome the fact that the Minister for Defence, the Secretary of State for Defence is with us. Therefore, if we want him to be here and if he enjoys being here, what does it matter if the neighbouring country is not happy. Would the Ministers in the Spanish Government or His Majesty the King of Spain be put off from visiting Ceuta and Melilla because it might upset Morocco? I would think not. I would think any government in Spain that suggested that the sensibility of the Moroccan Government is more important than asserting their right to their possessions in North Africa, would get short shrift from the media and the parliament of the Kingdom of Spain. Therefore, it is only to be expected that our feelings on this subject should be no different from what theirs would be if the shoe were on the other foot.

There are many links between Gibraltar and the United Kingdom and many things we have learnt from them. In the years when I had the privilege to be in office, I dealt with a number of Secretaries of State for Foreign Affairs. I used to remind friends like Douglas Hurd that if they felt sometimes uncomfortable with the bolshies of the Gibraltarians, they only had themselves to blame because that is part of our heritage, that is what they taught us. They taught us that as free people, as free British citizens, in a place under British sovereignty, we have the right to express our views and the right to campaign for our rights, and that is what we do. We behave here as we would if we were living in the United Kingdom because that is the culture they have exported to us. There are many people who feel that the British Empire had lots of things wrong with it, but it also had lots

of things right with it. It exported an ethos, a code of conduct, an administration which survives still today throughout the Commonwealth, and has been there from the colonial days. There were lots of dedicated United Kingdom citizens who went to the colonies and then went native, and ended up fighting their own head offices in London, the Colonial Office in London, to stand up for the rights of the colonial people because they saw it as their duty to serve the people that they had been sent not to rule.

We stopped being a part of Spain on 4th August 1704 and we are celebrating it on 4th August 2004 and will be here to celebrate it in a thousand years time. I am not so sure that the Kingdom of Spain will survive that long. Indeed, not just in the rule of law, not just in the parliamentary practice, not just in the fact that we have got a vibrant democracy and vibrant parliamentary debates, maybe a bit too vibrant at times but also in many of the institutions of Gibraltar, we have got a lot to be grateful for. In my particular respect, given my own trajectory in life, I think the Trade Union movement is something we owe a great deal to the United Kingdom for. In Gibraltar the organisation of labour and the negotiating process that we have, are all learned from them. The GSLP, speaking for my own party, owes its existence to the British Labour Party and we are extremely proud of that particular link. So the heritage is a heritage that affects every facet of our lives. I think what we have in Gibraltar is something that is not unique to Gibraltar, but is true of many other colonies and former colonies, the British exported a political, social and economic system, it reached Gibraltar because Gibraltar, as has already been mentioned, in the case of the Navy was the first port of call and the last port of call and therefore it is a home from home.

But like a plant that is transported to a different climate and a different soil, we have given it a different flavour. We are a hybrid and that hybrid, in my judgement and in the judgement of any of us, preserves the best of British values and adds a few Gibraltarians to the chemistry of it. Those Gibraltarian values and those British values are what is today the identity of the

people of Gibraltar, that we have seen reflected on the streets today with the holding of hands, that we see reflected in National Day, as has been happening since 1992 and that shows that the Gibraltarian is here to stay and that the Rock of Gibraltar is here to stay under the British flag, with a new relationship, where finally we will achieve what we have always wanted. At the end of the day what is clear is that we are only able to do that thanks to the courage, the determination and the military efficiency of the Royal Marines and the Royal Navy, that took the place in 1704. So without them we would not be here to tell the story.

HON DR J J GARCIA:

Mr Speaker, I too welcome the opportunity to say a few words on this motion. I would like to start by welcoming to Gibraltar all those many friends who are here to celebrate the tercentenary with us, including the representatives of the three main UK parties, the Labour, Conservative and Liberal Democrat Party. The motion in front of this House spells out a number of different things that are being celebrated, commemorated or remembered today.

The first point in the motion mentions 300 years of British sovereignty but it gives no explanation as to how that British sovereignty came about. Other than through a passing reference in the motion which describes the events, as the events of the 4th August 1704. It is no secret that those events were a successful military assault by a force of Anglo/Dutch marines, which captured the Rock from the Spanish defenders. Today what we commemorate is the anniversary of that capture, which happened on this day 300 years ago during the War of the Spanish Succession. This is precisely why Tercentenary Day is today. Little did Charles II of Spain know that when he died childless in 1700, his death would precipitate a chain of events that would prove to be essential to the formation of the Gibraltarian identity as we know it today.

Centuries earlier Queen Isabella la Catolica had urged Spaniards never to lose control over Gibraltar. It is one of those ironies of history that the death of Charles II led to the War of the Spanish Succession, which in turn was the conflict where Spain actually lost Gibraltar for ever more. Indeed it is important to stress that without this basic fact of history, nothing else in this motion would follow. There would have been no Gibraltarians. There would have been no colonial people. There would have been no demands for self-determination and decolonisation. Had Admiral Rooke and the Prince of Hesse failed in their assault on Gibraltar or succeeded in the previous attacks on Cadiz instead, I submit that history would have been very different. The value of Gibraltar to the trading links of the Empire would never have been realised. Its strategic importance in military conflicts from the Peninsular War to the two World Wars, the Falklands and two Gulf Wars, would never have materialised. Indeed, without Gibraltar how could General Eisenhower have launched Operation Torch, the Allied offensive into North Africa. And how much more dangerous would a Gibraltar in the hands of General Franco have been to the cause of the Allied effort at the time when Franco was flirting with Hitler.

Mr Speaker, we have already made clear that as far as the Opposition is concerned, in 1704 the territory of Gibraltar was liberated, or freed, from the control of the Spanish Bourbons. I note that in an article yesterday in the daily El Pais, the Spanish Foreign Minister says that it is, and I quote, sarcastic if not insulting that in Gibraltar we should dare to express this view. I have to say I did not know what he finds so offensive. This is a basic fact of history which is entirely accurate. The Rock was taken in the name of the Hapsburg pretender to the Spanish throne, the Archduke Charles of Austria. The first non Spanish Governor was the Prince of Hesse who represented him. Therefore after 4th August the Bourbon King of Spain no longer controlled, governed in or was sovereign over the territory of Gibraltar in any way. The Spanish Foreign Minister would do well to re-assess these facts. He has not appreciated that the term liberation refers to the territory and not to the people.

Mr Speaker, the modern day Gibraltarians have every right to celebrate the military action that gave them their homeland and their country. There is nothing to be embarrassed about. Spain has no reason to take offence nor do we have any reason to re-write our own history. What happened, happened. Indeed last week plans were unveiled in Britain for the celebration to commemorate the Battle of Trafalgar. Are the potential sensibilities of Madrid or Paris being placed before the commemoration of a great naval victory? The answer is no. The visit by the Princess Royal, the recent call by HMS Tireless and the Tercentenary commemorations have shaken the Spanish political establishment to the core. Once again we have been subjected to a barrage of anti-Gibraltar rhetoric.

Mr Speaker, is it not about time that they came to terms with the fact that they lost Gibraltar 300 years ago and they are never going to get it back. Do they not understand that British royalty are our royalty too. Have they still not learnt that the British military are as home here as they would be in the United Kingdom itself. It was the Royal Navy and the Royal Marines who captured Gibraltar along with other forces. The Royal Marines retained Gibraltar as a battle honour on their colours to this day. The Royal Navy will be conferred with the Freedom of the City later this evening. The Motion before this House rightly recalls the sacrifices made by those servicemen who have lost their lives over the centuries in order to keep Gibraltar British. Indeed it is important to know that Spain wasted little time in laying siege to the Rock, only a few months after she had lost it in 1704, and that next year we will be commemorating 300 years of the failure of the first siege.

Mr Speaker, it is also fitting that the motion should make reference to the many Gibraltarians who have contributed to the creation of the Gibraltar of today. Without them we would not be who we are. The motion pledges that this House will resist and oppose any discussion or negotiation against the wishes of the people of Gibraltar, for the transfer to Spain of any part of the sovereignty of Gibraltar. Many of us, myself included, would go further than this. The 2002 Referendum produced a resounding

no to sharing the sovereignty of Gibraltar with Spain in any percentage or in any shape or form. Therefore, as far as we are concerned, there is nothing more to discuss. The people have spoken. As far as we are concerned sovereignty is not transferable, not negotiable and not discussable. This is the same position that the United Kingdom has adopted to this day over the Falkland Islands and nobody thinks that this is an unreasonable stand.

Mr Speaker, Spain has to learn that we are no longer living in the days of Louis XIV, Queen Anne and Admiral Rooke. Times have moved on since 1704. Territories and people can no longer be bandied about from one monarch to another like pawns in a chess game. Madrid has to learn that the principle of self-determination is sacrosanct. In a colonial context this means that the future of a territory can only be decided by the people of that territory. In our case this means the people of Gibraltar. Successive Spanish Governments of all political colours have refused to recognise the right to self-determination of the people of Gibraltar. Instead they have embarked on a series of political and economic sanctions against us, which continue to this day. True democracy will not be established in Spain at a political level until they learn that a small colonial people cannot be bullied into forming part of that country. One thing we have learnt from our long and valued links with Britain, is never to give in to bullies and we never will whether the bully is in London or in Madrid or in both places. There is no doubt that as a colonial people we have now come of age. It is totally unacceptable that since 1969 we have remained stuck in a colonial straight jacket. Restricted by a constitution that we have long outgrown. This is now bursting at the seams. A patching up exercise to repair the damage done is not the answer. We need a wholesale reform which turns our existing political structure on its head. By making the Gibraltarians masters in their own country and which decolonises Gibraltar in a new relationship with Britain.

Looking at the past I have already explained how the Rock was liberated from Spanish Bourbon rule 300 years ago. Looking to the future there is no doubt that the time has now come once and

for all to free the Rock and its people from colonial rule so that we can celebrate many hundreds of years more as a decolonised British territory. Thank you Mr Speaker.

HON C A BRUZON:

This House of Assembly, which is at the very heart of democracy in Gibraltar, unanimously welcomes this motion. I am part of this House, I have been in the House only for seven months but I also want to pay tribute to you Mr Speaker, as I know that you are finishing your term of office and I want to thank you. We remember with gratitude and emotion, I certainly do, not only the many generations of British servicemen, who during the past 300 years served in and defended Gibraltar, but also the many generations of Gibraltarians, whose sacrifices and sheer determination have enabled us to reach the point in our history that we now enjoy. The many flags in the King's Chapel, which I often look at, remind me of the different regiments and battalions that have served in Gibraltar since 1704, and standing there amongst them is the most recent addition, and it is the flag of HMS Calpe, which to me symbolises Gibraltar's own contribution to the Royal Navy. But we as a people must look forward to the modernisation of our relationship with the United Kingdom. We must look forward to this without fear of hurting the sensibilities of our big neighbour. We are indeed unanimous, and I am happy to be part of this, in granting the Freedom of the City to the Royal Navy, and they well deserve it. But the people of Gibraltar also yearn for freedom. That kind of freedom that takes full note of our dignity as a people. So whilst honouring the memory of past generations of Gibraltarians, and in the name of the vast majority of today's inhabitants of Gibraltar, I say, Gibraltar is united in its rejection of any kind of shared sovereignty with Spain, Gibraltar is united in wanting to retain its links with Britain, Gibraltar is united in desiring the maximum possible self-government. Gibraltar is united in wanting to be recognised as a people in its own right. Gibraltar is united in its passionate love and affection for the Rock on which we live. Gibraltar is united in its struggle to have our right to self-determination respected and not just

acknowledged. Gibraltar is united in wanting to be de-listed from the United Nations list of non self-governing territories. Finally, Gibraltar is united in its yearning to be free and God knows we have earned it.

HON MISS M I MONTEGRIFFO:

Mr Speaker, it is quite an honour for me to be able to address this House on the motion before us today, when we are celebrating 300 years of British Gibraltar. Mr Speaker is aware that I have been a Member of this House since 1984, 20 years. I decided to join the Gibraltar Socialist Labour Party and become involved in local politics for the sole purpose of wanting to serve my people and defend our country as best as I could. Gibraltar has been through many, many sieges since it became British 300 years ago and many British servicemen have given their lives to keep the Rock British. The people of Gibraltar are greatly indebted to them. Moreover, we have always had an extremely good relationship with the Armed Forces, stationed for so many years in Gibraltar. We have always expressed to them our admiration and our gratitude. In return, we have also shown 100 per cent loyalty to the British people and to the Royal family. Their Royal family is our Royal family. Similarly, the people of Gibraltar have proved their loyalty to the United Kingdom on many, many occasions. When a member of the Royal family visits us, we show them our warmth and our gratitude for their support to the people of Gibraltar.

Mr Speaker, the Gibraltarian race came about as a result of quite a number of Mediterranean peoples that came to settle in Gibraltar. Our links with the United Kingdom and the British people have made us into quite a unique race. But of course, we have been taught the British way, we love our British heritage and we love our Rock. I say the following phrase with passion and I hope that my message will go beyond our frontiers. No one, but no one, will ever succeed in taking Gibraltar away from us. It is our homeland and when so many democratic nations today speak of the rights of the people to decide their future, it

cannot mean that Gibraltar has to be excluded, otherwise we are talking about a democracy that is false, because it will only be applied by governments when it suits them. No government has a right therefore, to determine the future of a people.

As far as Spain is concerned, what can I say except but to tell them, when are they going to grow up? When are they going to learn? My homeland is not for sale. The people of Gibraltar have spoken in a referendum twice, saying no, we do not wish to give up not even an inch of our land, or should I say not even a centimetre. Spain closed the border and it did not work. Spain has gone and can go ballistic and still it will not work. Spain can try to woo us, they can do whatever they like and still they will not succeed. We are as determined today as we were fifty, a hundred or two hundred years ago, united as we are and together with the invaluable support that we receive from our friends in Parliament and the people of Britain, we have always survived against Spanish attempts to destroy our resolve. Now Mr Speaker, we have a Gibraltar which has grown of age. A Gibraltar which has been self sufficient since the border opened and the support and sustain policy from the UK ceased. We have a people who want to move forward and who rightly yearn for their right to determine their own future.

As in previous battles, we will succeed, I am absolutely confident of this. However, once again in this House, I reiterate that a new constitution for us must mean that Gibraltar will be decolonised and then we can be struck off from the United Nations list of colonies. It is extremely important that this happens, otherwise Spain will be able to continue with her campaign that we are still an anachronism being the only colony left in Europe. When she no longer has this argument, she will lose credibility internationally. It is therefore the people of Gibraltar and not any government who should exercise the right to decide their own future. When we exercise our right to self-determination Mr Speaker, it should be exercised by referendum. But I am sure that the status we choose will be one that still maintains links with our mother country. It is now up to our mother country to realise that we, as others, are just as entitled to that right. Only

when this happens, will we have won the final battle and then the words, alls well the fortress is secure, will have its real true meaning. Because only then can we give the long-lasting security that all past generations of Gibraltarians have been fighting for.

Finally Mr Speaker, I wish to thank the many thousands of Gibraltarians and other residents that turned out this morning in what was a really important, symbolic gesture. That of embracing our country. This event will go down in history and it proves beyond any reasonable doubt, how much we love this Rock of ours. Thank you Mr Speaker.

HON L A RANDALL:

Mr Speaker, I wish to thank the people of Gibraltar for affording me the honour and privilege of addressing this House on this important milestone in the history of our country, the tercentenary of our independence from Spain. My thanks also go to the many generations of Gibraltarians and British servicemen and civilians who made this possible. I would remind the House that it was the government of the United Kingdom who chose to include Gibraltar in the United Nations list of colonies, and that the list was created for one purpose and one purpose only, to hand over total control of the colonial territories to the inhabitants. I therefore expect that the negotiations which will commence this autumn with the United Kingdom Government, regarding the modernisation of Gibraltar's relationship with the United Kingdom, should result in our country being decolonised. Additionally, these negotiations should be exclusively between this House and the United Kingdom. That is to say, without any reference to or input from the Kingdom of Spain, regardless of the level of their protestations and strength of their representations.

This morning we witnessed a wonderful and emotional expression of unity by our people, when the vast majority formed a human chain around Gibraltar. It was yet another

manifestation of the wish of the people of Gibraltar to remain British and not to allow the Kingdom of Spain to have any say over the future of our country.

Finally Mr Speaker, I take this opportunity to wish the people of the United Kingdom, the Members of this House and the people of Gibraltar many happy returns on this day. May God bless Queen Elizabeth II, her heirs, successors and subjects, and all who wish them well. Thank you Mr Speaker.

HON S E LINARES:

Mr Speaker, I would also like to express our warmest appreciation to Her Royal Highness the Princess Royal for her recent visit, and whilst the Chief Minister rightly asked her to extend her visit to Her Majesty the Queen, I in the year 2000, in a Commonwealth Parliamentary Association Plenary Conference, had the pleasure of meeting Her Majesty the Queen, and I told her in no uncertain terms that the people of Gibraltar were awaiting her visit, and I added the fact that she should do so despite the advice from the Foreign Office for her not to come because her visit would hurt the sensibility of our neighbours. I think it is about time that the Foreign Office learns a simple fact of life, that we are not out to touch the sensibilities or hurt the sensibilities of anyone but if Spain still gets annoyed, so be it. No one in the Foreign Office takes into account our sensibilities when Spain bullies, cajoles and insults us. So we must all here in Gibraltar continue to secure our future in the manner it has been mentioned in this motion, in the last paragraph, which reads, and I just want to repeat it because it is important, looks forward to the modernisation of the relationship between Gibraltar and the United Kingdom, no one else, by agreement of a new decolonising constitution providing the maximum possible level of self-government and guaranteeing exclusive British sovereignty over the whole of the territory of Gibraltar, for so long as the people of Gibraltar so wish. Thank you Mr Speaker.

HON F R PICARDO:

Mr Speaker, 300 years ago today, at about this time, the Anglo Dutch battle for the conquest of Gibraltar was unfolding and reaching its height. Today we commemorate that conquest by our friends in the Royal Navy and the Royal Marines, not for military pride but for all that followed from it. Essentially, that was the genesis of the Gibraltar we know today and of the Gibraltarians. The birth of an indivisible union of people and their territory. The first faltering steps of our nation. That is what we truly celebrate today, with great pride. Many years later a treaty was signed which purported to transfer sovereignty over Gibraltar to Britain. But let us make absolutely no mistake about it, title to this land is British by right of conquest and exclusively Gibraltarian by dint of modern international law.

This morning we have heard cannon ring out again over our land, but this time in a peaceful call for all hands to duty. The cannon that shot today called all foot soldiers of the Gibraltarian cause to order, and heralded a much happier event than 300 years ago. The symbolic encircling of our territory. Our territory by our people. After three hundred years of development as a people, it is right that we should express our unencumbered title to our land in that way, in a physical expression of our political aspirations. It is right that we should do that with friends from the United Kingdom. In these past 300 years, it has already been alluded to already in many of the speeches this morning, Gibraltar and the United Kingdom have fulfilled many historic assignments together. In the fourth paragraph of the motion before the House we have rightly remembered the sacrifice of previous generations of Gibraltarians who have helped establish our homeland. Those previous generations also formed the backbone of this fortress when it played its important role in events such as the taking of North Africa in the Second World War, and the sailing of the task force to the South Atlantic. But that is the story of the last 300 years.

For the future we have greater challenges facing us than perhaps ever before but that is not something which we do not

share with any other modern society. There is no doubt in my mind therefore, that we shall face off those challenges as we have seen off those of the past, with a stern resolve designed to ensure that the whole of the territory of Gibraltar remains exclusively ours. It is in that way that the next generations of Gibraltarians will carve for themselves a proud future in a Europe now, thankfully and finally, at peace with itself and in a world with security challenges, the like of which we have never seen before. All of that must be in the context of a modern decolonised partnership with Britain. A partnership of friendship, of comity and which must be one of mutual respect.

Mr Speaker, that we shall have to progress our political cause under a cloud of hostility will do absolutely nothing to deter us. In fact, the hostility that we face to our reasonable political aspirations will only steel our resolve as a people, as it has done to date. It is to all those who have played a part in the events that has led us to this day, that we pay true tribute today. Our past Elected Members, many of them in this House. Our past Governors, many of them also in this House. Our past and very present friends in the British Cabinet, and particularly to those generations of Gibraltarians, of all ethnic origins and of all religions, who have come before, thank you from the generation of Gibraltarians that will take the torch forward.

A special thank you also Mr Speaker, to you. In your speech accepting your post, you said that you would approach your role with a sense of civic duty. You defined that sense of civic duty by reference to the words of a now deceased president of the United States of America, by saying that we should ask not what Gibraltar can do for us, but what we can do for Gibraltar. You have led by example Mr Speaker. It is that spirit and sense of civic duty which will see us safely through the challenges that face our people now. All that remains for me to say, to all Gibraltarians, is to wish us all a very happy birthday and very many happy returns of the day. Long may we flourish in peace in this land of ours.

Question put. The motion was passed unanimously.

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 1.20pm on Wednesday 4th August 2004.

**REPORT OF THE PROCEEDINGS OF THE HOUSE OF
ASSEMBLY**

The Fourth Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Monday 11th October, 2004 at 10.00 am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo

The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

APPOINTMENT OF ACTING SPEAKER

The Hon the Chief Minister moved that the Hon the Attorney General be appointed acting Speaker for the duration of the debate on the motion confirming the appointment of the new Speaker.

Question put. Agreed to.

The House recessed at 10.10 am.

The House resumed at 10.20 am.

MOTION

HON CHIEF MINISTER:

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

“That the appointment of Haresh Kishinchand Budhrani QC as Speaker of the House of Assembly be confirmed.”

Under section 26(1) of the Constitution the Governor appoints the Speaker after consultation with the Chief Minister and the Leader of the Opposition. In more recent times this follows a recommendation from the Chief Minister upon which there is then consultation. The Governor has already appointed Mr Haresh Budhrani by Proclamation dated 15th September 2004 to be Speaker with effect from and including 16th September 2004. Mr Budhrani is already the Speaker of this House. He is not appointed by this House. This House is called upon to confirm the appointment. It is not even an appointment subject to the confirmation of this House. The appointment is complete and if this House should fail to confirm the appointment at its first sitting after the Governor's appointment, then the Speaker is required by section 26(3) of the Constitution to vacate the office to which he has already been appointed. I therefore bring my motion in order to secure the confirmation by resolution of this House of the appointment by His Excellency the Governor of Mr Budhrani.

Mr Budhrani is a leading member of the legal profession in Gibraltar. He is President and therefore a leading member of the Hindu Community in Gibraltar. His personal integrity is beyond question and thus his ability to discharge the functions of Speaker with the degree of independence required. I believe that Mr Budhrani will apply the Rules of this House and thus ensure that the House enjoys the dignity and respect that it should, indeed must have. I subscribe to the view that in the interests of openness and accountability of Government the

greatest degree of latitude should be allowed to the Opposition in the interpretation of Standing Orders, that is the Rules of this House, but that is not to say that Standing Orders can be disregarded. The House needs rules of engagement and it needs them to be properly applied if the dignity of the House is to be upheld. Those rules of engagement are the Standing Orders of this House and subject to their interpretation by the Speaker they must be applied. The alternative is a free-for-all which is what brings this House into disrepute. This House is a debating chamber. Debate between Members, however heated or impassioned, or even however aggressive does not bring this House into disrepute, provided that the Rules of the House are adhered to and if necessary enforced. The view has recently been expressed that Parliament is supreme. Indeed it is, but it is Parliament that is supreme and not the Speaker. The Speaker is bound to apply the Rules of this House and though he can interpret them, upon which his ruling is final, he cannot disregard the Standing Orders and he cannot choose not to apply them, nor can he make rules without the approval of this House. During the last meeting of the House the previous Speaker chose to name me. Regardless of whether I believed the Speaker to be right or wrong in his decision, I was under an obligation to accept his ruling at that moment and I did, but Standing Orders also requires the House as a whole, on motion, to decide whether a Member that is named by the Speaker should be reprimanded. Under the Rules of the House that is the power and right of the House as a whole not the Speaker. To exercise that power is not a defiance of the Speaker's authority, still less to challenge the supremacy of Parliament. Indeed it is to assert and uphold the supremacy of Parliament. It is crucial that these issues should not become confused and distorted through public misquotation.

I believe that Mr Budhrani is able and willing to discharge the duties of Speaker with fairness and independence. I have read in some quarters of the press that Mr Budhrani is not an appropriate choice as Speaker because he is a political supporter of one of the parties represented in this House, in this case my own party the party of Government. It is not a

requirement that the Speaker should not have political preferences, even declared political preferences. Indeed, in most democratic Parliaments including the House of Commons in the United Kingdom, the Speaker is drawn from the elected Members of the House. That is to say, from one or other of the political parties represented in the House. He is thus a member and supporter of a political party and was elected into the House as a candidate, a successful candidate, representing one political party. This is not a disqualification, under the United Kingdom and most Parliamentary systems it is an inevitability far from a disqualification. The relevant issue is does the Speaker have the degree of personal integrity necessary to apply the Rules of the House and preside over it fairly and even-handedly and independently regardless of his personal political views and putting them to one side. This is the relevant criteria and I have no doubt in the fact that Mr Budhrani enjoys that degree of personal integrity.

Before concluding I would like to record the Government's thanks to the previous Speaker, Judge John Alcantara, for his service to this House as Speaker and for his service to the community as Mayor during the last eight years. I commend the motion to the House.

Question proposed.

HON F R PICARDO:

The Opposition's position on this appointment is clear. We are of the view that the individual proposed for the post does not satisfy the criteria, and I say that having heard what the Chief Minister has said, of political partisan impartiality which we believe is an essential pre-requisite for any such appointment in this community and in this Parliament. Why do we say that? Because the Conventions of this Parliament are not like the conventions of Westminster when it comes to appointment of a Speaker. The conventions of this Parliament have always been

to seek an appointment of partisan impartiality. Opposition Members, as the Chief Minister has already foreseen, are of the view that Mr Budhrani is a GSD supporter who has not been shy to express his sympathies to the party of Government and his antipathy of the GSLP. There is nothing wrong with Mr Budhrani being partial to the GSD, absolutely nothing wrong. This is a free society and it is his right and privilege to be partial to the policies of the Government, but given that partiality, he should not be chosen for the role of impartial arbiter of this House. That is not to say that Speakers should not have partisan political opinions or that they unusually in our society should be the only ones not free to make a choice when it comes to Election Time. If that were the criteria there would be no candidate who could fulfil the role. A Speaker should be free to make an expression of his partisan choice at the ballot box but a Speaker cannot command the respect and confidence of the whole House if he has expressed an opinion favourable of the partisan policies of one side of the House over the other, and that is the case in this instance.

In recent memory Mr Budhrani has made such expressions of preferment for the views of Government, and to boot the Members of this House are unanimously of the view that Mr Budhrani is partisan. So this meeting of this House will be unusual in the extreme. For the first time in the history of this Parliament a Speaker will be appointed by Government majority and with the Opposition voting against his appointment. All other Speakers appointed since 1969 have enjoyed either the support of all sides of the House or have not been supported by the Opposition, but none have had the Opposition vote against their appointment.

In these unnecessary circumstances, the appointment of Mr Budhrani will mark a blight in the history of this House. The fact is that the Speaker's impartiality in this House is now therefore in serious question, and therefore in question is the dignity of this House and its ability to engage and maintain the respect of the population of our country. If we are here to parley, or to speak freely, we must be allowed to do so without partisan favour

blemishing the intervention of Members on either side. We must be free to ask and receive answers to questions without partisan advantage. We have presently no confidence that the Government's choice of Speaker will allow us to do any of that. The Government Members are unquestionably the representatives of the people in the administration of the power of the Government of Gibraltar. The Opposition Members are similarly unquestionably the representatives of the people in the administration of Parliamentary scrutiny in the exercise of that power. In the context therefore, of the reality of the last Speaker's departure from this House, an appointment which is tainted by partisan favour is suspect as a potential attempted curtailment of the Opposition's ability to apply such scrutiny in the most forceful and un-mitigating manner open to us, but this debate cannot be only about the nominee's bumper stickers and his pro-GSD statements on GBC. The nature of the process of confirmation, which will be carried by Government majority, will not allow that. Mr Budhrani will be Speaker at the end of this debate by dint of the eight votes available to his proposer. It is therefore necessary to look forward also. I have now been a Member of this House for almost a year and in that time I have begun to appreciate ways in which the workings of the House are open to improvement. The new Speaker will soon find that all too often arguments in this House become most vitriolic when we argue over what it is that we have said a few moments before. In most Parliaments that is not an argument that goes very far. Hansard is soon on hand to settle the dispute, yet in this House we are all too often stuck on just such issues. We need a quicker record of proceedings in this House, even if that means substantial investment in a more timely and perhaps even simultaneous reproduction of the Hansard. I also believe, as I have said already before this House, that our proceedings should be televised or at least that a visual record should be kept of what is happening here for news bulletins. That would help to establish a stronger connection with our constituents. In this Question Time we will have a particular anomaly in this meeting. Only questions approved by the Speaker can be asked in our Parliament. In effect, for this meeting the questions will have been approved by a Speaker whose appointment has been

made by His Excellency the Governor but has not been confirmed by the Assembly. I think that throws up an interesting technical abnormality which should not be allowed to occur again.

One thing for the new Speaker to have in mind is that the content of answers to questions is as subject to control as the terms of the questions that can be put in this House. In answering a question or a supplementary question the Minister responsible should direct himself to his Government responsibilities. He or she should not use the answer as an opportunity to comment on the Opposition's policy. That is the procedure followed in the House of Commons and a recent ruling of the Speaker of that House maintained that rule. The Common's Hansard reference to the ruling of the Speaker of the Commons, should the new Speaker wish to look it up, is at column 1334 of 5th May 2004. The legacy of the new Speaker is still very much in his own hands. The immediate past Speaker, Mr Alcantara, has left this House with his head held high. His legacy is unimpeachably an honourable and uncontroversial one, deserving of unanimous respect. His impartiality was unquestionable, let us not forget that after the House voted on the motion on whether to reprimand the Chief Minister, a motion was then proposed by the Speaker of support in him, and the Government Members voted that motion down also. So let the new Speaker hear loud and clear from that legacy, that he is not here to press home the policy or timetable of the Government. He is not here to pursue the Government's agenda. He is not here to pursue the Chief Minister's advantage. Here the Speaker must be the referee of debate without selling out to either side. Now that scrupulous impartiality could cost a Speaker his job. If it does he will not be the first Speaker in a parliamentary democracy to lose his post for standing up to those who do not believe in the supremacy of Parliament, but he will follow in the steps of honourable men. Mr Budhrani would do well to make careful note that the Rules of this House referred to by the Chief Minister, apply to both sides. If he does sell out to those who control the majority then he will let down not only all those who have come before him but all Members of this House and all voters in our electorate. In any

such circumstances he will be rendered a puppet Speaker whose reputation will be sullied and whose Parliament will have let down the democratic community that elected it. The cloud that is this to us partisan appointment does have a silver lining though. It is gratifying to receive in this House a Member of our Hindu community. I had hoped that the first Member of that honourable and respected community, and I do not know why the Chief Minister laughs when I refer to the Hindu community as being respected, to hold office in this House would have been elected and not appointed. I will make no secret of the fact that I should have hoped to see my good friend Vijay Daryanani to be the first Member of that community in this House, given that he broke the mould and stood for election in the year 2000. I recall that the Hon Col Britto when he was on this side of the House, pursued a motion that proposed that no individual should be appointed Speaker of this House without the unanimous support of both sides of the House. I imagine that he either changed his mind or at some stage, or is about to surprise us by voting not to confirm the appointment of Mr Budhrani. I suppose that if he votes to confirm the appointment, with notice of the fact that it will not be supported by the Opposition, we should be free to consider him Colonel Do As I Say but not as I do, but the focus now will turn to every decision of the Speaker from now on. Each will be under scrutiny to ensure that they are free from partisan infection. I sincerely hope that Opposition Members' concerns will not be borne out. We will see. At this stage I will not be able to support the appointment of Mr Budhrani as Speaker.

HON DR J J GARCIA:

This House is presided over by a Speaker today as a direct result of the Constitutional crisis of 1955, when all the Elected Members of the Legislative Council resigned their seats. The Governor, who at the time sat here as the Speaker or President, had earlier used his reserved powers to push through increased taxation against the wishes of the five Elected Members. One direct consequence of the crisis was the removal of the Governor from the front line of politics and his replacement on 9th April

1958 with the first Speaker of the Legislature, Major Joseph Patron. We now have a Speaker in this House in part because the Elected Members of that time stood up for what they believed in. Speakers of the Legislature since 1958, and of the House of Assembly since 1969, have all been beyond reproach. This time it is both the manner of the announcements and the actual person proposed as Speaker which leaves a sour taste in the mouth. The Opposition is not saying for one moment that we should have a veto over the choice of Speaker. We are not saying that consultation means agreement. We are not saying that the Government have not behaved within the letter of the Constitution. What we are saying is that we do not agree with the Government's choice of Speaker and that there are plenty better qualified people in Gibraltar who could have been chosen instead.

A better selection could have been made on two counts. Firstly, in terms of the non-political association or allegiance of the candidate, and secondly, taking into account that person's record of public service. Therefore we do not support the view that no Speaker should be appointed unless the Opposition agrees. However we do have a democratic right to disagree with the Government's choice of Speaker when asked to confirm their candidate, and that is what we are doing today. The way in which the name of the candidate for Speaker was disclosed by the Chief Minister in a television interview does no credit to this House nor to the very office of Speaker itself. The Opposition found out the name of the proposed candidate through the media. The process of consultation provided for in section 26(1) of the Constitution of Gibraltar, which the Chief Minister referred to in his opening address, is that the Speaker shall be appointed by the Governor acting after consultation with the Chief Minister and the Leader of the Opposition. As far as I can tell this does not mean consultation through the airwaves of GBC. This process of consultation is presumably intended to be a private one but the Governor, who is after all the person who makes the appointment, consults both the Chief Minister and the Leader of the Opposition. It is therefore supremely undignified that the Government disclose their nominee on television before the

actual process of consultation envisaged under the Constitution had been completed.

On a wider constitutional point it is worth recalling that the new decolonising constitution agreed to by both sides of this House, envisages a change in the process to appoint a Speaker. At present the Chief Minister nominates, the Governor consults, the Governor appoints and the House confirms that appointment. The new Constitution will change all that so that the Speaker of this Parliament is appointed by this Parliament. This would happen by a resolution passed by a simple majority of its Elected Members and presented by the Chief Minister, acting after consultation with the Leader of the Opposition. This is the procedure this House has already signed up to in the constitutional document that was placed before the British Government nearly ten months ago. It means that the appointment of a Speaker would not take place until this House has debated the matter and accepted or rejected the nominee. It is also relevant to point out that the new Constitution also allows for the Chief Minister, in consultation with the Leader of the Opposition, before the meeting of the Parliament at which the resolution debating the appointment of the Speaker is to be debated, to appoint a Member of the Parliament for the sole purpose of presiding over the resolution.

Therefore quite apart from everything else, there is also something very wrong with the procedure. Today we have a Speaker who has already been appointed by the Governor and therefore is already the Speaker, no matter what we say and before we vote. Last week he has presumably been clearing the questions submitted by Opposition Members for Question Time, which follows further down the Agenda of this meeting, even though the Elected representatives of the people have not had an opportunity in this House to debate his very appointment. This cannot be right. The Speaker designate should not set foot in this House, nor act as Speaker nor sit in that chair until the appointment has been ratified by this House first.

The Chief Minister referred, when moving the motion, to the procedure of the House of Commons and at the same time he also indicated that it is not a requirement that the Speaker of this House should not have political preference, even declared political preference. The Speaker of the House of Commons, as we know, is partisan and is an Elected Member of Parliament. However, although this may be the practice in London and may have been the practice for many years, it has never been the practice in Gibraltar to appoint or confirm Speakers from or close to existing political parties. Having said all that on the procedure and the manner of the announcement, I now move on to the actual person that the House is being asked to confirm in the motion before us today.

Former Prime Minister John Major examined the qualities needed by a Speaker when addressing Betty Boothroyd on her re-election in 1997. He highlighted common sense, fairness, a touch of toughness distilled with good humour. Mr Major added the House of Commons expected a great deal from the Speaker, and I quote *"the job specification is pretty daunting. The patience of Job, the wisdom of Solomon, are only basic requirements. We also demand impartiality, independence and fairness."* The point is that given his political background which links him closely to the party in Government, the Speaker we are being asked to confirm in this motion falls well short of these last essential requirements – impartiality and independence. It is like being selected for a position or a promotion having already shown he is without the main qualification that is needed for the job. It will be recalled that the name of another lawyer was originally mooted for the office of Speaker. It became known that this person would not take the job without the support of both sides of the House. There is already a marked contrast in regard to the consideration for the views of the Opposition from one potential candidate to the other. It was also totally unnecessary that the Government should have emphasized the fact that the new Speaker is a member of the Hindu community, of which he is President presumably until today, as if somehow this was an issue in the debate. It is not an issue and it has never been an issue. The only question as far as the Opposition are concerned,

is whether the candidate has a track record of being politically unbiased or not. The answer to that question is that he does not have that track record, it has been biased. Indeed let me say that I am proud that the first person from the Hindu community to stand for election in Gibraltar, stood for this side of the House, was Vijay Daryanani as my Colleague Mr Picardo has just said, and is a good friend of both of us. Certainly the perception of many members of the Hindu community and the wider perception in the town as a whole, both at that General Election and indeed at every General Election since 1996, is that the Speaker we are being asked to confirm today has canvassed overtly or covertly within the Hindu community for the GSD. Indeed if the Government were minded to appoint a Speaker from the Hindu community for whatever reason, we all know plenty of senior members of that community who have never been politically aligned in this way and who could have been chosen instead. Nonetheless, I repeat, the essential qualification is the political neutrality of the person, not the sector of Gibraltar that he belongs to. However, assuming this latter criteria was a yardstick for the Government, it leads in turn to a number of interesting questions. Why has this House never had a woman Speaker for example? As the House knows, in April 1992 Betty Boothroyd became the first woman Speaker of the House of Commons. Why have all our Speakers had a military or legal background? Is it that retired military men and lawyers are the only ones who qualify for the job? The answer to the last question, with all due respect to all of them, must surely be no. There is a wider pool to choose from. The point is that in selecting a candidate who is so close to the GSD to put forward to the Governor, it is the Government themselves who have chosen to ignite this particular political controversy. This is the only issue that concerns the Opposition. The Speaker we are being asked to confirm has not been seen to be a politically neutral person in the past. We have never asked for a veto in the choice of Speaker, nor do we want one. Indeed, if we believe that this or any future Opposition should enjoy such a veto, it would have put this forward to the Select Committee of the House of Assembly that drew up the new Constitution.

As I have said earlier, the motion before this House is the opportunity for Opposition Members to air their views on the Government's choice of Speaker and that is what we are doing. A previous and highly distinguished Speaker of this House, Sir Alfred Vazquez who once held the office, has held the office for more years than anyone else, once said that he did not envy the task of anyone holding the office of Speaker who did not have the unanimous support of the House. This Speaker will not enjoy such support and the Opposition will be voting against the motion. Thank you.

HON J J BOSSANO:

The Chief Minister in moving the motion has highlighted the degree of personal integrity of the person appointed by His Excellency as the reason why we should support his appointment. Well, frankly, we are not in a position nor do we think it is our job to judge his personal integrity. We are making a valued judgement on his politics not his personal integrity and I do not think that for example, when the AACR including Col Britto felt that they could not support Major Peliza, it was not because they were questioning his personal integrity but presumably because they felt that since he had been in Government when they were in Opposition, and in Opposition when they were in Government, he would have difficulty in forgetting the past when it came to handling the affairs of the House with impartiality. I am glad to say that subsequently they acknowledged that their concerns were misplaced and I hope that the same happens in this House once the appointment goes ahead, because the fact that we disagree and are putting it on record does not mean we do not want the House to work. Of course, one of the things that tend to happen in this House is, as my colleague has said, debate about what actually took place shortly after it takes place and we have had an example of that today, because the Chief Minister in moving the motion made reference to what took place when Judge Alcantara was the Speaker in this House at the last meeting. He said that having ruled that some remarks that he made were out of order, the

Speaker then named him and then a motion was moved to reprimand him. Well I think I heard him say in his opening remarks today that if a Speaker names somebody the motion that follows is to decide whether to reprimand the Member or not. I will give way to him before I pursue this if I have misunderstood him.

HON CHIEF MINISTER:

It is true that I used the word 'reprimand' and 'motion' but not in the juxtaposition that the hon Member now seeks to attribute me. Indeed one of my complaints and one of the things that I intend to say when I eventually stand up to reply to his colleague the Hon Mr Picardo, is that the correct procedures were not followed. There was no motion as envisaged by Standing Orders and I moved no motion. Both votes were promoted by the Speaker himself and this was one of the things that happened. Therefore, one of the things about which I complain is that the correct procedures were not followed by others, so I do not say that the motion that was actually voted on was a motion upon reprimand. All I said was that under the Rules of this House the reprimanding of Members following their naming is a matter for the House not for the Speaker. That is all I have said.

HON J J BOSSANO:

I am grateful to the hon Member for that clarification because of course, what I was going to say is that I have no recollection of having voted on a motion moved by him to reprimand himself. That would have been a very peculiar thing to do, to have first proposed that he should be reprimanded and then have prevented it by having the eight Government votes voting against. Let me say that what I have heard on previous occasions and what concerned me about what took place the last time is that when the Speaker has made some rulings, in some cases rulings as the Chief Minister knows on limiting the number of supplementaries that could be put to questions, even

though the Government appeared to be willing to answer the supplementaries, the Speaker did not allow them to be put. On those occasions my understanding was that the Speaker said if we did not accept his ruling, then a motion had to be brought to the House effectively overturning the ruling. Now I do not think that a motion simply saying that we do not agree with the interpretation given by the Speaker, is a motion to remove the Speaker because it is a question of judgement and therefore, to the extent that that is all that the House does, it disagrees with the Speaker, I do not think the Speaker should take it as a lack of confidence, or a lack of support or a need to remove him, but unfortunately what happened the last time was that a second vote was taken and on that second vote the Speaker said that if the vote were against him he would take that to mean that we did not support his continuing as Speaker. I think all those things that happened ought to be something that we should draw lessons from and avoid any recurrence of, because notwithstanding the fact that we are not supporting the current appointed person as Speaker, we would not want his term in this House to end in anything similar to the one that ended because I think it would have been better if the Speaker had gone, as he had intended to go, when he decided to go and not triggered off by events of disagreements which ultimately should be disagreements between the two elected sides of the House and not disagreement between the House and the Speaker.

My hon Colleague Dr Garcia has already made clear that we have not asked for a veto and the Chief Minister in an interview with GBC, said that he did not think we were asking to have a veto and that he hoped that that would not be the case. Indeed it is not the case. As he has said, had we thought it was necessary to have unanimity for the Speaker of the House to be selected before appointment, then we would have suggested that in the new Constitutional proposals, and we did not. We recognise that in a situation where such agreement is not possible, then that would create a situation of stalemate which would make the workings of the House impossible because the House cannot meet until the Speaker is in post. In fact, although the Chief Minister consulted me about James Neish, he did not

have to. He chose to do it because he wanted to do it but not because there is any requirement under the Constitution, although it is the intention that that should be a requirement in the new Constitution where effectively, what we are doing is replacing the role currently held by the Governor. It is clear from the text that if in 1969 it was intended that the initiative of selection should be the Governor's, who would then think of somebody and test the water with both sides of the House to see whether that person would get confirmation, since then the position is that the proposal has come from the Government and in the process of consultation there is nothing to prevent the Opposition also putting forward names. I am surprised therefore that the Government have said that it is not correct that they mentioned Mr Budhrani's name on television before consulting, or before the consultation with the Governor had taken place, because in fact that would suggest that at the time when James Neish was being proposed to us, somebody else was being proposed to the Governor, which would be very odd. So what I can only suppose is that either with his foresight the Chief Minister already had Mr Budhrani prepared in anticipation of us saying we would not vote in favour of Mr Neish. Therefore Mr Budhrani was not only his second option and fall back position, as has appeared to be the case, but his first choice and he cleverly put him in second place rather than first so that we would not say no to him and then be faced with James Neish who is not really the guy that he wants. Of course that is just speculation on my part trying to make sense of the apparent conflict chronologically of the events that have taken place on the basis of the statements made by the Chief Minister, and the fact that he says that the Governor knew about this before the summer and decided because of holidays and one thing or the other that it should not be done until after the summer. We had reservations about James Neish and I said to the Chief Minister that we were undecided whether we should simply abstain or actually oppose the appointment if it went ahead, and we know that James Neish was not interested in the job particularly and least of all if it was not unanimous. At least that is what he tells us.

That being the case, it is not that I am suggesting to the Chief Minister that he should sort of have a long list of people and strike them off as I say no to them because I do not think he has got any duty under the present Constitution to consult me, and as I say he was gracious enough to do so in the case of James Neish. He maybe chose not to do it in the case of Mr Budhrani but he consulted me over the airwaves, as it has been put, and I gave my reply to him over the same airwaves through which I had received the message.

That said, I do not think that we want to add anything except to make absolutely clear that our concerns will be tested by the passage of time and that the fact that the hon Member happens to be a member of the Hindu community, and of ethnic groups different from mine, in no way is anything that bothers us in the least and if the Chief Minister does not believe it and wants to cackle away in the background as an expression of his disbelief, he may do so but I can assure him that I happen to be colour blind when it comes to human beings.

HON LT-COL E M BRITTO:

Two references have been made to me in contributions by Opposition Members that I think I need to answer. The motion referred to, the consensus motion referred to, in the case of a previous Speaker, Mr Peliza, was indeed one which I supported and indeed one which I agree with the principle that it is preferable for there to be agreement on both sides of the House, but as the present Leader of the Opposition himself went into great pains to point out at the time, and has repeated today, it is neither constitutionally essential or as he did at the time, he indicated that the Government of the day would push forward their preference irrespective of what the Opposition thought. That is not the point. The point that I wanted to clarify was that at the time I was not in favour of the person being nominated for Speaker and being asked to support, because indeed as has already been mentioned, he had been in Government and he was seen to be very close to the then Chief Minister, who is now

the Leader of the Opposition, and therefore the Opposition of the day considered that, as has been said today the fears that have been expressed from that side of the House, that the then person being proposed would not be impartial, would not prove to be a good Speaker because he would not remain independent and act fairly to both sides. Therefore the Opposition at the day took what I think was the honourable course of not supporting the recommendation. I stress not supporting, if I remember rightly we actually walked out of the House to show our disapproval, but we did not vote against. That is the point that I want to make because there is a considerable difference and by doing so, we gave the Speaker that was being proposed the benefit of the doubt to prove himself. Whether he did prove himself or whether he did not prove himself, that is something that the public at large who listen to these debates and procedures of this House, it is for them to judge. So all I would want to end by saying is that I voted in favour of that motion because I thought it was correct, but I think we declined to support it rather than voting against it, as Opposition Members will be casting aspersions without giving the person a chance to prove himself. I will end by saying that Mr Budhrani has my full personal support because I think he will prove to be an excellent Speaker.

HON CHIEF MINISTER:

I was a little bit amused to hear on the lips of the Hon Mr Picardo the phrase 'Colonel Do As I Say and Not as I Do'. I had been trying to avoid references to past events in this House but if we are going to talk about do as I say and not as I do, as always, the great masters of that habit and of that practice sit on that side of the House and not on this side of the House. Look, the worst that is said of Mr Budhrani is that he is a supporter of the GSD. Well I suppose the fact that he puts his sticker on his car saying 'GSD OK' or our equivalent of it, means that either he or some member of his family is a supporter of the GSD, but I am quite happy to proceed in this debate on the assumption that Mr Budhrani was, and may still be, a supporter of the GSD. That is as nothing compared to the circumstances in which the hon

Members who now complain about the fact that Mr Budhrani has expressed a preference as an ordinary citizen, even as a politically active ordinary citizen, which I think is over-gilding the lily, but even if that were true, that is what they say of Mr Budhrani and on the basis of that they impugn his integrity to sit as Speaker in this House. Compare that to the position faced in 1989 by the then Opposition, the AACR.....

HON F R PICARDO:

Can I just make a point of order and clarify for the sake of this House and for the sake of the Speaker that we have not for one moment impugned Mr Budhrani's integrity. I think the Leader of the Opposition made abundantly clear that what we were talking about was the issue of political expressions of preferment, that is it. Not personal integrity. Now the Chief Minister has talked about our impugning integrity, I think he should for the sake of his own nominee, avoid that type of language.

HON CHIEF MINISTER:

Well, I know that the Hon Mr Picardo, gets very nervous when I point out the frailties and inconsistencies of their argument and I fear that if that is what causes him to jump up and down like an excitable Jack in the Box, he is going to have to get up more than once during this address, because it is true that the Leader of the Opposition put the question of integrity in the sense that Mr Picardo has just described, but it is not the sense in which other Opposition Members who have spoken in this debate have fielded the question of integrity. I regret to say that if the Opposition's position had remained and were as deployed by the Leader of the Opposition, it would have been a much more measured position to take but the reality of it, as I now intend to demonstrate to them, is that neither he, the Hon Mr Picardo, nor indeed the Hon Dr Garcia, limited themselves to that use of the concept of integrity. The hon Member may not recall, because of course he was not here, and may not have taken the trouble to

revisit Hansard, as indeed I had to do because I was not here either back in 1989. So against all the things that are said against Mr Budhrani, that he has expressed publicly preference for the Government's policies over the Opposition's, and that I read in one newspaper although I do not think that the hon Members have mentioned it in the House this morning, that he is said to have had a sticker on his car, I have not heard that this morning but it has been said in a newspaper.

Now, as against that, when the AACR Opposition arrives in this House having been in Government, arrives into the Opposition in this House in 1988 when the hon Members win the Election, they were confronted with the wish of the hon Members Opposite, then just elected to Government, well not just a few months down the road, to appoint as Speaker of this House a man who had not just limited himself to expressing political views, a man who had not just participated in the political fray as the politically active citizen expressing his views and sticking stickers on his car, a man who had been at the head of the political Opposition to the then party of Opposition. A man who had not only been the active political opponent of the party then in Opposition, but a man that had hailed from the same political stable as the then Chief Minister. Or does he expect this community to forget that they were political partisan soul mates in the Integration With Britain Party and Movement. I honestly am astonished at the double standards that they now seek in a GSLP do as I say and not as I do way, that they are now willing to impugn the suitability of Mr Budhrani simply because as a citizen he has expressed a political preference, when they thought it perfectly correct, I would not have taken the position that the Opposition chose to take in 1989, I think the then Chief Minister was right, there is no principle and I am asserting it now just as he was de facto asserting it back in 1989. There is no principle known to our Parliamentary democracy that people are disqualified from being Speaker just because they come with a political baggage. This is very immature Parliamentary politics. It is implicit in the concept of Parliamentary democracy that the person elected to the chair in a Parliament is intensely political. He ceases to be party political of course, when he is elected and in the UK there

is a tradition that once one is a Speaker, I am not sure it is tradition any more but until the last two or three elections it was the tradition, that the Speaker was not even challenged in his constituency, and stopped describing himself as the hon Member for Strathclyde Labour, or Conservative but until that point, the Speaker is necessarily by design a political partisan animal and nobody has ever said that how can somebody who is a political partisan animal be a Speaker of a democratic Parliament. This is political science made on the hoof for which there is no precedent anywhere in the world including Gibraltar, because all that the Government are now doing is subscribing to the same view that he subscribed to in 1989 when he foisted, and I say foisted because I will explain the use of that phrase in a moment, on the then Opposition, a Speaker who not only had been the active political opponent of the Opposition in question, but who had been a party colleague of the Chief Minister who nominated him, who recommended him to the Governor and then used his majority to secure the confirmation in this House, and a man whom we all respect, but a man who has made no secret of the fact that he is a huge admirer of the then Chief Minister, and still professes to be a huge admirer of the Leader of the Opposition. However, he went a bit cool on the Leader of the Opposition, I am talking about the last Speaker but one, the Hon Mr Peliza, when the then Leader of the Opposition just before the last Election, was ambivalent of the question of integration. When I arrived in this House as Leader of the Opposition in 1992, I was confronted with a motion to re-appoint that same man as Speaker, who had made no secret of the fact that he thought that my politics were verging on the treachery, and that my policies were designed to give away Gibraltar to Spain, the Brussels Agreement and all of that. Did I say we had to vote against this man as Speaker because he is clearly no political supporter of us, no. There is no such principle. There is no such principle ever, there has never been such principle, it has never been practised in the past and the hon Members are fabricating principle when they think it should start now, not only when there is no precedent for it but when it is the immediate opposite, magnified and multiplied in intensity several times, than what they did when they were in Government, because I am sure that

they will concede that appointing Mr Budhrani to the chair, even if he is a committed supporter of the GSD, is a good deal further down the scale of what they regard as inappropriateness, than appointing somebody who has been in active politics as a member of his party, not his then party but his previous party. I am honestly astonished that the hon Members can come to this House and say the things that they have said.....

HON DR J J GARCIA:

May I raise two points of order on this. I think it is important to make.....

HON CHIEF MINISTER:

Points of order have got to be points of order, they cannot just be a means of interrupting.

HON DR J J GARCIA:

The point of order relates to the accuracy of what the Chief Minister is saying and its relevance to the debate. Firstly, John Alcantara who was Speaker of the House before the present gentleman, was actually an active member of the AACR and an Elected Member of the Legislative Council in the 1950s. Secondly, Joe Bossano, just to clarify this point as well, resigned from the Integration With Britain Party in 1975. The party ceased to exist in 1976 and therefore, in 1989 when Mr Peliza was elected Speaker, this simply did not arise because his party had ceased to exist in 1976. Those are the points that I wanted to make.

ACTING SPEAKER:

Could I simply ask you to formulate what the point of order is? We saw the historical accuracy but what is the order?

HON DR J J GARCIA:

It is the accuracy in the debate.

ACTING SPEAKER:

Certainly my understanding has been that various participants on the Opposition side have mentioned a Speaker, two Speakers ago, my understanding is the response is in respect of that Speaker and the attitudes taken at the time. Now perhaps if I have got it wrong I am open to correction but that is what I understand.

HON CHIEF MINISTER:

That is exactly the position. This is not a point of order, this is another nervous attempt to prevent the obvious inconsistency in their position coming out.

HON F R PICARDO:

Yes, just that the issue of the point of order made by my friend the Hon Mr Garcia, is that there is an error of fact in what the Chief Minister is saying in suggesting that Sir Bob Peliza, when he was Speaker was an anomaly in that he had been a Member of this House. Mr Alcantara when he was Speaker had been a Member of this House also, he had been an elected politician of the Legislative Council, which is the immediate precursor of the House and that is the factual point which is being made. Nothing else, it is not as if it is irrelevant. We are saying factually the

statement of the Chief Minister that Sir Bob was unusual in being an Elected Member that became Speaker, is incorrect.

HON CHIEF MINISTER:

With the greatest of respect to the hon Member, this is just flannel to try and prevent this debate taking its natural course. I have not said that Mr Peliza is an anomaly because he was a Member of this House. What I have said is that the hon Members are supreme practitioners of double standards because they object to the appointment as Speaker of a man about whom the worst that can be said is that he has expressed political preferences in favour of the Government of the day, when they proposed as Speaker a man that had actually been a partisan fellow Member in the past of the party, previous party I have made clear, Integration With Britain Party of the Chief Minister then proposing him. I did not mention the word 'anomaly', I have not mentioned Mr Peliza's status as a Member of the House, what I have said is that the people, the hon Members Opposite who now object to the appointment of Mr Budhrani because they say he is not politically neutral, in 1999 thought it proper and correct to bring to this House as a Speaker a man who (1) had been the political opponent, quite recently the political opponent of the then party of Opposition the AACR; and (2) brought to this House a man that had been a past political party fellow member of the same political party as the then Chief Minister, now the Leader of the Opposition. That is the only point I have made and I think anybody who has listened to me in this House, and wherever this House is being broadcast, is perfectly clear that that is all that I have said. There has been no factual inaccuracy in anything of what I have said. What there is, is an understandable lack of comfort, an understandable degree of discomfort amongst the Opposition Members whilst they listen to their duplicity and double standards being un-felled in front of them. That is what there is here.

HON J J BOSSANO:

Well, if the Chief Minister cares to read the Standing Orders he will find that one of the rules of debate is that he should not impute improper motives. I do not know what it is that any of us have said in this House so far in this debate, that allows him to attribute to us duplicity and double standards. The Chief Minister of course seems to forget that the first name he mentioned to me was Adolfo Canepa who had been my opponent in this House since 1972. Should I now accuse him of duplicity and double standards because he thinks it is all right for him to propose Adolfo Canepa?

HON CHIEF MINISTER:

I pointed out what his duplicity and double standards were, an appointment by the way, that he was very happy to support and Mr Canepa had not been a member of his party in the past. This is not a question of just being political opponents. The hon Member wants me to explain to him what is, I have not used the word 'hypocrisy', I have used the word 'duplicity' because the word 'hypocrisy' which he has used is specifically prohibited by Standing Orders, but if he wants me to explain to him what I think the duplicity and double standards that they are practising is, I think it is almost unnecessary for me to do so but I will happily do so. The duplicity and double standards which they have practised on a massive scale is to pretend that their objections now to Mr Budhrani are properly based, in genuine principles and legitimate concerns about political neutrality, fairness and independence, when they have had the power of recommendation to the Governor coupled with the power by majority in this House to confirm the Governor's appointment, they used that power to put in the Speaker's chair a man who by the standards that they are trying to assert today was infinitely more objectionable than Mr Budhrani could conceivably be, and that is the duplicity and the double standards that I attribute to him. He has used the word beginning with 'h' not me. I have used the words 'duplicity and double standards'.

Now, the Hon Mr Picardo says that Mr Budhrani does not satisfy the criteria of personal, partisan impartiality. Well, did the Speaker that they brought to this House satisfy the standards of personal, partisan impartiality? Answer, no, but just as it did not matter then, it does not matter now. There is no principle requiring the Speaker to have personal, partisan impartiality. Indeed as I have expressed on several occasions, in all other democratic Parliaments in the Commonwealth on the Anglo-Saxon system, the Speaker is from a partisan partial source, namely one of the Members elected in the House. This is just elevating to the status of sacred cow a principle that does not exist at all. So first of all they invent the principle and then they pretend that they are the victims of it when (a) there is not a principle; and (b) if there were such a principle, which there is not, they have demonstrated in the past that it is not a principle to which they have ever subscribed. That is the issue in contention.

The Hon Mr Picardo also said that he cannot command the respect of the House because he has expressed preferment of Government policy. That is just another articulation of the same non-existent principle. All Speakers in all Houses of Parliament have expressed preferences for Government policy before they are appointed. Then in perhaps his most disingenuous moment, the Hon Mr Picardo said, *'and this is the first time'*, imagine just how dreadful it is. This is the first time a Speaker is appointed by Government majority and the Opposition voting against. People in this Chamber listening, Members of the House, indeed people listening to us elsewhere might think, my goodness, is it possible that this is the first time that the Speaker is elected without the Opposition supporting? But of course it was very carefully chosen words, because the words were entirely accurate but a complete concealment of the reality that the only reason why the Opposition did not vote, even to abstain, is because they walked out of the House before the Chief Minister stood up to move the motion. They simply were not in the House and did not return to the House until after the Speaker's appointment had been made. Well I would have thought that any presentation of the facts based on a wish of openness and transparency, and

communicating the right impression to listeners, might just have found five seconds to make that point of clarification. The fact of the matter is that both Mr Budhrani and the Hon Major Sir Bob Peliza, will both end up being appointed Speakers with the votes of the Government side of the House only. That is it. The difference is that they will be sitting in this House whilst the vote takes place and will vote against, and the AACR in 1989 absented themselves from the House for the entire debate. The moment, as I understand from Hansard, the moment that the Chief Minister stood up to move his motion as I did an hour ago, they got up and walked out. They were not here for the motion, or for the debate or for the vote. That is the only difference, but both will have been appointed by the Government's votes only.

Then the Hon Mr Picardo says, *'no we are not attacking Mr Budhrani's integrity, the Leader of the Opposition has just made it clear that we are not doing that'*. Well does he not remember saying that the appointment of Mr Budhrani and I quote him, *'is a curtailment of the Opposition's power of scrutiny'*. In other words, he had already decided and has announced to the world that the appointment of Mr Budhrani by the way that he will conduct his obligations in this House will amount, indeed is intended by me with his conspiratorial practice, because he then will do it, to curtail the Opposition's power of scrutiny, and he has the gall to then stand up in this House to say that he is not assaulting Mr Budhrani's integrity. The hon Member should be grown up enough to take responsibility for the natural meaning of the words that he chooses to use. Then clearly, he has not even troubled to read the Constitution. He says there is a technical abnormality in the approval of the questions because a man that we have still not confirmed as Speaker, has approved the questions that the House is going to take later this morning. Well, clearly he does not understand the mechanics, the constitutional mechanics for the appointment of Speaker. I tried to explain them to him but as he had his prepared text and that is what his prepared text said, he ignored everything that I had explained, I gave him a pretty strong clue. The position under the Constitution, in case he wants to check it, section 26(3) of the Constitution is that he is appointed already. Mr Budhrani is

already the Speaker of this House and he is not the Speaker subject to the confirmation of this House, no. He is the Speaker. If this House fails to confirm him at its first sitting after the Government's appointment of him, he, Mr Budhrani, is then constitutionally required to "vacate the office". One cannot vacate the office unless one has already been appointed to it. He has already been appointed to it. Mr Budhrani has been the Speaker of this House since 16th September and he has checked the questions that we are about to be asked, in his capacity as the properly and constitutionally appointed Speaker. If we should fail to confirm him today, he would then have to resign as Speaker, without prejudice to the fact that he has been Speaker until today. That is the correct legal analysis. It is perfectly clearly set out, this does not require any great study, the language is perfectly self-explanatory. It is actually set in quite simple language so there is no technical abnormality in the approval of questions. Nor, of course every time the hon Members say something which is not correct, I do not jump up and down like a Jack in the Box into which a whole bottle of WD40 has been emptied, because it would mean I would have to be standing up and down all day. *[Interruption]* If the hon Members could just contain their nervousness for a few more minutes, the hon Member referred to a motion to reprimand the Chief Minister. There was no motion to reprimand the Chief Minister by the previous Speaker. The hon Member referred to there having been a motion of no confidence in the Speaker. There was no motion of no confidence in the Speaker, indeed in the episode in the last House of Assembly, which has obtained a degree of notoriety and which the Government will in due course make a full public statement about, the Government passed no motion at all. Both motions were moved by the Chair and neither was a motion to reprimand the Chief Minister and neither was a motion of confidence in the Speaker. At least not a motion of confidence moved by me or by any other Member in this House. The Leader of the Opposition correctly described the chronology. The then Speaker named me, I said, well in due course I will bring a motion and the Speaker said no let us do it now. I said, but I have not brought a motion yet, well I will bring the motion he said. The first motion was 'does the House think I am right or

wrong in what I have done?' The House, as it is entitled to do, not under that procedure, there is no procedure that entitles that to happen but it was not brought about by us. Do we think that Mr Speaker is right? No we do not. Thirty seconds later the Speaker says '*well now I want you to vote again, and this time if you vote the same way I am going*' or words to that effect. Well, the House's view of whether the Speaker's decision was right or wrong in the first place cannot change because he attaches a threat to the expression of the opinion. So of course the Government are obliged to vote at it again. It was not a vote of no confidence but if the Speaker chooses to interpret it in that way, that is a matter for him. Look, it is not normal for a vote of confidence, first of all a vote of confidence requires notice under the Rules of the House. One cannot call a vote of confidence and call for the vote there and then without a debate. It requires five days notice. So we will on another occasion review the events of that day and put them into their proper context. I have not wanted unduly to saddle this morning's proceedings by dealing with that in any detail.

It is always the same story, we want to have a go at Mr Budhrani without alienating the Hindu community, now let us see how can we do that. Oh yes, I know how we could do it, always try to get both ways, congratulates the Hindu community but I wish it had been some other member of it. Well look, the hon Members simply should have the courage of their convictions and just oppose Mr Budhrani without worrying about offending the Hindu community. I do not know whether the Hindu community will be offended or not, and frankly it is not the issue, but the Hindu community does not appear to share the hon Members' lack of confidence in Mr Budhrani's integrity because then he has been their President for as long as I can remember, and presumably if they doubted his integrity they would not leave him as their Leader of their community. So by all means congratulate the Hindu community but in saying so, in offering that congratulations to the Hindu community, the Hindu community should be told by them that they have a different view about Mr Budhrani's integrity. Then the Hon Mr Picardo says that he is not impugning Mr Budhrani's integrity but he does not mind saying

that each of his decisions from now on will be under scrutiny for partisanship. In other words, we start from the presumption that you are an untrustworthy, unreliable, politically partisan biased individual and we are going to scrutinise each of his decisions to make sure that that is true or not true.

HON F R PICARDO:

One moment. Words have been put into my mouth which I am not prepared to have there, especially if the Chief Minister is the one who is going to put it there. I have not said the word 'untrustworthy' in all of my contribution. I would be grateful if the Chief Minister could just stick to what I said and not try to characterise it as what he wishes I would have said. For the record, I am not nervous and am not a Jack in the Box but I am sure that is where he will go now.

ACTING SPEAKER:

I have to say I do not recall the word 'untrustworthy' being used.

HON CHIEF MINISTER:

It is not I who characterises what the hon Member says. What the hon Member's opinions that he has articulated this morning are characterised by the words that he himself has chosen to use. It does not need any guiding by me, he has made perfectly clear the nature of the allegations that he is deploying against Mr Budhrani, and each of his decisions will be under scrutiny for partisanship is not the wait and see approach that the Leader of the Opposition was advocating. One is we will give the hon Member the benefit of the doubt, and the other is we start from the presumption that this is what he is minded to do and now we are going to make sure that he does not. Well, the hon Member has a very substantial gall by suggesting that it is I who disrespects this House, or I who disrespects the Speaker. Here

is a man that has been constitutionally appointed Speaker and the hon Member is already announcing to this world that each of his decisions will come under scrutiny for partisanship. I do not know whether he thinks that Mr Budhrani is made of such small stuff that he thinks that Mr Budhrani is now going to be frightened of ruling against him, for fear of being accused of being partisan. If that is the game they have substantially under-estimated the nature of the man. If the hon Members should have some objection to the ruling that may be made by a Speaker of this House at any time, under Standing Orders what they should do is bring a substantive motion. That is the procedure provided for in Standing Orders in this House for when the House does not agree with the ruling of the Speaker, as I indicated to the then Speaker, I would do when he decided to name me. That is what I notified him would be my intention to do. That is the correct procedure. Then if the hon Member thinks that the Speaker has behaved improperly, the House shall be able to debate it but frankly, the hon Member should resist the temptation to set himself up as some sort of kangaroo court from hereon now in.

The Hon Dr Garcia says that the way the candidate was disclosed by the Chief Minister in a television interview. I think I have already made clear that what I said in my television interview was that Mr Budhrani is the man that I intended to recommend to the Governor. I did not announce Mr Budhrani as the Speaker, I said *[Interruption]* If the hon Member wants me to give way I am happy to give way to him. I have not actually made the point yet but.....

HON DR J J GARCIA:

The only thing I want to say is that what I had said was that he had announced Mr Budhrani as a candidate for Speaker, which is the same as recommending him to the Governor to be Speaker.

HON CHIEF MINISTER:

If the hon Member is saying that he thinks it is not right that I should even have disclosed the identity of the person that I was recommending, then certainly that I did, in language which made it clear that I was not giving the appointment as a foregone conclusion. I said *"if the Governor appoints him, I think he will make a jolly good Speaker"*. So there is publication of the fact that that is the name that I am recommending to the Governor. It is not publication of the identity of the Speaker. The hon Member thinks that that is, and I use his exact words *'supremely undignified'*. Well, I do not know whether it is supremely undignified or not, well I do know actually, I do not think it is supremely undignified. He appears to believe that it is. Whether it is supremely undignified or not, it cannot be more or less undignified or supreme than when it is done by somebody else. Of course he has obviously forgotten that the same fate befell the Leader of the Opposition, the Hon Mr Bossano, when he recommended in 1989 the Hon Mr Peliza and in fact there was quite a controversy about it then. I have taken the trouble of checking the Chronicles of the time, and on 23rd December, 1988, there was a controversy because the then Chief Minister now the Leader of the Opposition stated in a speech during a dinner for visiting Euro MPs, he may remember this, that Mr Peliza would be the next Speaker. That was before the Governor and everything else, and the explanation that he gave was yes, he admitted that he had done that but it was only after Peter Montegriffo was offering over the dinner table bets on Peliza not being appointed. So in order to make sure that Mr Montegriffo did not win any money by the book that he was opening on whether Mr Peliza would or would not be appointed, the then Chief Minister thought best to put it beyond doubt by standing up and in his after dinner speech saying Peliza would be the next Speaker. Well, I do not think that that was particularly undignified let alone supremely undignified, in the same way that I do not think that my answering a question on GBC as to who I would recommend to the Governor was any more or less dignified or supremely so. In a small place like Gibraltar where there is correctly a measure of consultation, then

it is inevitable that these things will get into the public domain. Let me give *[Interruption]*.....

HON DR J J GARCIA:

My point is that the Chief Minister is right. It is not supremely undignified because that happened in December and on 10th October the Chief Minister had written to the Leader of the Opposition to let him know that Bob Peliza was the Speaker that he had in mind. So if that happened in December and he wrote to the Leader of the Opposition in October, in this particular case the Leader of the Opposition found out on television.

HON CHIEF MINISTER:

The Opposition was then engaged in a very public objection to Mr Peliza being appointed Speaker, and indeed there was an exchange of correspondence, quite an intense exchange of correspondence between the then Chief Minister and the then Leader of the Opposition. It is true that by then Mr Canepa, the then Leader of the Opposition, knew that the then Chief Minister intended to recommend Mr Peliza but it was not publicly known. The use of the discourtesy to the Governor, the indignity of the name entering the public domain before the Governor had made an appointment or declined to make an appointment was identical. The only difference is that in that case.....

HON DR J J GARCIA:

I am sorry, point of order. I have not mentioned the Governor. I said it was an indignity to this House and to the office of Speaker.

HON CHIEF MINISTER:

I do not agree that it is an indignity to anybody, but I do not see how it can be an indignity to the office of Speaker that the name that the Chief Minister is recommending to the Governor for appointment should become known before the Government makes an appointment or not, and I have said if it is an indignity, which I do not agree, it is exactly what happened last time with Mr Peliza. In other words, that the name that the Chief Minister was putting forward was in the public domain before the Governor had made the appointment or not made the appointment, because at the time of the dinner for visiting Euro MEPs the public at large was unaware that the Leader of the Opposition, then the Chief Minister, was intending to propose Mr Peliza and it was discovered by the public at large over that dinner speech. All I am saying is that the parallels, I am not saying that the situations are identical but for all practical relevant purposes the situations are identical, so we will just put it down to another example of do as I say now and not as I did then.

Well, I agree with what the hon Member says by the way about that the new system that we have proposed in the new Constitution is a much more appropriate way for a non Colonial legislature to choose its Speaker, but for the time being we have the constitutionally legal system that we have. I think I heard him refer to the Speaker as “the Speaker designate” and for reasons that he has already heard me explain to his Alliance Colleague, the Speaker designate is not an appropriate phrase. He is not the Speaker designate, he is the Speaker already in the fullest sense of the word.

HON DR J J GARCIA:

At the point of being accused of over-interrupting, it is a point of order. Simply I did not use the phrase ‘Speaker designate’, I think I used the phrase ‘candidate for Speaker’, but I take the point anyway.

HON CHIEF MINISTER:

Not a huge point but he did use the phrase ‘Speaker designate’ as Hansard will show. I have made a note of it and there is no reason why I should do so and when he revisits Hansard he will see that he used the phrase ‘Speaker designate’. Then the Hon Dr Garcia said that it has never been the practice to appoint people close to political parties. Well I do not want to revisit the Major Peliza scenario but frankly, I do not think it is a tenable sustainable statement. I do not think it has been true of any Speaker in the past by the way. I think all Speakers in the past have had a degree of political involvement in their past life, even Sir Alfred Vasquez I understand. As somebody rightly said, the immediate previous Speaker, Judge Alcantara, also had in his past. It is simply not true. There can be degrees of proximity between political involvement and appointment, in some cases it has been further in the past than in others. It cannot really be said to have been in the past, because although he had not been in Government for some years, by 1989 he was, and everybody knows this, actively involved in expressing political opinions on political issues in Gibraltar, particularly political issues affecting our foreign policy.

HON DR J J GARCIA:

Can the Chief Minister give way? In the case of Judge Alcantara, Alfred Vasquez and even Major Peliza, the points I was making is that their parties did not exist at the time that they became Speaker.

HON CHIEF MINISTER:

These are very narrow nuances. The thrust of the hon Member’s objection does not turn on whether the party exists, does not exist, whether it is six months before or twelve months, the thrust of the hon Member’s objection appears to me to be that if one is

not politically neutral one is not a suitable Speaker. I do not think that throughout the eight years of GSLP Government anybody thinks for example that Major Peliza was politically neutral. Everybody knows where his political preferences lay between the AACR when they were in Opposition, and the GSLP when they were in Government and between the GSD when it was in Opposition and the GSLP when it was in Government, but it never occurred to me when I was Leader of the Opposition to think that because I knew that to be his political preference, that therefore the man was not capable of that degree of personal integrity that would enable him to keep his preferences to one side and apply the Rules fairly. Which brings me to the main point that I want to make in my response. That is, that the hon Members, with respect, are completely distorting the meaning of the words 'impartiality and independence'. When the principle says that a Speaker requires to have impartiality and independence, it is not referring to his political views, it is referring to the way he conducts the duties and functions of Speaker. In other words, in the conduct of the duties and functions of Speaker he must show independence and impartiality. It does not mean that one has got to have been impartial or independent before one arrives in the Speaker's chair. There is simply no basis for that, that is not what the principle says, it is not what the principle means and one just has to look at the practice everywhere else to know that the phrase 'impartiality and independence' refers to the way in which the functions are carried out and not to the personal, private characteristics of the individual concerned. Or what does the Hon Mr Picardo mean when he concedes then, that of course he is entitled to have his own views. How can one on the one hand say that the Speaker is entitled to have his own personal views, and on the other hand say that independence and impartiality means that he is not entitled to have his personal views. Of course he is entitled to have his personal views and having his personal views does not disqualify a person from being Speaker, here in England or in any other Parliamentary democracy in the world. What disqualifies a person from being a Speaker is an inability or unwillingness to show independence in the discharge of the function. Let me say that that is not a product of

partisanship. One can be capable of being fair and independent without being a member of a political party, and one can be incapable of being fair and independent without being a member of a political party, because although there are individuals who have no political baggage but who may feel unwilling to rule against governments, or unwilling to rule against oppositions if they thought the Opposition was going to win the next election. So impartiality and independence is about how one does the job and actually does not respond just to whether or not one supports a political party. Not supporting a particular political party is no guarantee of impartiality or independence, these are matters of personal characteristics. In other words, personal integrity, is one as an individual honest and strong enough to impose the Rules of the House regardless of one's personal political preference. That is the criteria, not whether or not one has political preferences and I have no doubt whatsoever, nor have the hon Members said anything this morning to suggest that they do not agree that Mr Budhrani has the degree of personal integrity and personal courage to apply the Rules above his own particular political preferences. Not even they have said that which is why I think that their objections to Mr Budhrani's nomination are actually founded in non-existent principle. The Hon Mr Garcia then went on to say that Mr Budhrani had been biased. What does he mean by 'had been biased'? What he means is that he had been biased in the sense that in the past he has expressed his personal political preferences. That is not the relevant bias. That is not the bias that is relevant for these purposes. That is not the bias that he is not allowed to have, that is the bias that he is allowed to have by his own admission. The bias that he is not allowed to have is that he cannot bring that bias to bear on the way he discharges the duties of Speaker, that is the bias that he is not allowed to have. Therefore, the Hon Dr Garcia's statement that the essential criteria is "political neutrality", is correct if he means political neutrality beginning from the moment he sits in the Chair. It is not correct if he means political neutrality before he reaches the Chair because that is not true of any Speaker in any Parliamentary democracy.

So we have not chosen to ignite a political controversy, I think was his phrase. We have not chosen to ignite a political controversy, we have simply chosen not to be guided by what we regard as non-existent, distorted principle. We do not believe that the principles that the hon Members are trying to enunciate as to when somebody is an appropriate candidate for the Speakership, and when he is not, we do not think the hon Members are right. They are not right by reference to practice anywhere else, they are not right by reference to their own practice when they were last in office, and we agree with them. We do not think that there is any such principle, and because we do not think that there is any such principle we are not willing to allow them to make the system hostage to their non-existent, mis-statement of principle. The Hon Dr Garcia closed with the point that Mr Vasquez, my uncle Sir Alfred Vasquez, who he said had been Speaker for longer than anybody else left with the words, I have heard him say this in Hansard or in an interview, that he did not envy the Speaker who did not enjoy the support of both sides. What the hon Member conveniently omitted to mention is that he said that three weeks before the hon Members forced on the then Opposition Sir Bob Peliza against their wishes. So if they were not willing to take Sir Alfred Vasquez's advice, on what moral basis do they now try to saddle me with it. I can accept the Leader of the Opposition's statement that he is not in a position nor is it our job to judge his personal integrity, but that is true of any nominee that is not personally known to him. This is not peculiar to Mr Budhrani. At the time that I voted on his motion to reconfirm the Hon Major Peliza as Speaker after the 1992 Election, I had barely met Sir Bob. I may have met him very casually but I was certainly not in a position to underwrite his personal integrity. I assume people's personal integrity until they give me positive reason to doubt it. I do not start from a position of doubting people's personal integrity and then scrutinising each of their decisions to see if my doubts are well-founded.

HON F R PICARDO:

Point of order. The Chief Minister has just referred to when he was asked to vote on the motion in 1992, re-appointing Sir Bob as Speaker, the fact that he had barely met him and in fact had met him casually. In fact, the hon Member had been elected in a by-election in 1991 and I think had been a Member of the House with Sir Bob as Speaker before that vote was to come about. I think that is historical inaccuracy.

HON CHIEF MINISTER:

I do not see how it is an historical inaccuracy. Honestly, I have to say that in all the years in this House I have never taken part in debates of this nature. I have not said that I did not know him. Of course he was the Speaker when I won the by-election in November 1991 or whenever it was, May 1991, and he was Speaker of the House for the eight months. Of course I know him but did I know him personally such as to enable me to gauge his personal integrity, the answer is most certainly not. I do not go around impugning the man's integrity until he gives me grounds to doubt it. I think the Leader of the Opposition's approach is much more reasonable than the approach taken by his two Colleagues, which is, as I have understood him, I assume Mr Budhrani's personal integrity and will wait to see what happens. That is not unreasonable, that is what I would do but that is not the line taken by the Hon Mr Picardo and by the Hon Mr Garcia.

I have already agreed with the Leader of the Opposition's assessment of what happened in the contentious day in the last meeting of the House, but let me say that the Government do not intend to leave that matter there. I think that there are issues there which the House needs to debate, which I think is important should be in the public domain because certainly the Government are not willing to allow public opinion to be left with the impression that the Government or I have incurred in disrespect for the Speaker, in disrespect for the supremacy of

Parliament and it is important to us that the people at large understand the exact facts as they happened, why they happened and what it was that ignited the exchange in question. Let people then judge for themselves whether I was right or wrong in declining the Speaker's invitation to withdraw my statement.

I would much rather that the Leader of the Opposition had kept confidential between us those attempts at consultation that I did with him. It makes consultation between Government and Opposition much more difficult if the Government know or cannot be confident that consultations will not be kept confidential, but now that he has mentioned the name 'James Neish', of course it has to be said that the Government never put the name 'James Neish' in the public domain, and it appeared in a newspaper after I had consulted him privately about it. That is not the point I want to make, the point I want to make is this. Now that the consultations between us can be spoken about, which would not have been my preference, the Hon Dr Garcia expressed that Speakers did not have to be lawyers, nor did they have to be men they could be women. Well, I think it is important so that people know who is who and what is what that when I proposed Mr Neish, who is a male lawyer, the Leader of the Opposition's counter proposal was another male lawyer. Not a female non-lawyer, another male lawyer. So if I had accepted the Leader of the Opposition's suggestion, we would still be debating here the confirmation of another male lawyer to be the Speaker of the House. So it is not the policy of that half of the Alliance to move away from what he calls the legalistic, militaristic history of Speakers in this House.

I do not accept for one moment, and if he cares to refresh his memory, there is no apparent chronological conflict. The Leader of the Opposition's imagination is much more fertile than I had given it credit for. The suggestion that Mr Budhrani was the Government's candidate all along and that Mr Neish was a smokescreen, I think that is how the man more or less understood the suggestion, all speculation based on an alleged, or his words were "apparent", on an apparent chronological

conflict is nonsense. There is no chronological conflict alleged or real, or apparent or real. The Government did not consult Mr Budhrani about his willingness to do the job until I had established that Mr Adolfo Canepa, a man who has opposed me politically, was unwilling to do the job. He knows this, I have mentioned this to him, and Mr Canepa turned down the offer because of personal circumstances surrounding his family at present. I then sounded out another gentleman whose name has been mentioned who expressed the view that has already been made here, and then I approached Mr Budhrani who was in the frame from the beginning.

My first preference would have been somebody from a political background, thereby confirming the fact that somebody has been a political opponent, it is not that long ago that Mr Canepa was campaigning against me, suggesting to the people of Gibraltar that I was a traitor in the making. That did not operate on my mind as a reason for excluding him from candidacy of being the Speaker. Why? Because I know that Adolfo Canepa, whatever might be his political views, is an honest individual and is not going to deploy those political views in the exercise of the judgements that he makes from the Chair, I take the same view of Mr Budhrani, and that is the point. So, I hope that even if I had not persuaded the hon Members that they will now understand that the Government's position is based on the view which I think that they also have, that what they regard as political neutrality is not a relevant issue here.

I am not going to bother to address the question of a candidate having to be a consensus candidate, and if I went into that ground then of course I could quote all the things that the Leader of the Opposition, then Chief Minister, said in the debate of the confirmation of Major Peliza in support of the proposition that there was no requirement for consensus. In other words, there is no issue about it being desirable but there is no issue of propriety about absence of consensus. That was the issue, and indeed how could they, in the United Kingdom, although it does not happen often, one can actually have a contest for Speaker. Competing candidates can be put up and there is a

vote, and of course everybody that votes for the candidate that did not win obviously is not getting the Speaker that they wanted. So there is no issue or principle of consensus. They accept that, they could not deny it in the context of the remarks that they have made in Hansard in the past. The only issue therefore is whether Mr Budhrani's attributed political preferences for the policies of this party as opposed to the policies of that party, in the past, whether that disqualifies him from being the Speaker of this House. The Government firmly believe that it does not, they did not believe it when they were in Government. The United Kingdom does not believe it, there is no Parliament in the British Commonwealth and the Old British Commonwealth that believes it and there is no such principle. That is why the Government are proceeding with Mr Budhrani's appointment, because we do not see why a candidate that does not fall foul of the correctly applicable principles, should be disqualified because the hon Members wish to mis-apply principle.

Question put.

HON CHIEF MINISTER:

Just to clarify a point. Just so that the record cannot be misinterpreted later, presumably the acting Speaker the Hon the Attorney General who is in the Chair is not going to participate in the vote. It ought to be clear whether he is participating or not participating. My view is that he should not participate although he is free to if he wants to.

ACTING SPEAKER:

My wish would be not to participate.

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

For the Ayes:	The Hon C Beltran The Hon Lt-Col E M Britto The Hon P R Caruana The Hon Mrs Y Del Agua The Hon J J Holliday The Hon Dr B A Linares The Hon J J Netto The Hon F Vinet The Hon T J Bristow

For the Noes:	The Hon J J Bossano The Hon C A Bruzon The Hon Dr J J Garcia The Hon S E Linares The Hon Miss M I Montegriffo The Hon F R Picardo The Hon L A Randall

The motion was accordingly passed.

The House recessed at 12.05 pm.

The House resumed at 12.10 pm.

OATH OF ALLEGIANCE

The Hon Haresh Kishinchand Budhrani QC took the Oath of Allegiance.

ADDRESS BY MR SPEAKER

MR SPEAKER:

Hon Members, when the Chief Minister asked me whether I would accept appointment as Speaker of this House, he told me he was anxious to see the dignity of the House restored. I know he was not referring to any shortcomings on the part of my distinguished predecessor because there were none, but to the perception of late of some outside this House that there was something lacking about the manner in which the business of this august body was being conducted. Naturally, I was delighted to be thought of as possessing the necessary qualities for the task and I am honoured to have been entrusted with that responsibility by His Excellency. I am well aware that my appointment does not enjoy the wholehearted support of every Member of this House. That fact only serves to heighten my determination to perform my duties with utmost impartiality and in accordance with the best traditions of this House. I will make the restoration of the dignity of this House my mission statement for the duration of my appointment, and I have no doubt that with your help I will succeed.

I have carried in my head for over 35 years the celebrated reply by Mr Speaker Lenthor to King Charles I in 1641 when he said, *"may it please Your Majesty I have neither eyes to see nor tongue to speak in this place but as this House is pleased to direct me, whose servant I am here."* I would not lose sight of the fact that I am the servant of the whole House. I am sure that every Member elected to the House regards it a privilege to be here and I can think of no greater privilege for myself than to be called upon by the chosen ones to preside over their deliberations. Hon Members, without wishing to put the proverbial cat amongst the constitutional pigeons, I humbly accept appointment as Speaker of your House.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on 30th April 2004.

HON CHIEF MINISTER:

Mr Speaker, there is an issue in relation to the Minutes. Not that they are inaccurate but that they are not entirely explanatory of an issue that I regard as important. In paragraph 81 it says 'the House was then asked to vote on the motion', and I think that should more accurately say, "the House was then asked by the Speaker to vote on the motion". I would like the Minutes, if that is the recollection of the other Members of the House, or otherwise we can leave the approval of the Minutes in abeyance until we have checked Hansard, but I would not wish the Minutes to give the wrong impression as to who asked for the vote to take place there and then. If the Opposition Members are not happy with that, then we can leave the confirmation of the minutes to a later day whilst we have had an opportunity to clarify this between us.

MR SPEAKER:

I am obliged, so I will not sign the Minutes.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table:

- (1) The accounts of the Social Services Agency for the period 8th August 2002 to 31st March 2003;
- (2) The audited accounts of the Gibraltar Regulatory Authority for the year ended 31st March 2004.

Ordered to lie.

The Hon the Minister for Health laid on the Table the Report and audited accounts of the Gibraltar Health Authority for the year ended 31st March 2003.

Ordered to lie.

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

- (1) Consolidated Fund Reallocations – Statements No 6 and No 9 of 2003/2004;
- (2) Consolidated Fund Pay Settlements – Statements No 7 and No 10 of 2003/2004;
- (3) Consolidated Fund Supplementary Funding – Statements No 8 and No 11 of 2003/2004;
- (4) Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2003;
- (5) The Accounts of the Government of Gibraltar for the year ended 31st March 2003 together with the Report of the Principal Auditor thereon.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 1.05 pm.

The House resumed at 4.05 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 Government motion.

Question put. Agreed to.

MOTION

HON CHIEF MINISTER:

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

“This House in pursuance of the provisions of section 78 of the Constitution of Gibraltar elects The Hon Clive Beltran as Mayor of Gibraltar with effect from Monday 11th October 2004.”

Mr Speaker, the hon Members will be familiar with the provisions of section 78 of the Constitution which reads in sub-section (1) “that there shall be a Mayor of Gibraltar who should be elected from among the Members of the Assembly, other than the ex-officio Members, by the Elected Members of the Assembly”. In the past we have had both styles. In other words, Speakers who have also been Mayors and separate Mayors and separate Speakers. The hon Members will recall that in their time in office two of their Ministers, the late Robert Mor was Mayor and the hon Lady was Mayor. We think that now that the functions and role of the Minister for Heritage and Culture have developed and become established, that if it is to come back to the Elected Members ranks, that it is appropriate for the Minister for Heritage and Culture who in any event attends many of the functions that the Mayor would host or have to attend, that he is the logical Minister so to speak to cover the functions of Mayor, and I am glad to report to the House that the Hon Clive Beltran has agreed

to carry out the not un-onerous in terms of demands on his private time duties as Mayor, and I therefore commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, we are quite happy to not just see the Standing Orders suspended so that the motion can be taken today, given the fact that there is a function that the Minister will have to be involved in tomorrow, and therefore it is logical, but indeed as we have already indicated to the Government, are voting in favour of this motion. We think it is up to the Government to decide which of their Ministers can best handle this responsibility and we note that the Minister actually had the choice of saying yes or no, difficult though it may be to believe. We in fact have always seen the role of the Mayor in the past as something that one was not particularly concerned, and I made that point on a previous occasion, when Judge Alcantara as Speaker was being made the Mayor as well, that we had in fact supported the AACR when Abraham Serfaty was kept as Mayor and we had continued with him as Mayor when we came into Government notwithstanding the fact that he belonged to a different political party. But that we thought it was preferable to have an Elected Member, obviously of the Government, rather than the Speaker and that was said when John Alcantara was there so it was not a reflection of the views we expressed earlier today on another motion. Therefore, having put that on record we are glad to see that there is an Elected Member again taking the post and we will vote in favour.

HON C BELTRAN:

Mr Speaker I would like to thank Members of the House for placing their trust in my ability to carry out the responsibilities of

Mayor of Gibraltar, which for my part it is indeed an honour to carry out, in spite of expenses as somebody was saying.

Question put. The motion was carried unanimously.

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 6.50 pm.
The House resumed at 7.00 pm.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 12th October 2004, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 8.15 pm on Monday 11th October 2004.

TUESDAY 12TH OCTOBER 2004

The House resumed at 10.05 am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT

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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 1.40 pm.

The House resumed at 3.20 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House
to Wednesday 13th October 2004, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 6.15 pm on Tuesday
12th October 2004.

WEDNESDAY 13TH OCTOBER 2004

The House resumed at 9.30 am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT

The Hon R R Rhoda QC - Attorney General

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 12.10 pm.

The House resumed at 2.35 pm.

Answers to Questions continued.

The House recessed at 5.00 pm.

The House resumed at 5.35 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN PARLIAMENTARY ELECTIONS ACT 2002 (APPLICATION TO GIBRALTAR) (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the European Parliamentary Elections Act 2002 and the European Parliamentary Elections (Changes to the Franchise and Qualification of Representatives) Regulations 1994 as they apply to Gibraltar consequential to the adoption of Council Decision 2002/772/EC, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 18th October 2004, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 8.25 pm on Wednesday 13th October 2004.

MONDAY 18TH OCTOBER 2004

The House resumed at 2.35 pm.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT

The Hon R R Rhoda QC - Attorney General

IN ATTENDANCE:

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

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN PARLIAMENTARY ELECTIONS ACT 2002 (APPLICATION TO GIBRALTAR) (AMENDMENT) ORDINANCE 2004

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 has arisen following the adoption by the Council of the European Community in June and September 2002 of Council Decision 2002/772/EC and EURATOM. The effect of that decision is to renumber the provisions of the Act concerning the Elections of Representatives to the European Parliament by direct universal suffrage, annexed to Decision 76/787/EC ESCS EEC and EURATOM. In a nutshell, we in Gibraltar have grown to refer to as the 1976 Act. Hon Members will recall when we were debating and lobbying for the Euro Vote that we were always referring to Annex 2 of the 1976 Act, which was attached to this original Decision. That is the Act that this new Decision amends. Changes made by this Bill renumber cross references to the provisions of the 1976 Act,

which are the same in substance as the provisions to which the cross references refer. The Bill takes into account new substantive provisions in the 1976 Act, following the amendments made by the 2002 Decision concerning entitlement for membership of the European Parliament. In particular, article 7(2) to which clause 2(b) of the Bill refers, now provides that an MEP cannot also be a Member of a national Parliament, subject to provisions therein contained by way of derogation until 2009 for UK MEPs who are already members of a national Parliament. The Bill achieves these ends by amending cross references in the European Parliamentary Elections Act 2002 and the European Parliamentary Elections (Changes to the Franchise and Qualification of Representatives) Regulations 1994, as amended, as they apply to Gibraltar. Those Regulations are United Kingdom Regulations and the 2002 Act, the European Parliamentary Elections Act, is a United Kingdom Act of Parliament.

Hon Members may recall that the 2002 Act was extended to Gibraltar by section 19 of the European Parliament Representation Act 2003. For their part the 1994 Regulations apply to Gibraltar by virtue of Gibraltar's participation in the combined regulation. It is rare for this House by legislation in this House to amend United Kingdom legislation extended to Gibraltar. We have proceeded, in consultation with the British Government, since nothing in our Constitution limits the House's right to amend the application of UK legislation to Gibraltar, save for the Colonial Laws Validity Act of 1865, which in any event does not apply in the context of EU legislation and that dis-application is done by section 2(6) of the European Communities Act. In other words, there is no constitutional limitation to the legislative competence of this House. The UK Act, the Colonial Laws Validity Act of 1865 says that this House, or any other colonial legislature, cannot pass legislation which is repugnant to United Kingdom legislation. In any event this legislation which we are passing would not be repugnant to United Kingdom legislation, and in any event section 2(6) of the European Communities Act deals with that particular aspect of the matter

and makes it clear that it would not apply in the context of legislation passed to comply with an EC obligation of Gibraltar.

So, we find ourselves legislating in the same terms as the United Kingdom legislated to introduce this directive, they did it by subsidiary legislation. They did it by something called the European Parliamentary Elections (Common Electoral Principles) Regulation 2004, so they did it by subsidiary legislation not by primary legislation but our legislation is in the same terms. As the Bill before the House, they have put in brackets for example, if the hon Members will look at clause 2 of the Bill, where for example in 2(a) it says "in section 9(1) for 9 substitute 10". They have said in section 9(1) (double voting), in other words, they have in their section just given an indication of the subject matter of section 9(1), and the same for section 10(8) and the same for Schedule 1A. But the substance, the operative parts of the legislation, are identical in our case as in the case of the United Kingdom. So the one substantive amendment is that members of national Parliaments will no longer be able also to be Members of the European Parliament and the rest of the legislation is basically correcting cross references, because if the hon Members have seen the directive or rather the Council Decision itself, they will see that one of the things that the Council Decision does is to re-number even those articles that remain unchanged. So because all the article numbers have been re-numbered, then there is a need in legislation where there is a reference to those article numbers, to change the cross references and that is also done by the Bill. I commend the Bill to the House.

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

HON DR J J GARCIA:

The Bill before the House is, as has already been said and as the Explanatory Memorandum itself makes clear, comes about as a result of Council Decision 2002/772/EC EURATOM and is

therefore an EU obligation. That Council Decision amends the 1976 EC Act on direct elections to the European Parliament. The preamble to the Bill makes clear what the Chief Minister has just explained, that we are amending the UK European Parliamentary Elections Act of 2002 as well as the European Parliamentary Elections (Changes to the Franchise and Qualification of Representatives) Regulations 1994. This is therefore UK legislation and not Gibraltar legislation but we are amending them as they apply to Gibraltar. The Chief Minister has explained and justified the reasons as to why this has been done in this way in relation to the United Kingdom. We would welcome an explanation in his summing up as to whether this was a Gibraltar Government initiative and what the view of the United Kingdom is in pursuing the amendments to the legislation in this way.

The Bill introduces a number of consequential amendments to the EC Act as a direct result of the Council Decision, which then need to be changed in the UK Act itself. As the Chief Minister has said, the Annex to the Council Decision itself contains the new numbering. The amendments in clause 2(a) of the Bill are simply a reflection of the fact that article 9 has now become article 10. In the UK Act this deals with the issue of double voting, as we have already heard. Similarly, in 2(b) of the Bill article 6(1) becomes 7(1) and (2) in the section of the Act that deals with disqualification. So far that is clear and relatively straightforward to establish. However, clause 2(c) of the Bill amends Schedule 1A of the European Parliamentary Elections Act. Schedule 1A is not shown in the copy of the European Parliamentary Elections Act 2002 that we have in our possession. The amendment proposed to substitute 10(2) for 11(2), there is a reference to 10(2) section 1.5 of the UK Act but we have not been able to find a Schedule 1A as such. Perhaps the Chief Minister will be able to clarify this point in his reply.

It is also relevant to point out that the EC Act on Direct Elections of 1976 was, as we have already heard, the Act that we were told for many years could not be changed in order to include Gibraltar in European Elections. Indeed it has still not been

changed in that respect. As the House knows we were enfranchised through changes to British law alone leaving European law as it is, yet in 2002 the EC Act which was set in stone for Gibraltar was changed for the purposes before this House today.

Another point I would like to make is that article 7(b) of the 2002 Council Decision mentions the question of the national Parliament. It actually says "from the European Parliament Elections in 2004 the office of Member of the European Parliament shall be incompatible with that of a Member of a national Parliament." Then there are certain derogations for the Irish national Parliament and for the United Kingdom Parliament. It would be relevant to know whether the House of Assembly for the purposes of European Parliamentary Elections is considered a national Parliament or not. If this House is a national Parliament it would mean that Members of the House are banned from being an MEP at the same time, although my understanding is that they can stand for the European Parliament but would have to leave the House if elected. So we would welcome also clarification on that point, but if we are not a national Parliament then it is also relevant to know whether EU nationals are allowed to vote in Elections to Parliaments such as ours. That is to say, we know they can vote in Municipal Elections in Spain and in Germany and across the whole of the European Union, but can they vote in State legislatures in the EU or not, and would we be a State legislature for these purposes? The Opposition would welcome clarification from the hon Member on the points raised and we will be supporting the Bill.

HON CHIEF MINISTER:

I am happy to try and provide the hon Member the clarification which he has sought. First of all the wish to do this by Gibraltar legislation rather than be included in the UK amending legislation was a Gibraltar Government initiative. The hon Members will recall at the time that we debated the enfranchisement legislation, that we formed the view that it would help us dispel

arguments by others that we have just been tagged on to the UK if we played a legislative role in creating the legislation, and we have taken the same view here and we asked the United Kingdom to let us do this by local legislation, legislate for these amendments rather than the alternative which would have been that for the new 2004 UK Regulations could have been extended to Gibraltar and could have made all these amendments for Gibraltar. We think it is desirable to keep to a minimum the occasions on which the United Kingdom primary let alone secondary legislation has direct application in Gibraltar, so wherever possible we ask the UK to allow us to do it ourselves and they agreed. I think that they agreed because it was not repugnant to what the United Kingdom legislation would have done were we to try to legislate to amend UK legislation in a way of which they did not approve. I am sure they would keep to exercise their powers of disallowance somehow to frustrate our ability to do so, but he asked whose initiative it was, it was ours, he asked for the UK view and the UK is content and has agreed that we should do this.

He has been unable to find Schedule 1A, he will find it in the 2003 Act. In other words, one of the things that the European Parliament Representation Act of 2003 did was to add Schedule 1A to the 2002 Act. So he will find it on the Butterworths direct print-out page 24, and it is just a Schedule 1A added to the 2002 Act, as I say by the 2003 Act. It deals with the periodic reviews of distribution of MEPs, basically when there is population shift about, instead of South West getting 7 the South West may have 8 or 6, distribution of MEPs. In it there is a sub-section (6) which says "in this Schedule general election of MEPs means an election required to be held in the United Kingdom by virtue of article 10(2) of the Act annexed to Council Decision 76". That would now read by virtue of article 11(2). So there is no substance to that point it is a pure renumbering point because article 10(2) has become article 11(2) without amendment. The hon Member said that the 1976 Act about which we have all got upset in the past has still not been changed, and I use the phrase "leaving European law as is". Well, we have got to be very careful not to describe the 1976 Act as meaning that UK

means UK only and not Gibraltar, that is what the Spaniards are arguing in their court case. I think the more accurate way to make the hon Member's point would be to say "leaving the EC Act as it was, but the UK now choosing to interpret it as we were always inviting them they were free to interpret it and which they had always previously declined to interpret, and which they now chose to interpret in the way that we had always been telling them they could and they were always denying". I think that is the better way of making the hon Member's point because of course we would neither of us wish to concede that European Union law makes our enfranchisement a breach of European Union law.

That clarification made, I agree with the hon Member's analysis. Certainly the political aspects of that analysis. He also asked whether national Parliament for the purpose of this provision includes this House, so that his ambitions to become an MEP might be frustrated. The answer to that question is that we have not yet been satisfied that there is clarity on that point. We have asked that when the Decision first came out, the UK asserts the view that without demonstrating why that view is correct, the UK takes the view that it does not include Gibraltar. In other words, that the hon Member is free to be both. We do not see that that issue is clear because of course for the purposes of Municipal Elections, where as the hon Member knows some years ago EU nationals, other than the nationals of the country in question, were given right to vote in Municipal Elections. For example, British residents of the Costa Del Sol can vote in Municipal Elections in Spain. In the context of that legislation it became necessary to describe what was a Municipal Parliament and what was not. Well, for that purpose it was made clear that Gibraltar was not to be regarded as a Municipal Parliament or Municipal Elections. Otherwise Spaniards, and Frenchmen and Germans would have been able to vote for our Elections to the House of Assembly, and that is how that situation was prevented in those days. Now all other Parliaments are internal tiers of domestic Government. In other words, provincial government, regional government but of a Member State. So the provincial

diputacion, the regional Government in Andalucia but they are all part of Spain, and in the United Kingdom even the Scottish Assembly and the Welsh Assembly, and then below that the local councils all the way down to parish council, they are still all internal organisational aspects of internal to the United Kingdom. Of course this House is not internal to the United Kingdom in that sense, so I have not seen any document that effectively and clearly means that Gibraltar is not to be regarded as a national Parliament, just as it is not to be regarded as a municipal Parliament for the purpose of the Municipal Elections. So that is the most light that I can shed. I think the bottom line is that the United Kingdom believes that it does not apply to Gibraltar in the sense that Members of this House are not caught by the definition of national Parliament, but frankly, as a matter of law I think the question is at least still open. The UK Government have expressed their view but I have not seen any document that makes it clear that that is necessarily the correct legal analysis and position.

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 IMMIGRATION CONTROL (AMENDMENT) (EU ACCESSION COUNTRIES) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and to amend the definition of family Member, 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 is necessary as a result of the enlargement of the European Union to include the ten new Member States, the names of which I will not read out again, the House has heard them twice with the Long Title of the Bill that was being read out. Those countries became part of the European Union on the 1st May 2004. The new European Union States fall into two categories under the terms of the Accession Treaties negotiated by them with the European Community.

(1) Cyprus and Malta. Their citizens will immediately have full European rights of free movement, including rights to set up in self-employment and to take up employment. Secondly, what are known as CEES (Central and Eastern European States), where the Accession Treaty allows existing EU States to limit the

free movement of workers from these countries during a transitional period. It does not allow for limitations to be placed on the self-employed persons or persons seeking to provide or receive services. So the freedom of Member States to apply transitional limitations to citizens from the Central and Eastern European States is limited to workers, to people in employment, and not to self-employed or people providing services. We in Gibraltar have chosen to limit the full free movement rights to the extent allowed by the Accession Treaty. On the other hand, the House may be aware from reading the press that the United Kingdom has chosen not to avail itself of these transitional provisions. The United Kingdom, in so far as it is concerned, has allowed them immediate access. The transitional period is for a maximum of five years until the 30th April 2009, although Gibraltar is free to shorten the application of the period in the future should it deem it appropriate.

The amendments to the Immigration Control Ordinance introduced by clause 2 are as follows. Clause 2(a)(i) amends the definition of EEA Agreement in section 39(1) to make it consistent with the Interpretation and General Clauses Ordinance definition of that same phrase. Clause 2(a)(ii) amends the definition of family Member in section 39(1) to cover in some circumstances, (a) children in education in Gibraltar; and (b) spouses or divorced spouses of an EEA national who leaves Gibraltar, where that spouse or divorced spouse is the primary carer of a child in education in Gibraltar. What that means is that there are certain circumstances in which, if an EEA person/worker leaves Gibraltar but has a child in education, the child in certain circumstances has the right to stay behind in Gibraltar to finish those studies. This means that when that happens a spouse, or even a divorced spouse, in other words a parent of the person staying behind to finish his education, can stay with them, even though the person who originally won them the right (the worker) has left Gibraltar. I think it is designed so that people do not have to interrupt their education just because Dad goes off to get a job somewhere else. That actually is not a requirement of the Directive or the Treaty, that is actually the implementation of recent European Court of Justice Case law

which chose to interpret existing provisions in that way, and we are therefore now making our Statute fall into line with that European Union Case law. So that bit of the Bill is not related to the implementation or the consequences of enlargement.

Clause 2(b) introduces a new section 39(3). It provides for a Schedule 1 which sets out the list of all EEA States, which actually have never been listed anywhere before and it now is. Clause 2(c) amends section 41(3) by re-drafting that section to clarify that it will only apply to family members of EEA nationals, where those family members have the right to take up economic activity in Gibraltar. Clause 2(d) introduces a new section 46(a) into the Immigration Control Ordinance, which sets out the rights of Central and Eastern European citizens during the transitional period. The reason for this is that the transition is conditional, not unconditional. Under our existing immigration law citizens of European States enjoy European rights of free movement, such as the right to take up employment in Gibraltar if they are "qualified persons". So if the hon Member goes now to the existing Immigration Ordinance, he will see that the regime by which rights of access are given to EU nationals is on the basis of this concept of the qualified person. This new clause, this clause 2(d) inserting a new section 46(a), provides that workers from Central and Eastern European States shall not be "qualified persons" under our immigration law unless they have been in legal employment, that is with a work permit, for 12 months starting before or during the transitional period. The transition period negotiated in the Accession Treaty of these Central and Eastern European States is conditional. In other words, Member States can deny them entry altogether, but if they are allowed entry or are already here before, there may be Poles in Gibraltar already, there might be citizens of the other list in Gibraltar, so if they are in Gibraltar before or come in or they are allowed in during the transitional period, after they have been here a year they then acquire the full rights. In other words, they cease to be subject to the transitional rules. So the transition rules really operate to prevent us from allowing them in in the first place, but once they are in and they have been in legal employment here

for 12 months, they then have the right to stay and to find new work and to free themselves from the transition restrictions.

Central and Eastern European nationals who undertake an activity in Gibraltar set out in the Immigration Control Ordinance under section 43(b) to (h), will be considered to be qualified persons. To save the hon Members looking up what section 43(b) to (h) says, that includes people self-employed, providers and recipients of services, retired self-employed persons, self-sufficient persons, retired persons and students. So they are qualified persons and therefore are not subject to the ability to exclude them during the transitional period. So in summary, the people who can be excluded during the transition period are people coming to work only as employees and not any of the other categories that have freedom of access on an EU basis. The clause also provides a new section 46(a)((vi) and (vii) that family members of Central and Eastern European State workers who are entitled to work in Gibraltar, have a right to live in Gibraltar but may only take up employment if they are considered to be entitled workers within the meaning of the Employment Regulations of 1994. The hon Members will recently have seen some amendments to the Employment Regulations, to those 1994 Regulations, to further restrict the people who are let in by that clause. Clause 2(e) introduces a new section 49(9) which allows shorter residence permits to be issued for family members allowed to stay in Gibraltar by virtue of being the primary carer of a child in education. In other words, that one can tailor make once the CEES worker has gone, one parent can stay behind to look after anybody in education and in that context the work permit can be made to match that period of time. Clause 2(f) introduces a schedule of all European Economic Area countries.

So in a nutshell, the one policy issue in this legislation is the decision of the Government to avail themselves of the transition provisions in respect of allowing access to Central and Eastern European nationals workers. Everything else is an EU requirement either of the Accession Treaty or of this Case law

that I explained to the hon Members in relation to the spouse and students. I commend the Bill to the House.

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

HON F R PICARDO:

The Opposition will be supporting this Bill and I will not address myself to those parts of this Bill which deal with EU obligations, although they are very welcome as well. Also welcome is the ability of the Gibraltar Government to avail themselves of a Treaty derogation available to Member States, even when the Member State United Kingdom does not avail itself of the same said derogation. The issue that concerns the Opposition about this Bill is that the transitional provision set out in the new section 46(a)(i) is defined as a period starting 1st May 2004 and ending 30th April 2009. It is right that that should be the date of the transitional provision because that is the transitional provision provided for in the Accession Treaties. This Ordinance, as stated in section 1(2), comes into operation on the day of publication. The question that we want to address is what will happen to individuals who made applications or registered themselves to work in Gibraltar from these Central and European States in the period between 1st May and the date of coming into effect of this Ordinance. We were told in Question Time by the Minister for Employment that the advice the Government had received was that the Government were able to refuse to register those individuals who made such applications from the new Member States on the basis of the derogations without the need for primary legislation. I would ask the Chief Minister to clarify that, if at all possible, because I believe that anybody who made such an application could have pointed to the law of Gibraltar and said 'the House of Assembly changed the European Communities Ordinance by Bill No. 19 of 2004 in order to include my country as a country of the European Union, as defined under that Ordinance, and I am therefore now entitled to work in Gibraltar.' We also saw in answers to questions from the

Minister for Employment that a number of work permits had also been issued to nationals of some of these Member States. In one particular industry, in one particular month, 11 permits had been issued to Polish nationals. The main issue therefore would be, what happens to those people who have filed their applications in the period between May and September, or October rather the date that we pass this Bill. Is it going to be clear that they should not suffer any detriment as a result of the failure to bring this Immigration Control Ordinance at the same time that we made the relevant amendments to the European Communities Ordinance, which we should in my submission have done all at the same time so that we were able to say we have amended our European Communities Ordinance to include the new States, and we have restricted the new States or the rights of individuals from the new States to avail themselves of one of the fundamental freedoms, freedom of movement of workers, from the same date. Otherwise, I believe we may have created an imbalance in our law which can give rise to hardship. We have already been approached by more than one individual who has been working in Gibraltar since 1st May, who is now being told by their employer "the Government is going to pass a piece of legislation now which is going to require you to have a work permit, you have not been working with us for a year, we do not want to make applications for work permits and as far as we are concerned we are going to let you go." We believe that this is the right sort of legislation for Gibraltar given the potential massive influx of labour from those Accession States, but we want to make sure that when Gibraltar legislates it does so properly and that we do not create a period of lacuna in our law, and that if we have done that, those who may have already come to Gibraltar and who may have become members of our labour market, who may have already started working in Gibraltar, do not suffer hardship as a result. Those are the issues that certainly I would flag for the Chief Minister to address in his reply if he can.

HON J J BOSSANO:

I just want to make a comment on the part of the Bill that deals not with the rights that are being granted to the Accession States, which has been dealt with by my Colleague, but to the effect of the existing legislation as a result of the Court Case which is referred to in the Explanatory Memorandum. Simply to say to the Government that perhaps we need to review the position of those non-EEA nationals in Gibraltar who have been here for a very long time and who are in declining numbers, given the extent to which we are being required now to give rights to their family members. In the case of EEA family members, even to the degree which I know for example, I have dealt with instances in the not too distant past of Moroccan women having to be separated from their children in a marriage between a Gibraltarian and a Moroccan, where the argument was that because they were going to be separated, she had no right to be here with her son. That is an incredible view to take administratively when here we are saying that even if divorced if the child is here in school the mother has got the right to stay. That can be a non-EU spouse of an EU national who could be somebody that came here from an Eastern European country. So what I am asking the Government, as a matter of looking at what we are being required to do in terms of loosening the restrictions we have had on immigrant communities in Gibraltar, that we cannot simply continue in my view doing things always in the same way as we have done for those who have been here for 20, 30 or 40 years when we are required to be far, far more liberal with those who have only been here a couple of weeks.

HON CHIEF MINISTER:

It is precisely because we agree with the Leader of the Opposition's position that he is indicating today, that we reversed the policy that we inherited from the previous Government of not allowing Moroccans for example who lost their jobs, free access to the labour market. That is something that we had to do after many years of them being denied that. It is the same reason, I

accept all these things have got to be done gradually, it is the same reason why.....

HON J J BOSSANO:

Can the Chief Minister inform us what was the law he had to change after 1996 to give people free access? Moroccans to my knowledge still require work permits, they do not have free access.

HON CHIEF MINISTER:

We can convert this into a debate on that issue if he likes, but he must surely remember that Moroccan workers demonstrated for a long time in between his office and the Governor's office, because they were not allowed access to the ETB to get new jobs when they lost the ones that they were in.

HON J J BOSSANO:

That is not correct. That is a complete fabrication. The Moroccans who were demonstrating outside the office were demonstrating because they were out of work as were Gibraltarian workers. In every single year in Gibraltar there have been unemployed Moroccans registered with the ETB and Gibraltarians. Just like today when questions are put to the Government in this House, they give us the Gibraltarians out of work and they do not say the number of Moroccans but they have been there every year. It is a complete and utter fabrication to say that Moroccans were not allowed, or that any law was introduced to prevent them registering for unemployment.

HON CHIEF MINISTER:

I have not said that there was any law introduced. I have said that they were prevented from access to the job market by administrative means because one could not lawfully get a new job without going through the administrative procedures in the ETB, and that they were for many years prevented from doing that. But I take note of the hon Member's statement in this House that what I have said in this respect is "a complete fabrication" and we will return to this matter, because of course the hon Member appears to be suffering from rampant amnesia. The last time we had a row in this House it was because I made a statement which the whole of Gibraltar recognised as true but he said was a complete fabrication. The hon Member cannot re-write.....

HON F R PICARDO:

Point of order. The point of order is this so that Mr Speaker can rule on it, as the hon Gentleman said the other day. The hon Gentleman has said that he made a statement which the whole of Gibraltar has recognised as true. It is not possible for him to say that because he has not taken a poll of the whole of Gibraltar. He made a statement which he believes is true, he should not be able to get away with suggesting that the whole of Gibraltar has recognised it to be true.

MR SPEAKER:

I am inclined to believe that. One cannot qualify it as a point of order, it is probably just a figure of speech.

HON CHIEF MINISTER:

The point is that the hon Member is not going to be allowed to re-write the well-known history, the well-known recent history of

Gibraltar simply by getting up and saying that I am completely fabricating things. So we will demonstrate to him that what I am saying, far from being a complete fabrication, is completely true for which purpose I repeat to him, because this is not a question of one nuanced word, but I did not say that there was any legal impediment to the Moroccan's accessing. He has said that, I have not. I have said that when this Government came into office we inherited the policy of Moroccans not being able to access the jobs market, which we reversed the policy and Moroccans then were able. That is the reality of it. The same way that we have reversed the policy of the offering of free education to the children of Moroccan workers who might have been in Gibraltar illegally, and the policy was always that they could not have education and we said, look, the Government of Gibraltar (this is not a political issue) must either have the courage to deport people or if we are going to turn a blind eye because we do not have the courage or the will to deport people, then we must educate the children that are in Gibraltar. It is not morally acceptable neither to deport them and to deny them a free education. A lot of them were up at the Loreto Convent, children of very unwealthy ordinary working people. Again we took that, and these I accept were not huge, well the beneficiaries thought that they were huge, but this is stages of the same point as the hon Member made in his intervention of how Gibraltar modifies in a way which is gradual and therefore affordable in both resources and financial terms, the way that it deals with non-EU nationals and their dependants and not just in the context, which is the point that he made, of comparing their treatment with the treatment that we give to back-packing EU nationals. I think he used the phrase that they had been here for two weeks, but rather regardless of that, in other words there is a moral issue always has to be tempered by the limitation of resources and the limitation of space, but there is a moral issue about the extent of curtailment and restrictions imposed on non-EU nationals resident in Gibraltar and who have been resident in Gibraltar for many years. We have started that process of modifying that, there are many things that we could change and indeed the discussions with the Moroccan Workers Association of the Transport and General Workers Union continues in this

regard. There is a potential difficulty in just treating them as immediately the same. In other words, to decide to treat all non-EU nationals as if they were qualified persons, I acknowledge that the hon Member did not suggest that, and to apply to them the definition of family members as it applies to qualified persons, would open a huge can of worms because he will have noticed that the definition of family member and qualified person goes up the antecedent line, up to dependant parents and grandparents so that the amount of persons that would be involved would be huge. But if the hon Member is saying, look, Gibraltar can progressively be a little bit less strict on some aspects of the strict application of the rules that legally apply to non-EU nationals in favour of the people that are already here, the position is that we agree with him, we have tried over the years without going back to the issues to have this approach. The Moroccan Workers Association would like us to go much further and indeed we are committed to carry on looking at things but there is a sort of mismatch between the ambitions of the potential beneficiaries to go much further much faster and argue that such things as housing and education have huge implications for resources and space issues, and therefore we have to tread warily. I do not know, I am happy to give way to the hon Member if he wants to clarify any aspect of this matter of what I have said or he has said before I move on to deal with the other points.

HON J J BOSSANO:

Well I think it was clear. I have not gone any further really than to suggest that we cannot simply ignore what we are being required to do for other people and carry on with the same system that we have had historically as if nothing else was changing. Particularly when we have to give it to non-EEC spouses of EEC nationals because that makes it even less comprehensible to people who have been here a long time, when they see somebody of their own nationality arriving here out of the blue and suddenly enjoying all sorts of rights that they have been here, more than half a lifetime some of them, and

they do not have. All I am saying to the Government is that in the light of the fact that we are being required to do certain things, we may need to perhaps be a little bit more lenient in respect of what we are free to do or not do, no more than that.

HON CHIEF MINISTER:

A lot of that is happening. The hon Member will be aware that one has got to try very hard to get oneself deported, and that applies even to people who retire and who are pensioners from the Moroccan community. I suspect the same applies to the non-British Hindu community that theoretically, when they reach retirement age, in other words when they cease to be in employment, they lose their work permits and theoretically their residence permit is up and they should go away. That is not how it works in practice. In practice they stay behind, either on some multiple entry visa, so there is on the ground at an administrative level, there is quite a lot of this stuff going on already. Now if he becomes aware of a particular situation and he wants to bring it to my attention as and when it arises, I would be perfectly happy to have it looked at.

I hear what the Hon Mr Picardo said about vacuums and lacunas, I just do not agree that that is actually the position. As I have understood his position is based on the premise, which we think is mistaken, that EU nationals acquired these rights as from 1st May 2004 at a time when there was no legislative provision legislating for the transitional option here, and that therefore until this House legislates this Bill, they have the legal right to come to Gibraltar without restriction. Well, that is an argument, it is not the view that the Government have taken on advice. The view that we have taken is that until we pass this legislation they have no rights in Gibraltar, either with or without transition. Yes, the Accession Treaties are not EU Regulations.

HON F R PICARDO:

I do not necessarily mean since 1st May. We did amend the European Communities Ordinance ourselves by Bill 19/04, which I think we did in July before the summer recess. I am saying, at the very latest as from that date when we amended the European Communities Ordinance we actually gave those rights. In fact, it gives me an opportunity to say to the hon Gentleman that the Schedule which is now provided as new Schedule 1 to the Bill which we are debating, actually did form part of that Bill and now forms part of the European Communities Ordinance also. So it would be wrong to say that the Schedule provides the first and only list in our law of what are EEA States and EFTA States. In fact, we provided such a list ourselves which is now part of Schedule 3 to the European Communities Ordinance. I would say it is at least that period that creates the potential problem in my view but I am quite happy to hear what it is the Chief Minister has to say about that.

HON CHIEF MINISTER:

Well, if any citizen thinks that they have obtained legal rights which we are not effecting by the legislation which we are passing in the House today, which is not the Government's view but look the Government's legal advisers can get it wrong. If there is anybody who thinks that from the moment we pass that legislation, as of that date it was already the law of Gibraltar that they were EEA citizens and that they were therefore then entitled to all the benefits of the Employment Ordinance in favour of EEA citizens, if that is the position and the administration tries to pretend that it is not and they think that it is, they have got recourse to the courts and they have got recourse to tribunals. The Government do not purport to adjudicate on what our peoples' legal rights. The Government take a view of what the law is and then it is up to people to assert the contrary view. I am a law maker and an executive, I am not part of the judicial process. If the law gives people certain rights which they are denied, the courts are there to try for them to assert those rights.

I suppose the way that would work in practice, if one of these persons that the hon Member thinks exists were to be sort of denied a work permit or any attempt were to be made to deport them, they are free to appeal or to apply to the courts to say "I am sorry this does not apply to me because". I do not know, if such a person were willing to pay me a legal fee, which of course he cannot now because I am suspended from practising at the Bar, but it is a matter for legal advice and for the assertion of his rights. It does not matter what I say here one way or the other about the rights and position of such a person.

HON J J BOSSANO:

Is it that the Government want to legislate so that anybody that has in fact been working already in Gibraltar and has not got a work permit, will now require a work permit because we are now bringing in the derogation?

HON CHIEF MINISTER:

No, I was going to deal with that in what is left of my reply. If there are such people, by which let us be clear, we mean nationals of one of these Central and Eastern European States, that is in Gibraltar then they are in Gibraltar with a work permit. Well, certainly the Poles, if they are in Gibraltar working.....

HON F R PICARDO:

There are two classes of persons. There are classes of persons who have come to Gibraltar and have made an application for work permits, and have been granted work permits although we say there is no provision for that, and there are other persons who have come into Gibraltar believing themselves to be entitled to work because their States are now members of the European Union, have gone to employers, have obtained employment, employers have either registered them on time or not registered

them on time and they are now being told, I certainly know of more than one case where a registration has been purported to be effected and has been sent back by the ETB. Those individuals are now being told that when this legislation which has been announced comes into place they are going to require a permit, so we are not going to keep them on. So there are two different classes of person.

HON CHIEF MINISTER:

It is not for me to offer legal advice to those persons or to anybody else. I am in this House to explain the contents of this Bill. I am not in this House to debate the legal status of somebody who falls outside the terms of this Bill. I am happy to discuss it but it is not the purpose of this debate. In respect of the CEESs who have got a work permit either before that Bill came into effect or after that Bill came into effect, their position is clear. So long as they stay in Gibraltar for a year they have extricated themselves from Gibraltar's ability to treat them in a transitional way. In other words, they are here for ever if they want to stay. If a person came to Gibraltar believing that he had now a Treaty right to come to Gibraltar so therefore does not have a work permit, has tried to register with the ETB or whatever such a person would do, I suppose one still has to go through notification and registration and all of this, and the ETB says no, a work permit is needed, and it is denied then that person must have his recourse in the courts presumably. It does not arise, no matter what the position is, the hon Member says he is aware of such a case, it does not arise from the provisions of this Bill. In other words, as this Bill is before the House it is purporting to obtain transitional restriction rights, as from the date that this operation of the day comes into publication. He believes that up to the day that this Ordinance comes into operation that citizens of Central European States under the July Bill, if I can call it that, are entitled to work in Gibraltar without the need for a work permit. That is not the view, apparently, that has been taken by the Government. But if there are such cases and if the employees or their employers take that view, they have

recourses open to them. Their position is not going to be fixed by this piece of legislation. This legislation does not help them except to the extent that the hon Member thinks that the commencement date of this legislation helps in the creation of a lacuna from which they are entitled to benefit. That is something that they have got to persuade the court of not me. That is the position as I see it and it is not for the Government or this House to adjudicate on what might be the rights of a particular citizen.

I have already explained there was a reference to the 11 permits to the Poles. Well if there are 11 permits to the Poles the 12 months have started to tick for them and not just from the date of this Bill. The clock started to tick for them from the moment that they arrived in Gibraltar even if it was before the July Bill, or before the Accession Treaty or anything else. I am sure they are not alone in that respect. There must be other nationals of one of these countries that has been in Gibraltar for some time and the clock starts to tick for them, the 12 month clock starts to tick for them from the moment that they arrived. So long as they do not leave the labour market they are entitled then to stay indefinitely as if there were no transitional provisions for them. So on the basis of the law as we have been advised, there is not the lacuna that the hon Member described in his address, but whether or not the lacuna exists is not for us to decide but for somebody to assert and to try and persuade a court of. I am just explaining what the position is that the Government have taken but that does not adjudicate on the matter.

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.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

- (1) The European Parliamentary Elections Act 2002 (Application to Gibraltar) (Amendment) Bill 2004;
- (2) The Immigration Control (Amendment) (EU Accession Countries) Bill 2004.

**THE EUROPEAN PARLIAMENTARY ELECTIONS ACT 2002
(APPLICATION TO GIBRALTAR) (AMENDMENT) BILL 2004**

Clauses 1 to 3 and the Long Title – were agreed to and stood part of the Bill.

**THE IMMIGRATION CONTROL (AMENDMENT) (EU
ACCESSION COUNTRIES) BILL 2004**

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the European Parliamentary Elections Act 2002 (Application to Gibraltar) (Amendment) Bill 2004 and the Immigration Control (Amendment) (EU Accession Countries) Bill 2004, have been considered in Committee and agreed to without amendments, and I now move that the Immigration Control (Amendment) (EU Accession Countries) Bill 2004, 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 to Monday 1st November, 2004 at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 3.50 pm on Monday 18th October 2004.

MONDAY 1ST NOVEMBER 2004

The House resumed at 2.30 pm.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares

The Hon Miss M I Montegriffo
The Hon L A Randall

IN ATTENDANCE:

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

MINISTERIAL STATEMENT

HON CHIEF MINISTER:

As Members of the House will know, the Foreign Secretary Jack Straw and the Spanish Foreign Minister Miguel Angel Moratinos met in Madrid on 27th October 2004 for a wide ranging bilateral meeting between them. This was not a Gibraltar specific meeting, still less a meeting under the Brussels Declaration but Gibraltar was discussed. The House will also be aware that since August this year I have been having informal contacts with the Director General for Europe and the Americas at the Spanish Foreign Ministry, Sr Jose Pons. These contacts, which I welcome, responded to a conciliatory statement by Sr Moratinos published in the El Pais newspaper on 4th August 2004, in which he indicated a desire to have improved relations with Gibraltar and cooperation regardless of whether or not there was progress on Spain's sovereignty claim. I look forward to these informal contacts continuing and re-state my offer to meet with Spanish Foreign Office Ministers at any time. I have of course also been in contact with the British Foreign Office and with the Foreign Secretary Jack Straw, to whom I wrote prior to his meeting with Sr Moratinos setting out the Gibraltar Government's position. The purpose of that letter was to ensure that the Foreign Secretary was personally aware of the basis of our contacts with the Spanish Foreign Ministry, and of the basis of our willingness to engage in a process of cooperation with Spain. Namely that it was de-coupled from the question of sovereignty and concessions on sovereignty and that there could be no quid pro

quo on sovereignty negotiations in exchange for cooperation. I informed the Foreign Secretary that Gibraltar's position on sovereignty remained unchanged as does our opposition to any resumption of sovereignty transfer negotiations between the United Kingdom and Spain. This is well understood by both Her Majesty's Government in the United Kingdom and by the Spanish Government.

Although we reject and oppose Spain's sovereignty claim, we understand that she has not renounced it, that she professes a determination not to do so and that she will be careful in the forthcoming process of cooperation and in any process of dialogue to avoid steps which prejudice her sovereignty claim. Indeed we understand that for Spain, even cooperation is in the context of her objectives in relation to the sovereignty of Gibraltar. Spain is free to have and to pursue whatever objectives she chooses. That is a matter for her. We for our part will be similarly and equally careful to ensure that there is no prejudice to our position and objectives on sovereignty, on self-determination and on constitutional reform. We have the comfort and security of knowing that we are able to prevent the achievement of any objectives with which the people of Gibraltar do not agree. That is very important for us.

The House will also wish to know, and I am certain will welcome the fact that the Foreign Secretary Jack Straw was in touch with me directly during his meetings with Sr Moratinos in order to secure a position and statement agreeable to all parties concerned. I wish to record my thanks to the Foreign Secretary for that. As a result of all these contacts the Gibraltar Government have been fully involved in the setting up of the initiative for local cooperation and also in the drawing up of the joint press statement by the two Foreign Ministers, including the paragraph relating to the setting up of a new forum for dialogue. I wish to repeat in this House the Gibraltar Government's satisfaction and contentment with the joint statement. I authorised the Foreign Secretary to say this on my behalf during his press conference in Madrid, but I think it appropriate to repeat it in this House.

We believe that the statement represents a positive outcome for Gibraltar on terms acceptable to all sides and success for our long standing policy in relation to the terms and purpose of dialogue. We welcome particularly the move towards the establishment of a new forum for dialogue on Gibraltar, with an open agenda in which Gibraltar would have its own voice. That is what the Gibraltar Government have been seeking and working to achieve since 1996. Indeed, all previous Gibraltar Governments and political parties have called for it. We are delighted that we may now be able to achieve it.

The joint statement by the two Foreign Ministers, while already saying that it will be a new forum, that it will have an open agenda and that Gibraltar will have its own voice, all of which are important changes, acknowledges that the modalities for this dialogue will need to be agreed by all the parties concerned. That is, by Gibraltar as well. This too is important. Our long standing position in this regard is very well known. The dialogue must be safe for Gibraltar and that means no agreement on anything without our agreement. We will engage positively and constructively with London and Madrid to work out the details of the modalities for this dialogue.

The House will also be pleased to know that the British Government's position is now that dialogue with Spain over Gibraltar can only take place provided that the Gibraltar Government have an equal footing in that dialogue. That is agreement will require all parties acceptance and that discussion takes place on the basis of a genuinely open agenda. We welcome also the possibility of replacement of the Brussels Declaration with a process viable and acceptable to most people in Gibraltar, as well as to the other two parties. This will be greatly welcome to all those people in Gibraltar, of whom I recognise there are many, who felt that the Brussels Declaration could not be modified to make it desirable for Gibraltar to take part in.

We also welcome the realisation by all parties that the 1987 Airport Agreement is no longer relevant or appropriate. Just as

we welcome the opportunity to explore the possibilities to reach an agreement on the airport of Gibraltar under a formula acceptable to all parties. We hope that through its expanded and joint use, the airport will be a positive factor for the benefit of the continuation of the economic and social development of both Gibraltar and the Campo. It is clearly understood by all that as far as we are concerned this must have no adverse sovereignty implications for us.

We welcome and applaud Spain's decision to immediately lift restrictions relating to cruise ships and diverted flights. As a result, cruise ships that have come from or are going on to Gibraltar, will no longer risk exclusion from Spanish ports nor have any restrictions placed upon them. Also, flights that need to divert from Gibraltar due to bad weather will now be able to divert directly to a Spanish airport without the need to first visit Tangier or any other third country airport.

The British Government have agreed to establish a technical working party to examine and to exchange information on the pensions issue of Spanish ex workers in Gibraltar. This is without prejudice to any outcome in respect thereof. The Foreign Secretary has accepted that our own agreement of the language of the joint statement does not mean that we would agree to pay any upgraded pensions that may in future be paid. Our position on this remains unchanged.

The Gibraltar Government greatly welcomes the new climate of relations that is potentially made possible by these developments. It remains to be seen whether the opportunities are grasped and the potential benefits to people on both sides of the frontier are harvested. Spain has said that she wants to end the policy of obstruction, subject to not prejudicing her sovereignty claim. She has also said that she wants a new non-hostile relationship with Gibraltar and its people. We welcome that and will contribute as we can to the creation of that new climate, but the people of Gibraltar will judge Spain by her actions and not just by her words.

Some people have asked why the sudden change of policy on the part of Spain. I believe that the maturity and success of our international political campaign to resist the joint sovereignty initiative, including the Gibraltar Government's Referendum of November 2002 and its results, has demonstrated to the world, to the United Kingdom and even to Spain that we have come of age politically to the point where it is no longer viable or realistic for anyone to disregard us or our wishes, or to treat us like someone else's possession. We in the Government see these potential developments as important and as a vindication of our policy since May 1996, and we look forward to participating with confidence and security in any new process of open agenda dialogue on the terms that we have been advocating since 1996, in the knowledge that everyone knows and understands what the position of Gibraltar is on sovereignty. That it has not changed and that there can be no negotiations to transfer our sovereignty without our consent.

I attach to my statement, which I lay in this House, a copy of the text of the joint statement dated 27th October 2004 by Messrs Straw and Moratinos so that it may feature in the Hansard records of this House. I am grateful for allowing me to make this statement.

**JOINT PRESS RELEASE BY THE BRITISH FOREIGN &
COMMONWEALTH OFFICE, THE SPANISH MINISTRY OF FOREIGN
AFFAIRS AND THE GOVERNMENT OF GIBRALTAR**

On 27 October 2004, the British and Spanish Foreign Ministers, Jack Straw and Miguel Angel Moratinos, made a joint statement in Madrid, on which the Chief Minister of Gibraltar, Peter Caruana, had been consulted and has separately expressed his agreement. Accordingly, and without prejudice to their respective positions, the Governments of the United Kingdom, the Kingdom of Spain, and Gibraltar now confirm the establishment of a new three-sided forum for dialogue on Gibraltar, separate from the Brussels Process.

The modalities of this forum will be as follows:

- Dialogue will be on an open agenda basis, and therefore any of the participants may raise any issue relating to or affecting Gibraltar.
- Without prejudice to their constitutional status (including the fact that Gibraltar is not a sovereign independent state), each of the three parties will have its own, separate voice and each will participate on the same basis.
- Any decisions or agreements reached within the forum must be agreed by all three participants. If the three parties wish to take a decision on an issue in the forum where formal agreement would properly be between the UK and Spain, it is understood that the UK will not agree thereto without the Government of Gibraltar's consent.
- The forum shall be convened with the three parties at ministerial level at least once every 12 months. Other meetings of the forum shall take place at a time and level agreed by the three participants.
- The forum may create working groups as necessary to address specific issues.
- The forum will, in their deliberations, take account of the activity of the 'Comision mixta de Cooperacion y Colaboracion' established on 18 November 2004 between the Mancomunidad de Municipios de la Comarca del Campo de Gibraltar and the Government of Gibraltar, to ensure co-ordination between the work of the forum and the Comision mixta.

Accordingly, through this forum of dialogue and by these modalities, the parties shall endeavour to create a constructive atmosphere of mutual confidence and co-operation for the benefit and prosperity of Gibraltar and the whole region, in particular the Campo de Gibraltar.

Finally, and in order to preserve the viability of this process for all the parties, they will refrain from making public statements which distort or misrepresent the basis, purpose or modalities of this forum as set out in this statement.

16 December 2004

BILLS

FIRST AND SECOND READINGS

**THE FINANCIAL COLLATERAL ARRANGEMENTS
ORDINANCE 2004**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to implement European Parliament and Council Directive 2002/47 on Financial Collateral Arrangements, 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, a financial collateral is defined in the Bill as one where a collateral provider gives a guarantee that the obligation of the collateral taker will be carried out. The collateral may be in the form of cash or securities. It applies only to companies and is intended to make such guarantees easier to realise, especially in the case of bankruptcy, thus removing an element of risk for the collateral provider and taker. Indeed, the general principle of the directive and of the Bill is to harmonise across the European Union certain rules applying on insolvency usually, and on the foreclosure upon. That is to say, the realisation of a security interest in a financial asset to ensure that there is greater harmonisation across the whole Single Market in the rules which apply to that practice.

Part 1 deals with the Title and the interpretation of the various highly technical terms used in the Bill. The House will note that they are technical and indeed that the definitions clauses of the Bill is always longer than the operative sections of the Bill. I would however emphasize, although I am sure the hon Members will themselves have noticed when reading the Bill, that the impact of this on Gibraltar is limited by the fact that it is limited in its application to financial security. So for example, it applies when the collateral is over cash or some financial asset, it does not apply in the much more common case in Gibraltar, where the security interest is over a real estate property, for example, through the taking of a mortgage which is much more commonly the case here. But it is not entirely without impact on Gibraltar because there are many occasions, particularly from business and property developers, where banks do take security over cash deposits, income streams and things of that sort and that would be covered by the terms of this legislation.

Part 2 provides for modification of in particular the Bankruptcy Ordinance, so that financial collateral arrangements are not subject to the formalities that might otherwise apply to them. In other words, the arrangements will continue notwithstanding the bankruptcy of the collateral giver. Clause 3 disapplies the registration provisions of the Companies Ordinance. I will just use as an example of how national peculiarities are ironed out. There is in our Companies Ordinance and in many other companies legislation a provision that says that certain securities issued by a company are not enforceable unless that security interest has been registered in the Companies Ordinance. Well, that goes so that that is no longer a pre-requisite of enforceability and validity. Also, clause 3 disapplies the Industrial and Provident Societies Ordinance to such an arrangement. Clause 4 provides that the arrangement is not subject to the provisions of the Bankruptcy Ordinance which might otherwise over ride the arrangement. Clause 5 provides that where an arrangement includes a mortgage, it can be foreclosed without a Court Order. Clause 6 provides for a duty to value the collateral at the market value at the time it is realised. In other words, harmonisation or partial harmonisation of rules as to how and when financial

collateral takers are required to value collateral for the purposes of realising it and applying its proceeds to a part or full repayment of the debts of the collateral giver. Clause 7 again disapplies the provisions of the Bankruptcy Ordinance which might make a security provided under an arrangement void.

Part 3 reinforces the point that the arrangement will continue according to its terms, despite any winding-up proceedings. Clause 8 provides that if the arrangement allows the taker to act as the owner, then he may do so in accordance with the terms of the arrangements themselves. Clause 9 deals with the so called close-out netting provisions, which are terms in an arrangement providing that the security takes priority over other obligations and will have effect even if the provider or taker is subject to a winding-up. Part 4 deals with any potential conflict of laws and provides that the law of the country where the account is kept shall apply. It relates to book entry securities collateral, which is collateral kept in an account by an intermediary in the name of the provider or taker.

As I said earlier, the impact on Gibraltar is not as much as it would be in a financial centre or in a commercial market place, where the taking of security interests over financial security instruments are concerned, but it does impact on Gibraltar and therefore would change the law of Gibraltar to the extent that one company gives to another company a security interest over financial instruments. They are defined as securities normally traded on financial markets, any rights to acquire such security where those rights are normally traded on financial markets and claims relating to rights or interest in or in respect of any of the foregoing. Then it goes on in that way. Financial collateral which is also an important part of the definitions, means cash or financial instruments. Both those two, there are many definitions which are important, but the principal ones are financial collateral and financial instruments, which form part of the definition of financial collateral arrangement, which is basically what is caught by the Bill.

This is an obligation under a directive and I am advised that the Bill goes no further than the transposition of the directive requires. I commend the Bill to the House.

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

HON F R PICARDO:

The transitional provision in the directive required implementation of Directive 2002/47 by 23rd December 2003, and the United Kingdom made the Financial Collateral Arrangements No 2 Regulations on 10th December of that year, last year in order to comply with the requirements to give effect to that directive before the expiry of the transitional provision. This is not an Ordinance which creates serious difficulty in Gibraltar and therefore I see no reason why we should not have complied with the requirement to bring the directive into effect as an Ordinance before the end of the transitional provision.

I do not agree that there will be little effect on the business done in the financial centre in Gibraltar because this Bill affects only charges taken over cash deposits or securities. In fact, that is a very large part of the business of our Finance Centre, but what I would say is this. Bringing our legislation into line with the European requirements in that respect, can only bode well for our Finance Centre because this directive, as the Chief Minister has indicated, is intended to simply create a level playing field of how these arrangements are to be registered et cetera. By way of attempted clarification, I may not be using an up-to-date copy of our Ordinance and I would be grateful therefore, if the Chief Minister could point me to where I could find the Industrial and Provident Societies Ordinance, and what he has transposed because I cannot find it. I do not know whether that is because this is a hold-over from the Financial Collateral Arrangements Regulations or whether I am simply not putting my finger on the Ordinance and it is actually something pretty obvious that I am getting wrong. I am quite happy to have the Chief Minister point

it out to me. It is certainly not in the copy that I have in the House and it is not in the copy that I have in my office. This Ordinance will only apply to bodies with legal personality not to individuals but we see in it a reference to the Bankruptcy Ordinance, and that will be as a result of the fact that there is cross-referencing between our Winding-Up Rules and our Insolvency provisions, still with our Bankruptcy Ordinance which is the old way of doing things. The Chief Minister has told us already that the Government are considering bringing new insolvency legislation to the House, which I think will also serve to clarify that.

Apart from highlighting the fact, as the Chief Minister has done, that this Ordinance will now not require certain charges to be registered under section 77, and that that will obviously require amendments to the way that business is done in respect of certain companies, there is nothing objectionable in this Ordinance.

HON CHIEF MINISTER:

I have to say that I do not remember saying that the Bill would have little effect. I thought I had said that it would not have as large an effect as might be thought, given that it did not impact on the form of collateral that was habitually well known in Gibraltar, which was the mortgage over real estate property. I think I remember saying that it would have effect to the extent that there is the giving or taking between two companies of security over financial instruments. So it is not that we do not agree, it is that I have not said anything with which the hon Member ought to want to disagree. I was simply pointing out that no one should misread the Bill by thinking that it alters the rights or obligations of anybody in that form of collateral giving and taking, which is most common in Gibraltar and everybody knows and understands, namely the property mortgage.

I note the hon Member's view that we ought not to be nine months late in the transposition of this directive. Obviously he is

relatively new in the House but he may not know that for Gibraltar to be only nine months late on the implementation of directives is a hugely improved record to the one that we inherited. Given the huge volume of EU legislation that Gibraltar has to grapple with, the draftsmen prioritise this. He knows that and very often they deal first with things on which we are under pressure in the form of infraction proceedings from the EU Commission, and then leave to a little later the issues on which we are not. The hon Member may also be aware that since we arrived in office in 1996, there has been a huge increase, a very significant increase in the amount of resources in the form of draftspeople that the Gibraltar Government employs. The result of which is that we have very substantially caught up on the huge backlog of legislation that we inherited from the previous administration. Much of it, much, much more than nine months old, some going back nine years and that Gibraltar's record, the hon Member knows that there is a league table maintained by the Commission, no Member State is entirely up-to-date with EU directive transposition. If one is in the 90s up-to-date, meaning on time, one is regarded as having a very good record. Well, the EU Commission does not place us separately from the United Kingdom in that league table but I understand from our draftspeople and indeed from the United Kingdom Government, that Gibraltar's record of transposition of directives on the whole compares well with many, many other of the Member States of the European Community. So I cannot offer, as no Government of Gibraltar has ever been able to and I am sure will never be able to, as indeed no Government of any Member State of the Community would be able to do, offer the hon Member an assurance that we will always have our legislation in place by the deadline contained in the directive being transposed, but I have to say to the hon Member that it is an objective that we would really like to achieve and if we did, we would be the first legislature of the European Union to achieve it.

HON F R PICARDO:

Can the Chief Minister give way just on this question of the Industrial and Provident Societies Ordinance. Can he assist me with that at all?

HON CHIEF MINISTER:

Oh I am sorry, with the existence or not, I will have to tell him that at Committee Stage. I am assured by the draftsmen sitting behind me that the law does exist and that is contained in his volume of the Laws of Gibraltar, but it is not in the House's copy so I will tell him at Committee Stage and bring him a copy of it or otherwise agree with him that it should not be referred to, but I cannot do it this afternoon.

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 IMMIGRATION CONTROL (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance to transpose into the law of Gibraltar Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence, 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 transposes Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence into the law of Gibraltar by amending section 63A of the Immigration Control Ordinance. The current section 63A makes it an offence to aid and abet, counsel or procure any non-European citizen to enter or reside in the territory of a country listed in Schedule 3. No countries were in fact listed in Schedule 3. Clause 2(2) of the Bill inserts a new section 63A(1) into the Immigration Control Ordinance, which provides offences in respect of assisting a non-European Union citizen to (1) enter; (2) transit across; or (3) reside in one of the countries listed in Schedule 3, in breach of that country's immigration law. It also makes it an offence to attempt, aid, abet, counsel or procure the commission of such an offence. Clause 2(3) of the Bill defines immigration law for the purposes of section 63A and provides for proof of foreign law in Gibraltar. Clause 2(4) of the Bill inserts a list of countries into Schedule 3. The countries listed are all Member States of the European Union, Iceland and Norway.

The penalties for the offences under section 63A has not been amended and remains a sentence of up to three months imprisonment or a fine up to level 4, which as hon Members I am sure will be aware, is £2,000.

This short Bill transposes Gibraltar's obligation under the directive and enables Gibraltar to play a role in countering trafficking in persons in the European Union, which I am sure the hon Members have recognised as being the objective of this Bill and this directive, which was a response to the increase in illegal immigration activity and the trafficking in illegal immigrants across the EU. The hon Members will also have noticed that the Bill gives to Gibraltar, and indeed the corresponding piece of legislation gives in other Member States, the possibility of prosecuting for breaking the law of another country. That is to say, one can be prosecuted in Gibraltar for conduct which amounts to a breach of the immigration laws of another State. I commend the Bill to the House.

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

HON J J BOSSANO:

We would like some clarification of some of the wording in this, which I am not sure whether in fact it is already a reflection of what is already in our law or not. I have just looked at the one we have got here, given what the Chief Minister said about the Schedule, but in fact in the copy we have here the Schedule is not even there. So never mind whether there is anything in it. It just does not exist in this copy.

The third Schedule that is being introduced now defines a Member State of the European Union as either a State or a territory which is part of the European Union, for the purpose of the Schedule. Now, the Schedule then refers back to the wording of section 63A and therefore, I assume that where in section 63A it talks about a person assisting someone who is not

a national of a Member State of the European Union, it means a national of the State or a territory. I do not know if there is any other territory other than us which is a Member of the European Union, and then it talks about entering or transiting across a territory of a Member State in breach of the immigration law of that State. Although this is a direct transposition, literally, of what the actual directive requires us to do I think the question that has arisen in my mind in reading this is, this seems to be fine in many respects in terms of what is required of us. That is to say, we are required to ensure that nobody in Gibraltar is involved in facilitating breaking other peoples' immigration laws, but the question that I ask myself is, how do other people do the same for us, given that in our case, I imagine probably exceptionally, the immigration laws of the Member State UK are not necessarily identical to the immigration laws of the territory Gibraltar. Therefore if we have got areas where our immigration laws are in fact more rigid than that of the United Kingdom, then somebody could be breaking the law in Gibraltar but would not be breaking it in the United Kingdom in identical circumstances since ours is different and probably tougher, at least we have always had the impression that it was.

What we are doing here requires us to make sure that nobody in Gibraltar is giving assistance to somebody who intends to enter the territory of another Member State in breach of its laws. Certainly in looking at the way the United Kingdom has done it there seems to be nothing there that applies this obligation on the United Kingdom if somebody in the United Kingdom is assisting someone to break our immigration laws, because there is nothing to say, in what I have seen of the law of the UK, that for the purposes of the UK law Gibraltar is deemed to be a separate Member State. So we would like to be sure that there is reciprocity in the law in that just as we are required to do it for everybody else, everybody else is required to do it for us. That is what the purpose of the exercise is and that is what the intention of the directive is. We feel that there should not be a situation where others are free from this penalty, however small may be the amount of illegal immigrants we get in Gibraltar and however little there may be compared to other countries in the European

Union, because in fact if someone enters Gibraltar illegally we are not doing anything to stop this. What we are doing is something to stop a third party helping them presumably entering into Spain or entering into the UK which are the only other bits of the European Union to which one can go directly from Gibraltar, either overland into Spain or by air into the UK. Now the movement between here and the UK in itself means that presumably anybody that is breaking or would be breaking the UK law on immigration, would probably have broken it already by being here. In relation to ourselves and Spain, again it may be that they would be breaking Gibraltar law and might not be breaking Spanish law, but it seems to me the real problem arises in the opposite direction where the other Member States would need to know that they would need to be aware of the two immigration laws in order to be able to meet their obligations towards us. I do not know if this is something that has been addressed and actually taken care of, but certainly from the surface of the text of the Ordinance before the House, it is not possible to answer those questions.

HON CHIEF MINISTER:

Let us have the bilateral situation between the UK and Gibraltar to one side for a moment. As between any other Member State other than the UK and Gibraltar, then the corresponding obligation would be (we have not checked them all to see that they have properly transposed that is the Commission's job to make sure that the other countries properly transpose) but for them to have properly transposed in the way that has reciprocal effect for Gibraltar that he has described in his observations, it would have to be transposed in a way which relates to the territory of a Member State. Now the territory of a Member State in the case of the Member State UK includes Gibraltar. This is true not just of this directive but indeed of every directive which requires reciprocal rights or laws. They have got to transpose in a way which accommodates the fact that in the United Kingdom there are many laws. For example, it is not just Gibraltar but indeed even within metropolitan United Kingdom there may be

different legal regimes. Scotland may have a different legal system to England, both may have a different system to Northern Ireland. I do not think it is the case in respect of immigration which is the subject matter of this directive, but there could be directives affecting situations where even within the United Kingdom there are different systems. Therefore it has always been so that where it says the territory of a Member State or a Member State, proper compliance reciprocally to accommodate Gibraltar requires the other Member States to do it in a way which takes into account the position of Gibraltar. In the past the hon Member knows that we have fallen foul of that reciprocity requirement when a directive has specifically listed, or annexed or scheduled things, for example, when we had the directives on the Parent Subsidiary Directive. It was not just a question of the substance of the directive, the directive also had an Annex, I think it was the different types of companies. Then the question arose, well if a Gibraltar company is not listed, and we have had that difficulty, I do not think this is such a case because there is no listing of any categorisation that needs to make separate provision for Gibraltar. The situation bilaterally as between Gibraltar and the United Kingdom, which is actually the specific point addressed by the hon Member, is somewhat different. He knows that unlike regulations that apply across the whole territory of the Union, in the case of directives, these are cross-border in nature, these are inter-Member State. In other words, when a directive throws up a regime it would not apply ordinarily as between Gibraltar and the United Kingdom, given that we are not separate Member States or different Member States, or other Member States relative to each other unless there were in our view a specific provision. One of the things that we complain is that the UK chops and changes as to whether it should or should not apply as between Gibraltar and the UK depending on the subject matter of the directive, on whether it suits the UK that it should be so or not so in a particular case. So as the directive, not our Bill, as the directive now stands it is for the UK and Gibraltar to enter into bilateral arrangements in our respective legislations as to whether we wish to extend each other the benefit of this directive. In other words as to whether we want to treat each other for the purposes of this directive as if we were

separate Member States. We have chosen to draft our Bill on that basis. In other words on the basis that it applies to Member States of the European Union, we could have excluded the UK by saying other Member States of the European Union. We have not done so but we are taking up with the UK the question of whether they think that their own legislation gives us reciprocal rights, and we need to address that with the UK, it has not yet been concluded, but in the meantime whilst recognising as we have already done the importance that where the UK and Gibraltar need to treat each other reciprocally because the directive would not normally apply between them, reciprocity should mean reciprocity. In other words that we treat the UK like the UK treats us and that has always been the case. We have not wanted to hold up this Bill because of the subject matter of it, pending clarification of that but I will keep the hon Member informed as he has showed an interest in it, as to what the UK's view is as to whether they are able to reciprocate us, and if not whether they would be willing to amend their legislation.

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 DEPOSIT GUARANTEE SCHEME (AMENDMENT) (EU ACCESSION COUNTRIES) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Deposit Guarantee Scheme Ordinance 1997 in connection with the accession of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania to the European Union, 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 short Bill introduces one amendment to our existing Deposit Guarantee Scheme Ordinance. The amendment is as follows. Clause 2 substitutes for the existing provisions relating to Spain and Greece a new requirement that where a credit institution established in Estonia, Latvia or Lithuania wish to open a branch in Gibraltar, that branch must participate in the guarantee scheme contained in the Deposit Guarantee Scheme Ordinance 1997 in order to ensure a minimum level of guarantee in Gibraltar. The amendment is needed as a result of the Accession Treaty by virtue of which Estonia, Latvia and Lithuania became Members of the European Union on the 1st May 2004. The provisions relating to Spain and Greece expired at the end of 1999 and are no longer valid. The reason why the Bill only deals with Estonia, Latvia and Lithuania and not the other accession States is that these three States have been given a transition period during which they are not entitled, their old systems are not up to the same directive

standards, and therefore their companies unlike the other accession countries who are immediately complying with the Deposit Guarantee Scheme Directive, the companies from these three wishing to passport into Gibraltar would have to comply with our Deposit Guarantee Scheme legislation, rather than as they would otherwise be able to rely on their own and passporting on the back of their own requirements. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC) (AMENDMENT) ORDINANCE 2004

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Merchant Shipping (Safety, etc) Ordinance 1993, 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 before the House amends the Gibraltar Merchant Shipping (Safety, etc) Ordinance 1993. The business of the Government related to the Port and shipping was specified in relation to the Minister for Transport but by virtue of Legal Notice No. 125 of 2003 the business of the Government relating to the Port and shipping has been relocated to the Minister for Trade, Industry and Communications. The business for transport has been specified as public transport and parking to the Minister for the Environment, Roads and Utilities. In view of the above changes to the Ministers' responsibilities for the business of the Government by virtue of Legal Notice No. 125 of 2003, it is necessary to amend the definition of Minister in section 2 of the Gibraltar Merchant Shipping (Safety, etc) Ordinance 1993 in order to clarify the authority for making subsidiary legislation.

The Bill seeks to provide a solution for amending the Gibraltar Merchant Shipping (Safety, etc) Ordinance 1993 every time the Minister responsible for the business of the Government relating to the Port and shipping is changed. I commend the Bill to the House.

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

HON DR J J GARCIA:

As the Minister has said, the Merchant Shipping (Safety, etc) Ordinance 1993 as amended, as it now stands, defines Minister as the Minister for Transport. Legal Notice No. 125 of 2003 to which he has referred defines the responsibilities of each Member of the Government following the General Election last

year. The notice was published in the Supplement to the Gibraltar Gazette on the 1st December. This shows that the Hon Mr Vinet is now the Minister for Public Transport and not the Hon Mr Holliday. As we have understood it, therefore the Bill before this House seeks to correct that position by changing the existing definition of Minister in the Ordinance, from Minister for Transport to Minister for the Port and Shipping. This is in itself a straightforward matter. However, by way of clarification, the Opposition would be grateful to know how and when the attention of the Government was drawn to this anomalous position. It would also be relevant to establish whether there has already been any subsidiary legislation which has been made by the Government enacted under this Ordinance by the Hon Mr Holliday even though he is not the Minister for Transport. Other than that the Opposition will be supporting the Bill.

HON J J HOLLIDAY:

In order to clarify one of the points made by the hon Member, I do not believe that there have been any amendments made to any Bill under this legislation.

HON DR J J GARCIA:

My question was whether there had been any subsidiary legislation made under that Ordinance. The reason why, if I may just expand on it, is that there was one set of regulations that were published on the 1st July under the Merchant Shipping (Safety, etc) Ordinance 1993, which was signed by the Hon Mr Holliday as Minister for Trade, Industry and Communications. My question was whether that should have been signed by the Minister for Transport given that the position at the time was that the Minister for Transport was the one responsible and defined under the Ordinance.

HON CHIEF MINISTER:

We have not been advised that this issue would vitiate the legislation but if having heard the debate in the House somebody whose job it is to advise us on such things wants to reconsider their position, I am sure they will. If they do then I suppose the Regulations will have to be resigned, but I suppose, I am speculating now, that they have thought that when the principal Ordinance said Minister with responsibility for Transport, it meant Minister with the responsibility for Shipping Transport and that now that the transport portfolio has been sub-divided into one that does not say transport, I think it says roads and traffic and one that says shipping, I suspect that in the Attorney-General's Chambers they have just decided that both fall within the definition of the original transport. It would have been different if the Hon Mr Vinet's portfolio were now Minister for Transport as opposed to Minister for Roads and Traffic. This is a highly technical matter for those that have to decide whether legislation is intra or ultra vires in the principal Ordinance.

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 MERCHANT SHIPPING (AMENDMENT) ORDINANCE
2004**

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 now read a second time. Mr Speaker, this Bill before the House amends the Merchant Shipping Ordinance. The business of the Government relating to the Port and Shipping was specified in relation to the Minister for Transport. By virtue of Legal Notice No. 125 of 2003 the business of the Government relating to the Port and Shipping has been reallocated to the Minister for Trade, Industry and Communications, and the Minister for Transport has been specified as Public Transport and Parking for the Minister of the Environment, Roads and Utilities. In view of the above changes, the Ministers' responsibility for the business of the Government by virtue of Legal Notice No. 125 of 2003, it is necessary to amend the definition of Minister in section 2(1) of the Merchant Shipping Ordinance in order to clarify the authority for making subsidiary legislation.

The Bill seeks to provide a solution for amending the Merchant Shipping Ordinance every time the Minister's responsibility for the business of the Government relating to the Port and Shipping is changed. I commend the Bill to the House.

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

HON DR J J GARCIA:

The issue here is similar to the previous Bill and the Opposition will be supporting it.

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 this Bill be taken later today.

Question put. Agreed to.

**THE GIBRALTAR MERCHANT SHIPPING (REGISTRATION)
(AMENDMENT) ORDINANCE 2004**

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Merchant Shipping (Registration) Ordinance 1993, 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 before the House amends the Gibraltar Merchant Shipping (Registration) Ordinance 1993. The business of the Government relating to the Port and Shipping is specified in relation to the Minister for Transport but by virtue of Legal Notice No. 125 of 2003 the business of the Government relating to the Port and Shipping has been reallocated to the Minister for Trade, Industry and Communications. The business for Transport has been specified as Public Transport and Parking to the Minister for the Environment, Roads and Utilities. In view of the above change the Ministers' responsibilities for the business of Government by virtue of Legal Notice No. 125 of 2003, it is necessary to amend the definition of Minister in section 2 of the Gibraltar Merchant Shipping (Registration) Ordinance 1993 in order to clarify the authority for making subsidiary legislation. The Bill seeks to provide a solution for amending the Gibraltar Merchant Shipping (Registration) Ordinance 1993 every time the Minister's responsibility for the business of the Government relating to the Port and Shipping is changed. I commend the Bill to the House.

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

HON DR J J GARCIA:

Once again this is a third Bill where we are basically doing the same thing so the Opposition will be supporting it.

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 this Bill be taken later today.

Question put. Agreed to.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) ORDINANCE 2004

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House once again amends the Social Security (Closed Long-Term Benefits and Scheme) Ordinance to provide a further opportunity to pay arrears of Social Insurance contributions to those persons who are eligible to do so on the 6th January 1975 but who opted not to. Hon Members will recall that three other opportunities have already been given in the past. However, there are a number of people who for various reasons did not avail themselves of these opportunities. This Bill therefore accords them a further chance

to bring their Social Insurance contribution record up-to-date. The option is again extended to the widows and widowers of any insured person who was eligible on the 6th January 1975 but is now deceased, and to those persons who at the time may have opted to pay arrears by instalments but were unable to complete all the payments. I beg to give notice that I will be moving an amendment to the Bill at Committee Stage to extend the time limit in which such an election can be made until the 22nd January 2005. I commend the Bill to the House.

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

HON J J BOSSANO:

Can I just say that we welcome the amendment to the date because it did seem to us to be a bit tight. The purpose is to give all those who have not yet done it the opportunity to do so. It does not seem to make a lot of sense to make it such a narrow window. Obviously we are supporting this but I would like to know if the Minister has got any idea of the numbers involved, given that these people must now be getting very elderly and that of course the group is still always the same original group because this is limited to people who were eligible on the 6th January 1975, so it was a reduced group of people to start off with in 1975. We are now 29 years down the road since then, there must be hardly anybody left, I would have thought, but we will support this.

HON MRS Y DEL AGUA:

I am told that there are about 20 people who are eligible this time round. I assume that obviously they had failed to take up the opportunity and who have realised because obviously they have reached retirement age and they have realised there is a gap in the contributions. So 20 have applied this time round.

HON C A BRUZON:

Could the Minister explain the reasons why so few people avail themselves of the opportunity? Could it be maybe that this has not been sufficiently publicised?

HON MRS Y DEL AGUA:

No, as I have said earlier, this is the fourth opportunity that we have given and on previous occasions actually more than 20 people have applied each time round. So a considerable number of people have taken up the opportunity accorded to them by Government.

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 POLLUTION PREVENTION AND CONTROL
(AMENDMENT) ORDINANCE 2004**

HON F VINET:

I have the honour to move that a Bill for an Ordinance to amend the Pollution Prevention and Control Ordinance 2001 in order to

complete the transposition into the law of Gibraltar Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control and to allow the Environmental Agency to charge for its costs, including the costs of using specialist or other consultants, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, some hon Members may recall that in 2001 this House passed the Pollution Prevention and Control Ordinance which obliged persons carrying out various industrial activities set out in the Schedule, such as energy production and waste management, to obtain a permit from the Environmental Agency. It further provided that acting in breach of the permit's conditions would be an offence. This short Bill amends the Pollution Prevention and Control Ordinance 2001 and ensures first that we fully implement Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, and second, that the Environmental Agency has the powers it needs to undertake its work in this important area. Clause 2A amends the existing section 3(2) to clarify that existing industrial activities may only be carried on after the 30th October 2007 if a permit has been granted by the Environmental Agency. Clause 2B amends the existing section 5 to require persons carrying out existing industrial activities of the type set out in the Schedule, to apply to the Environmental Agency for a permit to conduct that activity from the 30th October 2004. This requirement will allow the Environmental Agency a period of three years in order to consider the complex permit applications. Clause 2C adds an offence punishable with a fine at level 5, of conducting an industrial activity without a permit where a permit

is required under the Ordinance. Clause 2D enables the Environmental Agency to charge a reasonable fee in relation to costs incurred in issuing permits under the Ordinance and thereby to recover its costs. It also enables the Environmental Agency to use specialists and consultants where necessary. On request the Environmental Agency will be required to provide a detailed statement of the costs incurred in issuing a permit to the person from whom the fee is payable. Any unpaid fee or part of it will be recoverable as a civil debt. Clause 2E clarifies that consistent with Annex 1 to Directive 96/61/EC paragraph 5.1, the permit requirements in respect of the disposal or recovery of hazardous waste for which a licence is required under section 192D of the Public Health Ordinance, only applies to installations with a capacity of over 10 tonnes per day. Clause 2F clarifies that consistent with Annex 1 to Directive 96/61/EC paragraph 5.3, the permit requirements with respect to disposal of non hazardous waste only apply to non hazardous waste as defined in Schedule 12 to the Public Health Ordinance paragraphs 8 or 9. This short Bill strikes a balance between ensuring that industrial activities are conducted in a manner authorised by the Environmental Agency, while allowing existing Gibraltar industries sufficient time to meet new environmental standards. I commend the Bill to the House.

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

HON F R PICARDO:

Yes, I have had some difficulty getting my head around the way that the amendment to section 5 and the amendment to section 3(2) have been designed. I think I now understand exactly what has been done. Under the existing legislation, it is necessary as from the time of publication of the Ordinance for existing industrial activities, and this is the existing section 3(2), of the type referred to in the Schedule to be carried out only where a permit has been granted in accordance with section 5. Permits under the existing section 5 were required from the 30th October

2004 and had to be applied for as from the 30th October 2004. The change, will mean that no existing industrial activity of the type referred to in the Schedule shall be carried on after the 30th October 2007 without a permit granted in accordance with section 5. Under section 5 the application for the permit must be made as from the 30th October 2004. In effect this will allow a period of three years for the continued operation of industrial activity set out in the Schedule, so long as the party carrying out that activity has applied for a permit for the period until the 30th October 2007 by which time a permit would have been granted. Now, because we are talking about pollution prevention and control, and in fact in many of the interviews that the Chief Minister himself has given, in the past couple of days he has said that the environment and pollution issues concern more and more members of the public constantly, and of course they concern all Members of this House I am sure. I am very surprised to see that where in the first transposition of 2001 we were requiring these industrialised activities to have a permit as from the 30th October 2004, we are now going to allow them to get away with simply applying for a permit from the 30th October 2004, and allow them to operate without a permit on the basis of that application until the 30th October 2007. Because we are dealing with pollution prevention, it is I am sure common ground across the House that we want to give effect to any directive which addresses the prevention of pollution as soon as possible. I would be grateful if the Minister could indicate what policy reasons they are to extend the period in which these industrial activities set out in the Schedule continue to operate for three years without a permit.

HON F VINET:

With all due respect to the Opposition Member, it is not a question of simply extending the period and it is not a question of allowing operators to get away with undertaking the industrial activity. The new section 5 is quite simply a rewording of the existing section 5. All the existing section 5 said was that as from the 30th October of this year, operators could apply for a

permit and it failed to give a deadline by which the permits ought to be obtained. All the amendment of today's Bill states is that there is now that deadline, in three years time, it is a perfectly reasonable deadline considering that the application process is a voluminous and highly complex and technical one. It does not alter in any way the contents and the spirit of the original Ordinance.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda
 The Hon T J Bristow

Abstained: The Hon J J Bossano
 The Hon C Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F Picardo
 The Hon L A Randall

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Financial Collateral Arrangements Bill 2004.
2. The Immigration Control (Amendment) Bill 2004.
3. The Deposit Guarantee Scheme (Amendment) (EU Accession Countries) Bill 2004.
4. The Gibraltar Merchant Shipping (Safety, etc) (Amendment) Bill 2004.
5. The Merchant Shipping (Amendment) Bill 2004.
6. The Gibraltar Merchant Shipping (Registration) (Amendment) Bill 2004.
7. The Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 2004.
8. The Pollution Prevention and Control (Amendment) Bill 2004.

THE FINANCIAL COLLATERAL ARRANGEMENTS BILL 2004

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

Clause 3

HON CHIEF MINISTER:

Mr Chairman, this is a point raised by the hon Member. Initially we thought that the mistake was that the reference should have been to Friendly Societies Ordinance rather than the old Industrial Provident Societies Ordinance, but in fact it is not even that. There ought to be no reference at all. So I would like to move an amendment by deleting clause 3(2) of the Bill and therefore also deleting the sub-clause (1), so that clause 3 now becomes a single 3, and express gratitude to the hon Member for spotting that error.

HON F R PICARDO:

There is another issue which I have spotted in the interim, which perhaps the hon Gentleman can also help us with. It is no longer, as I understand it, section 77 of the Companies Ordinance. I think now we must refer to section 128 of the Companies Ordinance as a result of renumbering which occurred by Legal Notice No. 61 of 2004 and the consolidation of the Ordinance. So I think the new section 3 should say section 128 of the Companies Ordinance. I apologise for not having brought that up at Second Reading. I would have if I had alighted on it at that time, I have alighted on it since then.

HON CHIEF MINISTER:

Yes, if that has already taken effect then the hon Member is right. I shall send the draftsman to him later so that he can buy

him a beer. That is the draftsman to the hon Member not the other way round.

Clause 3 – as further amended stood part of the Bill.

Clauses 4 to 10 and the Long Title – were agreed to and stood part of the Bill.

THE IMMIGRATION CONTROL (AMENDMENT) BILL 2004

Clauses 1 and 2, Schedule 3 and the Long Title – were agreed to and stood part of the Bill.

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) (EU ACCESSION COUNTRIES) BILL 2004

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

THE GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC) (AMENDMENT) BILL 2004

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

THE MERCHANT SHIPPING (AMENDMENT) BILL 2004

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

THE GIBRALTAR MERCHANT SHIPPING (REGISTRATION) (AMENDMENT) BILL 2004

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

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) ORDINANCE 1996 (AMENDMENT) BILL 2004

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

Clause 2

HON MRS Y DEL AGUA:

Mr Chairman, I gave notice at the Second Reading that I wanted to move an amendment. In clause 2 and anywhere else in the Bill where the date 30th November 2004 appears, it should be substituted for 22nd January 2005.

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 POLLUTION PREVENTION AND CONTROL (AMENDMENT) BILL 2004

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Financial Collateral Arrangements Bill 2004; the Immigration Control (Amendment)

Bill 2004; the Deposit Guarantee Scheme (Amendment) (EU Accession Countries) Bill 2004; the Gibraltar Merchant Shipping (Safety, etc) (Amendment) Bill 2004; the Merchant Shipping (Amendment) Bill 2004; the Gibraltar Merchant Shipping (Registration) (Amendment) Bill 2004; the Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 2004; the Pollution Prevention and Control (Amendment) Bill 2004; and the European Parliamentary Elections Act 2002 (Application to Gibraltar) (Amendment) Bill 2004, have been considered in Committee and agreed to with amendments. I now move that they be read a third time and passed.

Question put.

The Financial Collateral Arrangements Bill 2004; the Immigration Control (Amendment) Bill 2004; the Deposit Guarantee Scheme (Amendment) (EU Accession Countries) Bill 2004; the Gibraltar Merchant Shipping (Safety, etc) (Amendment) Bill 2004; the Merchant Shipping (Amendment) Bill 2004; the Gibraltar Merchant Shipping (Registration) (Amendment) Bill 2004; the Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996 (Amendment) Bill 2004; and the European Parliamentary Elections Act 2002 (Application to Gibraltar) (Amendment) Bill 2004, were agreed to and read a third time and passed.

The Pollution Prevention and Control (Amendment) Bill 2004

Question put. Agreed to.

The House voted.

The adjournment of the House was taken at 4.10 pm on Monday
1st November 2004.

For the Ayes:

- The Hon C Beltran
- The Hon Lt Col E M Britto
- The Hon P R Caruana
- The Hon Mrs Y Del Agua
- The Hon J J Holliday
- The Hon Dr B A Linares
- The Hon J J Netto
- The Hon F Vinet
- The Hon R R Rhoda
- The Hon T J Bristow

Abstained:

- The Hon J J Bossano
- The Hon C Bruzon
- The Hon Dr J J Garcia
- The Hon S E Linares
- The Hon Miss M I Montegriffo
- The Hon F Picardo
- The Hon L A Randall

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn sine
die.

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fifth Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Monday 20th December, 2004 at 3.00 pm.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon

The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon A Trinidad - Attorney General (Ag)

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 11th October 2004, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for the Environment, Roads and Utilities laid on the Table the Annual Report and Audited Accounts of the Gibraltar Electricity Authority for the year ended 31st March 2004.

Ordered to lie.

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

1. Consolidated Fund Pay Settlements – Statement No. 1 of 2004/2005;
2. Consolidated Fund Supplementary Funding – Statement No. 2 of 2004/2005.

Ordered to lie.

MINISTERIAL STATEMENT

HON CHIEF MINISTER:

Mr Speaker, with your leave and that of the House I should like to make a statement. On the 1st November 2004 I made a statement in this House following the joint press release by the British and Spanish Foreign Secretaries, following their meeting in Madrid on 27th October 2004. Further and in addition to my statement in this House on 1st November, I now make this short statement to put subsequent developments on the record of this House.

On 8th and 9th December I met with the Directors for Europe of the British and Spanish Foreign Ministries at Chevening House. There was further telephone contacts during the days after that meeting. The result was agreement on the modalities for a new process of three-sided dialogue. The agreement was made public on 16th December 2004 in the form of a joint press release between the Governments of the United Kingdom, Spain and Gibraltar. The agreement on 16th December 2004 reads as follows, it was issued simultaneously in London by the British Government, in Madrid by the Spanish Government, and in Gibraltar by the Gibraltar Government, in the same texts although obviously the Spanish version in Spanish.

It is headed, and I quote from it now “Joint Press Release by the British Foreign and Commonwealth Office, the Spanish Ministry of Foreign Affairs and the Government of Gibraltar”. On 27th October 2004 the British and Spanish Foreign Ministers, Jack Straw and Miguel Angel Moratinos, made a joint statement in Madrid on which the Chief Minister of Gibraltar, Peter Caruana, had been consulted and has separately expressed his agreement. Accordingly and without prejudice to their respective positions, the Governments of the United Kingdom, the Kingdom of Spain and Gibraltar now confirm the establishment of a new three-sided forum for dialogue on Gibraltar separate from the Brussels Process. The modality of this forum will be as follows:

Dialogue will be on an open agenda basis and therefore any of the participants may raise any issue relating to or affecting Gibraltar, without prejudice to their constitutional status including the fact that Gibraltar is not a sovereign independent state, each of the three parties will have its own separate voice and each will participate on the same basis. Any decisions or agreements reached within the forum must be agreed by all three participants. If the three parties wish to take a decision on an issue in the forum where formal agreement would properly be between the United Kingdom and Spain, it is understood that the United Kingdom will not agree thereto without the Government of Gibraltar's consent. The forum shall be convened with the three parties at Ministerial level at least once every twelve months. Other meetings of the forum shall take place at a time and level agreed by the three parties. The forum may create working groups as necessary to address specific issues. The forum will, in their deliberations, take account of the activity of the Comision Mixta de Coperacion y Colaboracion established on 18th November 2004 between the Mancomunidad de Municipios de la Comarca del Campo de Gibraltar and the Government of Gibraltar, to ensure coordination between the work of the forum and the Comision Mixta. Accordingly, through this forum of dialogue and by these modalities, the parties shall endeavour to create a constructive atmosphere of mutual confidence and cooperation for the benefit and prosperity of

Gibraltar and the whole region, in particular the Campo de Gibraltar.

Finally, and in order to preserve the viability of this process for all the parties, they will refrain from making public statements which distort or misrepresent the basis, purpose or modalities of this forum as set out in this statement.

Mr Speaker, that is the end of the joint press release and I will now, with your leave, like to formally lay a copy of that joint press release declaration on the Table of this House for the record.

Mr Speaker, for the Government this agreement represents success for our policy of reasonable, safe and dignified dialogue on the terms which we have long advocated and required. It is a dialogue and not a negotiation. It is open agenda and thus not pre-determined on any issue including sovereignty. It is not a sovereignty negotiation. The three parties take part "on the same basis" and Gibraltar has its own separate voice. Any decisions or agreements reached within the forum must be agreed by all three sides.

Mr Speaker, and it is a new forum outside of the Brussels process. I should like formally to inform this House that in a letter that he has written to me, the Foreign Secretary has assured me that there is no question of the British Government taking part in any separate, bilateral negotiation over sovereignty between the United Kingdom and Spain.

The Brussels Declaration was bilateral between the United Kingdom and Spain and therefore we cannot formally renounce it as a party, but it has become clearly irrelevant as well as ineffective. It has been ineffective for some time, in our view it has now also become irrelevant. The UK and Spain should therefore abandon it as soon as possible, certainly, as far as the Government of Gibraltar are concerned it is confined to the history books and we would not contemplate participating in it on

any circumstances, given the agreement that has been reached on 16th December.

ANSWERS TO QUESTIONS

The House recessed at 5.45 pm.

The House resumed at 6.10 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 21st December, 2004, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 9.40 pm on Monday 20th December 2004.

TUESDAY 21ST DECEMBER 2004

The House resumed at 9.35 am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

The Hon A Trinidad - Attorney General (Ag)

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS (CONTINUED)

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
Government motions.

Question put. Agreed to.

MOTIONS:

HON MRS Y DEL AGUA:

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

“This House resolves in accordance with section 46 of the Social
Security (Open Long Term Benefits Scheme) Ordinance 1997
that the Minister for Social and Civic Affairs proceed with the
making of the Social Security (Open Long Term Benefits
Scheme) (Amendment of Contributions) Order, 2004”.

Mr Speaker, the Government proposes to increase the Social
Security (Open Long Term Benefits Scheme) element of the
Social Insurance contribution as follows: employee from £1.00
to £1.65p; employer from £11.00 to £11.35p. An overall

increase between employee and employer of £1.00. There are other alterations to the allocation of the various elements which will result in an overall increase of 10 per cent in the weekly Social Insurance contributions. As the House will know, there has been no increase since 1998 and it is necessary to increase the revenue of this Fund in order to protect its capital from further erosion in the face of continuing low interest rates. The Government are taking other measures, to which I will refer when we debate the other motion on the Order Paper, to increase the capital reserves of this Fund. I commend the motion to the House.

Question proposed.

HON C A BRUZON:

Mr Speaker, I would just like to state briefly that the Opposition are not in favour of the increases and we shall be voting against the motion.

Question put.

The House divided.

For the Ayes:

The Hon C Beltran
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon T J Bristow

For the Noes:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

Absent from the Chamber: The Hon Lt-Col E M Britto

The motion was accordingly passed.

HON MRS Y DEL AGUA:

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

“This House resolves in accordance with section 52 of the Social Security (Insurance) Ordinance that the Minister for Social and Civic Affairs proceed with the making of the Social Security (Insurance) (Amendment of Contributions) Order, 2004”.

Mr Speaker, the Government propose to increase the contributions payable under the Social Security (Insurance) Ordinance in respect of the Short Term Benefit Fund as follows. Employee from 17p to 50p; employer from 17p to 50p, an overall increase of 66p. Honourable Members may be wondering why the Government propose to increase the revenue of the Short Term Benefit Fund which already has a huge capital surplus. The reason is this. Government propose to increase the income of the Fund to a level where its revenue substantially covers its outgoings. In addition, Government propose to leave in the Fund the capital sum of £1 million. This has enabled the Financial Secretary to certify that the remainder of capital, beyond £1 million in the Short Term Benefit Fund, is surplus to its requirements. The Government intend to transfer that surplus to the Open Long-Term Benefit Fund. I commend the Motion to the House.

Question proposed.

HON C A BRUZON:

Mr Speaker, the Opposition is not in favour of the increases and I would like to state, as I did in the previous motion, that we shall be voting against the increase.

Question put. The House divided.

For the Ayes: The Hon C Beltran
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon T J Bristow

For the Noes: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

Absent from the Chamber: The Hon Lt-Col E M Britto

The motion was accordingly passed.

HON MRS Y DEL AGUA:

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

“This House approves by Resolution the making of the Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance (Amendment of Schedule 3) Order 2004.”

Mr Speaker, the rates of unemployment benefit were increased in July 2003 by approximately 35 per cent. The object of this Order is to bring into effect another 3 per cent increase in the current rates of unemployment benefits as announced by the Chief Minister in his last Budget speech. This Order will uprate the weekly rates payable with retrospective effect from 12th July 2004. As a result the standard weekly rate will now increase from £50.25p to £51.75p. I commend the motion to the House.

Question proposed.

Question put. The motion was carried unanimously.

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 11.30 am.

The House resumed at 11.50 am.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Health moved the adjournment of the House to Wednesday 22nd December 2004, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 1.35 pm on Tuesday 21st December 2004.

WEDNESDAY 22ND DECEMBER 2004

The House resumed at 2.30 pm.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT:

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

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 5.20 pm.

The House resumed at 5.35 pm.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend
the Public Health Ordinance in respect of water rates, 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 is a short and simple Bill which has only one effect, that is that under the present Public Health Ordinance the water tariffs in respect of both potable and brackish water are set out in a schedule to the Ordinance itself, and therefore amendments of the tariff requires primary legislation. This reflects the fact that it is an old Bill that used to be the case in respect of import duty rates and income tax rates and everything else too. The effect of the amendment would be to do that by subsidiary legislation, so instead of setting out the water tariffs in a schedule of the Ordinance in a manner that it can only be changed by amendments to the primary legislation, the effect of the amendment proposed is that the water tariffs should be such as may be prescribed by regulations by the Government. That is the sole effect of the Bill. I think the hon Members of the House will be aware that the Government have given notice of intention to increase the water tariffs and would propose to do it by this means if the amendment is passed. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition do not agree that the water rates should be increased or changed by regulation, the Opposition will therefore not be supporting the Bill.

HON CHIEF MINISTER:

I see that the hon Members are not happy to see the present Government carry on the philosophy of the previous

Government. Given that they gave themselves the power to change income tax rates by regulations, it seems much, much less aggressive to give ourselves the right to change the water rates by regulation, but still we take note of the fact that they are not happy to see us do what they were quite willing to do themselves. Anyway the amendment will be passed by Government majority.

Question put. The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet

For the Noes: The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE FINANCIAL SERVICES (INSURANCE MEDIATION) (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Financial Services Ordinance 1989 in order to implement into the law of Gibraltar Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill amends the Financial Services Ordinance in order to regulate insurance and reinsurance mediation activities. Namely, introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance, concluding contracts of insurance or reinsurance, assisting in the administration and performance of such contracts, in particular in the event of a claim. Clause 1 of the Bill provides for citation and commencement. Clause 2 inserts Part V(A), that is to say new sections 38A to 38G, into the Financial Services Ordinance 1989. New section 38A transposes the definitions contained in Article 2 of the Insurance Mediation Directive. New section 38B designates the authority as the competent authority for the purposes of Article 7 of the Insurance Mediation Directive. Since this is by way of insertion into the Financial Services Ordinance, hon Members will be aware that the word "authority" is a defined term in the Financial Services Ordinance. It provides that the authority must maintain an up to date electronic record of licensed insurance and reinsurance intermediaries, the details of the designated competent authority in each Member State and each Member

State in which a Gibraltar firm has established a branch or is providing a service. The authority must ensure that members of the public are able to access quickly and easily information on the register. If an insurance or reinsurance intermediary ceases to meet the requirements of the Bill, the licence will be cancelled and it should be removed from the register. New section 38C details the professional requirements that an insurance or reinsurance intermediary operating in or from within Gibraltar must satisfy. An insurance intermediary must, amongst other things, be of good repute, hold professional indemnity insurance, have a specified minimum financial capacity and ensure that customers' money is transferred by strictly segregated accounts. The Minister with responsibility for Financial Services may by regulation add to these requirements. New section 38D implements the passporting provisions of the directive and the duties of the authority in this respect. Insurance and reinsurance intermediaries in a Member State who have obtained registration in their home Member State, will have a right to passport into Gibraltar to establish a branch or provide services. New section 38E deals with the exchange of information between Member States and provides that the authority is under a duty to cooperate with other competent authorities designated under Article 7 of the Insurance Mediation Directive. New section 38F provides that customers and interested parties may complain to the complaints authority, that is to say the Consumer Protection Office or some other body designated by the Minister. Such complaints must be registered and the complainant must receive a reply. The Minister may by regulation make further provision in respect of complaints procedures. New section 38G details the information that an insurance intermediary must provide to a customer and the manner in which he must provide that information. Prior to the conclusion of an initial insurance contract, and if necessary upon amendment or renewal thereof, the intermediary must provide the customer with his identity and address, details of the register in which he has been included, whether he has a holding direct or indirect representing more than 10 per cent of the voting rights or of the capital in a given insurance undertaking, whether a given insurance undertaking or parent undertaking of a given

insurance undertaking has a holding direct or indirect representing more than 10 per cent of the voting rights or of the capital in the insurance intermediary, and customer complaints procedures. An insurance intermediary must also inform the customer whether he gives his advice on the basis of a fair analysis, that is on the basis of an analysis of a sufficiently large number of insurance contracts. Clause 3 of the Bill amends Schedule 3, paragraph 3 of the Financial Services Ordinance 1989 to provide that insurance and reinsurance mediation activities are controlled activities for the purposes of section 3 of the Ordinance. This means that persons carrying on these activities must be licensed under section 8 of the Ordinance. The description of insurance and reinsurance mediation activities flows from the definition of these activities in the Insurance Mediation Directive, and it makes full use of the exclusions in that directive. New paragraph 3.2 and 3.3 contain the exclusions detailed in Article 1(2) and Article 1(3) and Article 2 of the directive. Clause 4 of the Bill amends section 44 of the Financial Services Ordinance. The amendment means that decisions made by the authority under new Part V(A) are subject to the provisions of section 44. That is to say, the authority must provide reasons for any decision taken and consider any representations made by a licensee. In addition, this also means that the decisions under new Part V(A) may be appealed to the Supreme Court under section 45. Clauses 5 and 6 make some consequential amendments to the Financial Services (Licensing) Regulations 1991 and the Financial Services (Fees) Regulations 1991 in respect of the classes and descriptions of business. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, the spirit of the Directive 2002/92/EC is one which is designed to be good for the consumer and good for fair and legitimate business, and the directive is fairly transposed by the

Ordinance that we are looking at. There are a number of issues nonetheless I think it is fair to draw attention to. The first is that the Consumer Protection Office has recently been established and complaints under this Ordinance to that Office may be of a very technical financial services nature. I think it would be fair to say that that office must be properly resourced in order to deal with those complaints. The other point I would raise, is that I have not been able to find in an earlier directive, which is Directive 73/239/EEC, a definition of "large risks" which is a defined term by cross-reference to that directive in the new section 38A. Without that all the parts of this Ordinance that relate to large risks appear to be at large. Now, we have had situations in this House before where Opposition Members have simply not been able to find European legislation sufficiently up to date which may be available to Government Members, that we are able to make sense of what is happening. The version that I am relying on is on CELEX, is the enforced part of CELEX, it may be that there was a definition in Directive 73/239/EEC of large risks. At the moment all I can find in Article 5 of Directive 73/239/EEC are an (a) defining units of account; a (b) defining matching assets; and a (c) defining localisation of assets, and I would be grateful if perhaps during the course of his reply the Chief Minister could assist me with that.

HON CHIEF MINISTER:

Let me try and address those two points. Mr Speaker, I am sorry that the hon Member should have difficulty getting up to date current versions of directives. There is a consolidated version of these directives, I do not know if he has had an opportunity to find that.

HON F R PICARDO:

That is the one that I have got.

HON CHIEF MINISTER:

All I can say to the hon Member is that as far as we are concerned, the directive as extant is accurately transposed. I do not know whether he wants to check it or not, the point that he was making was that he could not find the provision not that he was challenging.

HON F R PICARDO:

It is just that the definition of large risks cross-refers to a part of another directive, an earlier non-life directive I think, which I cannot find in the European website that is supposed to say exactly what is or is not in force and is supposed to give the latest version of directives in force, which I imagine would be the source most people would go for.

HON CHIEF MINISTER:

Yes, we are just trying to get the text of it for the hon Member, it may take some time, we may have it during the Committee Stage. Even if we do not have it for the Committee Stage I will pass it on to him. I am pretty sure that this language is taken directly from the I&D itself but it does not matter, it is just that we do not have the text of the directive here, I will get the information to him.

In terms of the Consumer Protection Officer, Mr Speaker that is why we have the language "or such other party which the Minister may designate", because at the moment the Consumer Protection Officer is the only public administration related body. If the Government should proceed with the proposal of the idea for a Financial Services Ombudsman, then that would be the logical place. It does not exist at the moment so we have this here. I am sure it would be of a highly technical nature, I do not think this complaints process is for that, I think it is for ordinary retail customers of insurance intermediaries. If the Consumer

Protection Officer gets a query that is beyond his or her competence, she will have to take advice from others in the Government administration.

HON F R PICARDO:

Not by way of reply but just to confirm, the Chief Minister is right that the definition of "large risks" is actually the same in the directive that we are transposing. In other words, Directive 2002/92/EC refers to the 1973 Directive. It is just that when I go back to the 1973 Directive it seems to have disappeared from there so I cannot find for myself the definition of a large risk.

Question put. Agreed to.

HON CHIEF MINISTER:

I have the honour to move that the Committee Stage and Third Reading of the Bill be taken later today. This Bill is due to be transposed by 15th January, failing which passporting rights would not be available as from 15th January as they otherwise would be.

Question put. Agreed to.

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) ORDINANCE 2004

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, in July 1999 the Government introduced maternity allowance as a new social security benefit. At present a payment of £75.60p per week is made to entitled women who are on maternity leave. This allowance is currently paid for a maximum period of 14 weeks. The purpose of this Bill is to extend the financial support currently provided for a further period of four weeks, making maternity allowance payable for a total of 18 weeks. As a result of this amendment, a woman on maternity leave will now also be entitled to a maximum of 18 weeks social insurance credits. I commend the Bill to the House.

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

HON C A BRUZON:

Just to say Mr Speaker, that we shall be voting in favour of the amendment.

Question put. Agreed to.

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.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Public Health (Amendment) Bill 2004,
2. The Financial Services (Insurance Mediation) (Amendment) Bill 2004,
3. The Social Security (Insurance) (Amendment) Bill 2004.

THE PUBLIC HEALTH (AMENDMENT) BILL 2004

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

THE FINANCIAL SERVICES (INSURANCE MEDIATION) (AMENDMENT) BILL 2004

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

Clause 2

HON F R PICARDO:

Just that caveat that we do not yet know whether there is easily accessible that definition of “large risks”, I am happy to come back to it.

HON CHIEF MINISTER:

Somebody has gone to try and get it but I do not think they are going to have it here in the next few minutes. I honestly do not think it alters the hon Member's voting intentions on the Bill. It is going to be checked, we are 100 per cent certain it is right, we will send him the text anyway for his perusal and obviously if we are wrong, which I do not think it is, it will have to be corrected.

HON F R PICARDO:

The only issue here is what is a large risk. If I am right that they cannot find it and therefore it is not there, then the easy answer would be that we simply insert the definition that was in Article 5D there. If Article 5D exists that is fine, otherwise we just insert the definition there.

HON CHIEF MINISTER:

Yes, if we find that Article 5D of the Directive 73/329/EEC is not extant, then we shall have to amend this to set out the definition there verbatim, but I am assured by the draftsman that it is. Well whatever the text I am assured that it is there, it is extant, I will provide him with a copy of it.

Clause 2 – stood part of the Bill.

Clauses 3 and 4 – were agreed to and stood part of the Bill.

Clause 5

HON CHIEF MINISTER:

There is a small typographical error in the Bill as printed. In clause 5 first line it says, "in Schedule 1 of the Financial

Services (Licensing) Regulations 199 blank, that should be 1991 but it is a typo.

HON F R PICARDO:

I just note that there is actually also in the Bill as printed an error in the numbering of clause 5. We go from 5(a) to 5(c) without going through 5(b) but it is of no consequence to the amendment that will be made to the Financial Services Ordinance.

HON CHIEF MINISTER:

I do not think so Mr Chairman, I think the hon Member may not have noticed that in fact it is quite unusual to amend Regulations by principal legislation, but that is what we are doing. So those are amendments to Schedule 1 of the Financial Services, it may be that there is no amendment to (b).

HON F R PICARDO:

Well, if that is the case, then it is necessary to show that what we are doing is inserting a new (a) and inserting a new (c), which it does not at present appear that we are doing because we are not saying open inverted comma (a) the paragraph close inverted comma. We are actually saying "5. In Schedule 1 of the Financial Services Ordinance 1991, (a)".

HON CHIEF MINISTER:

Yes I think it should be (b) because it is a list of amendments being made, not a reference to the sub-clause number being amended. Yes, (b).

Clause 5 – as amended stood part of the Bill.

Clause 6 and the Long Title – were agreed to and stood part of the Bill.

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) BILL 2004

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Public Health (Amendment) Bill 2004; the Financial Services (Insurance Mediation) (Amendment) Bill 2004, with amendments; and the Social Security (Insurance) (Amendment) Bill 2004, have been considered in Committee and agreed, and I now move that they be read a third time and passed.

Question put.

The Public Health (Amendment) Bill 2004.

The House voted.

For the Ayes:

The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet

For the Noes:

The Hon J J Bossano
The Hon C A Bruzon

The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bill was read a third time and passed.

The Financial Services (Insurance Mediation) (Amendment) Bill 2004 and Social Security (Insurance) (Amendment) Bill 2004, were agreed to and read a third time and passed.

HON MISS M I MONTEGRIFFO:

Before the Chief Minister starts to adjourn the House, I wish to make a statement on a point of clarification. Mr Speaker will recall that on Monday the Minister for Sport said that I was mistaken in saying that he had said in this House in his Budget speech, that the facilities of the Sports City and the changing rooms of the new hockey pitch would be fully operational by this autumn. He said that he was referring to the works being completed. He said that he had not said that these facilities would be fully in use, that he was referring to the works being completed and not to the facilities being fully operational. I told him that I had taken down some notes in shorthand and therefore, in order to be 100 per cent sure because I said I was 99 per cent sure, I have just checked on the draft text of the Budget speech and I would like to read what the Minister said. "The new Sports Hall and ancillary building, which will include lecture rooms and another squash court, a cafeteria and new offices are expected to be in full use by autumn, by which time the changing facilities and spectator stands for the hockey pitches, will also be ready for use." Therefore, Mr Speaker, I wish to say that I think that I have a better memory than he has.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 24th January 2005 at 2.30 pm and in so doing wished Mr Speaker, Members and the staff of the House a Happy Christmas and the compliments of the season.

Mr Speaker and the Hon Miss M I Montegriffo on behalf of the Opposition Members thanked the Hon the Chief Minister and associated themselves with the sentiments expressed by the Hon the Chief Minister.

Mr Speaker then put the question which was agreed to.

The adjournment of the House was taken at 6.15 pm on Wednesday 22nd December 2004.

MONDAY 24TH JANUARY 2005

The House resumed at 2.30 pm.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE, ED - Minister for Health
The Hon J J Netto - Minister for Housing

The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities
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 F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT

The Hon R R Rhoda QC - Attorney General

IN ATTENDANCE:

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

DOCUMENTS LAID

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

1. Consolidated Fund Pay Settlements – Statement No. 3 of 2004/2005;
2. Consolidated Fund Supplementary Funding – Statement No. 4 of 2004/2005;

3. Consolidated Fund Reallocations – Statement No. 5 of 2004/2005.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Maintenance Orders (Reciprocal Enforcement) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the amendment of this very short and simple Bill is to make clear that the procedure in respect of foreign maintenance orders set out by the Maintenance Orders (Reciprocal Enforcement) Ordinance, applies only to matters to which the Civil Jurisdictions and Judgments Ordinance 1993 does not apply, and thus to prevent any possible overlap or conflict between the two. In other words, both pieces of legislation deal with similar subject matter and material and the purpose of this Bill is to make it clear that the Maintenance Orders (Reciprocal Enforcement) Ordinance

has effect subject to the Civil Jurisdictions and Judgments Ordinance 1993, as subsequently amended from time to time to apply various Conventions. That is the sole purpose of the Bill to the extent that both pieces of legislation that this House has already passed, to the extent that there may be overlap, the Civil Jurisdictions and Judgments Ordinance prevails in manner that the Maintenance Orders (Reciprocal Enforcement) Ordinance has effect subject to the Civil Jurisdiction and Judgments Ordinance. I commend the Bill to the House.

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

HON J J BOSSANO:

All that the mover has done is really say more or less the same thing as the explanatory memorandum. I think what is difficult to understand is if there is some doubt as to whether the Maintenance Orders (Reciprocal Enforcement) Ordinance is subject or not subject to a law passed in 1993, what has been happening in the last eleven years? How has the doubt been resolved in the eleven years since we legislated the 1993 Ordinance? Is it that there has been a recent case which has put in doubt something that was assumed not to be in doubt before? I would imagine in 1993 when this House approved the Civil Jurisdiction, I do not remember it but I can only suppose that is what happened at the time, but when the Civil Jurisdiction and Judgments Ordinance was passed by this House it must have been passed on the premise that it would affect the operation of the Enforcement Ordinance which preceded it. Every time we pass a Bill presumably what went on before is subject to what we subsequently decide should happen, as I understand it as a layman and as a legislator. Now the fact that there is a need to do this now and spell it out raises a number of questions. Is it something we ought to be doing as a regular feature in legislation, or is it that somebody has questioned this one because of something that has happened recently which

had not happened previously? I think that is the principle that concerns us.

HON CHIEF MINISTER:

The Bill is two lines long and the hon Member reproaches me for saying little more than what the explanatory memorandum says. It is really not easy to go much further. There are two pieces of legislation which the Government have been advised, let me say first of all that the answer to the hon Member's questions 'has there been a recent case?', that is not the case. In other words, the Government's legislation administrators, the Legislation Support Unit, has pointed out that the scope exists for confusion because two different Ordinances purporting to deal with the same subject matter in terms of procedure, have different provisions. One transposes the requirements of an international obligation, the other is domestic, and all this piece says for the sake of clarity and in case the matter arises the court does not have to be delayed, there is not a case in which this has arisen or anything, it is just legislation managers having spotted this and said it would be better to pass a legislative provision making it clear that where there is overlap it is the Reciprocal Enforcements Ordinance that prevails because that responds to an international obligation, as opposed to the other which is entirely domestic in nature. So the Civil Jurisdiction and Judgments Ordinance 1993 prevails. That is all, there is not a historical problem that the Government are aware of, there is not a case, no one has fallen foul of this supposed possible conflict. It is just housekeeping in advance in case the issue is ever taken, it will have been resolved before it has arisen rather than deal with it after the event. From that point of view the hon Members may take the view that legislation is unnecessary, it is just that we were advised to do it so we bring the legislation to the House. No more than that.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

**THE JUDGMENTS (RECIPROCAL ENFORCEMENT)
(AMENDMENT) ORDINANCE 2004**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Judgments (Reciprocal Enforcement) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the background to the presentation of this Bill is the same as in the previous Bill. The purpose of it is to make clear that the procedure in respect of foreign judgments set out by the Judgments (Reciprocal Enforcement) Ordinance, applies only to matters to which the Civil Jurisdictions and Judgments Ordinance 1993 does not apply, and thus to prevent any possibility of overlap or confusion. The amendment introduced by the Bill is as follows. Clause 2 introduces a new section into the Judgments (Reciprocal Enforcement) Ordinance, which provides that the Ordinance has effect subject to the Civil Jurisdictions and Judgments Ordinance 1993. In other words, in exactly the same vein as the debate on the previous Bill, the Civil Jurisdictions and Judgments Ordinance 1993 prevails over the Judgments (Reciprocal Enforcement) Ordinance where

there is any conflict between them as a result of overlap in subject matter, and again there is no specific case. The Government are advised that it would be wise just to have the legislation clarify this without the point having arisen, and it is for the same reason, one implements international obligations, it is the Brussels and Lugano Conventions basically in their various manifestations, and of course that has to have priority if there is a conflict in our legislation. I commend the Bill to the House.

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

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 IMMIGRATION CONTROL (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance to further transpose into the law of Gibraltar Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and to transpose the Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, 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 transposes Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, and further transposes Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence into the law of Gibraltar. In other words, it does two things. It transposes Council Framework Decision 2002/946/JHA and it also completes some of the transposition of Council Directive 2002/90/EC. It does these things by amending the Immigration Control Ordinance as follows. (1) To clarify that the offences will be committed where a non-EU citizen is assisted to unlawfully enter, transit or reside in a schedule free State, being the EU States plus Norway and Iceland. That is the extent of the correction of the previous transposition of that. Previously, this House had legislated only for EU Member States, the directive actually applies to the EU Member States plus Norway and Iceland, so the element of correction is in adding Norway and Iceland. In other words, by reference to Schedule 3 rather than Member State. Secondly, to provide for a new aggravated offence, and now this is transposing the framework of 2002/946 where the Member States decide to toughen up against these things, to provide for a new aggravated offence of assisting a non-EU citizen to enter or transit a Schedule 3 State, where the action is taken as part of the activities of a criminal organisation or the action endangers the lives of the persons who are being unlawfully assisted. In other words, hon Members will remember that at a given point the EU gets exercised about organised crime and trafficking in illegal labour, and they decide to create this specific offence which is more serious when it is committed by a Member of an organised crime ring than it is when it is committed by

somebody who is not, a rather novel concept. Thirdly, it increases the penalties, again required by the Council Framework, the penalties for offences committed under section 63A in line with the requirements of the Council Framework Decision 2002/946/JHA, including allowing the court to make a forfeiture order in respect of certain vehicles, boats and aircraft used in the commission of offences under section 63 and 63A. It also amends section 63 to provide the section 63 offences harbouring persons in Gibraltar, may be committed by Gibraltarians outside of Gibraltar and in an amendment of which I have given notice, I do not know if hon Members have had it circulated to them but which I will be moving at the Committee Stage, I intend to replicate the United Kingdom's equivalent legislation in this regard by adding a power to prosecute in Gibraltar any British person, which will be defined in the amendment, who is ordinarily resident in Gibraltar. I will give the hon Members specific notice of that amendment at the Committee Stage.

So, in details clause 2(3) of the Bill inserts a new section 63A into the Immigration Control Ordinance. The new section is as follows. Section 63A(1) preserves the existing offence of assisting a non-EU citizen to enter or transit an EU Member State. The wording of the existing section in the existing Ordinance is amended to refer to a Schedule 2 State rather than a Member State, as was always required by the directive and we simply got that transposition wrong by limiting it to Member States. The penalty has been increased to one year and/or a fine in line with the obligation to impose, and this is a requirement of the Framework Directive, requires to impose effective proportionate and dissuasive criminal penalties which allow for extradition under the arrest warrant. Further, section 63A(2)(a) introduces the new aggravated version of section 63A(1) offence previously referred to. The penalty for this offence will be up to eight years imprisonment and a fine, and those are sentences referred to in the Framework Decision, these are not figures that the Government of Gibraltar have chosen as a matter of policy. Section 63A(2)(b) preserves the existing offence of intentionally, for financial gain, assisting a

non-EU citizen to reside in an EU Member State but amends it to cover Schedule 2 States. The penalty has been increased to eight years imprisonment and a fine. Section 63A(3) defines a criminal organisation, of course, which is necessary given that when committed by a member of the criminal organisation, the aggravated version of it. Section 63A(4) and section 63A(5) preserve the existing definition of immigration law and means of proof of foreign law. Section 63A(6) provides that a section 63 offence may be committed by persons of any nationality in Gibraltar, as the Bill now stands before the hon Members, by Gibraltarians outside Gibraltar and by virtue of the amendment that I propose to move, also by any other British person ordinarily resident in Gibraltar when committed outside Gibraltar. So assuming the House approves the amendment that I will move, Gibraltar will have jurisdiction over people of any nationality who commit the offence in Gibraltar, and also Gibraltarians and any other British person ordinarily resident in Gibraltar, in respect of events occurring outside Gibraltar. The existing section 63A(2) dealing with conspiracy has been omitted as it is no longer necessary. Clause 2(4) inserts a new section 63B which allows the court to make forfeiture orders in respect of certain vehicles, boats and aircraft used in connection with offences in section 63 and section 63A, and the hon Members will see that in the case of boats and aeroplanes there are particular cumulative conditions that need to be satisfied to protect the innocent owners of perhaps commercially sized aircraft and ships from being subject to forfeiture unfairly. Clause 2(5) renumbers the existing Schedule 3 as Schedule 2, in fact there never was a Schedule 2 so the new Schedule 3 is in fact Schedule 2 and there is just that renumbering exercise done.

The Bill transposes Gibraltar's EU obligations in relation to trafficking and strengthens Gibraltar's ability to play a role in counteracting trafficking in persons in the European Union, in implementation of the European Union wide policy to clamp down on the movement of illegal people into and through the Community by organised crime rings. I commend the Bill to the House.

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

HON J J BOSSANO:

I think the only point that has not been explained is that in fact when Bill No. 29/04 was passed, which became Ordinance No. 33/04, we introduced section 63A(1) with penalties which were lower than the ones that we are now transposing. Is it that for example, it was level 4 as opposed to level 5 which there is now in section 63A? Even though what we are doing now is transposing a Decision of November 2002, I am surprised that late last year we were introducing a lower level of penalty which we are now pushing up, given that we have known since November 2002 what it should be. Is there an explanation for that? That is the only part that I do not think has been explained by the mover.

HON CHIEF MINISTER:

Well just to provide the hon Member with an answer to his query, when we did the first Bill we were only transposing, the drafting of the Bill was only to transpose Directive 2002/90/EC. By the time we did that late, we had already incurred in a subsequent commitment, the Council Framework, which tightened up the penalties. When we did the original Bill the drafting was only to do the directive and it did not have in mind the subsequent obligation, even though the hon Member is quite right in saying it was then already known, but the drafting only addressed the original directive. These amendments, in terms of the ratcheting up of the penalties, responds to the subsequent Framework Decision, albeit that that was already known at the time that we did the original Bill in the House.

HON F R PICARDO:

Can I just in addressing that point, point out that in fact the Council Directive is of 28 November 2002 also. It is not a subsequent Framework Decision, they both appear at least on the explanatory memorandum to be of the same date.

HON CHIEF MINISTER:

Yes, they are of the same date, it was just overlooked in the original draft. If the hon Member looks at the Framework Decision he will see the commitment to have what is referred to as proportionate, effective, dissuasive penalties. I can only assume, I am completely guessing here, but I can only assume that the directive was in the making long before the Framework and then having approved the directive, they then decide to sort of amend it and they amend it by reference to a Framework Decision so as not to have to start again with the very laborious procedure that there is in Europe for promoting a directive. A framework decision is a Member State issue, a directive is a Community institution mechanism, and there are wholly different procedures for getting to the stage where one can publish them as binding obligations. So I can only assume that the directive was already in the pipeline and then the Member States decide they want to ratchet up the penalties, and so they put them all out together but as wholly different measures. One in the hands of the Member States, the other having to go through a Community process.

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 CIVIL JURISDICTION AND JUDGMENTS
(AMENDMENT) (NO. 2) ORDINANCE 2004**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision in respect of EC Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000, to make further provision in respect of EC Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and to amend the Civil Jurisdiction and Judgments Ordinance 1993, 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 amendments contained in the Bill are of a procedural rather than a substantive nature. In general terms, firstly they make provision for Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters, and the matters of parental responsibility, repealing Regulation 1347/2000, a regulation which is normally known as Brussels II

bis. Hon Members know that being regulations they have direct application to Gibraltar without further legislative requirement, which is why it says making provision for rather than transposing into the laws of Gibraltar. Secondly, this Bill alters the procedure whereby foreign judgments may be enforced in Gibraltar. It changes the procedure from a registration procedure to a procedure by which a court in Gibraltar may declare the foreign judgment enforceable. In other words, in the jargon of the Brussels Convention, it is a declaration process as opposed to a registration process.

Article 28 of the Brussels II *bis* Regulation provides, I do not know if the hon Members have got the text in front of them, provides for either of the two models. When the legislation was originally passed in 1993 to transpose the Brussels I, the House back in 1993 chose the model set out in sub-section (2) of Article 28. The Government are not able fully and publicly to explain the reasons for this amendment because it involves matters which are currently being litigated in international tribunals. However, they are able to say the following, of course I am happy to give the hon Members if they want more details a fuller explanation. Article 28 of the Brussels II *bis* Regulation deals with enforcement of foreign judgments in relation to certain matrimonial matters and parental responsibility. It provides for two different methods of enforcement. As I have said, a declaration of enforcement procedure or a registration procedure. I hope the hon Members from what I have said have been able to work out what the difference between the two procedures is. One is, one gets a judgment in a foreign court, it is simply registered in Gibraltar and then it is enforced without further intervention from any Gibraltar court. That is the registration procedure. The declaration procedure is that one has to get a Gibraltar court order declaring it enforceable before it can actually be enforced. On consideration of the provision it was clear, and this is the signal that I can send the hon Members publicly at least, on consideration of the provision it was clear that Gibraltar fell under the declaration of enforcement procedure in Article 28(1) rather than the registration procedure under Article 28(2). Similar provisions exist in Article 38 of

Brussels I Regulation, and Article 31 of Brussels and Lugano Conventions. In relation to all of these Gibraltar falls under the declaration procedure rather than the registration procedure. The specific amendments introduced by the Bill and therefore what this Bill does, is in respect of the 1993 Ordinance it switches from the registration procedure to the declaration by local court order procedure. That is the effect of that part of the Bill.

Therefore the Bill introduces, I will take the hon Members through it very briefly, introduces certain language into the 1993 Ordinance consequential and for the administration of the new procedure. For example, clauses 2A and 2B introduces into section 2 the definitions, which is the definition section, a definition of "Regulation 2201/2003", it includes a definition of "declared enforceable" because of course it was not relevant before because the previous model was not the declaration model and therefore there was not a need for a declaration of declared enforceable. Similarly, definitions are introduced of "enforcement order" being a court order under a foreign judgment may be enforced in Gibraltar. Clause 2C concerns the enforcements of foreign judgments other than in respect of maintenance orders. Under the Brussels and Lugano Conventions, under which the Bill substitutes the existing section 6 with a new section 6, that is to say we have now moved on from maintenance orders and we are now to all other aspects under Brussels and Lugano other than maintenance orders. Under the new section 6 the Supreme Court may make enforcement orders in respect of foreign judgments. Where an enforcement order has been made the Supreme Court shall have the same powers to enforce the foreign judgment as if that judgment had originally been given by the Supreme Court, and the foreign judgment may be enforced in the same way as a Gibraltar judgment. Clause 2D concerns enforcement of maintenance orders under the Brussels and Lugano Conventions, and the basic difference is that for maintenance orders the local court that has jurisdiction is the Magistrates' Court, whereas for issues other than maintenance orders as I have just said, it is the Supreme Court. That is basically the

only difference between clauses 2C and 2D. Clauses 2E, 2F and 2G, amend the wording of respectively sections 9, 10 and 32 of the 1993 Ordinance to reflect the new procedure for enforcing foreign judgments, subsequent to an enforcement order rather than subsequent to registration, and also enables rules of court to be made in respect of Regulation 2201/2003. Clause 2H introduces Schedule 11 giving effect to Brussels II *bis* Regulation, that is Regulation 2201/2003. This clause will come into operation on the 1st March 2005, the date on which Regulation 2201/2003 applies. The hon Members will no doubt be pleased that we are now ahead of the game and transposing legislation before the due dates. Clause 2(1) extends section 39(1) to cover Regulation 2201/2003. Clause 2J amends paragraphs 1 to 6 of Schedule 10. Schedule 10 deals with enforcement of European Union judgments under Regulation 44/2001, that is the Brussels I Regulation. The amendments alter the wording of the paragraphs referring to registration of foreign judgments to referring their enforcement subsequent to an enforcement order. These amendments reflect the fact that Article 38(1) and not Article 38(2) of the Brussels I Regulations applies to Gibraltar. In other words, it is amending the language in paragraphs 1 to 6 of section 10, consequential upon the switch from registration process to court enforcement, a court order, declaration of enforceability process. Clause 2K inserts Schedule 11 which makes provision in respect of Brussels II *bis* Regulation. This clause will come into operation on 1st March 2005, the date on which Brussels II *bis* applies.

This Bill therefore makes provision for Brussels II *bis* Regulation, Regulation 2201/2003 and amends the existing procedure for enforcing foreign judgments in Gibraltar and the previous regulations under previous Conventions and under previous Bills to bring it all into line. I commend the Bill to the House.

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

HON F R PICARDO:

The change from registration to declaration will make the process of enforcement of judgments in some instances where, for example maintenance orders, the finances of the person needing to rely on the judgment may not be the best, slightly more onerous as it will require a process of judicial decision. On that basis I think we will take the Chief Minister up on his offer that he should explain to us exactly what it is, but perhaps if we could stand down before we vote for a few moments.

HON CHIEF MINISTER:

Yes, either that or I am perfectly happy to delay the conclusion of the Second Reading until after we have had that opportunity perhaps when we break for tea.

On the basis of what I have just proposed, we would sort of interrupt the debate at that point where they are still free to speak, after they have heard my explanation in private, so I would suggest that we just adjourn the debate of this Bill where it now is, in other words, before Mr Speaker says “does any other Member wish to speak on the Bill?”, and we move on to the next.

The House recessed at 3.30 pm.

The House resumed at 3.40 pm.

HON F R PICARDO:

Mr Speaker, on the basis of the discussion we have had in the course of the adjournment, I think there is nothing to add in relation to this Bill.

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 MATRIMONIAL CAUSES (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Matrimonial Causes Ordinance to make provision for Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 and for Council Regulation (EC) No. 22/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill is to make clear that in relation to matters covered by Regulation 2201/2003, that is Brussels II bis, which we will have legislated when we pass the previous Bill that we debated, and Regulation 22/2001 Brussels I, the appropriate Regulation and the Civil Jurisdiction and

Judgments Ordinance 1993 will apply rather than the Matrimonial Causes Ordinance. The Bill introduces a new Part X containing section 60A into the Matrimonial Causes Ordinance to make clear that the Ordinance has effect subject to the Regulations above, and to the Civil Jurisdictions and Judgment Ordinance 1993. It renumbers existing Part IX as Part X following the insertion of the new Part X. Therefore the new section in A simply says that the Ordinance has effect subject to two pieces of regulation which are regulation by direct application in any case, and to sections 38A of the Civil Jurisdiction and Judgment Ordinance and also section 38 and 39. I think there is a typographical error there, in that in (b) it says Civil Jurisdiction and Judgments Ordinance, which is correct but in (a) it says Civil Judgments and Jurisdiction, little (a) just inverted the words jurisdiction and judgement. I commend the Bill to the House.

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

HON F R PICARDO:

We do not believe that these amendments are strictly necessary, although in advertising the fact that they are subject to these other Regulations et cetera, within the Ordinance all they do is alert those who might not be aware of that to this. We have no difficulty with that. Can I just simply say that in the Ordinances that we have just passed, in Bill 42 and Bill 41 we are referring repeatedly to the Civil Jurisdiction and Judgments Ordinance 1993, which I think is the correct citation because of the post-1984 criteria and I think we should do that here as well in Third Reading. Also I think that there is a second amendment which is section 2(b) of this Bill which will renumber Part X as Part XI. At the moment that seems to be hanging on the end of the amendment of section 60A as if section 60A had an (a), (b) and (c). In fact I think section 60A will only have an (a) and a (b) and what appears in (c) at the end of it, is actually sub-section (b) of section 2 of this Bill. I think that is right.

HON CHIEF MINISTER:

I would not be able to agree with the hon Member that the legislation is unnecessary for the reason that it refers to a regulation that is of direct application. For example, section 39 of the Civil Jurisdiction and Judgments Ordinance, which is being invoked by this amendment which is overriding the Matrimonial Causes Ordinance, for example applies the regime as between the UK and Gibraltar for example, and the previous section applies the Matrimonial Matters and Parental Responsibility for Children to all Member States of the Union except Denmark, which for some reason or other has opted out of these arrangements. Let me just get confirmation as to whether the hon Member's observation is indeed correct.

Yes, as a matter of presentation I think the hon Member's point must be right. Renumbering the existing part as Part XI is non sequitur (a) and (b). It would not be (a) and (b) of a new section 60A of the Ordinance, it would simply be a separate clause of the Bill, that is the point. I think that must be right. I will move the necessary amendment at Committee Stage to reflect the secretarial aspects of the presentation. I think the hon Member's point is right.

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 MAGISTRATES' COURT (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision in respect of Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and to amend the Magistrates' Court Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purposes of the Bill is to add to the jurisdiction of the Magistrates' Court, the court responsibility that arises from Council Regulation No. 2201/2003 in relation to guardianship of minors and parental responsibility under those Regulations. That is to say, that the jurisdiction and the power to recognise and enforce judgments in matrimonial matters and the matters of parental responsibility, and the definition of domestic proceedings in the Magistrates' Court are amended to give those powers and jurisdictions to the Magistrates' Court and to include all applications for the recognition and enforcement of maintenance orders under the Civil Jurisdiction and Judgments Ordinance 1993, rather than as present only those under Part 1 of the Civil Jurisdiction and Judgments Ordinance 1993. So that is all rather than just Part 1 proceedings. This Bill ensures that the Magistrates' Court Ordinance reads consistently with the Civil Jurisdiction and Judgments Ordinance 1993 as amended. I commend the Bill to the House.

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

HON F R PICARDO:

Just a very minor point but the version of the Magistrates' Court Ordinance that I have in the House, and I think the one I checked earlier, has a proviso at the end of the list of matters in section 45. That proviso, after it lists those issues, it says, "in this Ordinance the expression "domestic proceedings" means proceedings". At the moment (a) says "under any law relating to the guardianship of minors" then there are other definitions of domestic proceedings and then the law says "other than proceedings as a general proviso for the enforcement of an Order made under any of the laws mentioned in paragraphs (a) and (b) or for the variation of any provision et cetera". My concern is that maybe we are legislating here to create a conflict because the new (a) that we are inserting actually refers to a regulation which deals with recognition and enforcement of judgments in matrimonial matters, which seems to be ousted by the proviso to the section 45 into which we are inserting it. I just flag that for the Government to consider, it may be something that we can tidy up at Third Reading but we are now providing for domestic proceedings to include this enforcement issue whereas that appears to be specifically excluded by the proviso to section 45.

HON CHIEF MINISTER:

Not on the general principles but I will consider the hon Member's point when we debate it at Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short housekeeping amendment to remove from the Income Tax Ordinance references to the qualifying company following the repeal of the Qualifying Company Regulations. The qualifying company regime has been ended by the repeal of the Rules and this is just to prevent there being a reference to a concept which then does not exist because there are no Rules. It has no other effect than that. I commend the Bill to the House.

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

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 MERCHANT SHIPPING (CARRIAGE OF DANGEROUS OR POLLUTING GOODS) (REPEAL) ORDINANCE 2004

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to repeal the Merchant Shipping (Carriage of Dangerous or Polluting Goods) Ordinance 2000, 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 before the House repeals the Merchant Shipping (Carriage of Dangerous or Polluting Goods) Ordinance 2000. EU Council Directive 93/75/EEC was transposed into the laws of Gibraltar by way of this Ordinance. However the 1993 EU Directive has now been repealed by a more recent EU Directive which was published in 2002, Directive 2002/59/EC. It is therefore necessary to repeal the Gibraltar legislation that gave effect to an EU Directive which is now spent. The new 2002 Directive of the European Parliament and of the Council goes beyond the original directive, it further establishes an EU vessel traffic monitoring and information system. The provisions of the 2002 Directives have already been transposed into Gibraltar law by way of the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and

Information System) Regulations 2004 which was published in the Gibraltar Gazette on 23rd December 2004 as Legal Notice No. 120 of 2004.

Part 3 of this new regulation sets out the provisions for the notification that needs to be given by ships carrying dangerous or polluting items. Regulation 1(2) of the new regulation provides that the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulation 2004 shall come into operation on a date to be appointed by me in my capacity as Minister with responsibility for the Port and Shipping. The Government wish to bring the regulation into effect at the first opportunity in order to complete the transposition of the 2002 directive. In order to do so the Merchant Shipping (Carriage of Dangerous or Polluting Goods) Ordinance 2002 needs to be repealed. It is intended to bring the repeal into effect at the same time that the regulations come into operation. I wish to give notice that at Committee Stage I wish the title of the Ordinance to be amended to replace "2004" with "2005". I commend the Bill to the House.

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

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 PORT OPERATIONS (REGISTRATION AND LICENSING) ORDINANCE 2005

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to make provisions for regulating port operations and employment within the Port; and for connected purposes, 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, up until now there has only been regulations in respect of two classes of port activity. The Dock Work Regulation Ordinance has provided a regime in respect of stevedoring and the Ship Agents Registration Ordinance has set out the licensing regime for ship agents. However, there are many other kinds of activities within the port which historically have been unregulated. Government were faced with two options. One, doing away with all the regulation of port activities, or in the alternative providing a licensing regime for all the different categories of port activity. There are dangers of abolishing all control and there is a need to ensure that port operators work safely, that people who wish to operate within the port meet certain minimum standards and the Port of Gibraltar can continue to offer a number of port services, and that all port operators have a real presence in Gibraltar. The Government also consider it desirable to register persons who are employed by private sector companies as port workers. In order to provide a licensing regime there is a need for there to be an appropriate body which shall be the licensing authority. This authority will be the Gibraltar Port Authority which is set up under the Gibraltar Port Authority Ordinance, the Bill of which is before the House today. It is envisaged that there will be seven

categories of port operators. Bunker supplies, stevedores, ship repairers, ships agents, ship chandlers, dock operations and a miscellaneous category which will cover all other industrial or commercial operations carried out within the port. Before bringing this Bill to the House the Government carried out a wide-ranging consultation with existing port operators. They were invited to comment on the draft Bill and many representations were received which were closely studied. Many of the suggestions which were made by the industry were incorporated into the draft. The Port Advisory Council also examined the Bill in detail and provided me with valuable feedback. In general, Gibraltar port operators were strongly supportive of the initiative to introduce a wide-ranging licensing and registration regime.

I will now turn to the details of the Bill. Up until now there has been an unofficial understanding known popularly as the “3 ton rule” that goods or merchandise under three tons in weight shall be classified as cargo. The new definition of cargo gives legal effect to this so-called “3 ton rule”. This in effect has been a highly contentious issue within the industry. I have had strong representations from the industry to raise the limit to five tons or indeed to do away with it altogether. I have also had strong representations seeking to lower the limit to below three tons. The Government have considered the matter and decided to retain the limit of three tons as at present. Clause 3 empowers the Gibraltar Port Authority to issue a licence for any class of port operator to any person or entity who applies to the Authority in writing in the prescribed form, pays the prescribed fee for the registration and satisfies the Authority of compliance with the requirements of the Ordinance. The Authority may also register any person as a port worker for one or more specific activities, if his employer registers as a port operator and his employer requests the Port Workers Registration basic prescribed fees and satisfies the Port Authority that the port worker is a fit and proper person. In accordance with clause 4, the Gibraltar Port Authority shall have the absolute discretion to decide whether to grant or refuse a licence. In particular, the Authority may refuse to issue a licence if it considers that the operational

circumstances, the viability of a particular sector, the need to maintain levels of investment, the safety of a particular port sector or the wide economic interests of Gibraltar could be adversely affected should the licence be issued. Clause 5 provides for the renewal of Port Operator Licences for the re-registration of port workers. Clause 7 aims to ensure that the Port Authority is aware, through the registration process, of all persons employed within the port sector and who will need to work within the port.

It is appreciated that there may be an urgent short-term need, for someone who is not registered as a port operator, going to the port and carrying out work and that there may not be sufficient time for this operator to go through the standard application process. In such circumstances clause 9 provides that the Authority may exceptionally grant an operator exemption from registration on the recommendations of the Captain of the Port, for a defined short period of time and for a specific purpose. Clause 10 sets out the regime for the removal of an operator from the register of port operators or for the cancellation of the registration of a port worker. It also provides a mechanism for the short-term resolution of disputes between operators and the remedying of any breach of port operator licence. In such cases the Dock Controller shall make an immediate adjudication in respect of the dispute or shall require that a particular breach of the licensing conditions be remedied. A person who is dissatisfied with the adjudication of the Dock Controller can appeal to the Minister. Clause 11 provides that anyone may inspect the register on payment of the prescribed fee. Clause 12 is fundamental to Government strategy, only registered port workers can carry out work within the port. This will ensure that unregistered labour cannot work within the port and that the port operator cannot try to introduce a worker into the port who does not meet the minimum standard of training or competence required to ensure that operations are carried out safely. This clause needs to be seen side by side with the requirement of clause 3(5), that an operator can only carry out within the port those activities for which he has been registered. The Government wish to encourage the development of the port

and operators who wish to diversify even further the range of services offered by the port. However, it is of equal importance to the Government that an operator shall have a real presence in Gibraltar and this legislation puts in place a framework which will allow the Port Authority to insist on this. Clause 13 provides for offences and penalties. Clause 14 provides an appeal and establishes a Port Tribunal. Clause 15 provides for a referral to the Supreme Court on a point of law if a person is dissatisfied with the decision of the Port Tribunal. Clause 16 allows the Minister to make regulations for the purpose of carrying out the Ordinance into effect. Clause 17 repeals the Dock Work Regulations Ordinance and the Ship Agents Registration Ordinance 1987. Clause 18 provides for the transitional provision to ensure that there is continuity in respect of port operators, who until now have come under the provisions of the two Ordinances which are to be repealed. The Bill will introduce a wide-ranging system of licensing port operators and registering port workers. I commend the Bill to the House.

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

HON DR J J GARCIA:

Let me make clear from the start that the Opposition do not support the creation of a Port Authority, but it is not an issue which I propose to address at this stage, given that this is the subject matter of another Bill further down the Order Paper. We know the explanatory memorandum to this Bill says that it reproduces many of the existing provisions of the Dock Work Regulations Ordinance which it also replaces. It is the view of the Opposition that these functions should continue to be carried out as they have been until now by the Port Department. We also note, having heard the Minister's contribution this afternoon, and we also support the licensing and registration scheme which the Minister has mentioned, but we also believe that that should be carried out by the Port Department. However, on the assumption that the Government will create the

Port Authority without Opposition support in the Bill that follows, we have little choice but to accept that in those circumstances it is logical that the functions in this Bill should be carried out by the Authority rather than be left in limbo. The Opposition will therefore be supporting the Bill on this basis.

Question put. Agreed to.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE PORT (AMENDMENT) ORDINANCE 2005

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Port 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 introduces a new regime for yacht reporting and follows a consultation exercise with the industry and with the relevant authorities. The Government have wanted to introduce the new regime for some time and have only been constrained by doing so because of the delicate negotiations that were in hand for the restructure of the Port Department into

the Gibraltar Port Authority. In order to introduce the new regime it is necessary to re-deploy three boarding officers within the old Port Department structure from yacht reporting duties elsewhere to introduce new job description for all port boarding officers. I am happy to report to the House that all the discussions with the relevant Trade Union in respect of the restructure of the Port Department have now been completed in principle, and this paves the way for a change in practice for yacht reporting at Gibraltar.

I would now like to give a brief overview on the way in which yacht reporting has developed. The Government have been aware for some time of certain shortcomings in the system. In the first place, a yacht entering Marina Bay and Sheppards Marina have been obliged to attend at the yacht reporting berth adjacent to the ferry terminal before proceeding to the marina of their choice. However, yachts intending to berth at Queensway Quay Marina have proceeded there directly without calling at the yacht reporting berth. Therefore, there has historically been a sharp discrepancy in the handling the arrivals at one marina when compared with the other two. Visiting yachts that do not intend to enter a marina, for example, a yacht that intends to anchor off Western Beach similarly does not report anywhere. This system has applied ever since Queensway Quay Marina came into operation a good number of years ago. It throws into question the need for the yacht reporting regime that has applied to the yacht reporting berth up until now. There are further considerations that the Government have taken into account. Yacht visitors are an important source of visitor arrivals to Gibraltar and the present system is generally user-unfriendly. Furthermore, a yacht master is required to complete forms at the yacht reporting berth which are almost identical to the further set of forms that need to be completed on arrival at the marina. This has often been the subject of adverse comment. The Government are aware that the regime that currently applies in Gibraltar is far more stringent than that which applies in neighbouring marinas in the region. Purely from a port perspective there is little to be gained from having Port Department boarding officers visiting arriving yachts, when there

is no role for them other than for gathering yacht statistics and the occasional grant of clearance if there is a sickness on board. The port does not have a real part to play in respect of visiting yachts and old traditional practices, which are past their best sell-by date, are being re-examined. There are and will continue to be an important role for Immigration and Customs Authorities. The new Government policy that is reflected in the Bill aims to address these issues while ensuring that security considerations are in no way compromised. The responsibility for ensuring that a visiting yacht is properly documented and for reporting its arrival up until now, the Immigration and Customs Authorities, will be passed to the marina in the ordinary course. The person who has the day to day management and control of the marina will have the responsibility in law to ensure that the identity card, passport and visas, where necessary, of all persons arriving on yachts are checked. That the manifest or report of a cargo in a vessel is produced, that the manufacturer's certificate in the case of yachts is produced, that the crew/passenger and stores declaration are correctly completed and that copies of all documentation are sent to the Principal Immigration Officer, the Collector of Customs and the Captain of the Port. This will produce an upgrading of the regime that currently applies at Queensway Quay. It will provide the same information that is presently being obtained from the other marinas.

There is further provision at section 15(6)(a) in respect of yachts that enter Gibraltar waters and choose not to enter a marina. Such yachts up until now have been almost uncontrolled. The new provision empowers the Captain of the Port to direct a yacht of this type attends at a berth designated by him for the purposes of carrying out all arrival formalities. The Government are aware that as a result of security considerations there may be times when there is a heightening state of alert, when it would be desirable or necessary to ensure that all arriving yachts attend at a particular berth, in order to complete Immigration and Customs formalities. There may also be occasions when intelligence received by the Gibraltar Authorities will require that an arriving yacht be searched. Provision is made for this under section 15A(7). The Captain of the Port

may designate the berth at which yachts can be obliged by him to call for examination or for reporting. Indeed, this provision allows for more discreet examination of suspect yachts rather than in the full glare of the public at the present yacht reporting berth or at the marina. The Government believe that the new regime now being introduced by this Bill, will strengthen existing procedures and at the same time make Gibraltar a more welcoming jurisdiction for yachts visiting. I commend the Bill to the House.

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

HON DR J J GARCIA:

The procedure for the reporting by yachts arriving at Gibraltar is something that the Opposition have raised in this House at Question Time on several occasions over the years. Having analysed what the Bill proposes to do, the Opposition do not think that the person running a marina, or the director of a private commercial dock, as the Bill defines the post, should be responsible for enforcing immigration control requirements in Gibraltar. The system which has been proposed to create is one where the director of a private commercial dock inspects the passports, visas or identity cards of persons coming into Gibraltar and ensures, to quote from the Bill, "that the entry into Gibraltar of the occupants of the vessel is in compliance with the provisions of the Immigration Control Ordinance". It is a requirement that copies of the immigration and other documents be forwarded within prescribed limits to the Immigration and Customs Authorities.

This system is not the same as one where the Immigration Authorities go and do this function themselves through a contracted company. The Government have a company contracted for these purposes, which has been carrying out these functions for many years. Presumably the Government must be satisfied with the quality of those controls. To take that

responsibility away from a contracted entity and hand it to a third party, in the view of the Opposition would appear to give the Government less control over the exercise of immigration checks. The Opposition are unhappy with this aspect and with what the Bill sets out to do. There are also serious concerns as to the timing, given that it comes at a time when there is greater sensitivity worldwide about matters like illegal immigration and terrorism. Therefore, the Opposition will be voting against the Bill.

HON J J HOLLIDAY:

I wish to clarify a couple of the points that have been made by the Hon Dr Garcia. Let me say that even though the responsibility will fall on the director, which basically is the management of the different marinas, in order to comply with the completion of various forms that will be handed out for circulation later on for Immigration and Customs control, the Immigration and Customs control will actually have the ability to be able to attend to these yachts at the different marinas. The idea is not for the system to be totally abandoned and put in the hands of the pier master without no control whatsoever, so the Immigration and Customs will definitely have a role in attending to visiting yachts at the marina as they enter the marina. In the case of the port, as I have said in my presentation earlier on, it is a different ball game because really they have a very little role to play apart from the maintenance of statistics, which is what they do at the moment, unless there is a sickness on board and clearance has to be made but otherwise it is a very uncommon occurrence. So therefore, the Port Department will actually not have a role as far as the control at the different marinas.

Question put.

The House voted.

For the Ayes:

The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua

The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon T J Bristow

For the Noes:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

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 GIBRALTAR PORT AUTHORITY ORDINANCE 2005

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to establish the Gibraltar Port Authority and to make provision for the transfer of certain of the functions and activities of the Port Department from the Government to the Authority, 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 before the House establishes the Gibraltar Port Authority in law. Up until now the crest of the Port Department have carried the main Port Authority and some items of uniform, the technical staff carried the badge which read "Gibraltar Port Authority". There has therefore been recognition for a long time that what we term the Port Department has in fact carried out the traditional role associated with a port authority. The Government now wish to proceed from the old Port Department to a fully fledged Port Authority. The establishment of a Port Authority in law is possible now that that there is agreement in principle, after long drawn out negotiations and discussions which have taken place over some years with the Trade Union representatives and staff of the Port Department. What is most important for the Government is that new job descriptions of work practices in particular, a dispute procedure, should be agreed and implemented. Shipping has developed greatly in recent times, and indeed a large body of merchant shipping legislation has been enacted in the last few years and continues to be enacted. The Port of Gibraltar needs to be able to face the challenges that lie ahead in a most convenient manner.

The Bill before the House provides for the transfer of certain functions and activities of the Port Department from the Government to the Gibraltar Port Authority. Setting up the Authority is also essential in order to introduce, monitor and police a new licensing regime for all port operators. This Bill therefore needs to be seen as part of a package of measures designed to deliver the Government's strategy in improving the Port of Gibraltar. It has been the strategy of the Government since 1996 to improve, enhance and invest in the port and shipping. There have been significant improvements in the infrastructure, unsightly buildings have been demolished. The approach to the port around North Mole has been improved for

both commercial port users and for visitors on cruise ships. The Cruise Terminal and the work in improving the Western Arm reflect the much improved appearance in recent years. The Government continue to invest in new technology to improve the safe handling of ships in the port and in the western anchorage. The business of the port continues to develop and grow. The delivery of bunkers, the development of off port limit calls, the consolidation of Gibraltar as a port that offers a wide range of services to ships and the marketing of the port, all require that a modern structure be in place, in order to allow this important sector to grow further, develop and consolidate.

I will now turn to the details of the Bill. Clause 3 provides that the Authority shall consist of seven members. The Chairman shall be the Minister with responsibility for the Port. Clause 4 provides that the Authority shall be a body corporate with perpetual succession under the name of "the Gibraltar Port Authority", and shall have a common seal and may be sued and be sued in its corporate name. Clause 5 provides that the quorum of all meetings of the Authority shall be three members in addition to the Chairman or other person presiding. Any matters arising at the meeting shall be decided by the majority of members present by voting. In the case of an equality of votes, the Chairman shall have a second casting vote. This clause also provides for all orders and directions of the Authority shall be given under the hand of the Chief Executive. The duties of the Authority are listed in clause 6(12). Clause 7 sets out the power of the authority to do all that is necessary for carrying out of its duties under the Ordinance. In exercise of its powers, duties and functions under the Ordinance, the Authority shall be required to act in accordance with the policy of the Government and any decision of the Government communicated to the Authority by the Chairman, in his capacity as Minister for the Port and Shipping. I established a Port Advisory Council a number of years ago, and this Council advised me in relation to port matters and they have been most helpful. I wish to formally record my appreciation for the work done by members of the Council, who freely give up of their time to advise me on port related issues. Clause 11 of the Bill recognises the value of the

Port Advisory Council and provides that the Authority may establish an advisory council to advise not just myself but those of the Authority. Clause 13 of the Bill provides for the establishment and operation of a general fund with the Accountant-General. Clause 14 provides for the manner in which accounts shall be kept by the Authority and for the auditing of the accounts. Clause 18 provides for the exemption of the Authority from all taxes on income and property rates. Clause 19 provides that the exemption of freehold and leasehold land, all property which immediately before the commencement of the Ordinance was held by the Government wholly or mainly for one or more of its marine functions, will be transferred to and vested in the Gibraltar Port Authority.

In summary, the Bill will ensure the proper functioning of the Gibraltar Port Authority and will ensure that the port continues to develop and prosper for the good of the economy and of Gibraltar. I commend the Bill to the House.

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

HON DR J J GARCIA:

The creation of the Port Authority by this Bill raises matters of policy. This is a policy that the Opposition do not agree with and therefore cannot support. We acknowledge that it is the policy of the Government to go down this route, but equally they must acknowledge that it is not the Opposition policy. Indeed, the House will recall that in March 2003 the Opposition abstained on the Bill which created the Electricity Authority a year before that in March 2002. We also abstained on the Bill which created the Sports Authority. The view of the Opposition on this issue has been made clear in the past and I will not be repeating it. The Opposition will therefore be abstaining on the Bill creating the Gibraltar Port Authority. We abstain on the basis that this is not something that we ourselves would do in Government. In our judgement what this Bill does is not in the public interest or in

the interests of the employees. As I have said before, we will abstain on this Bill.

HON J J HOLLIDAY:

Only to say that when we came into office in 1996, the Gibraltar Port Authority was already referred to under that name, in fact the uniform and everything reflected that.

Question put. The House voted.

For the Ayes: The Hon C Beltran
 The Hon Lt-Col E M Britto
 The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon T J Bristow

Abstained: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon Miss M I Montegriffo
 The Hon F R Picardo
 The Hon L A Randall

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 RECOGNITION OF PROFESSIONAL QUALIFICATIONS
(EU ACCESSION COUNTRIES) (AMENDMENT) ORDINANCE
2005**

HON DR B A LINARES:

I have the honour to move that a Bill for an Ordinance to amend the Recognition of Professional Qualifications Ordinance in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. Mr Speaker, I will speak on the principle of the Bill before us but I intend to introduce an amendment during the Committee Stage to this Bill as it stands before us. The principle is very simple. The Bill is necessary because of the enlargement of the European Union to include 10 new States, which have been listed. Those countries became part of the European Union, as hon Members will know, on 1st May 2004 and the Bill thus amends the principal Ordinance, the Professional Qualifications Ordinance, in order to make provision for professional qualifications issued by these States. This is done by amending Schedule 3 of the existing Ordinance to insert there the qualifications of those States which are listed in the European Act concerning the conditions of accession of the 10 new EU

States. The effect of the amendments will be that persons with these qualifications listed in the Bill, will have the right to practice that profession in Gibraltar by virtue of section 11 of the existing Ordinance, subject of course to our Immigration and Work Permit legislation. This Bill ensures that Gibraltar meets its European obligations as regards the recognition of professional qualifications issued by the new EU Member States. I commend this Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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

Question put. Agreed to.

THE TRAFFIC (AMENDMENT) ORDINANCE 2004

HON F VINET:

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

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill reorganises the powers to regulate traffic movement, and in particular parking and waiting. The present section 94 of the Ordinance grants the Commissioner of Police the power to provide for designated bus stops, taxi stands, parking areas and so on. However, it is clearly appropriate that the general power to provide for parking et cetera should be vested in the Minister. The Commissioner should retain his powers to make orders in respect of any temporary necessity. This short Bill achieves that. The new section 94 provides a general power to the Minister in sub-section (1), sub-section (2) grants the Commissioner of Police power to make temporary orders, and sub-section (3) provides that it is an offence to contravene any regulation or order. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition are of the opinion that the administrative system has worked satisfactorily up to now. We therefore do not see a valid reason to amend it. We will therefore abstain in voting.

Question put. The House voted.

For the Ayes:	The Hon C Beltran
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto

The Hon F Vinet
The Hon T J Bristow

Abstained:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

THE PET ANIMALS (SALES) ORDINANCE 2004

HON F VINET:

I have the honour to move that a Bill for an Ordinance to regulate the sale of pet animals, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this short Bill, as has been said, regulates the sale of pet animals. Any person keeping a shop selling pet

animals must be licensed by the Chief Environmental Health Officer. In considering whether to grant a licence the officer will ensure that the animals concerned are kept in proper conditions, they will not be sold when they are too young and that they are healthy. The conditions are set out in section 3(3), licences are valid for one year and an appeal lies against the refusal of a licence or the conditions imposed thereon. No other method of selling pets is permitted, and a person who sells pets without a licence is guilty of an offence under sections 3, 4 and 5. In addition, anyone who sells a pet animal to a child under 12 (whether a licence holder or not) is guilty of an offence. Pet shops may be inspected under section 7 to ensure the licence is being properly observed, and the licence must be displayed in the shop under section 8. Section 9 provides power to inspect premises where there is a reasonable suspicion that pets are being sold without a licence. Finally, sections 10, 11 and 12 provide for the levels of punishment for offences, a regulation-making power and a saving provision for existing pet shops pending their obtaining of a licence. I commend the Bill to the House.

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

HON F R PICARDO:

This Bill introduces legislation which is to be welcome, to protect animals in pet shops et cetera and the sale of them. The Opposition will be supporting this Bill but on the basis that an Ordinance is for life and not just for Christmas, we will be proposing some minor amendments to ensure that it is in the right order.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Maintenance Orders (Reciprocal Enforcement) (Amendment) Bill 2004;
2. The Judgments (Reciprocal Enforcement) (Amendment) Bill 2004;
3. The Immigration Control (Amendment) Bill 2005;
4. The Civil Jurisdiction and Judgments (Amendment) (No. 2) Bill 2004;
5. The Matrimonial Causes (Amendment) Bill 2004;
6. The Magistrates' Court (Amendment) Bill 2004;
7. The Income Tax (Amendment) Bill 2004;
8. The Merchant Shipping (Carriage of Dangerous or Polluting Goods) (Repeal) Bill 2004;
9. The Port Operations (Registration and Licensing) Bill 2005;

10. The Port (Amendment) Bill 2005;

11. The Gibraltar Port Authority Bill 2005;

12. The Recognition of Professional Qualifications (EU Accession Countries) (Amendment) Bill 2005;

13. The Traffic (Amendment) Bill 2004;

14. The Pet Animals (Sales) Bill 2004.

THE MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) (AMENDMENT) BILL 2004

Clause 1

HON CHIEF MINISTER:

Just a very small point which I think we can deal with as a matter of typography almost. All of these Bills were published in 2004, or most of them, so they are all called the something or something Ordinance 2004, that should read 2005 in clause 1, the title.

Clause 1 – as amended stood part of the Bill.

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

THE JUDGMENTS (RECIPROCAL ENFORCEMENT) (AMENDMENT) ORDINANCE 2004

Clause 1

HON CHIEF MINISTER:

Same point, 2005.

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

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

THE IMMIGRATION CONTROL (AMENDMENT) BILL 2005

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

Clause 2

HON CHIEF MINISTER:

I have given the hon Members notice of amendment. I will talk hon Members through it. The effect of the amendment will be that the “or” after (b) would be deleted, (c) would remain as it is. The “or” then comes after (c) because we would add a new (d), and (d) would read “(d) outside Gibraltar by an individual who is a British person ordinarily residing in Gibraltar.” The definition of British person which is then added by an amendment to a subsequent clause, is the definition used in the British legislation. Unless we introduce this amendment we have got the rather peculiar situation where if there is a Gibraltarian and another British person living in Gibraltar, and they commit acts which are breaches of this legislation outside of Gibraltar, only the Gibraltarian is exposed and not the other British person, who may also be a Gibraltar believer and it seems to us illogical. So that is also replicated at section 63A(3) which has exactly the same effect and then the rest of the amendment is to add at the very end of the Bill, as a new section 63C, we would insert that definition of British person. So there would be a heading

“Definition of British person. 63C. For the purposes of section 63(6) and 63A(6), a “British person” means a –

- (a) British citizen;
- (b) British Overseas territory citizen;
- (c) British National (Overseas);
- (d) British Overseas citizen;
- (e) a person who is a British subject under the British Nationality Act 1981; and
- (f) a British protected person within the meaning of that Act.”

Which are the UK equivalent of section 25 of the UK Act. Exactly the same shopping list.

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 CIVIL JURISDICTION AND JUDGMENTS
(AMENDMENT) (NO. 2) BILL 2004**

Clause 1

HON CHIEF MINISTER:

In clause 1, title, the figure “2004” should be deleted and the figure “2005” inserted.

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

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

THE MATRIMONIAL CAUSES (AMENDMENT) BILL 2004

Clause 1

HON CHIEF MINISTER:

In clause 1, title, the figure “2004” should be deleted and the figure “2005” inserted.

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

Clause 2

HON CHIEF MINISTER:

In clause 2, just so that the Bill is secretarially properly presented, the (c) should be (b) and taken back to the margin. In other words, the words renumbering the existing Part X as Part XI is (b) in the Bill and not (c) in section 60A, which is the observation that the hon Member made.

HON F R PICARDO:

Yes, and the observation which the Chief Minister himself made earlier which he has not moved, which is that the words “Judgments and Jurisdictions” must be inverted in (a). Are we going to say “1993” there as we have everywhere else when describing that?

HON CHIEF MINISTER:

Yes we can do that too. After each reference to Civil Jurisdiction and Judgments Ordinance, the date “1993” to be inserted. In (a) the words “Judgment and Jurisdiction” are in the wrong order.

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 MAGISTRATES’ COURT (AMENDMENT) BILL 2004

HON CHIEF MINISTER:

Clause 1

In clause 1, title, the figure “2004” should be deleted and the figure “2005” inserted.

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

Clause 2

HON CHIEF MINISTER:

In clause 2 I am grateful to the hon Member for pointing out that the word “any” is missing after “under”. So whereas it presently reads “under law relating” it should read “under any law relating”. Insert the word “any” after the word “under”. As to other matters raised at Second Reading, I think following a discussion we are not going to pursue it at this stage and the Government will look into the question of whether the reference in the Preamble, or rather whether there is any need to restructure the whole of section 45, given that the preamble suggests that enforcement proceedings are not domestic proceedings, whereas the (a) that we are inserting specifically says that enforcement proceedings would be. The reason why is that if there is a defect in the structure it already exists, because in the Ordinance as already existing, (e) already imports enforcement only for it to be excluded two lines later in

the proviso. So I think we have agreed that we will legislate for the purposes of this Bill as it is, but the Government will see whether there is a need to restructure the whole for historical reasons as well as for current reasons.

HON F R PICARDO:

Can I just come back to that? There is a minor typographical error in (a) enforcement or judgments, I think it is enforcement of judgments.

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 INCOME TAX (AMENDMENT) BILL 2004

Clause 1

HON CHIEF MINISTER:

In clause 1, title, the figure “2004” should be deleted and the figure “2005” inserted.

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

Clause 2

HON CHIEF MINISTER:

In respect of clause 2(3) I have given notice of amendment because in fact we should not be deleting the word “company” just the words “or qualifying”. The word “company” needs to

remain there, so whereas the Bill proposes to delete the words in section 6A(2)(c) “or qualifying company”, the word “company” should be removed from the Bill so to speak so that the deletion only affects the words “or qualifying”.

MR CHAIRMAN:

Would the Chief Minister please clarify, in section 2(2) there is reference to qualifying company as well as in sub-section (3). Is the retention of the word “company” being sought in both?

HON CHIEF MINISTER:

No, in section 2, in other words the first reference to it in the Bill, I am not moving any amendment to the Bill. So the amendment applies only to sub-clause 2(3) of the Bill.

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 MERCHANT SHIPPING (CARRIAGE OF DANGEROUS OR POLLUTING GOODS) (REPEAL) BILL 2004

Clause 1

HON J J HOLLIDAY:

In clause 1, title, the figure “2004” should be deleted and the figure “2005” inserted.

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

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

THE PORT OPERATIONS (REGISTRATION AND LICENSING) BILL 2005

Clauses 1 to 18, the Schedule and the Long Title – were agreed to and stood part of the Bill.

THE PORT (AMENDMENT) BILL 2005

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

THE GIBRALTAR PORT AUTHORITY BILL 2005

Clauses 1 to 20, the Schedule and the Long Title – stood part of the Bill.

THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS (EU ACCESSION COUNTRIES) (AMENDMENT) BILL 2005

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

Clause 2

HON DR B A LINARES:

Clause 2 as it stands in the Bill before us is amended by substituting for the existing clause the following –
“Section 30(1) of the Recognition of Professional Qualifications Ordinance is amended by inserting, after the definition of “the directive” the following –

“Member State” means a state which is a member of the European Union.”

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

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

THE TRAFFIC (AMENDMENT) BILL 2004

Clause 1

HON F VINET:

In clause 1, title, the figure “2004” should be deleted and the figure “2005” inserted.

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

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

THE PET ANIMALS (SALES) BILL 2004

Clause 1

HON F VINET:

In clause 1, title, the figure “2004” should be deleted and the figure “2005” inserted.

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

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

Clause 3

HON F R PICARDO:

At sub-section (5) of section 3, “fore” should be “for” without the “e”.

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

Clauses 4 to 11 – were agreed to and stood part of the Bill.

Clause 12

HON F R PICARDO:

I have an amendment in respect of clause 12(c), if I can direct the House’s attention to it. That section I think does not make any sense as drafted. I think what the drafter intended to say was where the person has appealed against a decision not to grant a licence under section 3(4) above until the dissemination of the appeal. Otherwise, the appeal is against nothing or at least against a decision under section 3(4) but one needs an objective there that is being appealed. I think if we just add the words “a decision” after “against” then that is quite enough.

HON CHIEF MINISTER:

I think that should read: “where a person has appealed against a refusal to grant a licence or any conditions subject to which a licence has been granted under section 3(4) above until the determination of the appeal”. I think the simplest way is just to delete the word “against”. “Where the person has appealed under section 3(4) above”.

Clause 12 – as amended, was agreed to and stood part of the Bill.

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Maintenance Orders (Reciprocal Enforcement) (Amendment) Bill 2005;
2. The Judgments (Reciprocal Enforcement) (Amendment) Bill 2005;
3. The Immigration Control (Amendment) Bill 2005;
4. The Civil Jurisdiction and Judgments (Amendment) (No. 2) Bill 2005;
5. The Matrimonial Causes (Amendment) Bill 2005;
6. The Magistrates’ Court (Amendment) Bill 2005;
7. The Income Tax (Amendment) Bill 2005;
8. The Merchant Shipping (Carriage of Dangerous or Polluting Goods) (Repeal) Bill 2005;
9. The Port Operations (Registration and Licensing) Bill 2005;
10. The Port (Amendment) Bill 2005;
11. The Gibraltar Port Authority Bill 2005;
12. The Recognition of Professional Qualifications (EU Accession Countries) (Amendment) Bill 2005;
13. The Traffic (Amendment) Bill 2005; and
14. The Pet Animals (Sales) Bill 2005,

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 Maintenance Orders (Reciprocal Enforcement) (Amendment) Bill 2005;
The Judgments (Reciprocal Enforcement) (Amendment) Bill 2005;
The Immigration Control (Amendment) Bill 2005;
The Civil Jurisdiction and Judgments (Amendment) (No. 2) Bill 2005;
The Matrimonial Causes (Amendment) Bill 2005;
The Magistrates' Court (Amendment) Bill 2005;
The Income Tax (Amendment) Bill 2005;
The Merchant Shipping (Carriage of Dangerous or Polluting Goods) (Repeal) Bill 2005;
The Port Operations (Registration and Licensing) Bill 2005;
The Recognition of Professional Qualifications (EU Accession Countries) (Amendment) Bill 2005;
The Pet Animals (Sales) Bill 2005,

were agreed to and read a third time and passed.

The Port (Amendment) Bill 2005;
The Gibraltar Port Authority Bill 2005;
The Traffic (Amendment) Bill 2005;

The House voted:

For the Ayes:	The Hon C A Beltran
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto
	The Hon F Vinet

Abstained:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 31st January 2005, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 5.20 pm on Monday 24th January 2005.

MONDAY 31ST JANUARY 2005

The House resumed at 2.35 pm.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT

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

BILLS

FIRST AND SECOND READINGS

**THE INTELLECTUAL PROPERTY (COPYRIGHT AND
RELATED RIGHTS) ORDINANCE 2004**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for copyright and other related rights; and to transpose into the law of Gibraltar Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs; Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights relating to copyright in the field of intellectual property; Council Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable re-transmission; Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights; Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases; and Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright

and related rights in the information society; and for connected purposes, be read a first time.

Question put.

Agreed to

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as the very long Long Title suggests, this Bill is for an Ordinance to make provision for copyright and related rights in Gibraltar. There are two objects to the Bill, one is to re-state the existing copyright law of Gibraltar and I will explain that in just a moment. Secondly, to implement in Gibraltar not just the provisions of all of those Directives, the main purpose of which is very briefly described in the Long Title that hon Members will have seen printed on the Bill, and also read out several times already today in the House, but also in accordance with two applicable international Conventions dealing with copyright. I just want to explain to the hon Members what I meant by in addition to all of that re-stating the copyright law of Gibraltar.

Hon Members may be aware that until now, or unless and until this House passes this Bill, the copyright law of Gibraltar is set out in the Copyright Act of 1956. The Copyright Act of 1956 in the United Kingdom was extended to Gibraltar by the Copyright (Gibraltar) Order 1960. In other words, until now Gibraltar's body of copyright law has been an English Act extended to Gibraltar by an Order in Council of 1960. The UK repealed that Act in so far as it applied to itself, so the UK has modernised its copyright legislation to the 1988 Copyright Act. So not only do we have our copyright legislation extended to us by UK legislation but it is not even current UK legislation, it is legislation that the UK has moved on from nearly 20 years ago, or 15 years ago or whatever. So this Bill, quite apart from the substantive content of it, I mean regardless of the content will have the effect

of for the first time ever really repatriating to Gibraltar and to a legislative Act of this House the body of Gibraltar copyright and related legislation. So really the Bill does two things. On the one hand it brings back to Gibraltar, Gibraltar legislation, it modernises that legislation by bringing it forward from 1956 to the more modern version, and then it also transposes all those EU Directives relating to the subject matter.

Hon Members will have seen that the general scheme of the Bill is divided into four parts. Part I deals with copyright. Part II deals with database rights. These are new rights established by these directives in favour of people who create databases. They are not actually copyright at all, it is a new form of intellectual property rights known as database rights. Part III deals with performers' rights, which also are not copyright in the strict sense of the word, they are a separate category of property, intellectual property called performers' rights. Part IV deals with miscellaneous related matters. So starting with Part I, Copyright. Clause 1 makes provision for citation and commencement. Clause 2 for copyright, it provides that copyright is a property right which subsists in (1) original literary musical or artistic works; (2) sound recordings, films or broadcasts; and (3) typographical arrangements of published editions. So those are the three sorts of things in which one can have copyright as such. Clause 3 provides that the owner of the copyright in a work has the exclusive right to do the act specified in Chapter II. Clauses 4 to 11 describe the works in which copyright subsists. For copyright to subsist in a work certain requirements with respect to qualification for copyright protection must be met. These requirements are as follows. (1) Clause 4(2) provides that copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded in writing or otherwise. Clauses 7(2) and 8(4) provide that copyright does not subsist in a sound recording or film which is, or to the extent that it is a copy taken from a previous sound recording or film. Thirdly, clause 9(9) provides that copyright does not subsist in a broadcast which infringes or to the extent that it infringes the copyright in another broadcast. Clause 12 provides that the author of the work is the person who creates it. In the case of

films the principal director and the film producer are joint authors. The author of a sound recording, broadcast and published edition is the producer, broadcaster or publisher respectively. Clause 13 makes provision for works of joint authorship. Clause 14 provides that in general the author is the first owner of a copyright in a work. The main exception to this general rule is where a work or film is made in the course of employment, in which case the employer owns the copyright. Clause 15 makes provision for the duration of copyright in literary, dramatic, musical or artistic works. The general rule is that copyright expires at the end of a period of 70 years from the end of the calendar year in which the author dies. However, in the case of computer-generated works, copyright expires after 50 years from the end of the calendar year in which the work was made. Clause 16 provides for the duration of copyright in a sound recording. The period is 50 years from the end of the calendar year in which it is made or released, that is published or played in public or broadcast. Clause 17 makes provision for the duration of copyright in films. The period is 70 years from the end of the calendar year in which the death occurs of the last to die of (1) the director; (2) the author of the screenplay; (3) the author of dialogue; and (4) the composer of the music. Clause 18 makes provision for the duration of copyright in broadcasts. The period is 50 years from the end of the calendar year in which the broadcast was made. Clause 19 makes provision for the duration of copyright in typographical arrangements of published editions. That is to say, in the typeset. The period is 25 years from the end of the calendar year in which the edition was first published.

Chapter II, which takes us to clause 21 of the Bill, sets out the rights which subsist in copyright work. The owner of copyright has the exclusive right to do the following acts in Gibraltar. (1) Copy the work and issue copies to the public; (2) lend or rent the work; (3) perform, show or play the work in public; (4) communicate the work to the public; (5) adapt the work. The right to do those acts is exclusive to the copyright owner or a person authorised by him, and would be infringed if anything is done by any other person. Clauses 22 to 33 make provision for

infringement of copyright. Clause 34 establishes publication right. This is a right separate from copyright. It is a right given to a person who publishes a work with authority for the first time after its term of copyright has expired. Publication must be in the EEA or by an EEA national. The right is given to non nationals only on the basis of strict reciprocity. Literary, dramatic, musical and artistic works are covered for 25 years. This provision aims to secure expenditure on producing, rediscovered manuscripts and long-lost art works. That takes us to Chapter III of the Bill and clause 35.

Chapter III of Part I of the Bill, introduces various exceptions to rights of the copyright owner. These have been drafted in line with the constraints imposed by Directive 2001/29/EC. In addition to this, the exceptions have been drafted in accordance with the provisions of the Berne Convention. The Berne Convention requires that any exceptions and limitations must comply with the so-called three step test. Under this test the exception or limitation (1) must be confined to special cases; (2) must not conflict with a normal exploitation of a work; and (3) must not unreasonably prejudice the legitimate interests of the right holder. Clause 36 makes provision for the making of temporary copies of the work. Clauses 37 to 39, which are important, make provision for fair dealing in copyright work for the purposes of research, private study, criticism, review and news reporting. The fair dealing concept will call for a qualitative assessment. Clause 38 provides that all works other than photographs may be used for reporting current events. Clauses 40 to 45 make provision for copying for the purposes of education and educational use. Clauses 46 to 54 make provision for copying by librarians and archivists. Clauses 55 to 60 make provision for copying for the purposes of public administration, that is to say, for parliamentary and judicial proceedings, for statutory enquiries and for public business. Clauses 61 to 64 make provision for the copying of computer programs for the purposes of their back-up, for the purposes of decompiling them or for personal use. Decompilation is concerned with clear line by line copying. It is significant given the importance of open computer systems in which programs

supplied from different sources need to be inter-operable. For an outsider to secure knowledge of the interface information it is in some cases necessary to “decompile the program”. An objective of Directive 91/250/EEC is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together and to achieve this often requires each of the programs to be decompiled so that they can be made compatible with one another by the proposed operator. Clause 65 makes provision for permitted acts in relation to databases, such as accessing and using the context of the database. Clause 66 removes copyright protection in design documents and models. Clause 69 makes provision for permitted acts in relation to the use of typefaces in the ordinary course of printing. Clause 70 makes provision for permitted acts in relation to artistic work, consisting of the design of a typeface. That is to say, not only what is said with a typeface is copyright but indeed the design of the typeface itself is capable of being a form of copyright and that is for 25 years from the end of the year in which the work was first marketed. The typeface, as a form of artistic work, is subject to very strictly limited rights and they are not actually copyright in the typeface itself, but peculiarly, the limited rights amount to restrictions on the importation and dealing with machines and other articles specifically designed or adapted for producing material in the typeface. So it is a form of right but not the same right as normal copyright. Therefore the rights protected does not extend to the typeface itself. Clause 71 makes provision for the copying and adaptation of works in electronic form, where the purchaser of a legitimate copy of for example a computer program, is entitled himself to make further copies, he transfers this additional power when he transfers the copy to another unless there are express conditions to the contrary. Clauses 72 to 80 set out certain miscellaneous exceptions to copyright for literary, dramatic, musical and artistic works purposes. Clause 72 provides an exception where it is reasonable to suppose a copyright has expired. Clause 73 provides an exception to the use of notes or recordings of spoken words in certain circumstances. Then there are further exceptions set out in the remainder of those clauses and also certain other types of

qualification. For example, clause 74 provides that a solo reading or recitation of a reasonable extract from a literary or dramatic work may be made in public so long as sufficient acknowledgement is made, there are a series of qualifications of copyright to allow for ordinary day to day activities of a non-commercial nature, in which otherwise somebody's copyright in works may be technically invoked. Clauses 81 to 92 for example make provision for miscellaneous exceptions to copyright with respect to the lending of works and the playing of sound recordings, films and computer programs. In particular, clause 86 provides that a broadcast may be recorded in domestic premises for private and domestic use, in order to view it or listen to it at a more convenient time. Clause 88, for example, allows the broadcast to be shown or played to a non-paying audience without infringing copyright in the broadcast nor in any sound, film or recording to inmates or residents of a place. For example, inmates of a prison, residents of a home, guests in a hotel and things of that sort.

This takes us to Chapter IV in relation to copyright and we are now at clause 94 of the Bill. Chapter IV deals with the rather curious but I suppose logical concept of so-called moral rights. The moral rights are certain rights in addition to protection of copyright, given to the author of the work. These so-called moral rights seek to protect the integrity of a work and the author's connection with it. They are the right to be identified as the author or director of a work, that is the so-called right of paternity; the right to object to derogatory treatment of the work, that is the right of integrity; the right against false attribution of a work, and the right to privacy in private photographs and films. In other words, in addition to the proprietorial rights of an owner of copyright, he has certain rights under the Berne Convention and these Directives, actually it is the Berne Convention rather than the Directives, for the owner of the copyright, the author of the copyright of the work to have in addition to the economic rights protected, his so-called moral rights. In other words, that no one should distort it in a way that brings his own reputation into disrepute and things of that sort. This is pre-conditional on the right, some of these rights have to be asserted, other rights

do not have to be asserted and the ones that do and do not are set out in these clauses. Clause 96 sets out a substantial list of exceptions to these so-called moral rights.

Chapter V, we are now at clause 107, deals with dealings with rights in copyright works in such things as how they can be assigned, left by will, the extent and the manner in which one can enter into an agreement to own or transfer copyright in works which have not yet come into existence, and other things that relate to the dealing in or transferring of the rights in copyright. That will take us to Chapter VI, which starts at clause 116 of the Bill and Chapter VI deals with remedies for infringement. Clauses 116 to 120 make provision with respect to the right of a copyright owner and the remedies for infringement of those rights. The Bill gives rise to a range of remedies, including the right to damages, injunctions, accounts or otherwise. Provision is made for the court to award additional damages, having regard to the frequency of the infringement and any benefit accruing to the defendant by reason of his infringement. Clause 124 makes provision for remedies for infringement of moral rights, infringements of moral rights are equated with breaches of the statutory duty owed to the person entitled to the right and are actionable on that basis. So that Chapter generally sets out the regime for remedy and enforcement, and clause 128 deals with those remedies that are criminal in nature. Up to Clause 128 all the remedies were civil in nature, injunctions, damages and orders of that sort. Clause 128 makes provision for criminal liability by a person who does one of two things. (a) Undertakes certain acts in relation to an article, which is or which a person knows or has reason to believe is an infringing copy of a copyright work. In other words, all the things set out there, if one knows one has something which is an illegal copy of a disk or of a film or something like that and one sort of sells it, hires it, exhibits it in public, distributes it et cetera, that is a criminal offence. It is a criminal offence to do it with a copy of the work that one knows to be illegal; and (b) makes or has in his possession an article designed or adapted for making copies of a particular copyright

work. In other words, the machinery and paraphernalia for producing unauthorised, illegal copies.

Chapter VII takes us to clause 137 of the Bill, and this is a chapter of the Bill that deals with licensing schemes and licensing bodies, because most of the licensing arrangements are done subject to established schemes and with particular licensing bodies and not individually with each owner of copyright. This is the statutory framework and requirements in which that scheme has got to take place and it establishes jurisdiction to the Supreme Court to intervene on motion of an affected party. In the United Kingdom there is a copyright tribunal rather than the High Court itself. We as a matter of policy have decided it would be unduly cumbersome to set up for Gibraltar, as there is not enough of it, a copyright tribunal so we have in the Bill given this jurisdiction to the Supreme Court itself.

Chapter VIII at clause 165, deals with qualification for copyright protection. In other words, who is entitled to seek protection, who is qualified to seek protection for their copyright in Gibraltar. There are several criteria established for that, the most important ones are is one a person connected with Gibraltar; is the author a person connected with Gibraltar; was Gibraltar the jurisdiction in which it was first broadcast?; that also anchors the entitlement in Gibraltar. Hon Members will see that under the Bill, as is the case in the UK, copyright in ordinances once assented to belong to the Crown, but interestingly copyright in legislation before it is assented, in other words whilst it is still in the hands of this House, the copyright is vested in this House and it is the House acting by the Speaker, who for this purpose is given special legal personality, is the party that would protect and enforce the copyright of this House, not just in bills but also in other edited material, literary material generated by this House, Hansard, Reports of Committees and things of that sort. Bills, once they become law, cease to be the copyright of this House and become the copyright of the Crown.

Part II of the Bill, so now we are moving away from the area of copyright into this new area of, the hon Members will see at section 187 which is at the end of Part I, the general definitions clause for Part I, and they will also see a useful index of defined expressions at section 88, which is a novel drafting technique which sets out the sections of the Bill in which those expressions are actually used. In other words, so that one can refer back on that and that is a pretty useful aid to the interpretation and reading of this statute. Part II of the Bill deals with these new rights in respect of databases. Clause 189 defines the expressions used in this Part II. Clause 190 makes provision for database rights. It provides that database rights is a property right which subsists in a database, if there has been a substantial investment in obtaining, verifying, or presenting the contents of a database. Database rights protects the investment of money, time and effort that goes into compiling databases. The right applies to databases whether or not their arrangements justifies copyright and whatever the position may be regarding copyright in individual items in its content. So really it is something completely new. If we were to go to the effort to compile a database, the exploitation of that database, for whatever it might be worth, quite separately to the ownership of the copyright in the material in the database, the exploitation of the effort that has gone into putting the database together is itself now an intellectual property right which is protected for 15 years. Of course every time the nature of the database changes materially or is materially brought up to date, the 15 year period is to run again.

I will be moving an amendment at the Committee Stage in respect of clause 195 to remove the reference to the Isle of Man. This Bill generally applies to Gibraltar, the United Kingdom or any other EEA State. The Directive establishing these database rights does have a provision allowing the Community to enter into global agreements with other territories not in the EEA, and when the Community enters into such an agreement, then Member States are required on a reciprocal basis to extend the ambit to that territory, but rather than doing it here on the face of the legislation so that we would have to

amend the primary legislation every time the Community enters into such an agreement, what we are going to do is delete the reference to Isle of Man there, create a schedule with the power to add to the schedule by subsidiary legislation whenever the Community enters into an agreement with a non EEA territory, and I think that will make the situation easier to administer and easier for practitioners to follow in the law.

Part III of the Bill which takes us to section 201 deals with the new rights protecting performances and persons having recording rights in relation to performance. These are people other than the owner of the copyright, so for example, if the orchestra that did the New Year concert in St Michael's Cave, they do not own the copyright but they did a performance, and they have not got copyright, they do not own the copyright and I suspect the copyright in that music has now expired, but if we could think of an example of a performance of music in which copyright had not expired the owner of the copyright would be the owner of the copyright but if with permission and lawfully it is performed in a concert that music, one does not have copyright but one has something called performers' rights in respect of that performance. So that if somebody wants to record and distribute a record of that performance, not just the copyright owner but also the performer, has this separate category of things called performers' rights. Clause 201 for example, makes provision for the definition of the various terms, the rights are given in dramatic performances including dance and mime, musical performance, reading or recitation of a literary work and performance of a variety act or similar presentation. The performance must be a live one although performers' rights relate to an authorised and unauthorised recordings of the performance. The use of a recorded performance in the course of another live performance is not protected. A performance qualifies for protection if it is either given by a qualifying individual, that is a citizen or subject of a qualifying country, or takes place in a qualifying country, that is Gibraltar, an EEA State or any other country designated by specific order. Chapter II, which starts at Clause 202, creates the regime for infringement and enforcement of a performers' rights as

established under this part and the hon Members will see that they are not dissimilar to the rights of the copyright owner. It is the same sort of thing that can be enforced in the same sort of way. Performers have four basic property rights. The performers' reproduction rights, clause 203, the performers' distribution rights, clause 204, the performers' rental and lending right, that is clause 205 and the performers making available rights, that is clause 206. These rights apply to a performance which is legitimately recorded but then improperly copied, and equally to copies of a recording which an interloper such as a bootlegger has made without authority. Clauses 207 and 208 contain certain secondary infringement of performers' rights. These are showing or playing in public or communicating to the public the performance without consent, an important possession in dealing with certain recordings. Hon Members will see that the remaining clauses in that Part deal with such things as the duration of these performers' rights and also with the manner in which the performers' rights can be assigned, transmitted or otherwise dealt with, and the role of the Supreme Court in the adjudication of any issues and licensing relating to them. Chapter III of this Part of the Bill makes provision for a performers' moral rights. I will not take the hon Members through that again, they are rights equivalent to the copyright owners, moral rights which the hon Members will recall I said something about.

Now Part IV of the Bill is noteworthy too, so we are moving out now from the areas of the Bill that deal with performers' rights. We have dealt with copyright, databases and performers' rights, now we go to Part IV of the Bill at Clause 254 under the heading "miscellaneous provisions", and there are some interesting well hon Members may wish to have their attention drawn to them because these are the provisions to protect such things as computer programs and other forms of electronic data from being tampered with. Particularly from having interfered with any mechanism written into the program to prevent them from being tampered, things unlawfully used. So for example, if one interferes with a program to decode it so that it can be used in circumstances other than that intended by the owner of the

copyright in that computer program, then one has infringed this part of the Bill. It provides for civil remedies for the act of putting into circulation or the possession for commercial purposes of any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical device, which may have been applied to protect a computer program. That is clause 254. Clauses 255 to 259 flow from the comprehensive legal protection for technological protection systems set out in Article 6 of Directive 2001/29/EC. So Clause 255 for example, applies where effective technological measures have been applied to a copyright work other than a computer program. Effective technological measures are broadly defined in clause 259 and cover both access, control and copy control, so there is one regime when one tampers to unlock so to speak a computer program, and a parallel regime for devices installed other than in computer programs to gain access or copying when those devices are specifically put in to prevent access or copying. So liability is imposed on any person who does anything which circumvents the measures, knowing or having reason to believe that that is the effect of what he is doing. This provision covers anyone who infiltrates a web source and anyone who breaks instructions placed within the transmitted material in order to limit the use of the copy. It can apply to a consumer user as well as to a trader. Against all such persons there will be a right of action equivalent to that of copyright infringement, but it is not given only to the copyright owner concerned but to any other person who is distributing the copyright material with authority. The same persons are given rights as those who generally became engaged in supplying anti-circumvention devices or services commercially. Clause 260 provides copyright owners and distributors with civil rights of action against those who remove or alter electronic rights of management information. Clause 261 provides for the avoidance of terms in an agreement providing for the use of a computer program.

The Schedule to the Bill is important because it contains all the transitional provisions and savings, because since we are transferring our existing copyright law from the English Act as

extended to Gibraltar by an Order in Council, to a separate piece of legislation namely a Gibraltar Ordinance, it is necessary to protect and carry forward and preserve all rights that are existing in copyright under the established laws. Also, some of the directives give right to some transitional requirements because of the nature of the rights given by those requirements. It is a complex piece of legislation, I hope the House will agree with the Government that it is useful to have Gibraltar's copyright law in our own legislative framework, there are directives here which the hon Members will see really go back to 1991, 1992, 1993, 1996, 2001, so this is an area of law in which Gibraltar has fallen behind, not just in terms of its European Union obligations but indeed also we had fallen behind even in respect of our domestic legislation, because whereas the United Kingdom has moved on to a much more modern regime, Gibraltar's legislation is still cemented in the 1950s. So we have achieved all of that, well we will achieve all of that if we agree to pass this piece of legislation. I commend the Bill to the House.

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

HON DR J J GARCIA:

The Bill before the House today, as the Chief Minister has said, restates existing law and then amends it through the transposition into Gibraltar law of six EU Directives. These are Directives 91/250/EEC, 92/100/EEC, 93/83/EEC, 93/98/EEC, 96/9/EC and 2001/29/EC. The Directives all deal with copyright and protection in different fields. The general aim of the directives is to standardise the position on these issues in the different Member States of the European Union and to update that protection in line with technological advances. The explanatory memorandum to the Bill says that the law of copyright in Gibraltar was set out in the Copyright Act of 1956, as the Chief Minister has restated this afternoon, of the United Kingdom which was extended to Gibraltar by the Copyright (Gibraltar) Order of 1960. The Opposition welcome the fact that

we are taking a UK-made law as extended to Gibraltar and are enshrining it in an Ordinance approved by this House. The view of the Opposition is that the United Kingdom should not legislate for Gibraltar. Gibraltar is after all a separate jurisdiction to the United Kingdom and the separate legislative powers of this House should always be upheld and respected. The restating as amended of the existing law means this can also now be changed by this House at a future date should there be a need to do so. The view of the Opposition remains that Gibraltar, as a separate jurisdiction, is and should be free to implement these or other European Union directives differently to the United Kingdom for as long as the requirements of the directive are achieved. The Bill before this House today is therefore the combination of six EU directives with existing law, and as such it is a complicated and a lengthy piece of legislation running to well over 200 pages. It is extremely complex to do a detailed analytical, line by line examination of every single clause, nor of the ensuing consequences of every single detail of every single clause in the Bill. However, the general principles of the Bill, which is what we are discussing at this stage, seem clear enough. The explanatory memorandum to the Bill makes those general principles clear. It says that the main purpose of the Bill is to restate the existing law of copyright in Gibraltar and to amend it in accordance with six EU directives. This is the main purpose of the Bill. On that basis, and on the basis that this is what we are doing, the Opposition will be supporting the Bill.

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 on another day, and I will be giving notice of various amendments to the Bill in good time for hon Members to consider it.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 17th February 2005, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 3.30 pm on Monday 31st January 2005.

THURSDAY 17TH FEBRUARY 2005

The House resumed at 2.40 pm.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and
Communications
The Hon Dr B A Linares - Minister for Education, Employment
and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and
Sport
The Hon F Vinet - Minister for the Environment, Roads and
Utilities

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon L A Randall

ABSENT

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

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to 4.15 pm.

Question put. Agreed to.

The adjournment of the House was taken at 2.45 pm on Thursday 17th February 2005.

The House resumed at 4.25 pm.

BILLS

FIRST AND SECOND READINGS

THE TEMPORARY PROTECTION ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the main object of the Bill is to provide the means to act in the event of a mass influx of displaced persons by means of a mechanism for immediate protection establishing minimum standards for giving this protection, and for ensuring a balance of efforts between Member States in receiving refugees and displaced persons. The Bill transposes Council Directive 2001/55/EC of 2001 into our laws.

Clause 1 deals with citation and commencement. Clause 2 contains the definitions, most of which flow from the definitions contained in Article 2 of the directive. Clause 3 deals with the effect and implementation of a mass influx decision. I should

just pause there to explain that we are not talking about mass influxes into Gibraltar, we are talking about mass influxes anywhere into the European Community and then this regime is applied to share out the burden between all the various Member States as to who takes them in during the duration of the mass influx. The Government of Gibraltar is required under the Bill to make an assessment of Gibraltar's capacity to receive displaced persons. In other words, how many displaced persons does Gibraltar have resources to accept from the mass influx. A mass influx decision has the effect of introducing temporary protection in Gibraltar for the displaced persons that Gibraltar has assessed it has the capacity to receive. A mass influx is established by a Council Decision adopted by qualified majority on a proposal from the Commission. So if there is some turmoil in some country and there is mass displacement of people, the Commission meets to decide whether that constitutes a mass influx into the EU for the purpose. If the Commission decides that there is such a mass influx into the Commission, then each Member State is required to accept a proportion of those people based on the assessment of their capacity to do so, that they themselves have done. Clause 4 deals with the duration of temporary protection. The duration in accordance with the terms of the directive is one year. This may be extended by the Council, acting on a qualified majority, on a proposal by the Commission for a maximum period of one year. Temporary protection is ended either automatically when the maximum period expires or when the situation in the country of origin is such as to permit the long-term, safe and dignified return of the displaced person. Clause 5 lists the person who may be excluded from temporary protection. These are persons representing a danger to national security, suspected of having committed a war crime or a crime against humanity and who have acted against the aims and principles of the United Nations. Clauses 6 and 7 provide that persons enjoying temporary protection shall be issued with residence permits and facilities for visas to be obtained free of charge or at a minimum cost. Clause 8 provides that persons enjoying temporary protection shall have access to accommodation. Clause 9 that they shall have access to medical care. Clause 10 that they

shall have access to social assistance. Clause 11 that they must enjoy access to the Gibraltar education system under the same conditions as Gibraltarian minors. Clause 12 provides that they shall have access to employment, whether it is as employed or self-employed, that they shall have access to vocational training courses and in-services training on the same basis as everybody else. Clause 13 provides that persons who enjoy temporary protection under this directive who wish to submit an asylum application may do so at any time. Clause 14 makes provision for family reunification. It authorises the entry and residence of the spouse, the children, and subject to certain conditions, other family members where a family had been established in the country of origin before the events which led to the mass influx. Statements of reasons must accompany any decision rejecting an application for reunification. Clause 15 details obligations in respect of an unaccompanied minor with particular reference to representation, placement, that is care and accommodation and where it has not been possible to locate their family, their right to be placed with the person who looked after them when fleeing. Clause 16 makes provision for humanitarian extensions. When temporary protection ends, the Government must consider any compelling reason which makes return impossible. Even where temporary protection has ended there is a duty to extend the residence of persons who have special needs, such as medical or psychological treatment, if their return would entail interrupting such treatment. Clause 17 provides for the transfer of persons enjoying temporary protection. It places a duty on the Government to cooperate with Member States where a person is to be transferred from one to another. Clause 18 provides that the Head of the Civil Status and Registration Office will facilitate the voluntary return in the full knowledge of the facts of persons enjoying temporary protection. Clause 19 deals with the provision of information to persons enjoying temporary protection. Clause 20 deals with the recording of information, that is personal data relating to persons enjoying temporary protection, and ensures that it shall not be disclosed except in some narrowly defined situation. Clause 21 provides that the Civil Status and Registration Office shall be the contact point for the purposes of the legislation

when there is a need to discuss things with other Member States. Clause 22 provides a right of appeal for any person who is excluded from the benefit of temporary protection or family reunification or who is otherwise affected by a decision made under this Ordinance. Clause 23 provides a general regulation-making power. Schedule 1 details the information referred to in clauses 14, 17 and 20. Schedule 2 contains the model pass which is to be used where responsibility for a person enjoying temporary protection is transferred from Gibraltar to a Member State, as referred to in clause 17. I commend the Bill to the House.

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

HON J J BOSSANO:

We will be voting against this Bill. The Bill comes about as a result of a directive and it is to give rights to people in Gibraltar in the event that there is a mass influx of people into the territory of the European Union, that is the 25 Member States. Of course, in all other cases in the 25 Member States, this is national legislation where the resources of the nations concerned that have decided to be included are provided and not of a town of 30,000 people. In fact, what the directive makes clear is that the option to be included in the scope of this directive has been exercised by the United Kingdom, and our view is that when the United Kingdom has such an option, which I think derives from the Protocol in the Amsterdam Treaty, our view unlike the Governments, is that we should be entitled to exercise that option independent of UK. Whether the UK goes in or the UK goes out is something that has to be taken by the Government of the United Kingdom in the context of what is best for the UK and it does not follow that because it is best for UK it is best for us. The directive shows that in accordance with Article 3 of the Protocol, the United Kingdom gave notice by letter of 27th September 2000, of its wish to take part in the adoption and application of this directive. As far as we are

concerned the Gibraltar Government should have been asked whether they wanted to go in or not, and should have had the opportunity of either going in with the UK or not going in with the UK. In fact, the directive makes clear that in accordance with Article 1 of the same Protocol, Ireland decided not to participate in the directive and in accordance with Articles 1 and 2 of the Protocol, Denmark decided not to participate either. So in fact neither Ireland nor Denmark are being required to do this, and I think that this creates a series of questions of principle which are not being addressed politically. The United Kingdom itself has not introduced primary legislation apparently to do this. They have altered the instructions to Immigration Officers in the Immigration and Nationality Directorate, by amending a number of the regulations as the mechanism that needs to be applied when faced with entry into the United Kingdom by people who are covered by these temporary protection provisions.

We are providing here in our laws for people who would be, or the Government of the day in their wisdom in such element of care that we all hope they never do, would be the numbers of people that we could take in Gibraltar. I do not know whether that means that we would apply a pro-rata judgment and say, if the United Kingdom with 60 million takes x, we divide pro-rata to 30,000 and we might come up with one. But there are a number of important issues here in relation to the division of responsibilities between ourselves and the United Kingdom. That is to say, this House, the Parliament of Gibraltar and the Government of Gibraltar and the United Kingdom under the Constitution, and in particular I would draw the attention of the House to this business of access to the asylum procedure. In the regulations in the United Kingdom the Secretary of State may decide that a person who is covered by a permit under the temporary protection provisions may have to wait until the expiry of that permit before he can submit an application for asylum. In my experience, before 1996 and I think this happened on some occasions after 1996, we have had people wandering about here in Gibraltar without it being clear whether we have the responsibility for taking a policy decision on what happens to them, or the United Kingdom does, with the United Kingdom not

wanting to know anything about the people who have landed on our shores, mainly from East Europe, in some cases I remember they got here thinking they were arriving in Canada and then they were seeking asylum on the basis that if they were sent back to Ukraine they would not survive. Therefore they were arguing that they were political refugees. Now, do we have the power under the Constitution to grant political asylum, and is the political asylum then defined to Gibraltar? I mean, are we saying then that somebody who is given political asylum, which seems to be what section 55 of the Immigration Control Ordinance says, that anybody that under section 55 claims to be a political refugee may be allowed by the Governor, I do not know whether that means the Governor on the advice of the Government, or the Governor as the Governor, may be allowed to remain in Gibraltar, and then presumably he is stuck in Gibraltar for life because that is what has happened in the past. They have been granted temporary residence permits, there has been the problem of whether they should be granted work permits or not granted work permits, and here we are talking about actually doing things which we do not do for people that have been immigrants in Gibraltar and have lived here for 30 years. If tomorrow there is a problem in North Africa and we are faced with an influx of people, maybe the influx in the whole of the EEC but it may be that the first place they hit in the EEC is us. We are now creating statutory rights to welfare benefits, to housing and to employment, which we do not grant to people who have been here as economic refugees rather than political refugees, and have lived amongst us for 30 years. I think this is breaking new ground, I think we should have exercised the option that Ireland and Denmark did, I think we have got a very strong case for saying that nobody else in the whole of the European Union is required to accept this kind of responsibility. The United Kingdom, or France, or Germany, or Italy, accepting the responsibility as a national obligation but not for a town of 30,000. Since this is one of the rare occasions when there is an option that may be exercised or not exercised, what we would have wanted to see would have been using that option so that the United Kingdom, if it wants to go in would go in, but without us. I think it also creates some rather odd situations which are

not necessarily objectionable but where it would appear that Gibraltar is very clearly being treated as a Member State, and it may well be that this makes us the 26th Member State, given that there is now a national authority for the United Kingdom and a national authority for Gibraltar, and in the directive it says there must be a national authority per Member State. Apart from the matter of detail, I think the very principles that we find objectionable are that (a) we believe we should have been out rather than in; and (b) that we are doing it in a way where we are creating for the first time in our legislation a statutory right to things where they have not existed previously.

HON CHIEF MINISTER:

I regret to inform the Leader of the Opposition that not a single point that he has made is either factually correct, legally correct or a proper analysis of the legal, political or any other position. He may vote against the Bill if he likes but if he does so he will be voting against it for reasons which are completely spurious and which do not justify any of the points that he has made. I have no doubt that that will not stop him from voting against but he should understand that none of the choices that he claims that we have, we actually have, and that none of the consequences that he fears can actually materialise and I intend to take him through his points one by one. I am not sure that I will persuade him however persuasive the arguments are because I think he prefers not to be persuaded, but I think I have got a duty at least to put on Hansard the response to that analysis which is not a correct analysis in the Government's view.

There are no serious questions of principle which are not being addressed politically. None, not one. It is true, and this is about the only accurate thing that he said, that the directive gives rights to persons affected by mass influx of persons and that this is done by national legislation of countries that have resources and that we are only little, we are only 28,000 and why should we be subjected to the strains and stresses of behaving like a

big boy when we are only a little boy. Well I only wish he would remember that more often when he likes to pretend that we are bigger boys than we are, he might just like to remember his own words here and then we might avoid some contentious issues. But that fear that he has that we might be incurring responsibilities above our resource capacity to meet them, cannot be incurred because it is the Government of Gibraltar that decides what our capacity is to accept any number of people. We could theoretically assess ourselves and say that we have not got capacity to accept any people, zero and then we cannot be made to take any. Or we might say, well look we could take one, or two or three, because we have the resources for one or two and then that is the maximum that we could be invited to take. So there is no question of Gibraltar having to deploy resources beyond that which the Government of Gibraltar themselves consider that we are able to deploy to contribute like good humanitarian Europeans to the plight of temporarily displaced mass influx affected people.

I think that it is right that Gibraltar should be willing to play its part with the rest of Europe in relation to response to humanitarian situations, within the limits of our resources and that important caveat is fully accommodated in the Bill which says precisely that. I do not know by virtue of what legal analysis the Leader of the Opposition thinks that we have an option here. He seems to think that like Denmark, the United Kingdom or Ireland, that we had an option that we failed to exercise. Well, I regret to inform the hon Member that Gibraltar does not have, and has never had any such option. In respect of directives, no. In respect of what used to be Third Pillar measures, that is to say inter-governmental treaties, because the territorial scope of the European Union under which inter-governmental treaties were adopted did not apply to Gibraltar, Gibraltar was free to decide on a case by case basis whether we had it extended to us or not. In the case of Community business, that is to say business done under the Treaty establishing the Community as opposed to business done under the Treaty establishing the Union, the Treaty establishing the Community does have a territorial application clause, the

famous 1994 and directives automatically extend to Gibraltar, unless it is in one of the areas that do not apply to Gibraltar, common customs, common agricultural policy and coal and steel. In consequence other single market in goods directives. The United Kingdom negotiated for itself as a Member State, as did Denmark and Ireland, the option, hon Members will be aware of this, the opt out right from certain types of business that would otherwise have applied to it, of this sort. That is completely different to the inter-governmental business in which Gibraltar has the legal right to opt separately from the United Kingdom because it is an inter-governmental treaty, agreement, and the British Government are free to decide what part of its territory it applies to and which it does not. In a directive affected by the opt out clause, in Maastricht as he says, this is to be exercised by the UK for itself and the entirety of the European territories for whose external affairs it is responsible, Gibraltar has never been able to and is not able to make a separate opt out choice from the UK under the Maastricht politically negotiated opt out rights which Ireland, Denmark and the United Kingdom negotiated. Denmark and Ireland can of course exercise that opt out because they had it. The United Kingdom could exercise that option and if it had exercised the option to stay out, then we would have been obliged to stay out even if we would have wanted to be in. For example, as they have done with the single currency, with the European single currency, similar opt out rights negotiated, they exercise it and it affects them and us. This is another example of that. So if the hon Member believes that this is a case in which legally Gibraltar has an opt out right, I have to tell him that there is no legal possibility of Gibraltar exercising an opt out right in the context of the UK exercising its right to opt in. Or rather not exercising its right to itself opt out.

The Leader of the Opposition said almost as if, I do not know what the purpose of making the point was, in any case it is inaccurate, almost as if to give the impression that we were complying with this but the UK was somehow ducking or diving and not complying with it, made the point why should we have legislation when the UK does not or is not applying the

legislation. The UK is not introducing specific legislation for doing this because its asylum legislation already covers, under subsidiary making powers, already covers this in large measure administratively, and therefore the United Kingdom does not lack, as we do, a statutory framework that enables it to comply with its obligations under this directive. We do. We have laws that say the opposite of this and therefore we need to amend our primary law book in order to make it possible for the Government to comply with this particular European Union obligation. He asked whether it was a question of pro-rata allocation, it is not a question of pro-rata allocation as I said earlier. The Gibraltar Government do their own assessment of the number of people, if any, that they can take in and that is the maximum number of people that we can be asked to take in. The hon Member also listed in his list of alleged or apparent objections that this business of asylum and who exercises the power, it is perfectly clear. One must know, after having been in office for eight years, that Gibraltar has no specific asylum legislation, and indeed we are shortly to bring Gibraltar-specific asylum legislation to this House in compliance of other requirements. The only provision of Gibraltar law that allows asylum to be dealt with in Gibraltar is the Immigration Control Ordinance, which gives to the Governor the power in effect to exempt people from immigration control, and if it were a case of genuine asylum, that power to exempt from immigration control can be used and it is what is used in the case like the four stowaways that arrived in Gibraltar and thought they were landing in Canada that he referred to. He asked whether that power is exercised by the Governor in his own right or whether it is exercised by the Governor on advice. Well, it is exercised by the Governor on advice because the Governor acknowledges that he does not have the resources, the financial wherewithal to support these people should he make a decision to grant asylum contrary to the wishes of the Gibraltar Government.

The hon Member says, and he is right but he is wrong in thinking that we have a choice, that we are in this Bill doing things that we do not do for people that have been in Gibraltar for many more years, and that is right but we have no choice.

The question is whether we should continue to deny it to all those other people. That is a matter of domestic policy. So he is right in saying that for example Moroccans do not have access to public housing, amongst many others. But this is a requirement and indeed there are other Member States of the EU that are having to do this and thereby giving rights to people, temporary protected persons, that others within their country may not be entitled to under their existing laws. I doubt there are any other cases as stark as ours because I doubt that there is anybody in Europe that denies quite as many rights to legal citizens as we do, but that is something that the Government are gradually looking at with a view to gradual redressing. So we are certainly more affected by that syndrome than others but that is only because we are more backward than any other place in Europe in how we deal with our immigrants and their rights.

So we do not have the right to opt out of this directive. The hon Member is wrong if he thinks that for political reasons or for any other reason there was a way forward that we chose not to exercise. There is not. When we established the fact that this was completely mandatory on us and that there was no such possibility, we set about protecting Gibraltar and our small size and our resources by the next best effective way, which is this formula of Gibraltar Government doing their own assessment of resources, and that is in our Bill and that provides Gibraltar with the protection of not having to take people that we cannot accommodate. As to Gibraltar being very clearly treated as a Member State, he can make that judgement of it if he likes. The hon Member knows the importance that this Government of Gibraltar, I do not know whether he attached the same, I suppose he did, but speaking only for myself anyway the importance that we attach to the competent authority issue, and for competence for public administration in Gibraltar not being exercised by United Kingdom domestic competent authorities. If he thinks that that makes us now the 26th, he has uprated his mathematics, now the 26th as opposed to the 13th Member State which is the figure he used to quote when he last expressed an interest in such issues, I do not think it has that effect but certainly we do jealously defend our right to exercise our own

constitutional and jurisdictional autonomy in the administration of European Union obligations. There is always a huge issue bilaterally with the UK when they agree to language in a directive that speaks of each Member State having one national authority. We say "well look, you have not made provision for us, you go and explain that to Brussels, we do not thereby feel compelled to submit to the jurisdiction of yours. If you had bothered to negotiate texts which accommodates the fact that you are responsible for the external affairs of a European territory whose administration of this cannot be done constitutionally, that is your problem – we go ahead and we transpose in a way compatible with our view of life constitutionally". So, to the extent that the hon Member was going to vote against this Bill on the basis that he believed, wrongly, that we had a choice, he cannot justifiably vote against the Bill on that ground. He can if he likes vote against it on the grounds that even if it is a legal obligation on us, in terms of the EC Treaty, to do it he nevertheless wants us not to do it because he does not like the content, or he does not think that the content is in Gibraltar's interests, but that is a position of rebellion rather than the exercise of a choice as if we could or could not comply with this. There is no choice about the legal obligation. He, because he does not have the responsibility of Government, can say "even if it is my obligation I am not doing it because I do not want to, or because I do not like it" but that is the basis on which he would be voting against it given that we do not have a choice.

I have to tell the hon Member that even if we did have a choice, I think the Government would have still brought this Bill to the House. Given that we are able to decide for ourselves how many resources we deploy for these purposes, I believe that Gibraltar should be seen to be doing what it can, not what others decide it can but what it decides it can do, by way of a collective European Union effort to assist citizens of politically challenged, or human rights challenged countries outside the borders of the European Union. So in fact we have not had the choice in this case so I do not take any sort of brownie points for doing it, but if I had had a choice then I might be in a position to stand here

claiming brownie points because I think the Government would in any event have brought it in exercise of a choice, had we had it which we did not.

Question put. The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon A Trinidad

For the Noes: The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

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, as the hon Members are voting against I do not think they will mind.

Question put. Agreed to.

THE IMMIGRATION CONTROL (TEMPORARY PROTECTION) (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance further to the implementation into the law of Gibraltar Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 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 Opposition Members will be no more in favour of this Bill than the previous one, given that this is consequential and indeed as the Temporary Protection Ordinance was first drafted. These provisions would have been contained in the Temporary Protection Bill, but as they are specifically amending existing Gibraltar primary legislation the Government prefer to do it by separate Bills, otherwise practitioners are going to have difficulty if amendments for example to the Education Ordinance are buried in something called the Temporary Protection Ordinance, it becomes very difficult for people to find it.

The purpose of the Bill is simply to amend the Immigration Control Ordinance to disapply from protected persons under the Protected Persons Bill/Ordinance, those provisions of the Immigration Control Bill which are incompatible with and contradict what will be the law if and when the Temporary

Protection Ordinance is enacted. So that for example, under Clause 2 of this Bill now under discussion, sections 6, 18(2) and 18(3), 20, 21, 23, 52, 53 and 54 of the Immigration Control Ordinance are disappplied to persons enjoying temporary protection in Gibraltar. The sections in question deal with the following sorts of things. Section 6 of the Immigration Control Ordinance provides that the Principal Immigration Officer may require any person seeking any permit to deposit sums, a sort of bond for repatriation. Obviously that is not compatible with the temporary protected person regime. Section 18(2) provides that the holding of a residence permit shall not itself entitle the holder thereof to undertake employment in Gibraltar. That is incompatible because under the Temporary Protection Bill/Ordinance these people have got to have the right of employment and so on and so forth. Section 20 of the Immigration Control Ordinance provides the power for the Principal Immigration Officer to cancel permits at any time. Well, there is no right to cancel the permit of a temporarily protected person under that other regime. Section 23 provides that there shall be no appeal to the courts in relation of certain decisions of the Principal Immigration Officer. That is incompatible because the directive specifically requires there to be a right of appeal in respect of certain things under the Temporary Protection Directive et cetera, et cetera. So that is really a consequential amendment to the Immigration Control Ordinance to make it compatible and consistent with the Temporary Protection Bill when it is adopted by this House. So really these three Bills in effect form part of a package, taken separately only so that we do not end up with one hybrid ordinance amending several other principal Ordinances. I commend the Bill to the House.

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

HON J J BOSSANO:

Just to say that we shall be voting against this one and the next one, because they are consequential on the one that we have already voted against.

Question put. The House voted.

For the Ayes:

The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon A Trinidad

For the Noes:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

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 EDUCATION AND TRAINING (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Education and Training Ordinance further to the implementation into the law of Gibraltar of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 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, again this Bill is consequential and only achieves that no school fees shall be charged for educating in Government schools in respect of any child of compulsory school age involved in temporary protection.

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

Question put. The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto

The Hon F Vinet
The Hon A Trinidad

For the Noes:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo
The Hon L A Randall

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the parts of Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) which permit or oblige the Member States to make certain provisions in their national law including provision for the effective application of the Regulation; and to transpose into the law of Gibraltar Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is quite a complex piece of legislation to place in our laws as much as is necessary to have in our laws for the European Regulation to be operable in Gibraltar relating to the establishment of a so-called European company, which are called Societas Europaea. In Part I, clause 1 deals with citation and commencement. Clauses 2 and 3 provide for the interpretation of certain terms.

Part 2 of the Bill deals with the registration of European companies for the purposes of the EC Regulation. So for example, clause 4 provides that the Registrar has the functions conferred by the Bill in relation to these European companies. Clauses 5 to 14 provide for the registration and transfer of European companies formed under Articles 2, 3 or 8 of the Regulation. Clause 15 provides that any person who makes a false statement in any document sent to the Registrar or the Minister under the Bill is guilty of an offence.

Part 3 of the Bill implements the Directive. So part of the Bill is to facilitate the regulation and part of the Bill is to transpose the directive. Clause 16 provides for certain definitions which flow directly from the directive. Clause 17 deals with the circumstances in which the provisions of this Part 3 apply. Clause 18 obliges the participating companies that intend to set up a European company, to provide certain information to the employees representatives or the employees themselves, in order to calculate the number of representatives to which the special negotiating body is entitled and their allocation across the Member States. This information should be drawn up as soon as possible after the participating companies have drawn up plans with the establishment of a European company. So the European company is a model of a company created, I suppose the nearest thing is a joint venture vehicle in the old Anglo-Saxon terms, by companies together. It is a joint vehicle formed

by other companies established also. Clause 19 provides that an employee's representative or an employee may present a complaint to the Industrial Tribunal in relation to the failure to provide information or the provision of false or incomplete information under clause 18. Clause 20 provides for the special negotiating body and the competent organs of the companies participating in the establishment of the European company must reach an employee involvement agreement. The directive creates important rights of employee consultation and participation in these European companies, and when a European company has got employees across large numbers or more than one European Member State, there is a very complicated formula for allocating the representatives to the employees in the different Member States. In effect, the entitlement is to one member of the special negotiating body for each 10 per cent or fraction thereof of the employees in that Member State in relation to the whole. So if a Member State had 10 employees out of 100 total all across the grid, they would be entitled. Where a European company is to be established by merger and one or more relevant company is not represented by an ordinary member of the special negotiating body, the employees of those companies may be entitled to elect or appoint an additional member of the special negotiating body. The competent organs of the participating companies must inform their employees and the employees of any concerned subsidiaries or establishments about the identity of the members of the special negotiating body, as soon as it is reasonably practicable and at least within one month of the special negotiating body being established. Clause 22 provides that a complaint may be made to the Tribunal that a special negotiating body has not been established, or has not been established properly under Clause 21. Clause 23 provides details of the ballot arrangements for Gibraltar employees in relation to the election of members to the special negotiating body. Clause 24 provides for the conduct of a ballot. Clause 25 for the appointment of Gibraltar members of the special negotiating body by a consultative committee. Clause 26 prevents the composition of the special negotiating body from entailing a double representation of employees. Clause 27

provides that the competent organs of the companies participating in the European Company and the special negotiating body are under a duty to negotiate in a spirit of cooperation, with a view to reaching an employee involvement agreement. Clause 28 specifies what should be included in the employee involvement agreement without prejudice to the autonomy of the parties. The written agreement should specify the scope of the agreement. Clause 29 provides for decisions made by the special negotiating body. Each member of the special negotiating body has one vote regardless of the number of employees represented. The participating company or companies must pay all reasonable expenses of the functioning of the special negotiating body. For the purposes of negotiations, the special negotiating body may be assisted by experts of its choice. Clause 30 provides that except where the European company is to be set up by transformation, and the employees of the company to be transformed have participation rights, the SNB may decide by a two thirds majority vote not to open negotiations with the competent organ of the participating company. The special negotiating body can only be reconvened in terms set out in the agreement, basically 10 per cent of the employees. So the House will be aware from its reading of the Bill that there are in the bits that transpose the directive, encrusted on the European company, a very sophisticated regime of very extensive worker participation through this special negotiating body which is created for the whole European company and its workforce, even if they are spread out across cross-border Member States and each Member State then has its right to representation on the special negotiating body depending on how many workers it has in relation to the totality of that company's workers.

Part 4 of the Bill deals with the exercise of Member State options under the EC Regulation. Clause 50 provides that a company with a head office outside the Community may participate in the formation of a European company. Clause 51 provides for additional forms of publicity of a proposal by a European company to transfer to another Member State. That is notification of shareholders, creditors et cetera. Clause 52

provides for the extension of protection of creditors in respect of liabilities incurred before the transfer to another Member State. Clause 53 provides that competent authorities may oppose the transfer of a European company to another Member State on public interest grounds. Clause 54 provides that the management or administrative organ of a European company may amend the company statutes, where in conflict with employee involvement agreements. Clause 56 provides that the minimum number of members of the management organ of a European company shall be two, and the minimum number of members of the supervisory organ shall also be two. Each member of the supervisory organ is entitled to require information from the management organ and that is in Clause 58. Under Clause 59 the minimum number of members of the administrative organ itself shall also be two.

Part 5 of the Bill deals with provisions required by the EC Regulation as opposed to the directive being transposed. Clauses 63 to 66 deal with publication requirements in relation to the transformation, conversion and completion of a European company. Clause 67 requires the European company to make a statement of solvency before the competent authority issues a certificate allowing the European company to transfer to another Member State. These things are mobile and can transfer their domicile from one European Member State to another. Clause 68 provides that the Minister may issue a direction to the European company requiring it to comply with Article 7 of the EC Regulation. The direction is enforceable in the court. The Minister may also petition the court for the European company to be wound up. Clause 69 provides for the review of decisions of the competent authority. In Part 6, clause 70 specifies who the competent authorities are. The Minister is to be the competent authority in respect of Articles 8, 54, 55 and 64 of the EC Regulation. The Registrar is to be the competent authority in respect of Articles 25 and 26. Clause 71 provides that the Minister may issue a direction to the European company requiring it to amend its statutes. That direction also is enforceable in the courts. Clause 76 provides for the treatment of a European company as a body corporate where an

enactment is applied in respect of bodies corporate. Clause 77 provides for the notification of amendments to statutes and insolvency events. Clause 79 provides for penalties for breaches of Article 11.

Part 7 of the Bill deals with provisions relating to the conversion of a European company to a public company in accordance with Article 66 of the EC Regulation, namely registration, publication of draft terms of the conversion, effect of registration and the records of converting a European company.

Schedule 1 details the provisions of the Companies Ordinance which apply in respect of the registration or the deletion of registration of a European company, and the functions of the Registrar in respect of such registrations or deletions. Schedule 2 contains the standard rules on employee involvement. Schedule 3 makes consequential amendments in relation to the application of the Companies Ordinance for the purposes of this Bill. I commend the Bill to the House.

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

HON F R PICARDO:

This piece of legislation, as the Chief Minister has already indicated, principally brings into our law again, I imagine for the usefulness of practitioners, a regulation which is already to be deemed part of our law since last October. There is little to be said in that respect. The important issue, although we are creating a new juridical body or bringing into Gibraltar a new juridical or corporate body, is that we are imposing obligations for putting matters again before the Industrial Tribunal as we did with the Equal Opportunities Ordinance. My call then was, as it is now, that we should ensure that the Industrial Tribunal, not that I think it is going to have many applications from employees at a fairly early stage for determinations of their rights under this Ordinance, but that that Tribunal should have the resources

available it needs to discharge its functions. I am not saying that it does not at the moment but it is starting, I think, to become a body that moves more slowly than it used to because both the judges there are counsel who have to make their diaries fit with two other lawyers, there is only one room for it and it is starting to move fairly slowly. That would be the only issue I think that is important to us to highlight before going forward with this piece of legislation.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE INSURANCE COMPANIES (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Insurance Companies Ordinance 1987 to provide for the licensing and regulating of insurance companies who carry on business from within Gibraltar, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short Bill and in a sense it is odd that no one has spotted this lacuna before and not filled it before, but it has only just been recommended to us by the Finance Centre people. That is that although our Insurance Companies Ordinance regulates the provision of insurance services in Gibraltar, it does not regulate the provision of insurance services from Gibraltar. So that the reputational risk issue attaches to Gibraltar, we cannot have people from Gibraltar carrying on insurance business elsewhere in a non-regulated fashion. So what this Bill does is to ensure that insurers carrying on business from within Gibraltar must apply for a licence to carry out their activities in Gibraltar. This should deter companies from merely incorporating in Gibraltar but carrying out their insurance activities elsewhere. In other words, no brass plate jobs for insurance. In all likelihood such companies would simply find the regulatory regime too onerous for their purposes and move elsewhere. This is not business that we regard as insurance business in Gibraltar anyway, because there are no insurance people here, it is just a Gibraltar company. The Ordinance will come into operation on 1st July and this will allow those companies which choose to remain in Gibraltar a reasonable period to apply for a licence. I commend the Bill to the House.

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

HON F R PICARDO:

Simply to ask the Chief Minister if he can clarify whether in the process of having this matter brought to the attention, which frankly the spirit of the amendment is acceptable I think to both sides of the House, has it been brought to his attention that

there are in fact one or a number of operators carrying out such business from Gibraltar, or is it something that we are simply legislating to prevent without regulation catchment?

HON CHIEF MINISTER:

I have not been specifically informed that there are, but I believe that there are and that is why they propose that we delay the introduction until July, which I am told is to allow those companies which choose to remain in Gibraltar a reasonable period to apply for a licence, which pre-supposes or at least suggests that there are such companies. I believe that there are but I have no specific information to that effect.

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.

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 Intellectual Property (Copyright and Related Rights) Bill 2004;

2. The Temporary Protection Bill 2005;
3. The Immigration Control (Temporary Protection) (Amendment) Bill 2005;
4. The Education and Training (Amendment) Bill 2005;
5. The Insurance Companies (Amendment) Bill 2005.

THE INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) BILL 2004

Clause 1

HON CHIEF MINISTER:

A minor point. It should be the Intellectual Property (Copyright and Related Rights) Ordinance 2005.

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

Clauses 2 to 188 – were agreed to and stood part of the Bill.

Clause 189

HON CHIEF MINISTER:

I have given notice in writing of amendments to this part. I think I gave an explanation for this at the time that we debated the Second Reading. There are circumstances where the EU has an agreement with other territories to be included, and as originally drafted the Bill refers to it, the Isle of Man for example in section 189 at sub-clause (5). I want to change that for a procedure whereby there is a schedule which will now have the Isle of Man in it, and if there is any future such territories then

the Government will add to the schedule. This is not an area where we have a choice. Unfortunately, and much as I am sure the Leader of the Opposition would like it to be different, the European Commission does not require our agreement. This is not like the trilateral forum where nothing is agreed unless we agree. So here the Commission just does the agreements with the territories and then our legislation then extends to it. The amendments are self-explanatory and it is just to create that regime.

In sub-clause 189(5), for “, the EEA or the Isle of Man” where it occurs substitute “or the EEA”.

Clause 189 – as amended, was agreed to and stood part of the Bill.

Clauses 190 to 194 – were agreed to and stood part of the Bill.

Clause 195

HON CHIEF MINISTER:

Yes, that is where the main amendment goes in, which is to delete the existing sub-paragraphs (d), (e) and (f) and replace it with a new 195(3) in terms that are self-explanatory, which explains what territories are qualified to be added to the schedule, in which circumstances and the fact that the Minister can add to the schedule by notice in the Gazette.

In clause 195(1), delete sub-paragraphs (d), (e) and (f); and after sub-clause (3) insert –

“(4) The provisions of this Part shall also apply to a database made in the countries or territories listed in Schedule 3 where at the material time, its maker, or if it was made jointly, one or more of its makers, was –

- (a) an individual who was habitually resident in that country or territory;
- (b) a body which was incorporated under the law of that country or territory and which, at that time, had its central administration or principal place of business within that country or territory or had its registered office within that country or territory and its operations are linked on an on-going basis with the economy of that country or territory; or
- (c) a partnership or other unincorporated body which was formed under that country or territory and which, at that time, had its central administration or principal place of business within that country or territory.

(5) The Minister may by notice in the Gazette amend the list of countries contained in Schedule 3.”

Clause 195 – as amended, was agreed to and stood part of the Bill.

Clauses 196 to 263 and Schedules 1 and 2 –were agreed to and stood part of the Bill.

New Schedule 3

HON CHIEF MINISTER:

After Schedule 2 to insert a new Schedule 3 with just one item on it, “1. The Isle of Man.” So it would say “Schedule 3” the usual reference to the section which introduces the Schedule, which is “(Section 195)” at the right hand margin and then the substance of the Schedule is “1. The Isle of Man.” So that is the first item on the list which will comprise the schedule.

Schedule 3 – was agreed to and stood part of the Bill.

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

THE TEMPORARY PROTECTION BILL 2005

Clauses 1 to 23, Schedules 1 and 2 and the Long Title – stood part of the Bill.

THE IMMIGRATION CONTROL (TEMPORARY PROTECTION) (AMENDMENT) BILL 2005

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

THE EDUCATION AND TRAINING (AMENDMENT) BILL 2005

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

THE INSURANCE COMPANIES (AMENDMENT) BILL 2005

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that:

1. The Intellectual Property (Copyright and Related Rights) Bill 2005;
2. The Temporary Protection Bill 2005;

3. The Immigration Control (Temporary Protection) (Amendment) Bill 2005;
4. The Education and Training (Amendment) Bill 2005;
5. The Insurance Companies (Amendment) Bill 2005,

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 Intellectual Property (Copyright and Related Rights) Bill 2005 and the Insurance Companies (Amendment) Bill 2005, were agreed to and read a third time and passed.

The Temporary Protection Bill 2005, the Immigration Control (Temporary Protection) (Amendment) Bill 2005; and the Education and Training (Amendment) Bill 2005:-

The House voted.

For the Ayes:

The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon A Trinidad

For the Noes:

The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo
The Hon F R Picardo

The Hon L A Randall

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 11th March 2005 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 5.50 pm on Thursday 16th February 2005.

FRIDAY 11TH MARCH 2005

The House resumed at 10.05 am.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs

The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities
The Hon R R Rhoda QC - Attorney General

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
The Hon F R Picardo
The Hon C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT

The Hon T J Bristow - Financial and Development Secretary
The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

MOTIONS

HON CHIEF MINISTER:

I would like to withdraw the two motions standing in my name at this stage in relation to the Yugoslavia and Burma Orders. I will be presenting them at a later date but in respect of a different set of regulations.

BILLS

FIRST AND SECOND READINGS

THE FAIR VALUE ACCOUNTING ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Companies (Accounts) Ordinance, 1999, the Companies (Consolidated Accounts) Ordinance, 1999 and the Banking (Accounts Directive) Regulations 1997 in order to implement into the law of Gibraltar Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions, 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 Fair Value Directive is part of the EU's objective of enabling companies to use modern accounting practices that are consistent with international accounting standards, known as IAS's, and international financial reporting standards, known as IFRS's. All these are issued by the International Accounting Standards Board. The amendments will allow fair value accounting, essentially meaning in the most simplistic of terms that companies have to give a current market value to their assets and liabilities in their accounts, to be used for certain financial instruments by all companies in their

balance sheets. The Fair Value Accounting Directive requires Member States to (a) permit or require the valuation of financial instruments at fair values; (b) extend the permission or requirement to all companies or restrict it to any class of companies; (c) restrict it to consolidated accounts; and (d) permit the valuation of assets and liabilities which qualify as hedged items under a fair value hedge accounting system, at the specific amount required by that system.

Taking then the provisions of the Bill in turn, clause 1 provides for citation and commencement. It states that the Bill applies to financial years which begin on or after 1st January 2005 but which have not ended before the date of publication. Clause 2 inserts a new section 8A into the Companies (Accounts) Ordinance 1999. This requires the disclosure of certain information in the director's report, namely, the company's financial risk management objectives and policies and its exposure to risks in relation to its use of financial instruments. Small companies will be exempted from this requirement. Clause 3 amends Schedule 6 to the Companies (Accounts) Ordinance 1999. This clause introduces new section C into Schedule 6 of that Ordinance after existing paragraph 21. Paragraph 22 of new section C permits all companies to use fair value accounting for their financial instruments subject to certain restrictions. I just pause to emphasize and ensure that the House has noted that it is permissive and not mandatory in its scope. In other words, this allows companies to use a harmonised fair valuation regime but does not require them to do so. For example, liabilities may only be included at fair value if they are held as part of a trading portfolio or are derivative financial instruments. Paragraph 22(4) excludes from paragraph 22(1) financial instruments which cannot be valued reliably by any of the methods in paragraph 23. Paragraph 23 of new section C sets out how the fair value of a financial instrument is to be measured and determined. This is consistent with IAS 39 which defines fair value as "the amount for which an asset could be exchanged or a liability settled between knowledgeable, willing parties in an arm's length transaction". Paragraph 24 of new section C relies on the Member States' option under which

companies may be permitted to include any asset and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities at the amount required under the system. It is intended to allow the use of fair value hedging in accordance with IAS 39. The use of hedge accounting under IAS 39 is permitted only if strict criteria are met and is in any case optional. These criteria include a requirement to establish formal documentation of the hedging relationship. For practical purposes therefore, a company will not be obliged to apply hedge accounting as it can choose not to undertake this designation exercise. Paragraph 25 of new section C provides that where financial instruments are valued, in accordance with paragraphs 22 or 24, any change in value is to be included in the profit and loss account even though the change in value may not have been realised. This is subject to certain exceptions set out in paragraphs 25(3) and 25(4). Paragraph 26 of new section C provides that amounts may be transferred from fair value reserve, only when they are no longer necessary for the purposes of paragraph 25(3) or 25(4) or otherwise necessary for the purposes of the valuation method used. Clause 4 amends Schedule 7 of the Companies (Accounts) Ordinance, Notes on Accounts Minimum Requirements Rules. It inserts new paragraphs 6 to 9 after existing paragraph 5 of Schedule 7. So for example, paragraph 6 requires that where financial instruments have been valued in accordance with fair values, certain specified information has to be disclosed in the notes to the annual accounts. Paragraph 7 requires the disclosure of certain specified information about any derivative financial instruments that have not been valued at fair values. Paragraph 8 requires the disclosure of certain specified information about financial fixed assets that have been included in the company's annual amounts at an amount in excess of fair value, in circumstances where the company has not made a provision for diminution in the value in accordance with paragraphs 3(1) of the previous Schedule 6. Paragraph 9 provides for definitions. Clause 5 makes consequential amendments to the Companies (Consolidated Accounts) Ordinance 1999. This is necessary to implement the Fair Value Directive in relation to group accounts. Clauses 6 and 7 amend

the Banking Accounts Directive Regulations 1997 in the same way as clauses 2, 3 and 4 amend the Companies Accounts. So because there is particular accounting legislation relating to banks and insurance companies, other than the general one applying to companies, we need to change the companies general one but also the legislation that relates to insurance accounting and the legislation that relates to banking accounting. So clauses 6 and 7 deal with banking.

Small companies may also use fair value accounting for their financial instruments if they so wish. The application of the directive has been extended to individual as well as consolidated accounts. Being unable to use fair value accounting for individual accounts could hinder the official preparation of consolidated accounts and introducing consistency. It is highly technical piece of legislation. In a sense many Gibraltar companies will already be applying principles very similar to this, because of course in Gibraltar there is very little legislation other than the Companies (Accounts) Ordinance, and in Gibraltar historically international accounting standards have always been used by the accountancy profession to prepare audited accounts in Gibraltar. So there are changes but they would not be as far reaching as the application of these regulations and jurisdictions which have not historically based their accounting and reporting systems on international accounting standards. I commend the Bill to the House.

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

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 MARITIME (SEARCH AND RESCUE) ORDINANCE 2005

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to give effect in Gibraltar to the International Convention on Maritime Search and Rescue, 1979 as amended, and for connected purposes, 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 before the House will give effect in Gibraltar to the International Convention on Maritime Search and Rescue 1979, as amended, which I will refer to as the SAR Convention 1979. Most of the provisions of the SAR Convention 1979 are technical in nature. This Bill sets out the framework for maritime search and rescue within Gibraltar waters which is a role that has only been adopted by the Gibraltar Port Authority in recent times. The Government were looking ahead to this new role when they invested several years ago in a new launch for the Gibraltar Port Authority, the Samarang II, which is specifically designed for search and rescue work in addition to other roles. Indeed, it was as recently as 28th February this year that the Gibraltar Port Authority launch successfully rescued a yacht that was in trouble when its mast broke and all its

electrical installations failed in the storm we experienced that day. There is no need to introduce legislation in this House in order to diversify the traditional role of the Gibraltar Port Authority, this can be done administratively. It is nevertheless necessary to formally establish a maritime search and rescue unit in Gibraltar, so that should it be necessary for our neighbours to seek our assistance and cooperation under the SAR Convention 1979, it is clear who has the statutory responsibility in this field. The legislation also serves to clarify that in matters of maritime search and rescue it is the Captain of the Port who shall coordinate Gibraltar's response and not any other authority within Gibraltar. This Bill also provides for coordination, cooperation and collaboration in search and rescue matters. The Bill, once it is placed on the Statute Book, will act as an umbrella legislation for the purpose of maritime search and rescue and the Government will be able to put in place any practical measures that may be necessary by way of subsidiary legislation.

I will now turn to the detail of the Bill. Section 2 provides for definitions. One of the key definitions is that of Gibraltar's search and rescue region, which shall comprise all Gibraltar waters. Section 3 provides for establishment of a search and rescue unit within the Gibraltar Port Authority that shall be headed by the Captain of the Port. The maritime search and rescue unit will be responsible for maritime search and rescue services within Gibraltar waters and for providing assistance to any person in distress within Gibraltar waters, regardless of the nationality or status of the person or the circumstances in which that person is found. Section 4 provides that the Captain of the Port, as the coordinator for all maritime search and rescue operations, should implement search and rescue services under the Ordinance and other regulations made under it. Section 5 provides that the Government should endeavour to reach agreement with neighbouring countries for establishing boundaries of search and rescue regions and for cooperation and coordination with the Gibraltar Maritime Search and Rescue Unit and other rescue coordinating centres or sub-centres of another Convention country. This section also puts

responsibility on the Government to ensure that adequate shore-based communication infrastructure, efficient distress alert routing and proper operational coordination are provided to effectively support search and rescue services within Gibraltar's search and rescue region. Section 6 authorises the Gibraltar Port Authority during search and rescue operations to call for the collaboration and support of other Government services or departments, the Ministry of Defence, private companies or persons in enabling search and rescue regions. This section also places a duty on all Government services and departments concerned to take measures to facilitate, as far as possible, the immediate and temporary entry of personnel and their equipment from other states to an agreement with the Authority are participating in search and rescue operations. Section 7 provides that the maritime search and rescue unit shall act as the rescue coordinating centre for Gibraltar for receipt of distress alerts originating from any person, craft or vessel within Gibraltar waters and for communications with persons in distress with search and rescue facilities and other rescue coordination centres or rescue sub-centres in other Convention countries. Section 8 provides for cooperation with other countries for searching for maritime casualties and rescuing survivors. Section 9 sets up operational measures for the maritime search and rescue unit. Pursuant to this section, the maritime search and rescue unit shall provide on request up to date information concerning search and rescue facilities, and available communications relevant to search and rescue within Gibraltar waters. The Maritime Search and Rescue Unit shall have ready access to information regarding the position, course and speed of vessel within Gibraltar waters which may be able to provide assistance to persons, vehicles or other craft in distress in Gibraltar waters and regarding how to contact them. It also provides that the Maritime Search and Rescue Unit shall have detailed plans of operation approved by the Government for the conduct of search and rescue operations within Gibraltar waters. Section 10 empowers the Minister to make regulations.

This Bill, together with other important pieces of maritime legislation that have been enacted in recent years, brings our

legislation in the maritime field up to date. Shipping and the Port provide an important contribution to our economy, something which the Government have greatly developed and enhanced for the last nine years. It is essential that at a time that the shipping and maritime industry in Gibraltar is growing in importance, our legislation in this field should be kept up to date. It was not possible before to make provision for maritime search and rescue and so this important element has been omitted from our maritime legislation. This Bill before the House will set this right. The Bill will further enhance Gibraltar's reputation as a leading maritime centre and will cement our good international reputation in this field in addition to ensuring that Gibraltar fulfils its international obligations under the SAR Convention 1979. I commend the Bill to the House.

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

HON DR J J GARCIA:

As the Minister has said and as the explanatory memorandum itself makes clear, the Bill gives effect in Gibraltar to an international Convention. The Convention on Maritime Search and Rescue 1979 as amended in 1998 by Resolution MSC 70(69). The amended Convention itself came into force on 1st January 2000. The Minister has already explained that the Convention deals with the mechanism for search and rescue of persons at sea. It lays the foundation of the establishment of search and rescue regions and seeks to regulate cooperation between them. Therefore, in general terms there are two points which I would like to make on behalf of the Opposition. The first is that in section 10 of the Bill, under the power to make regulations, sub-section (i) according to our reading of the Bill includes that there should be a regulation-making power and this power shall include the power to provide for the provision to come into force although the law, agreement or Convention, as the case may be, has not yet come into force anywhere else. So we will have the power to allow additional elements to be

passed by regulation which may come into force in Gibraltar before they come into force elsewhere. Given this Convention is to do with saving lives it is something which the Opposition actually welcomes.

The second point I would like to make is in relation to the timing. The Minister has said that the Bill brings legislation up to date in relation to the maritime industry. The information available to the Opposition shows that the UK actually signed the Convention in May 1980. When the UK signed the Convention it was extended at the same time to various overseas territories and also to various Crown dependencies including Gibraltar, and it came into force in the UK and in those territories, including here, on 22nd June 1985. From 1985, and this is the point of clarification which we would like the Minister to provide the House, from 1985 until now this international Convention has applied to Gibraltar without any such Bill being brought before the House to give it effect. However, since the Government have chosen to do this in this way, the Opposition certainly have no objection and we will be supporting the Bill in any case, but we would welcome clarification from the Minister as to the timing.

HON J J HOLLIDAY:

On the second point raised by the hon Member, the Convention did not extend to Gibraltar and in 1997 Gibraltar was offered the opportunity by the UK to extend the Convention to Gibraltar. Once this legislation has been enacted in the House the Convention will then be extended to Gibraltar but up until now that had not been the case.

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 TRAFFIC ORDINANCE 2005

HON F VINET:

I have the honour to move that a Bill for an Ordinance to consolidate and amend the law relating to traffic, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House is the product of a consolidation process that has produced a Bill that should cure most of the imperfections which the Traffic Ordinance has traditionally suffered from. Legal practitioners and others who consult the Ordinance as it presently stands will know that the number of amendments it has succumbed to over the years has made it untidy and not particularly easy to navigate. The consolidation exercise has resulted in the renumbering of sections, typographical errors have been addressed and some sections that have become obsolete have been deleted altogether. The Bill is, I suggest, a more reader-friendly and straightforward piece of legislation. The House may wish to note that advantage has been taken of the opportunity to make

some amendments that are outside the remit of the consolidation but which are nevertheless properly made at this point in time. The first amendment relates to the issue of Gibraltar licences to EEA nationals who have taken up residence in Gibraltar and are by that fact unable to have their licences renewed by their respective issuing authority. These EEA nationals will be entitled to a Gibraltar licence. The second amendment relates to the exchange of non-EEA licences. The Bill provides a regulation-making power for the Government to introduce a regime whereby driving licences issued in certain countries and territories other than EEA States may be exchanged for a Gibraltar licence. A further change relates to the Traffic Commission. Wherever the Governor exercised powers of appointment this is to be exercised by the Government. A further clause 77(1)(d) at the present section 53, takes into account the demise of the Public Services Vehicles Operators Association and makes alternative provisions for representations of the sector. The functions of the Commission have been somewhat streamlined in the role as an advisory body, advising Government and not the Governor. Other changes which are too numerous to single out individually relate to the powers and duties, namely under Part 7 Streets and Highways. In this Bill Government and not the Governor, or a Commissioner of Police, is responsible for such things as traffic signs and traffic wardens. Where appropriate, however, the Commissioner of Police retains certain powers to be exercised either temporarily or in case of emergency. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition agree with the consolidation of the Traffic Ordinance in line with the amendments described in the explanatory memorandum, and will therefore be supporting the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

THE ENVIRONMENT ORDINANCE 2005

HON F VINET:

I have the honour to move that a Bill for an Ordinance for the purpose of transposing into the law of Gibraltar Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and to provide for regulations to be made for compliance with European Union obligations, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Environment Ordinance, as the Long Title suggests, aims to fulfil two functions. In the first instance it effects the transposition into the law of Gibraltar of Directive

2001/42/EC on the assessment of the effects of certain plans and programmes on the environment. Secondly, the Bill makes provision for the making of subsidiary legislation in connection with EU obligations. The Ordinance applies to certain plans and programmes, including those co-financed by the European Community, which are required by legislative, regulatory or administrative provisions and are either (a) subject to preparation or adoption by an authority; or (b) prepared by an authority for adoption through a legislative procedure. In general terms a plan that falls within the ambit of the foregoing needs to be subjected to an environmental assessment prior to its adoption.

The key to understanding the directive is that it is aimed at plans or programmes which set the framework for future development in a sense of projects. The idea is that if the plan has been in effect screened, permits or consents emanating from that process will be environmentally sound. This has the cumulative effect of delineating the areas which are no-go areas from an environmental perspective. This creates an element of certainty and avoids applications being rejected only after a lengthy process and after expenditure, which could have been avoided if it was clear from the outset that that particular application would fail. The requirements for an environmental assessment also applies to other plans and programmes which set the framework for future development consents of projects if they are the subject of a determination that the plan or programme is likely to have significant environmental effects. Determinations as to whether a plan or programme is likely to have significant environmental effects are made by the responsible authority according to the criteria in Schedule 1. Determinations cannot be made unless the responsible authority has consulted designated bodies, and in accordance with procedures set out in the Bill. Where the case arises, the Bill provides for a trans-boundary consultation to take place. It includes procedures for consultations relating to those draft plans and programmes prepared in Gibraltar that are likely to have significant effects on the environment in other Member States and vice versa. Once a plan or programme is actioned, monitoring with a view to

identifying at an early stage unforeseen adverse effects is required. I commend the Bill to the House.

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

HON F R PICARDO:

This Bill is almost entirely EU-driven but it is a positive EU development, I think both sides of the House will agree, in the sense that it will create rights in the Government of Gibraltar in the Minister to be consulted if something is going to be done, and I am focussing it principally from that point of view, in the environment of Gibraltar which could have a negative or other effect on the environment of Gibraltar and those who reside here. Indeed looking at the proposed section 14, one wonders whether if only the community had moved more quickly in relation to this type of directive we might have been consulted before the refinery was put up in the centre of our bay. It is positive to see that Europe is moving in the direction where a neighbour is not going to be able to do that without at least taking the views of the neighbouring State. But I want to say this in relation to the Bill. I note that it follows quite faithfully the provisions of the directive so this is not a criticism of the way the whole thing has been framed, but it is about a lot of administrative action, about moving paper around in bodies which are statutory and although not internal to Government close to Government before a determination is made. It is not, although the title Environment Ordinance sounds positive, it is not entirely the environment ordinance that the Opposition would like to see come into this House and for which we will be pressing dealing with all environmental issues. It is a Bill that allows for an element of public consultation after a determination has been made but the public are not the leaders of the debate as to whether or not a determination should be made. I note also that this is a developing area of law, much like perhaps compliance was 10 years ago, and that the planning process is becoming more and more complex and is requiring a greater

input in relation to the environmental effects, not just locally but also in the environment surrounding Gibraltar or if it is being done in our neighbouring Campo then certainly on Gibraltar. That can only be a positive development but I think we also now have to start considering whether we want to think about consolidating all the environmental imperatives that drive now a planning criteria. When somebody makes an application for planning there are now a number of requirements to deal with the environment, all of which is positive should we want to somehow prepare a code so that those who are involved in planning know exactly what it is that they have to comply with. Other than that, certainly the Opposition will be in favour of this Ordinance.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

I beg to give notice 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 European Public Limited-Liability Company Bill 2005;
2. The Fair Value Accounting Bill 2005;

3. The Maritime (Search and Rescue) Bill 2005;
4. The Traffic Bill 2005;
5. The Environment Bill 2005.

THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY BILL 2005

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

Clause 3

HON CHIEF MINISTER:

In clause 3 I would like to move a small amendment. In clause 3(2) it says “in Parts 2, 5 and 6 of this Ordinance Minister shall mean the Minister with responsibility for Trade and Industry”. I would like that to read “in Parts 2, 5, 6 and 7”. In other words, adding “7” and then the consequential grammatical changes. So it would read “in Parts 2, 5, 6 and 7” instead of as it reads at present “in Parts 2, 5 and 6”.

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

Clauses 4 to 81 – were agreed to and stood part of the Bill.

Clause 82

HON CHIEF MINISTER:

There is a typographical error here in respect of the number of the form. In clause 82(1) there is a reference to “Form SE82” and that should read “SE80”, just the number of the form.

Clause 82 – as amended, was agreed to and stood part of the Bill.

Clauses 83 and 84, Schedules 1 to 4 and the Long Title – were agreed to and stood part of the Bill.

THE FAIR VALUE ACCOUNTING BILL 2005

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

Clause 3

HON F R PICARDO:

In section 3(3) the last set of inverted commas and full stop should be deleted.

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

Clauses 4 to 6

HON F R PICARDO:

If I can just on that issue, I did not think this was a point to take at the Second Reading stage. Just to ask the Chief Minister who is moving the Bill that we are actually amending a regulation by Ordinance here which is usually not necessary, is there a particular reason for that or not? We even have sometimes amended Ordinances by regulation which is perhaps more controversial. This is obviously not controversial, there is power to do it but I just wondered whether there was a particular reason for not amending by regulation.

HON CHIEF MINISTER:

The hon Member may be interested to know that I asked the same question when I saw the draft first. It is just for the sake of implementing all the changes in one piece of legislation so that everyone can see all the implications of the transposition of this directive. But he is right, we could have excluded clause 6 from the Bill and then passed an amendment to the regulation by notice in the Gazette amending the regulation. There is no particular reason other than that.

Clauses 4 to 6 – were agreed to and stood part of the Bill.

Clause 7

HON F R PICARDO:

As part of clause 7 where we are making the amendment to Schedule 1, I noted and it is in section 35(4) where the list of expressions appears three times in the text, just a minor typographical at the end of the paragraph there is a double inverted comma, full stop, just to get rid of it.

Clause 7 – as amended, was agreed to and stood part of the Bill.

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

THE MARITIME (SEARCH AND RESCUE) BILL 2005

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

THE TRAFFIC BILL 2005

Clauses 1 to 77 – were agreed to and stood part of the Bill.

Clause 78

HON F VINET:

There is a small amendment at clause 78(a), namely the deletion of the word “all” so that the line reads “advise the Government on matters affecting traffic on roads.”

Clause 78 - as amended, was agreed to and stood part of the Bill.

Clauses 79 to 90 – were agreed to and stood part of the Bill.

Clause 91

HON F VINET:

At section 91(2) I am moving the amendment for the deletion of the word “any” and substituting for it the word “the”, so it reads “the Government, or in the case of emergency the Commissioner of Police.”

Clause 91 – as amended, was agreed to and stood part of the Bill.

Clauses 92 to 103, the Schedule and the Long Title – were agreed to and stood part of the Bill.

THE ENVIRONMENT BILL 2005

Clauses 1 to 19, Schedules 1 to 3 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 European Public Limited-Liability Company Bill 2005;
2. The Fair Value Accounting Bill 2005;
3. The Maritime (Search and Rescue) Bill 2005;
4. The Traffic Bill 2005;
5. The Environment Bill 2005,

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

Question put. Agreed to.

The Bills were read a third time and passed.

PRIVATE MEMBERS' MOTIONS

HON J J BOSSANO:

I beg to move the motion of which I gave notice some time ago that:

“This House notes the Report and the Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2003”.

The reason for bringing the motion to the House is in order to draw attention to the reference that there is in the Gibraltar Broadcasting Corporation Accounts to the position of the pension funds of the Corporation. Compared to the preceding year's Accounts where it said that the valuation carried out by actuary showed that the fund was in fact sufficiently well funded to meet its eventual liabilities, what the last Accounts point out is that if the valuation that was completed in January 2004 and was prepared as at 1st April 2003, the scheme has moved to a significant deficit from the valuation carried in the year 2000. I believe that this in fact inevitably creates a contingent liability on the Government and I wish to highlight this position, because in fact I am probably the only one that was involved, that is in the House today at the time that this was negotiated and when the Broadcasting Corporation entered into this agreement with I think originally the scheme was sold to the Corporation by Australian Mutual Provident, and the agreement made with ACTSS in respect of this pension scheme, which was more generous than many competitors at the time, was subject to the Government of the day approving it on the basis that GBC could not guarantee that they would be able to keep the scheme going if it ever got into trouble without the Government coming to their rescue. I think it is important to draw the attention of the House and the Government to the fact that there is in fact an implicit understanding that if the Corporation is not able within its resources to make the necessary contribution, then this House would need to supplement the annual grant by voting additional funds, as has happened for other types of expenditure like equipment and so on which are not part of the annual recurrent contribution that the House makes to the running of GBC. Given that this is the first time, to my knowledge, in all the time that the scheme has been in place that this situation has materialised, one which is obviously not peculiar to GBC because in the Accounts it mentions that it arises primarily from two factors. One is the performance of the equity markets and the other is the lengthening of life spans which actuarially are then translated into a liability for more years than originally predicated and originally funded. Therefore, I felt that it was important to flag this on the first occasion that we had, but of course it was

not an urgent matter, it could have been done at any time but I have raised it when the Accounts were Tabled for that reason.

Question proposed.

HON CHIEF MINISTER:

The first thing that I would like to say of course is that GBC is not a Government Department and therefore the Government are not either statutorily or as an employer responsible for any aspect of GBC, including the solvency of its pension scheme. That said, the hon Member knows that as a result basically of the fall of interest rates, the decline in financial markets and stock exchanges over the last four or five years, almost every corporate final salary pension scheme in the United Kingdom is insufficiently funded, and these of course are variable feasts in that there is practically no pension scheme in the world that would today anyway, be solvent in the sense of having assets to pay all of its liabilities if it were ended today. What happens is that the asset value of pension funds rise and fall usually with the markets for the assets in which they are invested, be it stock markets or property markets or whatever they are. Certainly, if the pension scheme of GBC were wound up today, if GBC were being liquidated today, there would be insufficient assets in GBC's pension fund to meet all its obligations, but that is true of almost every company quoted on the UK Stock Exchange. It is indeed true of almost every funded Governmental pension scheme. In Gibraltar the Government's Occupational Pension Scheme for the Civil Service is not a funded scheme, so this issue never arises because in effect we vote each year whatever it costs to pay that year's pension liability, but if we did have a funded pension scheme it would be under-funded in the same way as the GBC scheme is under-funded, because that is true of all schemes. So the Government certainly are not going to allow the situation where employees of GBC who retire are unable to collect the pension that they had expectations to retire, that is not the Government's position. Having first said that it is not the Government's statutory liability, the Government do not

treat and should not treat GBC as if it were a Government Department or as if the Government were the employer of the staff of GBC. So the Minister will now report to the House on what is happening in this respect, but certainly things will be done but it will not be the Government writing a cheque to keep the GBC pension fund at whatever capital value the actuary from time to time says it should be, because what does that mean if markets rise and the pension scheme becomes over-valued, does that mean that they will return money to the taxpayer? So it is not quite as simple as just saying every time there is an actuarial valuation the taxpayer should just write a cheque for £750,000 to top up the asset value.

HON C BELTRAN:

I just wanted to add to what the Chief Minister has just said that GBC is indeed currently engaged in discussions with Government in order to find a way forward, in as was previously mentioned is a very common position for Plc's in Europe generally to be in nowadays, in respect of schemes based on employees' final salary. I also just wanted to point out one more fact, which is in fact included in the report and which I think the Opposition Member has not mentioned but I think is of interest. That is that for the first time the actuary has used a different approach to the valuation of the scheme, I am not an accountant but what is known as the market approach, but what is interesting in this is that according to the actuary this approach whilst providing a realistic assessment of the funding position of the scheme at the valuation date, nevertheless it is acknowledged by the actuary that there is a greater risk of volatility in results at subsequent valuations. Indeed I can say that we have noted that over the last 18 months since the report came out, the shortfall has indeed decreased by 25 per cent, it is better by 25 per cent. So this new approach also has signalled something which is of course important that we can easily change in a matter of months.

HON J J BOSSANO:

I think one of the things in looking at the accounts is, if we look at the 2002 set of accounts, we find then that the contribution charged to the annual expenditure, the recurrent expenditure of GBC went up in 2002 from £86,000 to £94,210. That was the year before the fund was found to be running into a deficit and heading for a deficit, because in fact what the 2002 Accounts says is that at the last valuation the actuaries concluded that the scheme's assets were £2,392,000 and that this was estimated to represent 100 per cent of the benefits accrued to the members. So therefore, at the time that they increased the contribution from £86,000 to £94,000 it was against the background where the assets in the scheme were deemed to be sufficient to cover 100 per cent of the benefits, there was no surplus and no deficit. The following year we find that the actuary now tells there is a significant deficit, although this is not quantified, and yet the contribution going the second year into the scheme, when there is a deficit as opposed to the previous year but there was 100 per cent cover, is £92,671. That is to say, they put in £400 more the year they ran into a deficit as opposed to the preceding year when they put in £8,000 more when it was running well. So it seems to me that if we look at those figures then the amount of money that we have voted in this House, for example in year 2002 compared to year 2001, included an additional £8,000 for the contribution to the pension fund because that was included in the recurrent expenditure of the Corporation. So effectively, in the bid that the Corporation makes as to the assistance it requires from the House, which of course the Government bring to the House in the Budget but it is the House that is providing the money, there is already a reflection of the level of contribution that the fund requires. Therefore, I am glad to learn that there is discussion going on between the Government and the Corporation but I would venture to suggest that it is probably a good idea not either to try and wipe out the deficit by making a big lump sum payment because part of that may be recovered from an improvement in the market, but to perhaps review what is a more realistic amount to be putting in, in the light of the latest accounts and

the fact that in the year when things got worse the contribution actually went up by less than in the previous year is most peculiar. Given that it is a contribution linked to salaries, a £400 increase in £96,000 is a miniscule percentage increase which would not even reflect the annual salaries review. I commend the motion to the House and I am grateful for the indication from the Government that they are conscious of the need to address this issue.

HON CHIEF MINISTER:

Just on a point of order, are we voting? The motion simply actually notes the Report so I mean the House certainly can note the report but I am not quite sure what it is, I am happy to vote in favour of noting the Report.

HON J J BOSSANO:

I believe in the past when there have been motions noting something, it has been considered by the Chair that a vote was not required because by talking to the motion we are in fact taking note, which the motion requires.

The Report and Audited Accounts were noted by the House.

HON J J BOSSANO:

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

“This House notes the Gibraltar Health Authority Audited Accounts for the year ended 31st March 2003”.

Mr Speaker, the point in the accounts that I want to bring to the attention of the House and hopefully get some kind of explanation is the item that has appeared this year, which has

not been there in preceding years, which has an investment account for the new hospital which shows that there was a capital account for the new hospital which had receipts from the Royal Bank of Scotland of £30.5 million and payments of just under £13 million in respect of work conducted on the building, and that left a balance of £17.5 million which is where the new investment account comes in. That balance of unspent money was, from what I read in the Audited Accounts of the Government as opposed to the ones of the Authority, was then reinvested by being placed on deposit with the Royal Bank of Scotland. Given that the understanding that we had of the nature of the transaction was that this was not the Health Authority borrowing money from the bank but in fact the Government selling the building to the bank and then the bank owning the building, financing its conversion and then renting it to the Health Authority, I have difficulty in reconciling how it is that a building owned by a bank on which the Health Authority is paying rent is being refurbished by the Health Authority, we see here as making the payments, out of funding provided to the Health Authority by the bank, well what are these receipts? Is this in the form of a loan, an advance or what? In fact it is not that the Health Authority cannot borrow money of course, because there are borrowing powers in the Gibraltar Health Authority Ordinance which we introduced, which allow the Health Authority to borrow whatever money it needs to borrow long-term or short-term in order to carry out its functions. So the capacity on the Health Authority to borrow money is not in question and in fact, in my judgement there was nothing to stop the Health Authority doing it this way if they had wanted to do it. In fact when I asked for more information as to the details of the arrangements, I remember that what the hon Member said was that given that this was not debt that we were incurring, he did not want to Table it in the House as is normal when there is a loan agreement that the Government Table it in the House and the Members of the House and indeed members of the public are then able to look at it, but that it was a very voluminous document and that he would see if he could make some sort of summary and let us have a copy. In fact, it must be very voluminous because he still has not managed to do a summary,

he is probably wading through all these volumes. But it seems peculiar because given that the rent is for the building and therefore it is not related, it is not like a loan on which there is a drawdown and then one pays all the amounts that one is using, indeed there is a reference in the Audited Government Accounts showing that the deposit back of the unspent balance of the £30 million with the Royal Bank of Scotland generated an interest payment to the Health Authority, which presumably appears as recurrent revenue somewhere else, of £100,429.50p. So we also have something that is an unusual treatment which has not materialised before and I do not know whether this is something that is going to be peculiar to the hospital since the capital account simply talks about the new hospital, and that is that capital works which were funded by the Government and have already been charged previously and voted by the House in the Improvement and Development Fund, now appear in this capital account as Health Authority revenue and expenditure. Well, the money was spent before this financial year, it is very peculiar that we vote the money in the House, it appears in one year's annual accounts and then in the following year we have an item which says effectively on paper what this indicates is that the Improvement and Development Fund made a grant of cash to the Health Authority, that is the only possible way to read it because it is shown as receipts. Then it has expenditure which was the payment of capital works on the new hospital funded by the Gibraltar Government as if the Improvement and Development Fund had given the cash to the Health Authority prior to the money being spent, when in fact what happened is that the money was spent directly by the Government in the first instance in a previous financial year. So it is not an accounting treatment that I have seen before in the accounts of the Health Authority and I would welcome an explanation.

HON CHIEF MINISTER:

The Leader of the Opposition is right to this extent, and that is that the Accounts of the Gibraltar Health Authority as such should have been limited to the audit certificate and the first two

pages of it, the third page headed "Gibraltar Health Authority Receipts and Payments for the year ended 31st March 2003 Capital Account Investment Account New Hospital", should really not be there at all. It is a statement that somebody has obviously put together, it is really a cash flow statement of monies that have been spent in relation to the new hospital but actually do not form part of the accounts of the Gibraltar Health Authority at all. The Gibraltar Health Authority, as he correctly speculates in his address just now, and indeed as I have told him before as he himself has noted, the Gibraltar Health Authority has not borrowed money from Royal Bank of Scotland or anybody else. The Health Authority is paying rent for the occupation of a hospital upon which somebody else has spent several tens of millions of pounds smartening it up and putting new equipment in it and developing it. So that page 3, obviously was put there by somebody in an attempt to give as much information as possible, but actually does not meaningfully form part of the handling of GHA monies. In other words, it forms no part of the GHA's own account which should be limited to the GHA's revenue and the GHA's expenditure. These things are neither GHA revenue nor GHA expenditure and I think a more proper presentation of the accounts would simply have excluded page 3 altogether. I am sorry that we have overlooked giving the hon Member a summary of the PFI structure which would have enabled him to understand exactly how it is structured. I do not remember promising to do what he says I promised and I do not know whether he was using the word casually promise or I just said I would, but certainly I will now have him written to, if not myself I will get somebody else to write to him, setting out the structure of the PFI system so that he can see how the PFI deal is structured and how it does not include a loan by the RBS to the GHA in the context of this account. The structure of the PFI is a lessor funded improvement to the hospital, capital investment in the hospital, repaid through rental payments for the subsequent use and occupation of the hospital by its tenant the Gibraltar Health Authority. I will have the hon Member written to, so that in future either he does not need to ask questions or he can formulate them in the context of the structure as it is, because there is no reason why the facts

should not be in front of him for him to know and to formulate, and I regret if indeed there has been a previous undertaking to provide that summary, I regret that it has not been provided and I will see that it does get provided now.

HON J J BOSSANO:

I have to say I am not convinced by the explanation that he has given us as to why that is there on the basis that somebody wants to put more information than is required. It is quite true that the page from which I was quoting is headed "Receipts and Payments Account" but so is every other page. That is to say, every single page in the Accounts is headed "Receipts and Payments Account", and the Principal Auditor makes a reference to the figures that I have quoted in Note 6 of the Accounts and says "Capital Account New Hospital". The receipts exclude accrued interest in March 2003 amounting to £100,429.50p received in the following financial year. Now how can we be told that this is just a sort of cash flow explanation in order to give us more information than is required by the Statutory Accounts, when in fact the Principal Auditor that has audited these accounts actually tells us that there was a receipt of interest on money that the Health Authority had invested in the bank, which will actually appear in the 2004 Accounts. That is to say, after 1st April 2003 and in the financial year 2003/2004 we are going to see as part of the income of the Health Authority £100,000, which is the return on the money that it has lent to the Royal Bank of Scotland, which it should not have had to rent because it should not have borrowed it in the first place. I am afraid that point has not been addressed and I am afraid that the explanation that this is not necessary does not fit in with the fact that the auditor actually claims to have audited these accounts as well.

HON CHIEF MINISTER:

They are two things which in fact are not incompatible as he will see when he gets the outline. He has got to bear in mind that when he moves a motion saying that this House notes the accounts of the GHA, we have no notice of the particular issue that he wants to describe, which he wants to debate and therefore I cannot come armed with chapter and verse to respond to a detailed accounting enquiry. From my recollection of the PFI scheme it was envisaged without it being a loan, this is why I said before there was no lending, it was envisaged that there would be this commitment by the PFI finance provider, the Royal Bank of Scotland, to make funds available for.... In other words, in effect the Royal Bank of Scotland has paid for the refurbishment of the hospital, and this has got to be paid back by way of increased rent in exchange for a 21 years or whatever it is lease of the hospital. Of course the Royal Bank of Scotland did not want to stand in Gibraltar actually fixing the hospital, so what it said to the Government and the GHA is "look, here is the money, it is not a loan to you because this is my obligation (Royal Bank of Scotland's) to do the hospital because I am going to be the landlord and you are going to be my tenant. Here is the money, go and do the hospital but you can only use the money for the hospital obviously". That is the arrangement so it may well be that subject to the drawdown of that money, there was a time when there were monies in the hands of the GHA without it constituting a loan to or a borrowing by the GHA, upon which the GHA might, I am not aware that it had earned interest but it appears from what the hon Member has said that that money was earning interest for the account of the GHA, because eventually the GHA was going to have to pay rental at a level that reflected that expenditure by the Bank of Scotland. I have not seen or studied personally the exact language that he has quoted from the auditors report but from my distant recollection of the legalistic structure and the cash flow arrangements of the PFI, it would not surprise me that monies had been placed in the hands of the GHA with the GHA being able to raise interest on it, that is what the hon Member can see from the papers in front of him has happened, without that

meaning that there has been a loan or that there has been no debt, there has been no borrowing. The whole purpose of the PFI structure is that it avoids public debt borrowing, that is the whole reason for doing it that way. It would not work, it would not do the trick if it was in effect borrowing. It was carefully structured to avoid it being a debt. One makes no secret of that. Gordon Brown, when he borrows billions and billions of pounds of PFI, it is just a way of raising capital without increasing the public sector borrowing requirement. There is no secret to the fact that that is what Private Finance Initiatives are partly intended to do, although there has also got to be a sufficient amount of risk transfer to qualify under Treasury guidelines for that purpose, but the principal reason is that it enables governments to fund capital projects without itself having to go to the bank, borrow the money and add it to the public debt figures. That is clear is it not?

HON J J BOSSANO:

In the light of that further clarification, I will wait until I have the documentation that he has promised.

The Audited Accounts were noted by the House.

HON F R PICARDO:

I have the honour to move the motion that stands in my name that:

"This House grants leave for the introduction of the Rehabilitation of Offenders Bill 2005, a draft copy of which is attached to the motion itself".

Mr Speaker, that is the procedure provided for in the Standing Orders of this House for the introduction of legislation other than by the Government. Rule 25 of the Standing Rules of this House actually provides that any Member may move for leave to

introduce a Bill subject to two sets of criteria. It is the leave that is required in that rule to introduce a Bill for the Rehabilitation of Offenders Ordinance that I beg this House for today. The Ordinance proposed is designed to enable individuals who have committed offences and who have not reoffended to have a conviction considered spent. In other words, that the relevant conviction can not subsequently be referred to. That is the basic thinking behind the Ordinance, namely that punishment and conviction should serve a rehabilitative purpose principally and that I submit cannot be controversial. In any civilised society it is the rehabilitative aspects of punishment that matter. That has been the position in the United Kingdom where the Rehabilitation of Offenders Act has been in place since 1974 and has been substantially amended since it was passed. That is the source of this Bill, the Act in the United Kingdom as amended up to now. Indeed, statistics in the United Kingdom monitoring the Act, suggest that over a quarter of the working age population of the United Kingdom has a previous conviction and that employment can reduce re-offending by between a third and a half. I cannot vouch for those statistics but it makes sense to me that that should be the case. Having said that, a criminal record can obviously seriously diminish employment opportunities. The same is certainly true in Gibraltar in respect of the curtailment of employment opportunities of those who have previous convictions. It is for that reason that the Bill is introduced, to help restore the reputation of a person who has been convicted of an offence but has since stayed on the right side of the law.

The Bill for the Ordinance will specify the periods of time during which an offender is required to disclose previous convictions, including when applying for a job. For example, if someone is sentenced to up to 30 months or less in prison they will be required to disclose their conviction for a period of up to 10 years from the date of their sentence. After those 10 years the conviction will become spent and would no longer need to be disclosed. The details of those specific sentence periods are set out in Table A of the Bill at section 4. There is, however, provision for an exceptions order to be made by the Minister for

Employment setting out that these limits of disclosure should not apply. In the UK such an order has been made to cover posts that include a particular risk. For example, where an individual is making an application for a job that includes work with children or with vulnerable adults, or which involves consideration of national security, the administration of justice or financial services. When making applications for posts such as those, the Ordinance will not enable the applicant to rely on its provisions so as not to disclose a previous conviction. I think that in drafting the Bill it was proper to put in the Gibraltar context that power in the hands of the Government because this is not a prerogative matter, and the right Minister of the Government to have that power in his hands is certainly I think, because of the purpose behind the Bill, the Minister for Employment. The reason why I mention the prerogative will become clear later on.

The legislation is designed to ensure that the period of rehabilitation, that is the period before a person can consider his conviction spent, should fluctuate not based around the offence that has been committed but the period of sentence that is imposed in respect of any particular offence. For that reason there is no reference in the Bill to specific periods applicable to particular offences, except for the reference that hon Members may see in section 1(6) to sexual offences with minors or the offences under sections 103 and 104 of the Criminal Offences Ordinance. I will come to those later on. For example, looking at the table in section 4, a person convicted of an offence and sentenced to imprisonment for more than six months but for less than 30 months cannot consider their sentence spent until 10 years after the relevant conviction, and then only if he has not re-offended in that period. If he does re-offend then his slate is simply not wiped clean until the next period has expired. The periods provided for in the table are halved in relation to offenders who are under the age of 18. In any event, serious offences where the sentence exceeds 30 months or is a sentence of life imprisonment, however long it is recommended that an offender should serve that sentence of life imprisonment

even if it is less than 30 months, are outside the scope of the Bill. Those offences would never become spent.

Provision is also necessarily made for provisions in respect of Services disciplinary proceedings which the UK Act covers and it is right that our Bill should also cover given that we have a lot of members of the Services in Gibraltar, especially in the Gibraltar Regiment. In the UK all of those Service convictions or Service proceedings would arise under the Army Act. In Gibraltar they arise under the Gibraltar Regiment Ordinance although there is in that Ordinance cross-reference to the Army Act of 1955, and that is very specific, our Ordinance still refers to the Army Act of 1955. For that reason the second paragraph of the Schedule to the Bill pursuant to section 5(6)(b) refers to those sections in the UK Army Act.

The effect of rehabilitation is dealt with in section 3 of the Bill which provides that a spent conviction shall not be referred to a court, and a person shall not be compelled to answer questions about spent convictions. So in an application for employment in an application form, if an employer says "please fill in all your previous convictions, or please tick if you have previous convictions and provide the details of those convictions", if the rehabilitation period has passed since the sentence was imposed or since the conviction occurred, then the offender is able to tick the No box or simply not give any details and not have his application for employment prejudiced by that which may have happened 10 years before.

Section 4 provides for the period of rehabilitation of offences in its Table A, as I have said being dependent on the sentences of imprisonment imposed and then the following sub-sections of section 4 and in the Table deal with other types of offences. So going through them, if there is an absolute discharge, that becomes spent six months from the date of the conviction. If there is a conditional discharge, a voluntary binding-over or a disqualification, those are active only for the period of discharge and are spent thereafter. If there is a probation order, if the offender is over 18, it will become spent five years later. If the

offender is under 18 it will become spent half the time later, two and a half years later. If an attendance centre order is made the conviction is spent one year after the date on which the order ceases to have effect. Offences punishable by confinement are spent five years after the dates of conviction or two years after the date when confinement ceases, whichever is the longer. The Minister, again it would be the Minister for Employment, has power by order to amend these periods if he should consider that appropriate without having to come back to the House.

Section 5 of the Ordinance deals with what happens if different sentences are imposed on an offender in respect of different convictions. Then obviously the longer sentence, which shall be the relevant one in determining the rehabilitation period. Section 6 provides limits on the effects of the Ordinance. There does in this section need to be a reference to the powers of the Governor, given that he retains the power to pardon in our Constitution and that section goes on to make some more sensible exceptions to the ambit of the Bill in respect of legal proceedings, where it may still be necessary or appropriate for references to be made to convictions in respect of a witness which have happened earlier. Section 7 deals with the effect of this Bill upon actions for libel or slander, in which the plaintiff complains of a reference to a conviction of his which is spent by virtue of the Bill. There, if the publication complained of took place before the conviction became spent, then sub-section (2) excludes both sections 4(1) and sub-sections (3) to (7) from application to the case and the result would be that the defendant to such a libel action will be able to leave evidence of the conviction, and the law governing the case would be unaffected by the Bill. In any other case sub-section (3) permits the conviction to be proved for the purposes of a defence of justification, fair comment or privilege, but the law governing those defences is modified in two particularly important respects. First, a defence of justification can be rebutted by proof of malice, and secondly, if any evidence is ruled inadmissible under section 4(1) which has been referred to in a report for judicial proceedings, then the privilege attaching to such reports is not available except for law reports and other

educational, scientific or professional publications. That is dealt with in sub-sections (6) and (7). Section 9 is putting on a statutory footing what is already to a very great extent the practice of the Royal Gibraltar Police's Records Department and Her Majesty's Attorney General's Chambers when dealing with these issues. Section 10 allows the Minister to set an earlier date for the commencement of the Ordinance than that already provided.

If the House gives leave for the Bill to be published and have its first reading, a minor numbering amendment will be necessary in respect of sections 9 and 10, but as obviously the Bill has not yet been published it has only been circulated, we are at an early stage in order to do that minor amendment. I sincerely hope that we can agree across the floor of the House that this Bill proceed through its stages in this House. I have mentioned this initiative before and I have seen it met with positive nods from Government Members, especially those who have or have had responsibility for employment, but of course I do not hold them to their nod. Finally, I would draw the House's attention to section 1(6) of the Bill. That section is entirely home-grown. It excludes from the application of the Act and from potential rehabilitation, offences which relate to sexual offences with minors or rape or the procurement of rape. I could not in conscience bring a Bill to this House that might enable convicted perpetrators of such acts the opportunity to rehabilitate themselves. Some slates can never be wiped clean. When the Government bring legislation to this House, the Opposition supports it unless we have a serious policy difference between us. I do not believe that there can be a serious policy difference between us in relation to the subject matter of this proposed legislation. Therefore, in every respect, I pray that the House support the motion and that the Bill be published with the support of the whole House so that it can be read a first time as provided for in the Rules.

Question proposed.

HON CHIEF MINISTER:

The hon Member said that in any civilised society the purpose of punishment was rehabilitation, and said that this had been the case in the United Kingdom since 1974. Well, different people have different views about what the purposes of punishment are for but in any event I do not accept, and I am sure he did not mean to imply though it is almost implicit in his remark I am sure it was an unintended implication, that the fact that we have not had this Rehabilitation of Offences legislation since 1974 does not mean that we have not been in a civilised society. Nor by the way, would I regard the United Kingdom as the benchmark of civilisation for such purpose. I think one need only look at social models and social problems in Gibraltar and in the UK to justify the conclusion that Gibraltar should not always follow practice in the United Kingdom, and simply to say that because it has been done in the United Kingdom, civilisation must require that we do it, I think is not an approach that we should fall into the trap of pursuing. I will not go into the detail of the Bill that the hon Member would like to move in this House because we are not going to vote in favour of allowing him to move it, and he should not interpret this to mean that we are necessarily opposed in principle to Gibraltar having some sort of rehabilitation of offenders legislation. However, we are voting against it for a variety of reasons which I am happy to explain to the hon Member.

We are voting against his motion to be given leave to bring the Bill himself at this stage, for a variety of reasons which I am happy to explain to him. Firstly, a Bill of this sort should not be moved without a process of consultation. The Government would not move such a Bill or publish such a Bill without having engaged in a process of consultation with the judiciary, with the Bar, with social workers, with any number of society at large. Certainly we do not think that it would be appropriate to grant leave to move such a Bill without there having been that degree, or indeed any process of consultation with any social partner or stakeholder in the community, on the provision first of all on the principles of having such a legislation but secondly, on the

detailed content of such legislation. Secondly, even if we were minded to support the introduction of such legislation, it may not be in the terms of the detail of the Bill which I recognise as mainly drawn or almost entirely drawn from the UK version, but that does not mean that it is the version that we would want to put in here. We would almost certainly want to have some differences, for reasons that would emerge if the House ever came to debate this Bill at Second Reading, if it were to be moved. Thirdly, we believe that such legislation if it ever found its way onto the Statute Books, should be as the result of a Government Bill, being as it would be if it were adopted, a pretty fundamental piece of administration of justice and social engineering provision. So it would not get onto the Statute Books with Government support in that precise form anyway, but any legislation that would get on the Statute Book because it enjoyed Government support on the subject, would be quite a radical step for Gibraltar and would therefore more logically be a Government Bill.

So for all of those reasons we do not consider it appropriate to vote in favour of allowing the hon Member to move the Bill himself or at this stage, but I am happy, if he wants, which I think is implicit from the fact that he has moved this Bill, that he would like the Government to consider whether such a Bill would be worthwhile to consider the policy implications and do the consultation, and at least for the Government to decide whether they want to move such a Bill. We have had a look at the detail of the Bill but frankly we have not had long enough to make policy decisions about it and certainly not to conduct a public consultation process, so I can agree that the Government will consider whether Gibraltar should now have a rehabilitation of offenders Bill and I will let him know what conclusion we come to on that, but we cannot vote in favour of allowing him to move this particular Bill at this particular time in this particular way.

HON J J BOSSANO:

I think that there is something that needs to be addressed whether it is addressed as appears to be partly through this Bill or that is to say, totally taken care of by this Bill but the Bill goes beyond the point that I want to make which I think is important that something should be done about. I must say I was not aware that this existed in the UK for as long as it appears to have existed, but one thing that has long been a problem in Gibraltar, throughout this period and without anybody suggesting that we could put it right this way and which I am sure some Government colleagues of the Trade Union movement will remember, has been the discriminatory treatment of Gibraltarians which continues, and is probably getting worse, which exists because employers are able to go back to the date of birth of a Gibraltarian in deciding whether they make suitable employees or not, and they cannot do the same thing for the thousands that arrive in Gibraltar from many of the 25 Member States or anywhere else, and come here and their past history is checked to the degree that it is possible and normally it is not possible to check it very much. I can tell the House that there are cases of dismissals of Gibraltarians from construction companies, which is very relevant to the situation we are facing with contracting out, where the MOD because somebody in his thirties was found guilty of having possession of one milligram of marijuana when he was 16, considers that that person is a security risk and will not give clearance to work on MOD premises. Therefore, the contractor terminates the employment on the grounds that he cannot use the employee to work on the MOD. Now, independent of this although this in fact touches upon that issue, if there was some way of addressing that point I would ask the Government to look at that specific point as something that really needs to be dealt with. I must say that that is something that I have not been able to find an answer to in all the years that I have been involved with situations, other than effectively the Union using its industrial muscle to persuade the employer to change his mind.

HON F R PICARDO:

I am grateful that the Chief Minister has taken a positive attitude in terms of the subject matter of the proposed Bill. I am grateful for that for the reasons actually that my Colleague Mr Bossano highlights, the fact that many Gibraltarians are finding that they either find themselves unemployed for one reason or another and cannot get a new job, or they cannot enter the job market in order to start the process of reintegrating themselves into society when they come out of a prison sentence or after they have been convicted. I think it is fundamentally important to have put this squarely in the political agenda and I am very grateful to the Chief Minister to say that he is prepared to start the process.

HON CHIEF MINISTER:

The Leader of the Opposition and now his Colleague mentioned this business about people having difficulty in effect in reintegrating into society because of this problem. The Government are acutely aware of that and have for some time now been operating a sheltered employment scheme and a scheme of assisting such people in finding jobs when left to themselves they would normally have the door shut by employers. Now, the hon Members are recommending a statutory approach to that as opposed to an administrative one. I can see that it has its values and I think that we can all agree that there are certain types of behaviour that used to be regarded as very serious and that now are regarded by society as less serious that should not mark somebody's prospects for ever. I think we can all agree with that, I think that that is a position that has to be completely uncontroversial. I think the graver the nature of the conduct, this is the point I was trying to make to the hon Member when I first answered him, the graver the nature of the conduct the more debate and disagreement there is between various opinions in any society about whether it should be swept under the carpet after five, or perhaps more years, and therefore it is for the legislators to decide. For

example, he said "I have introduced into my desired Bill a homegrown because I do not think that certain types of behaviour should ever be forgiven", well, different people have different views about where that line should be drawn. Certainly if we ever get to such legislation there will have to be some pretty imaginative and enlightened debate about which are the offences that would, should for reasons of fairness and for reasons of making sure that people are not unfairly penalised for all their lives for something that they did perhaps, young people do things that they grow out of, and I think that that is right, but we will have to debate the detail of where the line is drawn. For example, he has already put the House on notice that he would draw it at a different place than the United Kingdom has drawn it. Well, other people will have similar views on different offences but certainly I agree with the sentiment that it is not right that any employer in Gibraltar, indeed the Government do not, we have a policy that offences should only be taken into account when they are in respect of something relevant to the nature of the job being applied for. So if somebody has a conviction for theft, let us use a real example. Hon Members should not interpret this to be wanting to raise the subject, but if somebody has a conviction for their being involved with tobacco smuggling when that activity was going on, that is not a reason why he should not be employed now as a bricklayer or as a carpenter. So the Government themselves do not apply the policy that a conviction in respect of something irrelevant to the nature of the job should be a bar to getting the job. Certainly the Government would not be happy that others are using that as a pretext for an excessively tough industrial relations attitude. So certainly whether we do a wholesale rehabilitation of offenders legislation or not, it may be possible to do something in relation to this more narrow point which relates to the extent to which employers are able to take this into consideration when selecting people for employment or not. Of course that is much narrower than saying that no one can refer to it at all for any purposes. One thing would be to say to an employer "this is not a reason for dismissing an employee", that is a much narrower point than saying it is a criminal offence for anybody to refer to

the fact that I had a conviction when I was 16 years old. It is a much narrower issue.

HON F R PICARDO:

I am grateful to the Chief Minister for that clarification. In effect what he was telling us when he was initially replying to my remarks is that the Government are running a scheme which is not legislative, which intends to assist people to reintegrate themselves into society. What is happening there is that some employers are bearing the brunt of assisting the Government in that respect and others are able to get away without forming part of that process or that project whilst if we put it on a legislative footing it will apply to everyone who is operating in Gibraltar. I entirely take the point of being subjective in determining where the line is drawn. I think that is why the UK scheme has been drafted in such a way that it is the sentence and not the type of offence that deals with where the line will be drawn in respect of a particular offender. So one of the issues I suppose the judge now takes into consideration when sentencing someone to 29 months or to 31 months, is well if I sentence him to 29 months in five years' time he is off the hook. If I sentence him to 31 months then he has got to wait 10 years before he is able to say that he has no convictions. I think that is important.

I also want to address one particular point which is not about the substance of the Bill. I think it is very important that we have dealt with this Bill in this way and that this issue is now, I am grateful to hear the Chief Minister say, on the agenda and that he will start the process at least of looking into whether it is going to go forward and become a legislative proposal of the Government. It is the second time in the past four years that this time of motion is brought. The last time was in relation to the Dangerous Dogs Ordinance and the attitude then of the then Minister for the Environment, who is still in this House although the individual that moved that Bill from my party is not in this House, was that it was the Government that were the legislators

and not the Opposition. I think it is much more positive to remember that all of us in this House are legislators.

HON LT-COL E M BRITTO:

Can the hon Member give way on a correction of fact? The argument that I gave was that the Government were the legislators and that the policy that we were going to apply to dangerous dogs was different to the one that was in the proposed Bill, and that is why we wanted to carry our own legislation.

HON F R PICARDO:

I am grateful to the hon Member, he has actually confirmed that he said that the Government were the legislators. Well in fact, all of us here are the legislators, the Government as the Executive has the right to move Bills without taking the leave of the House, and if it needed the leave of the House it has got the votes to get that leave of the House when it is necessary. But we must always remember that, this is the legislature not just the Chamber for us to score party political points off each other, and when we have the opportunity of doing something positive like this I think, to use the Chief Minister's own words, social engineering that we should be helping each other with.

HON CHIEF MINISTER:

The hon Member knows that in that other country where they are so much more civilised, it is almost unknown for Private Members Bills to reach the Statute Book, so I would not wish him to give the impression that our Parliament is deficient in that it is difficult for Opposition Members to promote legislation. In the Mother of all Parliaments, as they like to think of themselves, it is almost impossible. Indeed I think they have a raffle once a term to see who has the right to move a Private Members Bill

and then it gets a five minute hearing and gets voted down at the first opportunity. I think I made it clear to the hon Member that if the hon Member makes legislative suggestions, even if we do not want it to be done by them in a particular way, for example in this case for the reasons that I have given, look we are perfectly happy to be prompted and if somebody makes a decent suggestion, gives a decent idea, the Government do not have a reason that pride forbids us from considering simply because somebody else has had the idea and not ourselves, that is not the Government's position.

HON F R PICARDO:

I would now simply add this. Far be it from me to suggest that the country that invented colonialism is the most civilised place in the world, that is far from what I was suggesting. That should not be implied into any of my remarks but I would just finally use his last remarks to remind him also that one of the other issues on which I wish to prompt his Government, is the Police and Criminal Evidence Act of 1984 and whether changes in respect of our Criminal Procedure Ordinance are going to be made to take into account of the parts of that Act which have worked well in the United Kingdom, and in respect of which I know he has told me before the ball is already rolling for the Government to consider what changes it will bring. So I look forward to seeing legislative proposals if any in that respect also.

Question put. The House divided.

For the Ayes: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares
 The Hon F R Picardo
 The Hon L A Randall

For the Noes: The Hon C Beltran
 The Hon Lt-Col E M Britto

The Hon P R Caruana
 The Hon Mrs Y Del Agua
 The Hon J J Holliday
 The Hon Dr B A Linares
 The Hon J J Netto
 The Hon F Vinet
 The Hon R R Rhoda

The motion was defeated.

ADJOURNMENT

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

MR SPEAKER:

I have received notice from the Hon Mr Bossano who wishes to raise a matter of public importance.

HON J J BOSSANO:

As we said in the notice this is not a substantive motion, we are moving a motion on the agenda and which is limited to 40 minutes. Really, the views of both sides of the House have been absolutely clear, they have been made clear in public and outside the House, but this is the first opportunity since the announcement was communicated to the Unions by the Commander British Forces where we can address the issue collectively. The first thing I want to say is that we think that the legislation that the Government have indicated they are willing to bring to the House, assuming it requires primary legislation and not something that is done by regulation, in our view ought to be done as quickly as possible because given that it is intended to be a deterrent and that it is intended that it should be taken into account by prospective bidders for the work, then obviously

once they bid that effect will not be there other than they may change their mind after having bid and withdraw. But I would have thought it was preferable that it should be done very quickly. In that context, since we are adjourning sine die, what I want to offer the Government is the opportunity if they should be in a position where they wish to reconvene the House specifically to deal with that issue without necessarily triggering the whole question of the agenda and Questions and Answers and so on, that we would be quite happy to cooperate in order to do that. Like we considered such an option at the time when we were meeting specifically for the motions on the 300th Anniversary, we agreed that we would not use that occasion as a working session for Opposition driven business.

That was an important element of what I wanted to bring to the notice of the Government in this adjournment motion, other than that I think it is an opportunity to send a very clear message to the workforce and their Unions, in terms of the backing they can get from their elected representatives, and a very clear message to the Ministry of Defence in Gibraltar that continues to put out the version that because the military head of the MOD in Gibraltar has his orders from the Secretary of State for Defence and has to carry them out, the rest of us must all kowtow to that military hierarchy and do likewise. Well the answer is quite simple. I dare say the poor man who has been landed in this job with even less notice of the workforce, wished he had been sent somewhere else and probably has two choices. Either he hands in his resignation or he does as he is told. Those of us who have dealt with people in the military establishment in Gibraltar over many years in terms of industrial problems, know that there on many, many occasions there have been many individuals at quite senior levels who did not agree with the view that was being promoted from London, and who privately made no secret of their disagreement but expected understanding from the Trade Union side that they had really no choice. I think although the message was put in a particularly brusque way by the Commodore when he met the Unions, "this is what is going to happen and I have my orders and I have to carry them out". Effectively that is the way the MOD works, they give orders and

people carry them out. Well our view is that they can give orders to the people that they have got in uniform but they cannot give orders to the people of Gibraltar, and they certainly cannot give orders to the Parliament of Gibraltar or to the Government of Gibraltar. Consequently we in Gibraltar, as a separate country from the United Kingdom, just like we have been saying in relation to the proposal for a Private Members Bill by my hon Colleague, may have different views of what is the right and the wrong way to do things, or what is permissible or not permissible in terms of industrial relations, or what is permissible or not permissible for employers to do with their employees. We then lay down the rules and the parameters within which the MOD has to operate in Gibraltar. Really they only have one ultimate point to which they can go, and that is if they are not prepared to work in Gibraltar as Gibraltar collectively decides through its elected Parliament, then they have to decide whether they want to be in Gibraltar at all. We have to decide whether we want them to be here badly enough to be able to give them a blank cheque to do what they like. I think this is as serious and as important as the issue of the obtaining of equality of wages with the United Kingdom for our workers in the Ministry of Defence, which was not only a matter of economics and of the standard of living of our people, but also a matter of our fight against colonialism where we had people side by side being discriminated against purely on grounds of nationality. Probably, in 1974 when this was going on, they were already in breach of European law by treating two employees differently with different pay and conditions, doing exactly the same type of work. We had a similar issue when they tried, in fact to foist on us the conclusions of the PEIDA Study in the Naval Dockyard closure which clearly were aimed at the parity standard of living of the workers of Gibraltar, has to be brought down or has to be frozen to allow the hinterland to come up because there will be a day when that frontier will open and then the competition means that it will no longer be terrible to have parity with England. Well the Government of Gibraltar continue to be committed to parity with the UK and so does the Opposition, although there are now voices questioning it in Gibraltar. Therefore, I do not think we can permit the Ministry of Defence to actually wriggle out of the

commitment that it has to maintain parity of pay and conditions by this device of substituting itself as an employer by somebody that will come and replace it paying less. Although they may not be able to pay less, to start off with under TUPE it can only be that they will pay less at a later stage or we will be in continual battles every year over pay and conditions in the Ministry of Defence, with the repercussive effects that that would have on the rest of the community. So it is on the basis of sending a very clear message, first to the Government to say that we want to cooperate to bring this proposed legislation as quickly as we can in, we want to test that it will do what it is intended to do. Then if it does not do it then clearly there are other things that we will want to be putting forward. Secondly, to the workers in the MOD and their Unions, that they have got a right to look to this House for support and they can expect to get it, and to the Ministry of Defence and to the Secretary of State for Defence and the British Government, that it seems they enjoy putting themselves in a situation where it sometimes looks as if we are the colonial power and they are the colonials because we constantly defeat them. Since they seem to have a masochistic wish to do this, they are going to have to experience it once again.

HON CHIEF MINISTER:

Yes, as the Leader of the Opposition says, both sides of the House have placed on the record in public, that is to say the Government and the Opposition have placed on the public record their positions on this matter, and the similarities and the differences in those positions are also on the record. There are two aspects to this matter. One is the MOD objective of contractorisation of labour. I call it contractorisation of labour by the way, because for a reason that will become clear in a few moments time, to me this is not a contractorisation of a function or an industry, it is a contractorisation of labour. In respect of that objective the MOD can argue that it is not an illegitimate objective in principle for them to pursue because after all they do the same in the United Kingdom. Well, I have spent many years

explaining to every UK Parliamentary military officer above a certain rank and Minister, that the fact that some policies are reasonable or may be reasonable in the UK, even if they are reasonable in the UK, are not necessarily reasonable in Gibraltar because of a number of situations that vary. For example, if the United Kingdom contractorises the function of gardening and there are 15 gardeners in the military base at Farslane or in Aldershot or somewhere, well the next 15 gardeners are still going to be residents of Aldershot or residents of Farslane. They may be on less good terms of employment in the future but at least the jobs are for the people of the area. In a frontier town economy like Gibraltar, unprotected from European Union free movement rights, sitting next to a part of Europe that has one of the highest unemployment rates at least officially, then it is clear that there is a potential for exportation of jobs which is not the case when they contractorise something in the United Kingdom, because people are not going to come across the Channel every day in order to be a gardener in Aldershot. But they will come across the border to be a gardener in the Commander British Forces house.

So, there are differences which we have constantly urged the MOD to take into account regardless of any view that they may have that the policy objective itself is legitimate because they are doing it in the United Kingdom itself. Indeed, Geoff Hoon, when he was last in Gibraltar, the Secretary of State for Defence, acknowledged this and said that he was quite happy for the necessary efficiency savings to be effected through in-house methods rather than through contractorisation, which is why the Unions were seduced into Operation Pegasus, in which they have been doing precisely that in respect of janitorial and motor transport services. Whilst the Union is negotiating in good faith as steered by the Secretary of State for Defence, a job reduction and in-house efficiency savings package in respect of 300 of its workforce, the MOD suddenly pulls out of a hat in respect of another 300 without any consultation and without any discussion or negotiations with the Union, and that leads me to the second point. Regardless of the justification, the merit or

anything of the MOD's policy objective, it is not legitimate to go about it in this unilateralist form which we have tried to baptise "the done deal" in order to draw parallels with previous done deals. Of course it is not for the MOD in Gibraltar to decide to roll back 100 years of Trade Union practice in Gibraltar. I am not a trade unionist but as a member of the community of Gibraltar I recognise that things are done through the interaction and interface of various social constituents, and that the Trade Unions are the body with which employers, particularly official employers but all employers, negotiate the achievement of whatever objective the employer might have. Look, if it is legitimate for the MOD to simply say "well we have decided that this is what is going to happen, and it is going to happen and the only discussion that I am willing to have with you is to explain to you what I have decided, how it is going to happen and to try to hold your hand through the period of grief to minimise the number of people who have a nervous breakdown", well that is not compatible with the principle that in this community people have different objectives but that there is also a tradition of an attempt to achieve it through negotiation before having resort to any other approach to try and reach it. The MOD have completely ignored that in this case. So that raises the first issue for the Government, which is that the MOD should sit down and negotiate with the Trade Unions to see, as they have been doing in Pegasus, to see how much of their objectives the Trade Unions may be willing to agree to. That is not to say that we accept the principle of contractorisation, we have given the MOD a long list of arguments why the principle of contractorisation should not be adopted by the MOD in Gibraltar, because of the particularities of Gibraltar and all the differences which I have not listed but which I alluded to before. So in the Government's minds there are two wholly separate issues. One is what we think about contractorisation and about the MOD pursuing it as a policy objective. Secondly, regardless of that, this unilateralist done deal approach, this is what there is take it or leave it and it is not negotiable. That is not an acceptable way for the Ministry of Defence to do business and as the hon Members may have read in the press this morning, I am to meet with Geoff Hoon, at my request, next week to remind him of his

statement that he had no ideological obsession or commitment to contractorisation and he was perfectly happy for the necessary efficiency savings to be achieved by in-house means.

So the Government, as all Members of the House will know, have already explained their analysis of what the MOD wishes to do, have already stated that they support fully the Union policy of resistance, both to privatisation and of course to job losses because we must not just think of this as privatisation. After the privatisation will come a significant loss of the jobs that have been privatised, and it should also not be forgotten that even when they have finished privatising the 600 jobs that they want to privatise, and when the contractor has finished after the TUPE 12 month period is over, reducing whatever number of those jobs he wants to reduce, of the remaining 400 or so MOD directly-employed labour the MOD wants to reduce that too through what it calls a process of rejuvenation. When I have said the Government actually does not entirely support the principle of rejuvenation, because it means 50 year olds who are put out into the street at a time when they are least able to find another job. But at least can he confirm that the policy is one of rejuvenation only, which would require to rejuvenate on a one for one basis or not. The answer of course is no, because it is logical, the policy of rejuvenation on a one for one basis costs money it does not save money. So no, this process of rejuvenation is actually euphemism, a smoke screen for redundancies amongst the remaining MOD dell. Therefore all 1100 MOD jobs are in some measure affected or in the air. Three hundred of them through the Pegasus, 300 in janitorial and motor transport through the Pegasus efficiency savings, by the way on which there is no commitment by the MOD. They might still prefer to contractorise them, 300 are affected by the new policy just announced, the infrastructure service provider, that is 600 out of 1100 and the remaining 400 are subject to this rejuvenation coupled with shrinking numbers in the remaining directly-employed labour. So we have no idea, and I explained this yesterday to the Chief of Joint Operations, Air Marshal Sir Glen Torpay, that they are asking Gibraltar to accept principles and we do not know what the implication of accepting those

principles are even now. As a Government or as a Parliament or as a Trade Union, nobody knows how many jobs there will be left in the Base, whether of a directly-employed labour or even under contractorisation. We have no idea how many jobs there will be in the Base 13 months from now, or 13 months after the contractorisation. It could be 1100 if the contractors and the MOD decide not to make anybody redundant, most unlikely, or it could be 200, 300 and the loss could be 800, we have no idea because the MOD will not commit itself to telling the contractor what the minimum number of jobs that they must have. The MOD view is the contractor is free to do the job with as few people as it thinks it can deliver the output to the MOD. In other words, the contractor will decide, no doubt driven by his profit margin which will be directly linked to the number of employees, the contractor will decide how many employees are left of those 600, the contractor will decide whether they have a pension scheme or not. As I said to the Chief of Joint Operations yesterday, the MOD must be living in cloud cuckoo land if it thinks that the Government are going to stand idly by and watch 600 pensionable jobs in Gibraltar be converted into 600 non-pensionable jobs, regardless of the question of privatisation and regardless of the question of job losses. The Government policy is to encourage occupational pensions in the private sector, and the Government obviously would not remain idle watching 600 public sector pensionable jobs, not only transferred to the private sector but transferred on a non-pensionable basis. This is the wholesale and long-term destruction of 60 years worth of social progress and social engineering in Gibraltar, and the MOD cannot think that it can get away with that in a unilateral decision in which it is not willing to negotiate and in which it simply announces what it is going to do.

Mr Speaker, I do not want to expose what the range of legislative measures is that the Government are contemplating, indeed we have not finished contemplating what the legislative measures would be, but the MOD has got to appreciate that the relationship in the past has been based on certain mutual understandings, and that if they unilaterally choose to undermine that historical mutual understanding, then Gibraltar

also is free and there is all sort of manner of exemptions and privileges that the MOD enjoys in Gibraltar because it has been a quid pro quo for the other elements of the relationship, which if they undermine the whole thing is up for review. So there are a raft of areas that the Government are looking at quite apart from the question of social legislation to make sure that there is not injected into Gibraltar an unsustainable degree of destruction of social terms and conditions and social comforts as a result of this action. Indeed, the third limb, industrial action by the Unions, legislative action by the Government and by this House, are the first two limbs of the process in which the MOD will inevitably find themselves embroiled if they do not abandon the unilateralist approach in favour of a consensually negotiated agreement with the Unions, and that is legal action. It is inevitable that there has to be legal action. Personally, I do not know if I am right, but personally, the Government are going to take by the way a legal opinion on this – the Unions are too but the Government also are taking a legal opinion on this from specialist counsel in the United Kingdom. I am not entirely convinced that there is a transfer of undertakings at all in these contractorisation moves, because of course if one privatises a telephone company one is privatising the activity of providing a telephone service to consumers and the privatisation of the workforce is incidental to the fact that one has privatised an undertaking. What is the undertaking that is being privatised here? The work continues to be done, it continues to be done for the same person for the benefit of the Ministry of Defence, not for new shareholders of a privatised telephone company, the work, the gardening, the driving of lorries, continues to be done for the benefit of the Ministry of Defence. Therefore, we need to grasp and consider whether all that is happening here is not the transfer of an undertaking but just the privatisation of the labour that continues to undertake the same work for the benefit of the same ultimate beneficiary, namely the Ministry of Defence. Of course if we can establish that there is no transfer of undertaking here, then they cannot rely on the Transfer of Undertakings Directives and provisions to do any of this. Of course the MOD can continue to try and go it alone if it wants but it will find itself embroiled in a process of industrial unrest,

legislative action and legal action which in any case are going to prevent it from implementing its objectives within any timescale such as they envisage. So they might as well carry on with the operation Pegasus discussions with the Unions and see what they cannot get the Unions to agree to, Government have something to say there too, because of course it is all very well for individual employees to say well I will go on redundancy terms, but those jobs are then lost for future job seekers in this community. Certainly, my advice to the Ministry of Defence has been and will continue to be that they have a better chance of achieving part of their objectives through negotiation and agreement with the Union and its workforce, than it has by the pursuit of this unilateralist approach. Even if there are people in Gibraltar, and there may well be some, there may be people working in the private sector in Gibraltar who may be saying "good for the Ministry of Defence, I mean I have got to earn my living in the private sector, why should not everybody else? Why should not the MOD get maximum value for their money?" Some people may be lamenting the fact that we do not do that in respect of the Gibraltar Government. I do not know how many such people there are but there may be some. The point that I am making is that even those people, even people who think that, must be horrified by the method and the manner in which they have gone about trying to achieve it. Just as there are more than 187 people in Gibraltar that support the principle of joint sovereignty, more than voted yes in the Referendum and I believe that the reason why many people that might otherwise have been in favour of voting no, is because they were horrified at the unilateralist done deal nature of the approach. Therefore I think that the whole of Gibraltar, even those people who may not be opposed to the principle of privatisation, should nevertheless unite and support the Trade Unions and its members in the Ministry of Defence and the Government, and apparently the Opposition given the statements that they have made, in sending the message to the Ministry of Defence that the way that they are trying to achieve their objectives is not acceptable. It is not acceptable. The people of Gibraltar would not expect their Government to change peoples' terms and conditions of employment unilaterally without a negotiation, and are equally

unwilling I believe, to allow the Ministry of Defence to do it either.

The hon Member spoke about private expressions of disagreement by senior people. Well I can tell him that that is already the case in this matter, at the very highest levels and not just in the Ministry of Defence. There are people who are horrified and who have advised against this approach, not just in the Ministry of Defence. But somebody in the Ministry of Defence, I believe in the non uniformed branch of the Ministry of Defence, has decided that this is going to happen and they are now trying to make good their wholly unjustifiable decision, and I think Gibraltar has to make it clear to them that they will not get away with implementing their decision, if there is pain to be had because there is a shortage of money in the Ministry of Defence in the United Kingdom, if there is a general round of spending reviews or spending cuts then of course Gibraltar cannot expect to be exempted from cutbacks that affect the whole of the Ministry of Defence. But there is a question of methodology and there is a question of extent. Even these proposals are much more than our fair share of any dose of spending cuts of which Gibraltar should expect to eat its fair share of the cake. Much greater, this is in effect the entirety of the labour force affected and therefore I believe that there are two ways for the Trade Union movement and the Government to proceed from where we all stand now. One is to accept it and the other is to oppose it. If one opposes it then people have to understand that opposing things have consequences and implications. The Government are always going to be a government and are always going to act like a Government. The Trade Unions will always be trade unions and will always act like trade unions. Certainly the Government are not going to start acting like a trade union, we may support the Trade Unions in their actions as a trade union but here there is a problem which faces Gibraltar as a whole and which every institution in Gibraltar has to play its proper, adequate and appropriate role in collectively trying to ensure that this agenda does not unfold and is not deployed in a way which inevitably will cause huge adverse

consequences, firstly to the individuals involved but secondly also to the economy of Gibraltar at large.

HON C A BRUZON:

As a new Member to the House, does the 40 minutes apply to the amount of time given to the mover or to everyone?

MR SPEAKER:

To everyone.

HON C A BRUZON:

I found offensive the remark made by Adam Ingram in the House of Commons a few days ago, when he stated that the process was irreversible. Now that smacks of colonialism and it reminds me of the attitude that my father used to talk to me about that the British Government had vis a vis Gibraltarians, and sometimes the workforce within the MOD, that we are the natives and they are the masters. So I would ask the Chief Minister when he visits Geoff Hoon on I believe Thursday next week, to ask him what exactly did Adam Ingram mean by saying that the process was irreversible. Are they dictating to us, to our Government, to our Parliament, to our people? I would also like to ask the Chief Minister that when he says that this is not a matter about which we can stand idly by, that he really means it. That if legislation has to be brought to this House, that it will be done promptly and obviously with due whatever the expression is, I do not know what the processes are, but with due process and I would also ask him, as far as he possibly can, is to keep the Opposition informed as to what happens at the meeting with Geoff Hoon, please.

Question put on the adjournment.

Agreed to.

The adjournment of the House sine die was taken at 12.45 pm on Friday 11th March 2005.