

**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 Vasquez 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

MONDAY 18TH OCTOBER 2004

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.

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 disapplication 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.