## REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Second Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Monday 12th January 2004, at 10.00 am.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

**IN ATTENDANCE:**

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

**PRAYER**

Mr Speaker recited the prayer.

**CONFIRMATION OF MINUTES**

The Minutes of the Meeting held on the 28th March 2003, having been circulated to all hon Members, were taken as read, approved and signed by Mr Speaker.

**DOCUMENTS LAID**

The Hon the Chief Minister laid on the Table the financial statements of the Gibraltar Regulatory Authority for the year ended 31st March 2003.

Ordered to lie.

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

Ordered to lie.

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

(1) The Report and accounts of the Gibraltar Heritage Trust for the year ended 31st March 2003.

(2) Consolidated Fund Reallocations – Statement No 13 of 2002/2003.

(3) Supplementary Funding – Statement No 14 of 2002/2003.

(4) The Accounts of the Government of Gibraltar for the year ended 31st March 2002 together with the Report of the Principal Auditor thereon.

Ordered to lie.

**SUSPENSION OF STANDING ORDERS**

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

We were told that there was going to be a motion to suspend Standing Orders in order to take this before the questions because of their urgency but we have not heard anything about the urgency to justify why we need to take them before Question Time and I have to say, I am grateful that we were given an indication because otherwise we would have been concentrating for today's meeting on the Questions rather than looking at these Bills most of which were published over the Christmas period some of which relate to things that were pending implementation many, many years ago and therefore we can understand that there is apparently one which had a deadline because there is a deadline reflected in the Bill which says it will come into effect on the 1st January 2004. I do not know whether that date is going to stay there or whether it will have to be amended in the course of the Committee Stage. The others as far as we can tell do not have a required implementation date like that one has and therefore in the time available to us we have found lots of things in these Bills that give us cause for concern and we would have wanted more time to deal with them so we need to be persuaded not necessarily about starting it now but certainly finishing it all today if that is the Government's intention.

**HON CHIEF MINISTER:**

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

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

Question put. Agreed to.

## BILLS

## FIRST AND SECOND READINGS

**THE MUTUAL LEGAL ASSISTANCE (SCHENGEN CONVENTION) ORDINANCE 2004**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Ordinance to make provision for compliance with articles 48 to 53 of the convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985, be read a first time.

Question put. Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

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

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

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

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

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

Clause 5, deals with service of Schengen process in Gibraltar and enables authorities in Schengen states to serve process on persons in Gibraltar directly thus avoiding the need to transit through Governmental channels. Hon Members may be aware that under the existing regime if a court in one jurisdiction wishes to serve legal process on somebody in Gibraltar they have to use the diplomatic channels rather than direct service. This now enables things to be sent directly to individuals but there are safeguards built into the clause, for example, a translation if it is in a different language for the benefit of the recipient, the clause also confers powers on the Central Authority to serve process or cause process to be served on the person concerned should the issuing State choose to follow that route instead of direct service.

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

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

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

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

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

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

**HON F R PICARDO:**

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

**HON C A BRUZON:**

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

**HON J J BOSSANO:**

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

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

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

I do not know whether some of those drafting issues will be corrected by the amendments that we are going to be given by the Chief Minister at the Committee Stage and I am grateful to him for having told us that the Government will not be seeking to take all the stages in one day because we know that we will be able to do further work on the text that has been reported at the Committee Stage and it may be that some of the things that give us concern now will be clarified. In case the Chief Minister does not understand why it is that in the time available notwithstanding the fact that it says seven days notice in the Standing Orders and the Government are complying with that we are talking about legislation that is complex not simply because we are looking at what is written on the text of the green paper which as the Chief Minister has said by and large is self-evident but because we also think that in looking at this since the explanatory memorandum is that this is implementing articles 48 to 53 of the Convention of 1990 applying the Schengen Agreement we look at articles 48 to 53 to see whether we agree that this is implementing it and the answer is that we do not but it takes more time to do that than simply looking at this and we do not automatically get provided with what is purported to be being implemented unless we actually go searching for it or after it. I know that this is available on the internet but it seems to me that to make the work of this House more efficient and to make the work of the Opposition more likely to be productive it would make more sense that the Legislation Unit that is producing this from the directive or in this case from the Convention of 1990 should have no problem in attaching for circulation to Members the clauses, articles, that it says is being reflected here. In looking at this as an example of the point that I am making and this is obviously a case of the principles of the Bill because if it describes the Bill as an Ordinance to make provision for compliance with article 48 it does not necessarily follow from that that it can do nothing other than comply but if it is doing more than complying then presumably there should be an explanation for it, that is to say, it is providing for things that we cannot find in the sections that it is purported to be the place where the requirement is.

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

articles of the Convention. If indeed it is the case then it is quite obvious that they have almost left it as late as we have to give effect to something that has been around for a very long time. Since the Crime International Co-operation Act 2003, which is a very voluminous document, contains lots of other things besides this we have had some difficulty in the time available in identifying the bits that are here in there because there are obviously other things there which are also EU related, for example, there is a question of disqualification in one Member State if a driving licence is removed in another Member State and that is a very big chunk of the Crime International Co-operation Act 2003 but is not something that applies between Gibraltar and other Member States. For example, in the scope, 3(d) which says that the Ordinance applies to clemency proceedings we found that the United Kingdom legislation applies to clemency proceedings but we have not found a similar reference in the different elements in the actual Schengen Convention in the articles 48 to 53 that process relating to clemency proceedings in any other Member State is something that we are required to take action on here. It may be there but we have not identified it and after all it is not a very big document if there are only three pages to the Schengen Convention and we cannot find it there, in the case of Schengen it is in article 49 it says *"..mutual assistance shall also be provided…"* and then it lists different elements most of which are reflected here but as I say clemency is not mentioned as one of those in article 49 but it is in the United Kingdom, however, this is not applicable between us and the United Kingdom because in the definition it says *"…as State…"* and Schengen State means a state party to the Schengen Convention not being the United Kingdom so, we find it peculiar that we should be requiring in Gibraltar in the scope of this legislation that it should also apply in relation to proceedings dealing with clemency proceedings which is something that the United Kingdom is doing but something that apparently other Member States are not doing or at least that they are not required to do by articles 48 to 53 and therefore one would assume that if there are things in these and indeed in the other Bills before the House which are not strictly required by the text of the articles that are quoted as being in the Schengen Convention which we are implementing at this point in time then those additional elements are matters of Government policy. The Government are free to do it but they require an explanation, it is not sufficient to say "because it says so in Schengen", because it does not say so in Schengen. I think that on that basis what I am signalling is that at the moment depending on what we have to hear at the Committee Stage when we go through this thing in detail and when we then give detailed explanation of the different elements in each clause that give us concern our position will be determined one way or the other as to whether we will be abstaining or voting against.

**HON CHIEF MINISTER:**

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

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

Leader of the Opposition says that the Schengen Agreement is not very long, only three pages and that they cannot find this or that in it, Government are dealing here only with articles 48 to 53 the whole document is a bit more substantial but articles 48 to 53 which I suppose are the only pages that he has with him as the only ones that he needs for this purpose are the ones that deal with mutual legal assistance. The reason why there is much more in the Bill than he can spot in the text of articles 48 to 53 lie in the point that I made in my initial address but which he obviously may not have registered the significance of but as he has got the articles in front of him if I could invite him to focus on article 48 which reads, *"the provisions of this chapter are intended to supplement the European Convention of the 20th April 1959 on Mutual Assistance in Criminal Matters"* as well as in bits that do not need to concern him and then the last words, *".. and to facilitate the implementation of these arrangements…"* in other words much of what the Leader of the Opposition sees in the Bill relates to reflecting the 1959 Convention. So, if I could just paint a picture for the Leader of the Opposition , the source of material in the Mutual Legal Assistance body of jurisprudence starts with the 1959 Convention that is a council of Europe Convention. There is then the 2000 Convention of Mutual Legal Assistance which is a Schengen Convention. The 2000 one only applies as between Schengen States and there is a 2001 protocol to the 2000 Convention. So, the reason why the Bill has things in it that he cannot find in articles 48 to 53 is because article 48 incorporates by reference the 1959 Convention. Let me say to the Leader of the Opposition that there are different views between Gibraltar and London as to the question whether complying with article 48, I think it is in the hon Member's interest to hear this because it is quite a technical point, there are conflicting views as between London and Gibraltar as between compliance with article 48 which I have just read to him require or do not require the 1959 Convention to be extended to Gibraltar and reflected in our legislation for implementation. Do the words, *"…the provisions of this Chapter are intended to supplement the 1959 Convention and to facilitate the implementation of these arrangements…"* do those words amount to an obligation based on a presumption that the 1959 Convention already applies to us or does it leave open the possibility that we can pick out of the 59 Convention only those bits of it which are required in order to make sense of the Schengen five articles that we have in front of us. Our view is the second and in fact the first piece of legislation that we drafted reflected that. The United Kingdom and the other Member States of the Commission have taken the view that that is not a proper compliance with articles 48 to 53 because they say articles 48 to 53 presuppose that the 1959 Convention applies and if it does not then there is an implied obligation to reflect it in our laws. Then there is a sub-point to that and that is even if that is true, even if we are wrong and they are all right does it require the formal extension of the Convention or can we just simply mirror its provisions in our legislation as a matter of local legislation without it being accompanied by a formal extension of the treaty to Gibraltar? Again the view appears to be although I do not think the ultimate Court of Appeal has expressed its view on the matter yet that it may require a formal extension and not just mirroring the provisions of the 1959 Convention. So, this Bill mirrors the provision of the 1959 Convention on our view of things, the 1959 Convention has not yet been extended to Gibraltar in fact the 1959 Convention cannot be extended to Gibraltar because it is territorial scope clause allows it to be extended to Dependent and Overseas Territories only by bi-lateral agreement between the UK and other contracting states and does not have the possibility in it or by reference to the Vienna Convention on the interpretation and extension of international agreements that it be extended multi-laterally to Overseas and Dependent Territories of State party signatories.

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

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

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

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

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

The Leader of the Opposition is right in believing that the communications, the formal contact between Competent Authorities in this Bill being an EU measure is through the post box. We can have a debate if he likes about the relative merits and demerits of the post boxing arrangements of 2001 everytime we debate a piece of legislative measure in which there is a Competent Authority if he likes, I would have thought that that was quite futile having debated at length those arrangements and indeed let me say if I can just remind the hon Member that at the time of all those arrangements whilst he was critical of the identity cards agreement I do not recall him being critical at all of the Competent Authority arrangements which were struck at the same time. The Leader of the Opposition may have developed a dislike for that arrangement since. He would be entirely entitled of that view, the Government remain of that view that it represented an excellent compromise of the problems that Gibraltar was facing and in no sense do we regret therefore that the Competent Authority in this particular piece of legislation should be subject to the Competent Arrangements as well.

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

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

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

Finally, I think that the Hon Mr Picardo raised a question about whether the Attorney Generalmight feel uncomfortable at being referred to as a Judicial Authority. Well, the point is really just one of nomenclature. Central Authority if it is not going to be the Judicial Authorities themselves are deemed to be Judicial Authorities. So if one chooses to have a Central Authority which is not a Judicial Authority in the strict sense of the word by which I understand he means judges and people who work within the court system as opposed to people who work with the court system, if one is going to have a Central Authority as we are entirely entitled to have which is not a Judicial Authority it is deemed to be a Judicial Authority for the purposes of the Schengen Convention and the 1959 Mutual Legal Assistance Convention. It will not be necessary to have that clause 4 in our Bill if our Central Authority was, for example, going to be the courts but it is not thought appropriate given the administrative burden that attaches to administering this legislation to saddle our courts with this, so they will be left to deal with the judicial aspects of it and the Attorney General will provide the channels of communication parts of it. I do not think it has the effect of mixing up the roles of the Attorney General with the Judiciary although I accept that if one deems that somebody is deemed to be a Judicial Authority then one can have a semantic discussion if one likes but it does not make the Attorney General a Judge in the context of the local administration of justice in any sense.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

It says Legal Authority.

**HON CHIEF MINISTER:**

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

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

**HON J J BOSSANO:**

This is from the Internet.

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

Question put. The House voted.

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

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

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

**THE DATA PROTECTION ORDINANCE 2004**

**HON CHIEF MINISTER:**

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

implement Schengen Convention Articles 126 to 130 in relation to data protection, be read a first time.

Question put. Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

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

The Schengen Convention requires that we achieve a level of protection of personal data equal to that provided for in the 1981 Council of Europe Convention on automatic processing of personal data. There is an 81 Council of Europe Convention which applies only to automatic processing of personal data, the directive is not limited to automatic, so that is one of the main differences of doing both that the Schengen Convention would only have required us to do things relating to automatic processing of data because that is all that the 81 Council of Europe convention deals with and it is only the 81 Council of Europe Convention that the Schengen obligations actually refer to. The Directive 95/46 amplifies that Convention as I have said in particular by requiring data protection in respect of non-automatic data. The Bill thus covers automatic and non-automatic data both civil and criminal data and applies both to the processing of personal data in respect of Gibraltar establishments and to its transfer abroad. The Bill deals with how data is collected, kept and processed in Gibraltar and then deals with the circumstances in which that data can be exported from Gibraltar and how, to what safeguards, and to whom it can be exported from Gibraltar.

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

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

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

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

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

Section 7, then sets out criteria which must be satisfied before data may be processed. Section (8) provides more detailed criteria which must be satisfied before sensitive data can be processed and the difference between personal data and sensitive personal data, the latter of which requiring a higher level of criteria before it can be processed, the difference relates to the fact that sensitive data is said to be data concerning racial or ethnic origin, political opinions or criminal convictions of the *"data subject"*. The *"data subject"* being the person in respect of whom the data is held.

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

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

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

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

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

Anyone who feels that their rights under the Data Protection Ordinance have been breached can complain to the *"Data Protection Commissioner"* . The Bill contains specific provisions relating to particular types and uses of the data thus section 19 contains provisions as to criminal and tax matters and amongst other things limits the right of access to data kept for the purposes of investigating an offence. There are some exclusions and exemptions from the regime both as to the prohibition of processing data by the *"Data Controller"* and also the right of access by the *"data subject"* is also curtailed in certain specified circumstances and conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Part VII provides for judicial remedies, liabilities and sanctions. Section 32 provides a right of appeal to the courts from decisions of the Commissioner. This is another area that Government are amending. In the Bill the appeal from the decision of the Commissioner is directly to the Supreme Court. That is going to be changed by an amendment that Government are going to propose to the Magistrates' Court so that it should be easier, quicker and cheaper for data subjects with a right of appeal on a point of law to the Supreme Court. On reflection Government have formed a view that rights that can only be asserted in the Supreme Court disincentivise ordinary citizens from accessing the courts whereas access to the Magistrates' Court is thought to be much less of a big deal for ordinary individual citizens. The only judicial access which is going to be direct to the Supreme Court is when the Commissioner makes a Compensation Order. If the Commissioner makes a Compensation Order and either party are dissatisfied with that an appeal against a Compensation Order should go, and when the hon Members see the amendments, the amendments make them go directly to the Supreme Court, everything else will go to the Magistrates' Court with appeals on points of law to the Supreme Court. The courts may impose a maximum penalty for criminal offences under the Ordinance. Criminal offences are not to be confused with Compensation Orders, criminal offences are when somebody is prosecuted for the commission of a criminal offence established by the Ordinance to a fine not exceeding level 5. Amendments are being introduced so that that should be level 3 in the case of the Magistrates' Court and level 5 on indictment in the case of the Supreme Court. When the offence is committed by a company or a legal person then officers of that company may also be criminally liable.

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

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

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

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

**HON DR J J GARCIA:**

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

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

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

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

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

In relation to the definition of a *"filing system"* this is defined one way in the Bill and slightly differently again in the directive. The Bill defines it as meaning "any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis such that specific information relating to a particular person is readily available." It would seem from a straight reading that the actual definition provided for in the Bill is narrower than the definition provided for in the directive.

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

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

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

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

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

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

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

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

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

**HON J J BOSSANO:**

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

**HON F R PICARDO:**

Mr Speaker, just a short intervention at this stage in relation to this Bill. Can I just refer the Chief Minister to the definition of right to privacy included in the Bill which relates to article 8 of the European Convention of Human Rights. From the Opposition's view it is a welcome development that we should be incorporating parts of that Convention into our law. I would ask the Chief Minister whether consideration can also be given to make a reference to section 7 of our Constitution which deals with the right to privacy also in relation to property, I am conscious of the fact that both are not identical. Can I also say that the definition of right to privacy refers only to the European Convention of Human Rights whilst in the Bill that we will be taking later there is a much more extensive definition of that Convention which is a much fuller definition and which enables identification of it to be more precisely provided for and to ask that perhaps consideration should be given to including that fuller definition of the Convention in this definition section.

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

No. I was going to give the Leader of the Opposition an Internet reference where he could find the 1981 Convention but I will give him a copy directly. I am grateful for the helpful and constructive comments of the Hon Dr Garcia in relation to his desire that this Bill should be effective and unobtrusive as possible on small businesses. There is no getting away from it and in that point in his concern about the effects on small businesses lies the answer to his other question about why it has taken us so long to do it. As I have said before in this House the Government have done an awful amount of work over several years indeed from about 1988 onwards there has been some informal discussion with the Chairperson of the Federation of Small Businesses who offered to help the Government because the concerns that I was expressing to her about how this would impact on small businesses, she said had also bothered the Federation of Small Businesses in the UK and that they had expressed their views to the British Government. The problem is that the UK Government's legislation on data protection is copper bottomed, it goes beyond the requirements of the directives. Our economy is made up almost entirely of small businesses almost every company in Gibraltar would be regarded as a small business in any other country in the European Community so we have to be especially careful about this legislation and not just be concerned about how it impacts on small businesses because the phrase *"…how it impacts on small businesses in Gibraltar…"* means how it impacts on the economy given that 99.9 per cent of our economy is comprised of companies that would fall in the definition of small businesses and it took us a long, long time, eventually we rejected it and started again to try and modify the UK copper bottomed version to try and soften it. At some point in time maybe a year ago we abandoned that process in favour of starting from scratch again ourselves so that we could be sure that we were minimising the impact. In other words complying with the Human Rights aspects of data protection fully as provided for in the directive but not imposing on business a burden any greater than was necessary to achieve that to comply with our international obligations in the area of data protection and it has been quite a long and laborious process for those very reasons. There are transitional provisions to come which are not yet reflected in the Bill. The Bill simply says that transitional provisions may be made by regulations et cetera. If the hon Member looks at the directive he will see that in respect of automatically processed information which is already being processed then one has got three years from the date of coming into force of the national provisions adopting the directive so even in respect of automatically processed information the directive recognises, this is not something that businesses can be expected to comply with overnight so there will be a three year transition period in respect of that and in respect of manually held information, data already held in manual filing systems it is about 12 years from that date. There is a slight contradiction which we are trying to clarify here and which we will clarify before we pass the regulations. On this 12 year point If the hon Member looks at recital 69 halfway through it says, *"…whereas Member States should be allowed a period of not more than three years from the entry into force of the national measures transposing this directive in which to apply such new*

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

As I think the hon Member knows this legislation does not deal with computer hacking and I suppose he was just taking the opportunity to ask a question on one of his favourite topics namely are the Government intending to bring legislation on computer hacking et cetera. I cannot tell the hon Member whether Government are or are not, there is no policy not to bring in the legislation but whether there is anybody somewhere in Government working on that I cannot say and Government can certainly look at that although it is not being looked at in connection with this data protection legislation. I am just being reminded that in certain circumstances the security provisions in section 12 may impact on some aspects of what the hon Member might think of as computer hacking because there are restraints there about what people who gain access to the information in an unauthorised way what they in turn can or cannot do with it but it is not what the hon Member means by the principle legislation that he is describing.

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

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

Question put. Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

**THE EUROPEAN ARREST WARRANT ORDINANCE 2004**

**HON CHIEF MINISTER:**

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

Question put. Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

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

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

The dual criminality requirement and this is an important aspect of the whole principle that is to say that an offence for which somebody's surrender is sought should also be an offence in the country from which transfer is requested will not apply to a list of 32 offences listed in the framework decision and they are listed in Schedule 2 of the Bill. The general rule is that there has to be dual criminality but when the offence for which one is sought is one of the one's listed in the Schedule at the back of the Bill there is no need for dual criminality. It matters not that the offence is not an offence or that the offence is differently structured in the country from which the surrender is sought and therefore hon members will see that that list is limited to 32 of the most serious types of offences. In order for dual criminality for one of these things to be waived for one of these offences it has to be an offence in the requesting state which carries a penalty of at least three years imprisonment. So, although there is no dual criminality it nevertheless has to be one punishable by at least three years imprisonment. As I have said, under this regime it is the Judicial Authority exclusively who determines whether surrender takes place having regard only to the safeguards contained in the framework decision and now in the Bill and the other aspect of the regime is that it shortens the deadlines for the whole process so now really the whole question of surrender can happen much more quickly than extradition would have been possible before. The Central Authority whose role is limited initially just to an administrative verification of the request will arrange to have the European Arrest Warrant executed.

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

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

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

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

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

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

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

Sections 22 and 23 deal with the situation where there is a conflict, for example, two EU States might be seeking the same person or one EU State and one non EU State might be seeking the same person, or an EU State or a third country may be seeking a person but the Authorities in Gibraltar want to prosecute that person domestically and these sections provide for how those situations are to be resolved basically it leaves the judgment to the court taking into account the relative factors and circumstances of each competing request set out there, for example, at 22 sub-section (2) in the case where the conflict is between Member States. When the conflict is between a Member State and a third country that is dealt with in section 23 and again there are a series of criteria set out there for the court to take into consideration. The only tribunal that always gets priority for its request from any other request is in section 23 (3) sub-section 3 when one of the competing requestors is the International Criminal Court. When the International Criminal Court wants a person then they get priority but if the Central Authority receives a European Arrest Warrant in respect of a person and a request is received from the ICC for the arrest or surrender of this person the Central Authority shall where an order has not yet been made under section 12 or 13 in relation to that person so inform the Magistrates' Court and the Magistrates' Court shall not perform functions under this Ordinance in relation to the European Arrest Warrant et cetera, et cetera.

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

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

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

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

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

**HON F R PICARDO:**

Mr Speaker, can I start by thanking the Chief Minister for his reference to the new sections 18 and 19 that will be introduced. I will not say my piece on those because I think we were both going along the same lines. In this piece of legislation we see a Central Authority designated who is the Chief Secretary because in relation to all matters save those which relate to internal security or defence His Excellency the Governor who is designated under section 5 as a Central Authority will delegate all his powers to the Chief Secretary. The Chief Minister is right to say that the framework of this directive is to ensure that extradition requests go from Judicial Authority to Judicial Authority and the framework decision in effect says that we can be free to appoint Central Authorities who can assist logistically Judicial Authorities, the Judicial Authority most concerned in this case being the Magistrates' Court, but the Opposition's view is that the Chief Secretary is not the appropriate delegee or donee of the Governor's powers in relation to this matter and that an appropriate officer in those respects might have been more appropriately the Attorney General or the Commissioner of Police. I think that is a particularly important point because we are dealing here with in effect criminal matters and the whole point as the Chief Minister has referred earlier is to take the political out of the extradition and I am not for one moment suggesting that the Chief Secretary is a political officer of the Government but he is within the administrative political set-up of the Government whilst the position of the Attorney General and the position of the Commissioner of Police I believe are more inviolent. That is the first point, there are a lot of points which we will have to take at Committee Stage because the Bill as presently drafted as a result of grammatical errors et cetera seems to make little sense in some particular instances, for example, section 8 (11) makes a reference to an undertaking being a statement under section 9 (3) (b) when clearly it is not and as the Chief Minister has said in moving the Bill the types of undertakings provided are different and they are already provided for and it is a question of simply inserting the right cross reference but something like that can obviously make the Bill unintelligible.

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

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

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

In section 11 (3) at (b) there is a reference to a person under the age of 21 years of age being remanded in custody not in the prison but to a remand institution and I would also flag the point that we do not have remand institutions in Gibraltar and that either we are going to create such institutions or we have to make separate provision because the provisions of section 11 (3) are in imperative terms it says that the Magistrate *"shall"* in the event that the individual is less than 21 years old be remanded to a remand institution. So, we need to take care on how we deal with that. I want to jump if possible to the other points that I want to make in relation to sections 11, 12 and 13 to refer the House to section 14 and section 20. Section 14 says that the Central Authority may direct that the person remanded in custody under this Ordinance or committed to a prison of remand institution under sections 11 or 12 be removed to any other place if the Central Authority considers that in the interest of the person he should be moved. Section 20 specifically provides that a person remanded in custody under this Ordinance may be detained in a prison or if he is not more than 21 years of age in such a place as the Central Authority may specify and I am concerned that there should be no conflict between what the Magistrate *"shall do"* and what "*he is"* required to do and what the Central Authority "*may do"* and there is provision here in this legislation as drafted for the Central Authority who is in all instances the Chief Secretary to overrule the decision of the Magistrate as to where he has placed the individual because those rights of the Central Authority to move the prisoner are not limited to instances where the prisoner may not yet have passed into the hands of the Judicial Authority which is the Magistrates' Court and I think that is an important point to flag up.

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

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

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

At section 27 and not labouring the point that I made earlier in relation to the European Convention of Human Rights but a totally separate point, I would say this, that in reference at 27 (1) (a) to the European convention of Human Rights is in different terms to the reference to that same convention in the legislation that we were dealing with a moment ago and I think that from the point of view of uniformity we should be referring to that particular convention in the same way throughout our body of law but just in particular the first sentence or the first line of that sub-section where the surrender of the prisoner will be incompatible with Gibraltar's obligations under the Convention for the Protection of Human Rights. With respect I do not think that that is sufficiently clear, who is Gibraltar there? Gibraltar is not a signatory to the European Convention of Human Rights, HMG is a signatory to that convention, yes, the convention is extended to Gibraltar but I do not think that it is sufficiently clear to simply say *"Gibraltar's obligations"*. It is a different point to the one that I took earlier. The Chief Minister has referred us to this question of the duality which is also set out in the explanatory memorandum. The duality required for offences when there is to be an extradition. I think there is actually a provision here which drives a coach and horses through that principle of duality and that is contained in section 28 (2). I agree that in all other cases duality is required unless we are dealing with the heinous type of offence set out in schedule 2 non of which any of us could have any objection to an individual being extradited over but in 28 (2) the surrender of a person to an issuing state under the Ordinance cannot be refused on the grounds that in relation to a revenue offence, and revenue offence is defined in the next sub-section which is sub-section 3, no tax or duty of the kind to which the offence relates is imposed in Gibraltar or the rules relating to taxes, duties, customs or exchange controls that apply in the issuing state differ in nature from the rules that apply in Gibraltar to taxes, duties, customs or exchange control. In fact that language is almost identical to the language reference to which is made as a fiscal offence in the mutual assistance directive that we have looked at already and I accept that it comes from the framework directive but I think it is important to highlight that the principle of duality does not apply to tax offences and therefore we could find Gibraltarians because we are not necessarily only dealing with fugitive offenders from another state, Gibraltarians or other nationals practising in Gibraltar or presently in Gibraltar extradited in relation to tax offences of the sort referred to in section 28 (2) and (3) that I think is something which would cause serious concern in the Finance Centre.

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

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

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

I agree entirely.

**HON J J BOSSANO:**

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

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

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

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

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

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

Article 33 makes a specific reference to the provisions concerning Austria and Gibraltar and in article 33 (2) it says, *"…this framework decision shall apply to Gibraltar."* That positive inclusion of its application to Gibraltar raises the question of *"Does that imply that there is a requirement to specifically mention us when things apply to us and that if we are not mentioned it follows that they do not apply and if not why is it in this one? Why is it that in this particular one there is a specific reference to it applying to Gibraltar?"* The United Kingdom has to inform the Commission or the Council of the application in Gibraltar of the legislation and of the Authorities that are being appointed and we would like to know whether this is already happening, has happened and if not when it is intended that it should happen because presumably it is only after notification takes place that the mechanism can start to apply, can actually be made to do the job that it is intended to do and given that this was supposed to have been already the case on the 1st January this year we do not know whether that means that the necessary institutions of the European union were informed that as from the 1st January there would be in place these Authorities being in a position to receive requests but it would seem to suggest that from the way that this is worded and the fact that it is there. The other thing is that the request and the transmission of surrender procedures under article 9 is something that the issuing Judicial Authority not the Central Authority may decide to place on the Schengen information system of which we are excluded so, presumably, uniquely out of the European Union the only Judicial Authority that is not able to avail themselves of the facility for pursuing somebody that has committed a crime in Gibraltar by placing an alert on the information system are the authorities here and we would like to know whether our reading of that is correct or whether the United Kingdom is in a position to do it on our behalf notwithstanding the fact that we are not on that system. Equally since we are not in the system if somebody was issuing an alert presumably we would not get to hear of it and we would not be able to do anything to help unless we had been directly notified and I do not know whether there is an informal system in place that enables us to do it because unacceptable as it is that we should have been left out at the end of the day from a practical point of view it is better if some way for the United Kingdom to inform the Royal Gibraltar Police or Her Majesty's Attorney General of the wanted list as it were on the information system or what is there it would be preferable to have that because we do not particularly want people roaming in Gibraltar who have committed serious crimes elsewhere simply because we do not have access to that information, even though we should in our view, but it is better that we should know about it (a) so that we can be of help to others and (b) because we do not particularly want these people with potential criminal records capable of committing crimes here without our knowledge. That is or view on the general principles of the Bill and we will hear what the Government have to say on the points that have been raised.

**HON CHIEF MINISTER:**

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

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

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

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

I do not know what the Court of Human Rights has found on many instances, the fact of the matter is that what I am describing to him is to this day the law in the United Kingdom where for 300 years and still decisions as to extradition have had a very large measure of executive content and ultimately it is in the hands of the Minister, both the initiation and the final extradition. I do not want anybody listening to me to think that this is because the government are trying to justify which it easily could adopting for its Ministers the same powers as Ministers exercise in the United Kingdom and the reason why that does not happen here has nothing to do with the things that appear to worry the hon Member. It is just that extradition in Gibraltar has never been regarded as a defined domestic matter that is why in Gibraltar it is not in the hands of a Minister and not because it is………..yes, the Leader of the Opposition cannot now pretend that he did not say what he said the whole essence of his complaint was that it should be distance, or does he not remember saying, the hon Member must be careful that he does not get a reputation on his first meeting for having such a short memory. The hon Member said that it was important to distance this function from the political government and although he was not casting aspersions on the political control exercised over the Chief Secretary he thought it was better that it should be the Attorney General or at the very least the Commissioner of Police because he thought that those two were less amenable to political nobbling by the Government of the day. The hon Member may now wish to wiggle but that was to any……………

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

rational, intelligent, objective listener to the point that he was making would have inescapably come to the conclusion that the essence of his point was the view that the function should be distanced from the political government and he actually said it, *"I am not casting aspersions on the political control…."* words to that effect, this is what he said for him now to try and pretend that that is not what he said simply because I have pointed out to him that in the United Kingdom there is even closer connection between the political process and these decisions adhere is just trying to change the course of recent history because he has suddenly realised that his description of it is not sustainable. The point is nothing to do whether it is right or wrong for these functions to be closer or less close to the political process. In the United Kingdom it is the political process, in Gibraltar it has never been the political process and therefore Ministers not because it is wrong in terms of the administration of justice but because in Gibraltar administration of justice including extradition has Constitutionally always vested in His Excellency the Governor and therefore the Competent Authority in Gibraltar, the Central Authority in Gibraltar is not as he erroneously opened his address by saying, *"The Chief Secretary is the Central Authority designated."* It is not. It specifically says, *"The Central Authority for the purposes of this ordinance shall be the Governor."* The Governor is the Central Authority for all purposes but the Governor is entitled to delegate to the Chief Secretary his powers under subsection 1 which happen to be limited more or less to the administrative aspects of it because the judicial aspects some of which in the UK are exercised by Ministers but we are not talking about those because the judicial aspects under the European Arrest Warrant is exercised exclusively by the courts and by the judges. This dovetails to the points made by the Leader of the Opposition. Regardless whether he is right and I am not in a position without further research to categorically say so whether the use of the word "*may*" means that there need not be any or whether there can be more than one but assuming that the hon Member is right for the purposes of the deis isbate yes, there is a view on the part of the Government that the Magistrates' Court lacks the administrative resources and experience in dealing with international correspondence and the administration of international obligations of this sort and that the Magistrates' Clerk and Court should indeed be supported by the Chief Secretary and his office when it comes to the administration of these matters. In the UK I cannot tell the hon Member who the Central Authorities are but even if it were to be the courts in the UK I am not suggesting that they were but somebody has got to have this function. If it is not a Central Authority then the correspondence et cetera I suppose will be done by a court system that is administratively resourced to a much higher standard. I will try to find out for the hon Members before the Committee Stage as a matter of interest how the United Kingdom have done this given that the views that Opposition Members have expressed about the importance of Government retaining the choice of doing things differently will not be compelling therefore on him or us as to whether it would not be the better for us to do it in another way. We believe that it is desirable that there should be a Central Authority in Gibraltar and that the Central Authority should be the Governor given that this is a Constitutional area where the Governor has always operated and that it is entirely right and proper that the Governor shall delegate to the Chief Secretary his powers when it does not involve a matter of internal security or defence which is what this says.

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

I would just like to think about it a bit more and take some more detailed advice but from my knowledge of the provisions I do not think that there is any difficulty in reducing it to 24 hours precisely given that because we are not in the alert system where we could have arrested without a warrant necessarily there has to be a warrant in Gibraltar before one can arrest in original or in facsimile copy. We will look at that with a view to favourable inclusion of an amendment. I do not know what the answer is to the hon Member's point about whether things like section 9 (3) are in addition to, I suppose and I will check it now that he has raised it, but I had assumed that this Bill does not derogate from any established procedural systems so that this will be in addition to but just so that both our minds are put at rest I will have the matter checked. On the question of the remand institution actually this is a point that I had spotted and I did not take with the draftsman because I assumed that the remand wing of the Moorish Castle prison would be sufficiently identifiable as a remand institution but we had better just check that the remand wing actually operates as a separate entity with different rules et cetera and if does not then just to be on the safe side perhaps have a reference to prison on remand terms or define it as such although I fear that the directives specifically says in a remand institution. So depending on what we conclude when we look into it we will see the extent to which we may actually have a problem there or not. Grateful for him for pointing out some of these apparent contradictions in this section. I am not sure although I will look at it in detail that there is a conflict between section 20 and section 14 but as I say I will look at it in a more detained fashion. In Gibraltar courts can only confine people in prisons. Courts, judges, condemn or remand people to prison, where they are held in custody. I suppose this is then almost an executive decision in the sense that once somebody is entrusted to the custody of the state so to speak the particular institution save the difference in remand and post conviction facilities is no longer a judicial matter. The court is concerned with should he be in custody or not and for how long but not where he is held in custody. I am not sure that in England if a judge says that "I condemn you to five years imprisonment in Pentonville Prison" I suppose it is just sentence to imprisonment and then the executive, the prison's administration decides in what particular institution somebody is held. I had read section 14 but I will have it looked into, not as there being any conflict between any proper exercise of power by a court and any improper overriding of that by any administrative department but rather that almost for the safety of the individual. If somebody is incarcerated by the state pursuant to a judicial order if it is thought necessary to remove him to some other place that is what section 14 is about because it has got to be in the interests of the person, it is necessary.

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

That is what this is for.

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

Question put. The House voted.

For the Ayes:

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

Abstained:

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

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

The House recessed at 2.15 pm.

The House resumed at 3.35 pm,

**THE DRUGS (MISUSE)(AMENDMENT) ORDINANCE 2004**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Ordinance to amend the Drugs (Misuse) Ordinance to comply with the provisions of the Schengen Convention, be read a first time.

Question put. Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. As hon Members will have seen this is a comparatively

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

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

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

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

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

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

**HON F R PICARDO:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

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

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

Question put. Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

**ANSWERS TO QUESTIONS**

The House recessed at 5.40 pm.

The House recessed at 5.55 pm.

Answers to Questions continued.

The House recessed at 7.55 pm

The House resumed at 8.10 pm.

Answers to Questions continued.

**ADJOURNMENT**

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

Question put. Agreed to.

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

## TUESDAY 13TH JANUARY 2004

The House resumed at 10.10 am.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

**ABSENT:**

The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

**IN ATTENDANCE:**

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

**ANSWERS TO QUESTIONS (CONTINUED)**

The House recessed at 12.15 pm

The House resumed at 12.25 pm.

Answers to Questions continued.

The House recessed at 1.45 pm.

The House resumed at 5.00 pm.

Answers to Questions continued.

The House recessed at 7.10 pm.

The House resumed at 7.25 pm.

Answers to Questions continued.

The House recessed at 9.30 pm.

The House resumed at 9.40 pm.

**ADJOURNMENT**

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

Question put. Agreed to.

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

## WEDNESDAY 14TH JANUARY 2004

The House resumed at 3.35 pm.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

**ABSENT:**

The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

**IN ATTENDANCE:**

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

**ANSWERS TO QUESTIONS (CONTINUED)**

The House recessed at 4.50 pm.

The House resumed at 5.00 pm.

Answers to Questions continued.

The House recessed at 5.20 pm.

The House resumed at 5.35 pm.

Answers to Questions continued.

The House recessed at 7.40 pm.

The House resumed at 7.50 pm.

Answers to Questions continued.

The House recessed at 10.00 pm.

The House resumed at 10.10 pm.

Answers to Questions continued.

**ADJOURNMENT**

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

Question put. Agreed to.

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

**THURSDAY 15TH JANUARY 2004**

The House resumed at 9.15 am.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

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

**ABSENT:**

The Hon R R Rhoda QC - Attorney General
The Hon T J Bristow - Financial and Development Secretary

**IN ATTENDANCE:**

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

**ANSWERS TO QUESTIONS (CONTINUED)**

The House recessed at 11.15 am.

The House resumed at 11.20 am.

Answers to Questions continued.

**ADJOURNMENT**

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

Question put. Agreed to.

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

**FRIDAY 16TH JANUARY 2004**

The House resumed at 9.40 am.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

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

**IN ATTENDANCE:**

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

**SUSPENSION OF STANDING ORDERS**

**HON CHIEF MINISTER:**

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Committee Stage and Third Reading of Bills.

Question put. Agreed to.

## COMMITTEE STAGE

**HON ATTORNEY GENERAL:**

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

(1) The Mutual Legal Assistance (Schengen Convention) Bill 2004;

(2) The Data Protection Bill 2004;

(3) The European Arrest Warrant Bill 2004;

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

**THE MUTUAL LEGAL ASSISTANCE (SCHENGEN CONVENTION) BILL 2004**

**Clause 1**

**HON CHIEF MINISTER:**

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

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

are no obligations as between Gibraltar and the United Kingdom arising from this nature. These are cross-border obligations and as Gibraltar and the UK are not separate Member States whatever will be the bilateral regime and in a sense this is just an example of the views that we expressed yesterday in answer to Questions about the Government's intentions on the taxation of Savings Directive an extension of it to the United Kingdom, whatever may be the regime between Gibraltar and the UK and vice versa, whatever might be the bilateral relationship on any matter it cannot be sourced in an EU obligation. For that reason and because this legislation was only dealing with obligations the Bill as published would not have extended to the United Kingdom and we would have been left with a situation which would have been remedied in due course whereby Gibraltar could assist through mutual legal assistance every other country in Europe but not the United Kingdom which leaving aside the question of obligations and bi-lateral arrangements of a consensual type is at first sight odd that one can co-operate on terrorism and serious offences with Germany, France and Spain as a matter of obligation but that with the United Kingdom one cannot do it. Since this Bill has been taken in this House the United Kingdom has indicated that it would wish that there were arrangements between Gibraltar and the United Kingdom on mutual legal assistance on the same basis as between other Schengen States. In principle the Government have no difficulty with there being mutually legal assistance with the United Kingdom. If the decision is made that it is in our interest to have those on the same basis as the Schengen arrangements that is fine too, so long as it has been made clear and hence the language of the Long Title that in the case of the United Kingdom any such arrangements would not be in implementation of an EU obligation but rather by reference to some bilateral arrangement outside the scope of binding international obligations. In the short time that we have had since the United Kingdom invited us to take this view we have not had the opportunity to consider all the possible implications of extending this mutual legal assistance to the United Kingdom. Indeed one point that immediately arises although I hope to give him a significant degree of comfort on it when we get to that point is the point raised by the Hon Mr Picardo at the second reading when he expressed concern that the clause that speaks of fiscal offences that that might be damaging to the Finance Centre. Given that his perfectly proper observations have been reported already in the international press (widely reported in Spain as evidence that there is grave concern for the survival of the Finance Centre in Gibraltar) which I accept is a complete distortion and abuse of the words that the hon Member uttered, it really explains why we have to do these things using the least possible dramatic language but the points have to be made and the issues have got to be discussed, I accept that. Let us say that the Schengen Provisions of the Mutual Legal Assistance did indeed contain something that were damaging to the Finance Centre, one thing is to be stuck with that with countries in respect one has an international legal obligation where one has no choice and a quite different thing is to gratuitously accept the same burden vis a vis the United Kingdom as a matter of choice when it is not a matter of international legal obligation therefore adding a fifteenth problem for our Finance Centre rather than confirming it to fourteen. So, it is because I think we need to carefully consider also in consultation with the Finance Centre whether they regard any of the provisions of this regime as being detrimental to them if they were extended to the United Kingdom voluntarily that I have not introduced into the Bill the simple device of extending the whole thing to the United Kingdom simply by defining State and Schengen States. I could have just excluded the words "not being the United Kingdom". If the Hon Members look on page 2 of the annotated Bill there is a definition of *"state"* and *"Schengen State"* the very last definition in clause 2. If we simply deleted the words *"..not being the United Kingdom…"* then this Bill would apply to the United Kingdom in full because the United Kingdom is a State Party to the Schengen Convention. The Bill as published read *"…State and Schengen State mean a State Party to the Schengen Convention not being the United Kingdom…"* So, if we wanted to include here and now the application of this Bill to the United Kingdom we could do it just by deleting the words, *"…not being the United Kingdom….."* if on the other hand we want to take a little bit longer to decide whether there is any downside worth

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

**HON J J BOSSANO:**

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

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

**HON CHIEF MINISTER:**

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

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

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

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

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

**Clause 2**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

Yes.

**HON CHIEF MINISTER:**

That has been excluded now.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

Why it has been excluded from the Bill? I thought the Leader of the Opposition meant why it had been excluded from the clause, sorry. Why it has been deleted from the exemptions from the definition of offence? That reflects the view put in by the United Kingdom that co-operation in relation to drugs matters had to be on the same terms as the rest of the offences for the purposes of the legislation and that there could not be a separate regime for co-operation in matters of drug trafficking. The effect of having left the reference in would have meant that offences to which section 37 (6) of the Drug Trafficking Offences Ordinance 1995 applies would be excluded from the regime created by the Mutual Legal Assistance Ordinance. The UK said that we were not entitled to do that and I do not know why it was put in in the first place. Our local draftsmen took the view that because there was already a very special regime for co-operation in matters of drugs in the Drug Trafficking Offences Ordinance that that would be sufficient and that it was not necessary therefore to cover it in this. The UK advised that there was already a very enhanced co-operation relating to drugs trafficking under this it still did not entitle us this was in addition, we could not carve out, exclude drugs related offences from the operation of this legislation because the Schengen Agreement did not permit it.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

Absolutely so.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

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

**HON CHIEF MINISTER:**

The Leader of the Opposition will recall during the second reading that we had different texts of the Bill. I am assured by the draftsmen the authoritative texts says, *"Judicial Authority - requests for assistance may be made directly between Judicial Authorities and returned by the same channel."* If the text that the Leader of the Opposition has which says, *"Legal Authority"* were the correct one which I am told it is not, but if it were, then the Leader of the Opposition would be right, then the Bill in clause 4 should refer to *"Legal Authority"* and not to *"Judicial Authority".* That is that point. The Leader of the Opposition I think fails to make sufficient provision in his analysis for the fact that these international legal instruments are not specific as to administration of them, they provide the substance, some of them provide specific provision in relation to that administration but not all, leaving it to Member States to decide how the matter should be administered. These things need to be administered in the UK, for example, he is absolutely right there is no Central Authority because the UK which used to have a Central Authority approach to international assistance has now decentralised so that in the UK it is prosecutor to prosecutor level there is no longer a Central Authority in the Home Office as there used to be to which all these things were channelled from any country in the world and then the Home Office would decide who then distributed internally. They have abandoned that principle in favour of allowing whatever prosecutor is making the request in the requesting state to contact the relevant Prosecution Authorities in the United Kingdom. In Gibraltar we only have one Prosecution Authority perhaps the Leader of the Opposition is just challenging the use of the word Central perhaps we should have just left it at Authority rather than Central Authority but in effect we are administering it in the same way because we cannot decentralise. The person who is administering this in Gibraltar is the same Authority as administers in the UK namely the Prosecuting Authorities. In the UK they have been able to decentralise because there are many Prosecuting Authorities and in Gibraltar we have only one Prosecuting Authority so we cannot decentralise beyond him. If the hon Member thinks it contributes to addressing his point we can delete the adjective Central and just refer to him as an Authority as the Authority for the purpose, I would have no difficulty with that proposal but there has to be somebody who is authorised to receive these requests from abroad.

**HON J J BOSSANO:**

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

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

The point that I am making in relation to Central Authorities is that we have got Central Authority in capital letters if one looks at that and looks at the other Bill we have today in the House it seems that we are talking about the same institution and then saying different people are going to be that institution for different purposes even though we are all doing it in respect of implementing Schengen. In respect of the other one it is clear from the text of Schengen that it is a matter of choice whether one wants to have a Central Authority or not. In respect of this one it is in my judgement perhaps in the judgement of a layman and a legislator rather than a lawyer, a lawyer might come to a different conclusion but I read this and I read the text and what I read there is that there is no provision for a Central Authority to be created in a Member State for this purpose and that as I read what we are supposed to be giving effect to in clause 4 in order to comply with our obligations under article 53 rather than complying with it we are in my view from reading the text actually going against what is required of us because if it says, *"…request for assistance may be made directly between Judicial Authority and return through the same channels…"* as I see it the purpose of that exercise and the purpose of that provision given that this is supposed to be to facilitate things is that one court which presumably is the Judicial Authority in one Member State can contact directly another court in another Member State. Now, if the source says that they may do it and we say we are going to consider the Judicial Authority to be the Attorney General we are defeating the purpose for which article 53 (1) is there which is to make it possible for things to be done on the basis of court to court instead of National Central Institution to National Central Institution because the whole purpose of this is to make the system work quicker and with less bureaucracy. I would think that if the original provision said, *"….Member States may provide for requests to be made between Legal Authorities and returned through the same channels…."* then I would read that to mean that Member States may make that possible or may not if they do not want to but if the original says requests may be made directly to Legal Authorities it seems to me we are frustrating the intention by saying the Attorney General on this occasion is the Judicial Authority which means that if they intended for things to be going from court to court it is not going to happen. It may be that I am not looking at this as a legal expert and it may not be as legal experts read it but that is how I read it.

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

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

**HON CHIEF MINISTER:**

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

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

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

**HON F R PICARDO:**

Can I just take up his offer?

**HON CHIEF MINISTER:**

Yes of course.

**MR CHAIRMAN:**

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

**HON J J BOSSANO:**

We will just abstain.

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

We are supporting clause 2.

**HON CHIEF MINISTER:**

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

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

**Clause 3**

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

Well, we do not know that.

**HON J J BOSSANO:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

Mr Chairman we are just checking whether that is language that should have been underlined because it is new or whether it should have been underlined in any event even if it is not new because it might have been transferred from a previous place in the Bill. I accept that in either case it should have been underlined at least to signify the fact that it had changed place if that where to be the explanation but to whether it is brand new language or simply language that has moved ……………

**HON S E LINARES:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

*(a) Criminal proceedings and investigations, in respect of any criminal proceedings excluding proceedings excluding proceedings under military law*

*(b) Criminal proceedings brought by the administrative authorities in a Schengen State or territory, including Gibraltar, in respect of offences which are punishable in Gibraltar,*

*(c) proceedings for compensation in respect of unjustified prosecution or conviction,*

*(d) clemency proceedings,*

*(e) communications of legal statements relating et cetera, et cetera,*

*(f) measures relating to the suspension of delivery."*

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

*"…or that state".*

**HON F R PICARDO:**

Right, the Chief Minister has got that.

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

I see the Chief Minister was just paraphrasing ……….

**HON CHIEF MINISTER:**

Yes, I am sorry.

**HON CHIEF MINISTER:**

I think that the hon Members have now got photocopies.

**MR CHAIRMAN:**

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

**HON J J BOSSANO:**

Mr Chairman, we are looking at clause 3 which is the scope and the scope seems to be complying with article 49. We have got article 49 here and we are now looking to see whether this 49 says the same thing.

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

**HON CHIEF MINISTER:**

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

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

Well of course that is what the Government think it means, we are not discussing what the Government thinks it means we are discussing whether what the Government thinks it means is unambiguously and exclusively reflected in the language used in the Bill but given all that Government have said before about this being an obligation and about not being extended to anybody to which it is not an obligation then the Government could not possibly think that it is in this legislation and all the fuss that we have made about not extending it to the United Kingdom because it is not an obligation I do not know what leads the Leader of the Opposition to think that the Government's intention might be to extend it to a territory to which Schengen Acquis does not extend. It is not a question of can we know what the Government 's intention is? It is perfectly clear to the Leader of the Opposition what the Government's intention is.

**HON J J BOSSANO:**

I have not used the word *"intention".*

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

I beg your pardon?

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**MR CHAIRMAN:**

Yes.

**HON J J BOSSANO:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

In 3 (1) (c).

**HON CHIEF MINISTER:**

That stands as an amendment Mr Chairman.

The House recessed at 11.30 am

The House resumed at 11.50 am.

**HON CHIEF MINISTER:**

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

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

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

..and the definition of offence.

**HON F R PICARDO:**

The carved out fiscal offences and 3 (2).

**HON CHIEF MINISTER:**

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

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

**HON J J BOSSANO:**

Infallibility is not one of the advantages.

**MR CHAIRMAN:**

I have got to revert back to clause 2, what happened to *"Central Authority" and ……*

**HON CHIEF MINISTER::**

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

**MR CHAIRMAN:**

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

**HON CHIEF MINISTER:**

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

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

**Clause 4**

**MR CHAIRMAN:**

What do you want to do with clause 4?

**HON DR J J GARCIA:**

We are voting against clause 4.

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

Question put. The House voted.

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

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

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

**Clause 5**

**HON CHIEF MINISTER:**

Following on the amendment that has been introduced to clause 3 by adding the new *"g"* in the language of 5(1) (e) the remainder of clause 5 (1) can now be deleted and I so move. I propose by way of amendment that clause 5 (1) be deleted and the numeration (2) and that all the numbers in the remainder of clause 5 be reduced by 1 so that sub-clause 2 becomes sub-clause 1, sub-clause 3 becomes sub-clause 2, sub-clause 4 becomes sub-clause 3, 5 becomes 4, 6 becomes 5 et cetera.

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**Clause 6**

**HON CHIEF MINISTER:**

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

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

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

**Clause 7**

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

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

**Clause 9**

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

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

**Clause 12**

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON S E LINARES**

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

**HON CHIEF MINISTER:**

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

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

I see what the hon Member means that is possible.

**HON S E LINARES**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

No problem.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

Yes.

**HON CHIEF MINISTER:**

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

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

**<u>Clause 13</u>**

**HON CHIEF MINISTER:**

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

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

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

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

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

**Clause 15**

**HON CHIEF MINISTER:**

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

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

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

**Clause 17**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**MR CHAIRMAN:**

So you delete sub-section (1).

**HON CHIEF MINISTER:**

Of, so it reads "*in a case within section 13 and sub-section (1) of this section."* So sub-clause (2) would read as amended *"in a case within section 13 and sub-section (1) of this section,"* the list appearing immediately above *"..the Central Authority may arrange processes given only if satisfied."*

**MR CHAIRMAN:**

You delete *"and to".*

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

That is what it says.

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

It is not a question of finding another example it is not a question of drafting style or grammatical error or layout error it is a question of going back to the convention and seeing what the permutations are that the Convention requires. It makes sense as it is but the only sense that it makes is if (a) has got to be present and then one of (b) or (c) and I am just checking that that is what the Convention intends should be the provision.

**HON F R PICARDO:**

I accept the provision.

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**<u>Clause 19</u>**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON S E LINARES**

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

**HON CHIEF MINISTER:**

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

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

**<u>Clause 18</u>**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON S E LINARES:**

We are on clause 18 which now becomes 20, if we go to the original 18 it reads at the beginning (1) *"A court in Gibraltar shall not order a witness or expert"* and this one starts with a witness or expert so therefore what we should do is delete the first few words in the green one. The amendments should appear in the amended copy………of *"A court in Gibraltar shall not order"* and section 2 likewise.

**HON CHIEF MINISTER:**

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

**MR CHAIRMAN:**

Clause 20, stands part of the Bill as amended.

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

It is. In my version it is a capital *"S"*.

**HON F R PICARDO:**

In the third line down?

**HON CHIEF MINISTER:**

I am in 21 sub-section (3).

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

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

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

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

**The Schedule**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO**

The words *"so"* is probably……….

**HON CHIEF MINISTER**

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

**HON F R PICARDO**

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

**HON CHIEF MINISTER**

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

**HON F R PICARDO**

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

**HON CHIEF MINISTER**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

…not in this context. There are contexts in which the word *"so"* is capable of meaning that it is not capable of meaning that in this sense.

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**MR CHAIRMAN:**

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

**HON CHIEF MINISTER:**

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

**MR CHAIRMAN:**

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

**HON CHIEF MINISTER:**

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

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

**The Long Title**

**HON CHIEF MINISTER:**

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

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

Yes, for the whole clause.

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

The whole of the Convention is mandatory.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON F R PICARDO:**

It has been changed to *"shall".*

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

Yes.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

Certainly.

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

I think we would not be adding any other condition other than the offences having a penalty prescribed of at least six months but we could say under our law all of those are indictable offences.

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

I think it is important that it is mandatory.

**HON CHIEF MINISTER:**

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

The House recessed at 1.50 pm

The House resumed at 3.15 pm.

**THE DATA PROTECTION BILL 2004**

**Clause 1**

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

> *"1(1) This Ordinance may be cited as the Data Protection Ordinance 2004.*

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

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

Clause 2

The Hon the Chief Minster moved the following amendments:-

Insert after the definition of "blocking" the following:

"*The Commission" means the European Commission;"*

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

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

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

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

*"data processor"* means

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

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

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

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

*""EEA" means the European Economic Area;"*

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

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

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

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

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

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

**Clause 3**

The Hon the Chief Minister moved the following amendments:

Delete existing sub-clause (2) and insert:

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

That is the last point that arises in clause 3.

**HON DR J J GARCIA:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

A frontier worker would not be capable of being a data controller. If the Leader of the Opposition uses the phrase *"frontier worker"* in its strict sense meaning somebody who lives in Spain and is an employee of a company in Gibraltar, worker in that sense, it is incapable of arising. If by *"frontier worker"* he means a businessman, a self-employed person who lives in Spain and has a stall in the market-place or something that is possible, yes. If they process data in respect of an establishment in Gibraltar they would be captured by this.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

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

**Clause 4**

**HON CHIEF MINISTER:**

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

Clause 4 – as amended stood part of the Bill.

**Clause 5**

**HON CHIEF MINISTER:**

The amendment to clause 5 is to sharpen the scope of this. The section deals with when somebody can act for somebody else. When the data subject either by reason of infancy or by reasons of mental incapacity cannot exercise his rights and choices himself and it deals on how this can be done for him. Originally 5 (1) simply read *"a child"* and I do not think that *"a child"* is a sufficiently certain concept in law so it has been just made to read, *"where a data subject is (a) an individual under the age of 16 any action which may be taken by the data subject by virtue of this Ordinance may be taken by his parent or guardian."* In the case of mental incapacity it was thought to be too open to abuse because it does not define when somebody is mentally unable to understand their rights it simply said, *"where a data subject is a person who is mentally unable to understand their rights under this Ordinance any action which may be taken by their data subject by virtue of this Ordinance may be taken by the person who may act on his behalf whether by order of court, power of attorney or otherwise."* I could turn up and say, *"I do not think my friend Mr Britto is mentally able to exercise his rights therefore I have come along to exercise the choice for him"* and in order to avoid those difficulties we have introduced the concept of a patient in the meaning of section 45 of the Mental Health Order. The law decides when somebody is unable to exercise through mental incapacity rather than some subjective nebulous unspecific concept that people could invoke against the interests of the data subject when really he is not in that situation and that is the amendment to clause 5.

**HON F R PICARDO:**

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

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

**Clause 6**

**HON CHIEF MINISTER:**

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

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

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

**HON DR J J GARCIA:**

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

**HON CHIEF MINISTER:**

Delete one *"shall be"* yes.

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

**Clause 7**

**HON CHIEF MINISTER:**

In relation to clause 7 which is criteria for making data processing legitimate the amendment is at (e) (ii) and the words deleted are simply to delete words that are put in there by accident. Those are a secretarial error, those words should never have appeared there in (e) to invoke the rights under the Human Rights Convention or the Gibraltar Constitution Order , remember I told the hon Member that there were places in the Bill where both the Human Rights Convention and the Constitution were invoked because it was a carve out from an exemption. So, where somebody is being relieved of data protection duties and obligations it is done in terms which is nevertheless saved, Human Rights, Convention Rights, and Gibraltar Constitution Order Human Rights this is one example. Then a small amendment in sub-section (ii) to make sure that the Minister can make regulations specified in particular circumstances in which the provisions of sub-section (e) will or will not be satisfied. Before the hon Member could only specify in the positive now he can specify in the negative too.

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

**Clause 8**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**Clause 9**

**HON CHIEF MINISTER:**

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

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

**Clause 10**

**HON F R PICARDO:**

There should be an *"and"* after the item in (d) because it is clear………………..

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**Clause 11**

**HON CHIEF MINISTER:**

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

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

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

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

**HON F R PICARDO:**

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

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

**Clause 12**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**Clause 13**

**HON CHIEF MINISTER:**

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

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

**Clause 14**

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON S E LINARES**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

I think *"a statement"* is better language.

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

**Clause 15**

**HON CHIEF MINISTER:**

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

**HON C A BRUZON:**

Why is the word et cetera appearing after *"..rectification et cetera of data…"*.

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

They are not part of the Ordinance.

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

**Clause 16**

**HON CHIEF MINISTER:**

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

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

**Clause 17**

**HON CHIEF MINISTER:**

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

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

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

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

**Clause 18**

**HON CHIEF MINISTER:**

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

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

**Clause 19**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**<u>Clause 20</u>**

**HON CHIEF MINISTER:**

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

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

**<u>Clause 21</u>** - was agreed to and stood part of the Bill.

**<u>Clause 22</u>**

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

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

**<u>Clause 23</u>**

**HON CHIEF MINISTER:**

Amendments to clause 23 also as I have explained in the previous clause make it clear that what is being registered is not the person but the processing operation. So instead of reading *"..a person wishing to be registered.."* on the register, it says, *"..a person wishing to register a processing operation on the register.."* again making it clear that this a register of processing operations and not the persons who do the registering and sub section 2 is no longer required for that very reason because it is no longer relevant now that it is clear that each processing operation requires separate entries and not just the data controller's entry in the register.

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

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

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

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

**HON DR J J GARCIA:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON DR J J GARCIA:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON DR J J GARCIA:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

Therefore the amendments to it lie.

**HON CHIEF MINISTER:**

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

**MR CHAIRMAN:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

Remove the *";"* in red and add the word *"..and such requirement shall be publicised."*

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**<u>Clause 24</u>**

**HON CHIEF MINISTER:**

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

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

**HON C A BRUZON:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

Where are we?

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

Yes, but the more stringent rules provide more protection and therefore I do not mind giving the Minister the right to make regulations to protect people more but I am not sure that I want regulations to protect people less because the whole purpose of this is protecting people.

**HON CHIEF MINISTER:**

Yes, but when they need protection.

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

Government do not agree but I will take note.

**MR CHAIRMAN:**

You are voting against 5?

**HON J J BOSSANO:**

Yes.

**HON CHIEF MINISTER:**

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

**HON J J BOSSANO:**

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

**HON CHIEF MINISTER:**

I have understood the point.

**HON J J BOSSANO:**

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

**MR CHAIRMAN:**

Are you voting against or abstaining?

**HON J J BOSSANO:**

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

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

**Clause 25**

**HON CHIEF MINISTER:**

In clause 25 this is one of the points that we discussed at Second Reading where we have added the entitlement of the data subject in new (iii) the entitlement of the data subject to compensation for any damage that he suffers as a result of a breach by the data controller of the requirements and of the data subjects rights. In sub section 4 the Data Protection Commissioner is actually empowered to make compensation orders and then in the rest of (4) in (c) there is a requirement of the directive that no compensation order shall be made where a data controller proves that he had taken such care as in all of the circumstances was reasonably required to comply with the requirement or requirements that the Ordinance concerns. That is a statutory defence that the directive requires that to be available to the data controller and (d) is that "*the Commissioner shall notify the parties in writing of his decision in relation to…*" there is an *"it"* extra in the second line of (d) that *"it"* should not be there it should read, *"….the Commissioner shall notify parties in writing of his decision in relation to a compensation order and either party may if aggrieved by the decision appeal it to the Supreme Court under section 32 (5)."* This is the only direct access to the Supreme Court all other appeals from the Data Protection Commissioner's decisions are in the first instance to the Magistrates' Court. In the case of the compensation order the first appeal is directly to the Supreme Court.

**HON F R PICARDO:**

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

**HON DR J J GARCIA**

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

**HON CHIEF MINISTER:**

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

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

**Clause 26**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

The adding of the word *"and"?*

**HON F R PICARDO:**

Yes.

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

**Clause 27**

**HON CHIEF MINISTER:**

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

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

**Clause 28**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

So, what….?

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

I obviously made the mistake of believing that there might be an element of consistency in the way that the Chief Minister wanted to approach an issue. Clearly I was wrong. This morning we were told something about the way that modern drafting style was to be adopted and this evening we are being told something else, so be it. I have not difficulty with that legislation is in the hands of the Government and they will pass it as they see fit but the fact of the matter is that we are dealing with a completely different Bill to the one that has been provided to us with seven days notice and we are doing our best in order to be constructive to provide all those points that we believe need flagging. We flag them, if the Government do not wish to adopt them so be it that is why they have a majority in this House.

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

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

**Clause 29**

**HON CHIEF MINISTER:**

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

**HON DR J J GARCIA**

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

**HON CHIEF MINISTER:**

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

**HON DR J J GARCIA**

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

**HON CHIEF MINISTER:**

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

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

**HON DR J J GARCIA**

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

**HON CHIEF MINISTER:**

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

**HON DR J J GARCIA**

I am grateful to the Chief Minister for that.

**HON F R PICARDO:**

There is a misspelling in the new sub section 2 of *"authorised"* which is in the Americanised version and in sub section 3 the extent of the amendment is not clear because the only words in red start with the word *"or"* but before that the words *"by this Ordinance"* do not appear in the published version but they do appear here, if the Chief Minister and I could get back to the collegiate atmosphere that we have been in for most of the day I would ask him to also move that as part of his amendment.

**HON CHIEF MINISTER:**

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

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

**<u>Clauses 30 and 31</u>**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

That needs the deletion of the last *"or".*

**HON F R PICARDO:**

...and the semicolon.

**HON CHIEF MINISTER:**

…and the semicolon.

**HON MISS M I MONTEGRIFFO:**

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

**HON CHIEF MINISTER:**

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

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

**HON L A RANDALL:**

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

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

**Clause 32**

**HON CHIEF MINISTER:**

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

**HON F R PICARDO:**

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

**HON CHIEF MINISTER:**

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

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

**Clauses 33 and 34**

**HON CHIEF MINISTER:**

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

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

**Clause 35**

**HON CHIEF MINISTER:**

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

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

**Clause 36**

**HON CHIEF MINISTER:**

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

**HON DR J J GARCIA**

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

**HON CHIEF MINISTER:**

Section 23 has been deleted.

**HON DR J J GARCIA**

The same point applies in relation to sub section 3(b)(ii) once again we have the reference to section 23 over there.

**HON CHIEF MINISTER:**

It should be section 23(3)(a) to (e) not section 20(3). I am grateful to the hon Member for pointing that out.

**MR CHAIRMAN:**

The same thing happens at the bottom.

**HON CHIEF MINISTER:**

In both places yes.

Clause 36 – as amended, was agreed to and stood stood part of the Bill.

**Clause 37**

**HON CHIEF MINISTER:**

This is the general regulation and rule making power and it is to divide the regulation making power which in both cases belongs to the Minister into two types, one which under the directive he is allowed to discharge himself and sub clause 2, matters on which by the terms of the directive he is obliged to consult the Commissioner so, for the matters specified in sub section 2 any regulations that the Minister may make he has to consult the Commissioner before making them whereas the matters referred to in sub section 1 which are basically legislative matters as opposed to enforcement matters and administration matters he has the general legislative right.

**HON F R PICARDO:**

The reference to directive in 37 (1) should be with a capital *"d"* in the second line.

Clause 37 – as amended, was agreed to and stood part of the Bill.

**SCHEDULE 1 and the Long Title**

**HON CHIEF MINISTER:**

The main amendment to Schedule 1 is that whereas the published Bill in sub section 2 says *"may"*, the *"may"* has been deleted from there because some of the things have to be *"may"* and some of the things have to be *"shall"* so whether it is *"may"* or *"shall"* it has to be transported into each item. So, (a) and (b) are *"may",* (c) is *"shall"* because the directive requires him to do that (d) is *"may",* (e) is *"shall"* and (f) is *"may".*

**HON F R PICARDO:**

Little (d) and (f) are new it is a power to co-operate with similar supervisory authorities and to request the supervising authority somewhere else.

**HON CHIEF MINISTER:**

He has an obligation under the directive to co-operate with supervisory authorities and render assistance to supervisory authorities in Schengen States, people bound by the Schengen Agreement but he has not got that obligation in relation to third parties so that is why one is "shall" and the other is *"may"*. The additional language in addition to the split up of the *"may"* and the *"shall",* the additional language is that to circumscribe the kind of assistance, it should not be thought that he can assist by

providing the data itself. This is not a means by which any foreign body can get hold through these co-operation mechanisms of a data controller through the Data Controller Commission all that he is required to do that the co-operation and render assistance to Supervisory Authority states party to the convention ………

**HON F R PICARDO:**

I agree with the Chief Minister it is better if he does not have any power whatsoever other than to provide what is specified there.

**HON CHIEF MINISTER:**

The word *"including"* is dangerous in the context of the quite far fetched concern. There is no requirement to go beyond that language so we could take out *"including"* and *"through"* and just put instead of *"through" "by the furnishing of information"* making it clear that that is what he can do. We are deleting *"including through"* and substituting it with one solitary word *"by"*. Again in the second line of little (d) where the same two words *"including through"* appear.

**HON F R PICARDO:**

The concern that we have just touched upon now I do not know whether little (f) opens the door to the suggestion that if we are going to seek other supervisory authorities to act for us, or rather the Commissioner is going to seek that should he provide reciprocity in that respect which is what we are trying to get away from by getting rid of the *"including through"* and going to the *"by"* he probably needs to have a power to be able to call other Commissioners to assist him but how do we do that satisfactorily.

**HON CHIEF MINISTER:**

We should not be concerned about the importation of information should we?

**HON F R PICARDO:**

If our Commissioner is going to seek that others assist him does he in that way open the door to a suggestion that he must assist others when they come? He will defend himself with this *" I can only give you….."*

**HON CHIEF MINISTER:**

Absolutely and when he in turn asks somebody else for assistance it can only be in accordance to whatever limitations there might be in his laws.
I wish to make amendments to the Long Title to better and more fully recite the obligations being transposed. I would like to delete the words *"Schengen Convention Articles 126 to 130 in relation to data processing"* and add *"…Articles 126 to 130 of the Schengen Convention of 19th June 1990 applying the Schengen Convention of the 14th June 1985…"*
Schedule 1 and the Long Title, as amended, were agreed to and stood part of the Bill.

The House recessed at 7:30pm.

The House resumed at 7:40pm.

THE EUROPEAN ARREST WARRANT BILL 2004

**Clause 1**

**HON CHIEF MINISTER:**

Just to record that we are following the same procedure. The hon Members have had a copy of the letter of amendments and they have before them the annotated Bill.

**HON F R PICARDO:**

This is the point in relation to clause 1 (2) that I raised with the Chief Minister at the time of the Second Reading. We are legislating retrospectively explicitly so.

**HON CHIEF MINISTER:**

It is academic because there have not been any requests but even if we pass this Bill today it will not come into effect until it receives the Royal Assent and there may be requests between now and then so we had better delete the whole of sub section 2 and therefore the sub categorisation of sub section 1 so, clause 1 just reads *"..This Ordinance may be cited as The European Arrest Warrant 2004."*

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

**Clause 2**

**HON CHIEF MINISTER:**

In the definition of European Arrest Warrant the reason why the words "subject to sub section 2" have been added is that the definition of European Arrest Warrant as it appeared before referred to a warrant issued under the laws of a Member State under such laws *"for the arrest and surrender by Gibraltar…."* It presupposed only incoming warrants but it is also a European Arrest Warrant when Gibraltar requests the surrender from another country. It says subject to section 24 because section 24 deals with outgoing warrants and there it is defined as an outgoing warrant as opposed to an incoming warrant . Hon Members might like to glance at the Long Title it says, *"An Ordinance to give effect to council framework decision of the 11th June 2002 on the European Arrest Warrant and the surrender procedures between Member States and matters connected therewith and to make similar arrangements as between Gibraltar and the United Kingdom…."* Here is a case in which it is important also as was the case in the other one, Mutual Legal Assistance, to make clear that anything that we do in relation to the United Kingdom is not an obligation and the decision is that it would be odd if it were harder to extradite somebody to and from the UK than it was to extradite them to or from France or Spain but here instead of leaving it to regulations so that one can think about it and curtail it the Government have formed the view of which I think I will be able to persuade the hon Member when he sees how we have made clearer the language in respect to the taxation point that there is no point beating about the bush we might as well just extend this to the UK so long as we are extending it to the UK in a way that makes it clear that it is not by virtue of an obligation but simply because the House has decided to legislate as a matter of domestic legislation. That is the only point that the Government needs to be saved here and it is saved in two ways the Long Title amendment but also hon Members will have seen that we have removed in the European Arrest Warrant definition *"Member State"* has been removed and *"its state".* If the hon Members then go to the definition of *"States"* it means *"a Member State of the European Community, and the United*

*Kingdom”* thereby making the distinction that it is not extended to the United Kingdom qua Member State of the European Community. We only have the obligation to do this qua Member States of the European Community to those with whom we have the cross frontier obligation but we are extending it to the United Kingdom as a matter of domestic legislative choice on the basis that this House, if it agrees, believes that it would not be right on matters of extradition and its equivalent for the regime as between the United Kingdom and Gibraltar to be harder than with France, Germany, Spain, or Denmark……………

**HON F R PICARDO:**

To become harder……..

**HON CHIEF MINISTER:**

…………to become harder after this bearing in mind that traditionally extradition between Commonwealth countries was always supposed to be easier under the Fugitive Offenders Legislation rather than the Extradition Legislation. This is a matter of choice. In the Mutual Legal Assistance we made provision to extend it to the United Kingdom because there were things that needed to be thought about, here Government have made a judgment that there is nothing to think about and there is therefore no need to defer the extension to the United Kingdom to regulations.

**HON F R PICARDO:**

I am grateful that my suggestion that a definition of International Criminal Court be adopted has been taken but can I ask in relation to this substantive issue of the extension of the provisions to the United Kingdom which in principle would appear unobjectionable whether the United Kingdom will also be extending to us the same benefit of being able to rely on their provisions as we would if we were another Member State?

**HON CHIEF MINISTER:**

Yes indeed. It may not have finished happening yet but if the hon Member looks at the United Kingdom’s corresponding legislation which is the extradition act of 2003 it is split into what is called Category 1, Category 2 and Category 3 territories. Category 1 territories are basically EU territories to which this applies, Category 2 territories are basically non-EU but Commonwealth fished type territories and Category 3 are third parties and we are to be designated Category 1.

**HON F R PICARDO:**

We will be designated Category 1?

**HON CHIEF MINISTER:**

Yes but there is a published intention I do not know whether it has happened yet. In the commencement notice of the UK’s Extradition Act which I have here there is an explanatory note that says, *“…all requests received by the British Overseas Territories with the exception of Gibraltar which will be designated as a Category 1 territory……….will continue to be done under the Extradition Act 1989 until orders in counsel have been drafted.”*

**HON F R PICARDO:**

I take the point. The definition of International Criminal Court one needs a capital *“c”* when referring to *“Criminal Court”*. After the word *“United Kingdom”* instead of comma there should be a

semicolon which would give uniformity with the rest of the whole.

**HON CHIEF MINISTER:**

Yes agreed and we should also delete the words "and commencement".
Clause 2 – as amended, was agreed to and stood part of the Bill.

**Clauses 3 to 7** – were agreed to and stood part of the Bill.

**Clauses 8 and 9** - as amended, were agreed to and stood part of the Bill.

**Clause 10**

**HON F R PICARDO:**

There seems to be two parts to the Bill. In one part of the Bill the words Magistrates' Court are with a small *"m"* and a small *"c"* in the second half of the Bill for the whole part the word *"Magistrates' Court"* appears with a capital M. Throughout our legislation the word Magistrates' Court appears with a capital M so if I make the point once then I will not make it again because it occurs on a number of occasions.

**HON CHIEF MINISTER:**

It will be reviewed and it will all be made consistent with capital M's.

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

**Clause 11**

**HON CHIEF MINISTER:**

There is an amendment in (3) that commits a person *"…where there shall remain a court order under this section, it shall commit the person to a prison…."* And this is the remand institution point which we have resolved by saying, *"…provided that, if the person is not more than 21 years of age, he shall be held on remand terms."* There are different regimes for remand and prison sentences.

**HON F R PICARDO:**

Under this Bill everybody would have to be held on remand terms in any event but we get rid of the problem of the remand institution and that is what I highlighted.

**HON CHIEF MINISTER:**

In (6) there is an *"and"* added there and in (i) and in (iii) there is the addition of the person who is required to serve all or part of the remainder of that term of imprisonment. At sub section 5 that relates to the release of persons that are not going to be surrendered is curtailed if there is an unexpired prison sentence.

**HON F R PICARDO:**

If the Chief Minister recalls my point in relation to this had been that the sub paragraphs did not read and the new (iii) being inserted makes this provision a mirror of the provision of sub

section 7 of section 12 because it did not make sense before, now it works.

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

**Clause 12**

**HON CHIEF MINISTER:**

In clause 12 there is the removal of all the provisos in sub section 1 because there was complete repetition. My own personal reading of clause 12 sub section 1 and 2 as published were that they added practically nothing to each other and that I thought that with the exception of a reference to the word *"statement"* in sub clause 2 that there was an addition to undertaking that there was no difference between sub clause 1 and sub clause 2 so now they have been merged in effect. Sub clause 3 has been removed because there is now a provision which the hon Members will see in a moment for appeals against a decision of the Magistrates' Court which was insufficiently provided for in the Bill. There was a quick reference to an appeal but there was no structure and the hon Member could see that there is now in large, appeals to this section later on in the Bill.

**HON F R PICARDO:**

…and not limiting any longer the right of appeals just to a point of law.

**HON CHIEF MINISTER:**

Apart from the point that the hon Member made about limited to appeal, Government had limited its appeal provisions to two lines when in the UK it is two and a half pages. The hon Member will see what the new appeals regime is and that in addition to addressing the hon Member's point it actually now provides for a much more comprehensive appeal regime.

**HON F R PICARDO:**

In any event as we would expect the right of appeal and issues of fact is the first stage to the Court of Appeal in the usual way.

**HON CHIEF MINISTER:**

I do not think it is a Court of Appeal the hon Member will see when we come, I think it is Supreme Court followed straight to the Privy Council thereafter. Little (3) "*is held on remand terms"*, (5) that is provided in the new appeals procedure in effect it is 10 days after one has exhausted all the appeal provisions.

**HON F R PICARDO:**

I was just getting a little confused. The Chief Minister has made the right amendment to the new 5 (b) (ii) which should now be (4) instead of (6) but then he has not changed the numbering of 8, 9, and 10 which has to now be 6, 7, 8.

**HON CHIEF MINISTER:**

Indeed. In defence of the draftspeople I should say that they were up until 4 o'clock in the morning last night preparing these annotated drafts from the letters so a lot of these errors had not been there if they had had more time.

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

**Clause 13**

**HON CHIEF MINISTER:**

There what we have done is a little bit of presentation of skulduggery, does the hon Member remember the debate that we had about whether the person should be moved or not moved from the prison?

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

On reflection because it is not a compulsory thing we have decided to remove it altogether so the hon Members will see that we have removed the old section 14 altogether. So as not to have to renumber every other subsequent clause in the Bill we have split section 13 (1) and (2) into sections 13 and 14 to fill up the numbers and not therefore have to change all the cross referrals in the Bill thereafter.

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

**Clause 15**

**HON CHIEF MINISTER:**

There is no amendment there until page 354 in sub clause 6 where the proviso in part (a) 3 of sub clause 5 has been substituted with a new proviso. It is no change of language but it has just been removed again from (iii) to which it had become attached and made a separate paragraph given that the proviso applies to all three parts not just to part 3 and the same at the bottom of page 354.

**HON F R PICARDO:**

I am still at 5 (a) ………those three provisions are not to be read conjunctively they should be read disjunctively but there is an *"and"* after the second one. I think that they are each to be considered separately.

**HON CHIEF MINISTER:**

Yes, the hon Member is right that should be an *"or".*

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

**Clause 16**

**HON CHIEF MINISTER:**

Again here because we altered the definition of "*Member State"* to *"State"* that amendment is reflected there so that *"state"* is now both a Member State and the UK and the amendment at the bottom of the page is to rescue those words from (b) to which they had become attached and again I do not think that (b) should be crossed out.

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

**Clause 17** - was agreed to and stood part of the Bill.

**Clause 18**

**HON CHIEF MINISTER:**

The hon Member will recall that we were both concerned that these search and entry provisions were simply too Draconian. This was really the Bill which we had much discussion not so much the other one it was this one really and the hon Members will see that we have done the same thing, *"The Government may make regulations to provide for powers to authorise to enter into premises and seize property in connection with the execution of a European arrest warrant"* and that language is purposely chosen so that we can craft powers which do no more and no less than are needed for the specific purpose that we are obliged to do it which is *"in connection with the execution of an European Arrest Warrant."* There the hon Member is right, there arrest and warrant should be in the small case.

**HON DR J J GARCIA**

In the same way that the Chief Minister was supplying us with a copy of the other draft regulations would he be willing to do that in this particular instance also?

**HON CHIEF MINISTER:**

Yes indeed.

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

**Clause 19**

**HON CHIEF MINISTER:**

The same here because we have included the regulation making power *"..enter premises and seize property."* Clause 18 was only search and entry and clause 19 is seizure. Those go in favour of the regulation making power at clause 18 and therefore old 20 becomes 19 now. New clause 19 the words in brackets should read instead of *"or," "..provided that if he is not more than 21 years of age he shall be held…."* So, delete *"…in such a place as the Central Authority may specify"* and replace them with the words *"..he shall be held on remand terms."*

**HON F R PICARDO:**

I recall that I also referred this question of the 48 hours of detention. There were two periods of time I referred to one was the time before one was given the copy of the warrant. The reason for concern here is that traditionally somebody who is arrested is brought before the Magistrates' Court at the next session of the Magistrates' Court here we are talking about a person being remanded in a police station only for 48 hours. I think that could be problematic and I will tell the Chief Minister on what particular occasions, for example, if we had a long weekend one would have to have a special sitting of the Magistrates' Court or take the fellow up to prison instead of keeping him in the police station. There was a similar problem in the Criminal Procedure Ordinance which I managed to exploit to great effect on one particular long weekend to get the Magistrate out before the Monday and that was cured somehow, so maybe the Chief Minister will have to look at how that was resolved.

**HON CHIEF MINISTER:**

It may actually be more serious than the hon Member thinks because the power to remand in prison presumably is remand

by the court, so in fact it is not get the Magistrate out or send him straight to prison it is get the Magistrate out or release him.

**HON F R PICARDO:**

That is probably right. That is how I exploited it last time in relation to somebody not subject to the civil warrant.

**HON CHIEF MINISTER:**

I think that if somebody who is being seized on a European arrest warrant ……………….

**HON F R PICARDO:**

One has got the anomaly that for all the period that he is before the court he is really in the custody of the Chief Secretary………..

**HON CHIEF MINISTER:**

The position is that this is supposed to be the provision that gives power to hold somebody the moment the warrant is executed. It does not work for a different reason in addition to the one that the hon Member says because only a court can remand and therefore we need to change the language and we have to as legislators we have got to decide how long somebody should be held before they have got to be brought before a court. Section 10 deals with the arrested person being brought before the court. A language that requires the person to be brought before the court as soon as may be after his arrest and that is what the directive says and actually does not specify a period. It then goes on to say what the court can do. Section 20 if it serves any purpose at all therefore is simply to specify how long as soon as maybe can be. The most practical thing that we can do with Clause 19 is to use it to specify the maximum period that a person should be capable of being held before being placed before the Magistrates' Court and as far as I am concerned it should be the shortest period of time that accommodates a weekend unless we do it by reference to the next sitting. In other words that the power to detain should be until the next occasion on which the court sits.

**HON F R PICARDO:**

Which is why if the Chief Minister remembers when we had the discussion on clause 10 at the first reading issue here we say, *"..as soon as may be.."* and I said *"..you have got to be careful there I think to use the word as soon as may be practicable which is what is said in our Criminal Procedure Ordinance which is what imports the obligation to take them at the first available sitting."*

**HON CHIEF MINISTER:**

On that basis section 19 serves no purpose whatsoever. Will the hon Members approve that there should be consequential renumbering done by the draftsmen instead of trying to sit down and work them out now. So, clause 19 deleted and all subsequent clauses to be consequentially renumbered and all cross references to be consequentially changed.

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

**<u>Clause 20</u>** - was agreed to and stood part of the Bill.

**Clause 21**

**HON CHIEF MINISTER:**

The only amendments here are all references to *"Member State"* should be *'state'.*

Clause 21 – as amended, was agreed to and stood part of the Bill.

**Clause 22**

**HON CHIEF MINISTER:**

The amendments there are that instead of *"it shall"* it will be removed from the main paragraph 22(1) and then (a) says "*The Central Authority shall…"* and (b) says, *"The Central Authority shall…."* Instead of *"it".* So the hon Members will see the *"it"* crossed out in (b) and the *"..it shall.."* is crossed out. In 22(1) five lines down from the top or sub section 2 *"or (2)"* is crossed out and then in the last line before one gets to (a) and (b) *"it shall"* is crossed out and then it is (a) in which……….. *"the Central Authority shall" as "it"* meant the Central Authority before which was sited at the top half paragraph and again the *"it "* is deleted in little (b) the second word in (b) and instead of *"it"* it is *"the Central Authority"* which is what *"it"* meant before.

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

**Clause 23**

**HON F R PICARDO:**

Sub paragraph 23(1), if the court does not do it under this Ordinance, does it under the law of Gibraltar generally in relation to surrender, what are we left with the provisions of surrender are really contained wholly within this law, are they not?

**HON CHIEF MINISTER:**

It would be extradition not surrender on the second page. In 23(1)(b) both references should be to extradition.

**HON J J BOSSANO:**

The original version said, *"…conflict between surrender and extradition request.."* in the first one and what we are doing is putting that back yes?

**HON CHIEF MINISTER:**

And in the heading.

**HON J J BOSSANO:**

In the heading I am talking about.

**HON CHIEF MINISTER:**

In both that is the point that the heading should be *"conflict between surrender and extradition request…"* and then in little (b) it should be in relation to the request for extradition under the law of Gibraltar in ……………

**HON F R PICARDO:**

I think that this must be the victim of one of those Microsoft search and replace because in the original Bill as published the word extradition actually appears on a number of occasions in the whole of the text of this section so if we go to sub-section 2(ii) that should also be a reference to extradition, 2 (c) should also be a reference to extradition.

**HON CHIEF MINISTER:**

Yes and if we go to the third line 21 (3) the reference to surrender which is the first word in line three should also be extradition.

**HON J J BOSSANO:**

Technically what we have got in front of us in the Committee Stage has extradition because these are things in replacement of this which contain words which have not been introduced as amendments and therefore we do not need to do anything all we need to do is stick to the green paper.

**HON CHIEF MINISTER:**

I am just checking to see that they should all be as originals some of them may be intended amendments…..

**HON J J BOSSANO:**

But then they would be highlighted in red.

**HON F R PICARDO:**

So if it is of assistance to the Chief Minister there is no reference in his letter notifying the amendments to the change of the word *"extradition"* to *"surrender".* The only amendment is just the words *… "shall be performed….."* switched for *"..it shall be performed…"*

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

**HON F R PICARDO:**

I cannot understand the provisions of section 3 as amended and if I am going to be brutally honest I cannot understand the provisions of section 3 as not amended because what we are saying there is the Magistrates' court shall not perform functions under the Ordinance in relation to the Arrest Warrants unless the arrest and surrender of that person pursuant to such request is prohibited or not provided for under the law of Gibraltar I really do not understand that.

**HON CHIEF MINISTER:**

I think it refers to an arrest and surrender in the context of the international report. What that is intended to mean, whether it achieves it effectively, we are talking about resolving conflicting requests what this is intended to mean when there is a request for arrest and surrender by the International Criminal Court the Magistrate shall not perform functions under the competing European Arrest Warrant unless the person is not arrestable under the law of Gibraltar for the purposes required by the International Criminal Court in which the European Arrest Warrant then becomes activatable.

**HON F R PICARDO:**

I can understand that logic I do not think the section does that.

**HON CHIEF MINISTER:**

I have only deduced it from reading it so it cannot be that unclear.

**HON F R PICARDO:**

If one reads the final line as saying, *"….as the request by the International Criminal Court…."*

**HON CHIEF MINISTER:**

It makes perfect sense if the hon Member makes allowance for the fact that the functions by the Magistrate under the European Arrest Warrant are referred to as functions under the European Arrest Warrant and the arrest and surrender referred to the arrest and surrender pursuant to the International Criminal Courts so if the hon Member refers to those two lines if the Central Authority receives a European Arrest Warrant in respect of a person and a request is received from the Europe International Criminal Court for the arrest and surrender of the same person so the references to arrest and surrender in this sub clause are pursuant to the request from the ICC.

**HON F R PICARDO:**

Including the words "*pursuant to the request"* by the International Criminal Court again in the penultimate line instead of to such a request.

**HON CHIEF MINISTER:**

It would mean that no one would have to work it out .

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

**<u>Clause 24</u>**

**HON CHIEF MINISTER:**

We are now entering the territory of the reverse this is all issue of European Arrest Warrants by the Gibraltar Authority when we want somebody abroad arrested and surrendered to us.

**HON F R PICARDO:**

There is no specific mechanism in this Ordinance with a transmission of such a warrant, do we then fall back on the provisions of the Mutual Legal Assistance?

**HON CHIEF MINISTER:**

Every European country has provisions in their own laws mirroring our chapter 1.

**HON F R PICARDO:**

What we do not have here is the provision that says that once the European Arrest Warrant has been issued in Gibraltar in respect of a fugitive from Gibraltar, for example, what do we do with that warrant is it then taken by the Attorney General and transmitted in keeping with the laws of the state where we

believe the individual is and what if we do not know what state he is.

**HON CHIEF MINISTER:**

The European Arrest Warrant is issued and is then transacted internationally through the Central Authority.

**HON F R PICARDO:**

But are we not making particular provision for that in the legislation or is it not necessary to make specific provision for that?

**HON CHIEF MINISTER:**

The Central Authority for the purposes of this Ordinance shall be the Governor for all the purposes of this Ordinance.

**HON F R PICARDO:**

Except that he delegates them all.

**HON CHIEF MINISTER:**

Subject to delegation.

**HON CHIEF MINISTER:**

I do not think there is a requirement to specify the mechanics for the exportation of a Gibraltar European Arrest Warrant because that is a matter for the corresponding provisions in our favour in the laws of the other country. So in effect our Central Authority will be the channel, the Attorney General seeks the warrant from the Magistrates' Court, the Magistrates' Court issues the warrant, the warrant then comes into existence and it is then exported to the relevant Central Authority in the country where we want it executed from Authority to Authority.

**HON F R PICARDO:**

It is not clear, once the Magistrates' Court issues the warrant does the Magistrates' Court communicate the warrant to the Governor or does the Magistrates' court hand the warrant to the Attorney General?

**HON CHIEF MINISTER:**

Warrants are handed to the person making the application. The issue of the procedure is the Attorney General goes to the Magistrates' Court and says, *"Magistrates' Court please give me a warrant".* The Magistrates' Court says *"Okay, here is a warrant."* The decision of a Magistrates' Court is not just to bring into creation a piece of paper but to exceed to the petition of somebody who has a hand stretched out saying *"Issue me the warrant."* This is the equivalent in Part 1 Chapter 1 where we have said where the court in the issuing country has issued a warrant. The other way around that court would be our Magistrates' Court would have issued a warrant and that warrant that is in issue would have been handed to the party that has requested the warrant which is the Attorney General and then the Attorney General channels the execution up through the Central Authority to the Authorities in the requested state.

**HON F R PICARDO:**

At the end of the day the clarification sought would have been for the benefit only of the Authorities that could seek such a

warrant and if the Authorities that are going to seek such a warrant are satisfied with the clarity in that respect then there is no issue.

Clause 24 – as amended, was agreed to and stood part of the Bill.

**Clause 25** - was agreed to and stood part of the Bill.

**Clause 26** - was agreed to and stood part of the Bill.

**Clause 27**

**HON S E LINARES:**

Just to give notice to the draftsmen that although we are using the old numbers and the Chief Minister said about cross section it would be advisable that, for example, 28 (1) (b) in 27 (1) should read 27 (1) (b).

**HON F R PICARDO:**

In the first reading it might be recalled I raised this question of how paragraph 27 (1) (a) had been drafted and I see that no amendments have been posed in relation to that. There were really two limbs to the issue I raised first it is very fresh in our minds today we have been going through the Mutual Legal Assistance Ordinance and the Data Protection Ordinance, the number of references in both of those two European Convention of Human Rights when we referred to it in those terms in this Ordinance we are referring to it in different terms but it is exactly the same Convention we are actually specifying the number protocol et cetera and just from the point of view of uniformity is that a point that should be dealt with now and also this question more fundamentally of referring to Gibraltar's obligations under the European Convention of Human Rights and the word *"Gibraltar"* seems to be a little bit wide and is it the Gibraltar Government's obligation?

**HON CHIEF MINISTER:**

That is common Parliament language "*the United Kingdom's obligation under International Treaties"* the obligation belongs to the country not to an institution within it. They may be contracted on behalf of the country by its Government but the party is the country not the government.

**HON F R PICARDO:**

In this particular case the party is the United Kingdom that has extended the provisions.

**HON CHIEF MINISTER:**

This is a point that the Foreign office might wish to take I would never have thought that it would have been taken locally.

**HON F R PICARDO:**

I must confess I am simply trying to understand it from the point of view of interpretation.

**HON CHIEF MINISTER:**

We have always taken the view in this House when an international obligation is extended to us we regard it as our obligation and it is true that the United Kingdom wheezed down

our neck to make sure that we honour it. There have been occasions in which I have seen language such as obligations incurred by the United Kingdom in respect of Gibraltar but I really do not think that we should be worrying too much about these points.

**HON F R PICARDO:**

In that case certainly the (a), (b), (c) in this section I intend it to be read separately and that should be made clear in this 27.

**HON CHIEF MINISTER:**

I have no objection to the draftsmen changing the way that the treaties are described that is if the hon Member is still concerned about that point.

**HON F R PICARDO:**

I do not think whether I should or whether I should be or whether I should not be this seems like a more precise reference than the one we have been making but I think that the one we have been making is sufficient to identify the Convention.

**HON CHIEF MINISTER:**

It is *"1994; or……."* At the end of (a) then it is ………………..brackets semicolon *"or"* . that gives the hon Member's point.

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

**Clause 28**

**HON CHIEF MINISTER:**

Here is an important point. This is the place where we have restructured. It is clear that there is no requirement that there should be a loss of duality and what we have done is that we had used language designed to make that even more obvious than it was before to us but not apparently to the hon Member. We did not doubt that the previous language did not prejudice the duality requirement the hon Member read it , it raised the question in his mind and therefore we have used language which is designed to make sure that nobody else that reads it could have the question in his mind that entered the hon Member and that is being done in several ways. First of all the hon Member will see that the words subject to sub section 2 have been deleted from sub section 1. Sub section 1 creates the duality requirement and therefore let no one think that the words subject to sub section 2 means that anything in sub section 2 is a carve out of the duality required by sub section 1 so that is the purpose of deleting subject to sub section 2 and starting sub section 1 with simply, *"A person shall not be surrendered…."* Then the existing language in which we had specified the tax and duties point is removed in favour of the language of the directive which to boot we have preceded with the words *"..without prejudice to the application of sub section 1."* We have removed the subject to sub section 2 in sub section 1 and then we have made it clear in sub section 2 but it does not prejudice the duality requirement in sub section 1 and then said that notwithstanding that duality is required for the purposes of comparing the offences and whether they exist in both places it is done in the following way, in a new way, without prejudice to sub section 1 which is now a second layer of clarity, *"(a) if the conduct which constitutes the offence relates to a tax or duty it is immaterial that the law of Gibraltar does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the issuing State"* Those are the words of the directive therefore we have made it clear that duality is required, we have made it clear that the provisions of sub section 2 are without prejudice to the requirement of duality but one cannot allege that it is not duality simply because one

does not have that tax or because one has different tax rules, for example, if we have an offence in Gibraltar of evading income tax and we get a request from abroad asserting evasion of capital gains tax we cannot say, *"…ah no duality because we have not got capital gains tax"* because we have got the offence of evasion in respect of our own tax. So there is the duality requirement in respect of the offence of evasion of a tax but the duality is not destroyed because we have not got that particular tax or because that particular tax is subject to different rules and regulations in Gibraltar. In our view that was always the effect of the original language but these three layers of change, the removal of subject to sub section 2, the prefixing of sub section 2 itself by the words *"…without prejudice to the application of sub section 1.."* which says that one cannot surrender somebody unless there is duality in interpreting what duality means for the purposes of tax and duty we then use the language of the directive and that leaves it not open to any possible misunderstanding.

**HON F R PICARDO:**

I am reading it as if it read as follows, *"..If the conduct that constitutes the offence which must be dual relates to a tax ………..".*That would really be the shorthand way.

**HON CHIEF MINISTER:**

The only departure from symmetry is that we do have that tax but subject to different rules.

**HON F R PICARDO:**

The Chief Minister will excuse me if I do not determine whether I am satisfied or not at this stage of the proceedings but I understand exactly how he is structuring.

**HON CHIEF MINISTER:**

What I am saying to the hon Member is whether he is satisfied with it or not this is the maximum that can be done which complies with the directive. Continuing to oppose it would be, *"I oppose it because I do not like it even though I recognise it is an obligation."*

**HON F R PICARDO:**

I think I have understood but it is sufficiently late that maybe I have not. I think I have and the Chief Minister seems to think I have.

**HON CHIEF MINISTER:**

I personally put a lot of time to this since we had our discussion and I am entirely satisfied that it does. The maximum possible extent to exclude any possibility of the interpretation of this as meaning fiscal offences are excluded from the duality requirement which was………

**HON F R PICARDO:**

It would have been an abusive interpretation in any event but potentially open.

**HON CHIEF MINISTER:**

Yes.

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

**Clause 29**

**HON F R PICARDO:**

We actually referred the Chief Minister to the fact that 29 (2) there was a reference to "*issuing state* " but that reference should be to "*executing state"* if we were implementing article 3(1) of the decision. The Chief Minister said he would come back on that but I do not know whether that has been checked or not. That sub section is almost entirely out of the framework decision almost identical out of the decision, it is article 3 (1).

**HON CHIEF MINISTER:**

Yes the hon Member is right the *"executing state".*

**HON F R PICARDO:**

I must confess I do not know whether the second one is…………

**HON CHIEF MINISTER:**

Gibraltar cannot give somebody immunity from prosecution. Article 1 is that Gibraltar as the executing Member State has given amnesty where that state may be Gibraltar has jurisdiction to cross over the offence under general law.

**HON F R PICARDO:**

That could become very relevant.

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

Clauses 30 to 33 – were agreed to and stood part of the Bill.

**Clause 34**

**HON F R PICARDO:**

The amendment moved in relation to section 34 which is really just an amendment in relation to the heading but it actually highlights what the section is about, this will not apply in relation to any offence committed outside the issuing state because of the nature of Gibraltar's jurisdiction. I do not know whether the Chief Minister has followed that . In relation to section 34 where he made the amendment just to highlight the change in the title……….

**HON CHIEF MINISTER:**

That is just because little (b) has got nothing to do with Gibraltar that does not mean that they do not have a nexus with the issuing state.

**HON F R PICARDO:**

What we are doing here is saying if the UK arrest warrant has been issued by an issuing state in respect of something done by one of its subjects outside the issuing state then we will not extradite because as Gibraltar only has territorial jurisdiction and no extra-territorial jurisdiction we will never have an offence in Gibraltar for having done something outside Gibraltar.

**HON CHIEF MINISTER:**

The law of Gibraltar now regularly create extra territorial offences.

**HON F R PICARDO:**

Do they?

**HON CHIEF MINISTER:**

Yes, the relation to all manner of things, terrorism, conspiracy to commit offences, merchant shipping, aviation, all manner of extra-territorial offences created in Gibraltar law.

**HON F R PICARDO:**

I do not think that we need to have the discussion because I do not agree because I think that what we are doing is policing other laws when we do that. We have not created the offence of terrorism outside Gibraltar. If somebody commits an act of terrorism outside Gibraltar, Gibraltar will assist internationally to bring that person to justice.

**HON CHIEF MINISTER:**

I agree with the hon Member. I have heard others with whom I used to practice law constantly remind me about the fact that our Constitution did not allow it but that has gone by the board. There are now many laws of Gibraltar and as a matter of interest not in connection with this issue. I will have a few of them found and sent to the hon Member that create offences in our laws which would be regarded by him as being extra-territorial.

**HON F R PICARDO:**

There was a traditional problem which the Attorney General will bear out about possession of drugs for supply abroad where the Supreme Court regularly has denied jurisdiction in terms of the intention to supply whether the intention to supply has been proved to have been abroad but it is a jurisprudential debate which I will enjoy if the Chief Minister gives me the material.

Clause 34 - as amended, was agreed to and stood part of the Bill.

**Clause 35**

**HON CHIEF MINISTER:**

The language in the new sub clause (2) is rendered necessary by the totally new provisions which we will come to in clause 41 in relation to appeals against discharge and are rendered necessary by cross referencing provisions.

**HON F R PICARDO:**

The provisions of (2) I am prepared to accept but then (3) is repeated that second (3) must be wrong. Even as a (4) it must be wrong.

**HON CHIEF MINISTER:**

It cannot be there it is not part of the list.

**HON F R PICARDO:**

It is not that it is the wording of it, we cannot have a stand alone…………

**HON CHIEF MINISTER:**

Here is a case of the consequences of mixed drafting styles. This provision and indeed many of the provisions that we are going to be considering hereafter are lifted straight from the UK Act because we believe that our own provisions were either non-existent or deficient and in fact this is exactly how the UK Act reads. Now, the UK Act that implements the European Arrest Warrant requirements, the Extradition Act of 2003, what it means in the sort of telegraphics in the telegraphic almost bullet point style in which the UK Act is drafted is that in the circumstances described in (2) or (3) above the Magistrate must order the person's discharge. That is what it means. In our drafting style we would have drafted that differently so the following provision of this section applies if at any time in the relevant period the Magistrates' Court is informed by the Issuing Authority that the European Arrest Warrant issued in respect of a person has been withdrawn. Then there is a definition of a relevant period so that one can make sense of sub clause 2 and then it says *" ..the Magistrates' Court must order that person's discharge in the circumstances described above.."* that is how we would say it to make it clear but the UK says it in this almost stiletto way.

**HON F R PICARDO:**

Does the Chief Minister not agree with me that in our law this does not work and I think that……..

**HON CHIEF MINISTER:**

It does work because the provision is linked and the purpose for which it is there are also taken from the UK law.

**HON F R PICARDO:**

It is not linked it is just in the air at the moment so what I would suggest ……….

**HON CHIEF MINISTER:**

I suggest the hon Member waits and leaves this point to one side until we have finished with the new sections that he has not yet seen.

**HON F R PICARDO:**

With respect I do not think that I am persuaded by that because I think the easiest course is to tag this on to the end of (2).

**HON CHIEF MINISTER:**

Why is the hon Member making observations in relation to something that I am telling him is linked to provisions that he has not even cast eyes on.

**HON F R PICARDO:**

I have not cast eyes on because the Chief Minister has just given us new material but even so there is a stand alone phrase in our law that says the "Magistrates' Court must order the person's discharge". Now, let us at least flag it to come back to.

**HON CHIEF MINISTER:**

All right we will come back to it. [*INTERRUPTION*] The answer to the Leader of the Opposition's question is that whilst he has

been away we have been considering it in so much excruciating detail.

**HON J J BOSSANO:**

But we are now coming to something where there is a lot of new stuff and in the last 10 minutes we have just heard that it is there because it has been lifted straight out of UK. Fine, now we know that it is there because it has been lifted out of UK but we have not seen where in UK it has been lifted out of and we have not seen the framework directive that is being transposed here and in UK and therefore on that basis and given that we have seen it in the last 10 minutes what do we do with it now? If we take the job seriously and want to take a long time doing it the time is not here and now.

**Clause 35** - was agreed to and stood part of the Bill.

**Clauses 36 to 40** – were agreed to and stood part of the Bill.

**Clause 41**

**HON CHIEF MINISTER:**

In clause 41 in (2) a reference to 48 (2) should read 35 (2) and that is the cross reference we spoke in respect of the section we stood by. The hon Member should bear in mind that all of this is necessarily desirable stuff because it all replaces two lines of Rights of Appeal. In the previous Bill we had a Right of Appeal that simply said that one shall have a Right of Appeal to the Magistrates' Court on a point of law and the hon Member said that why should it just be limited to a point of law. When I was researching in response to the hon Member's point I said, *"well, look it is not just that it should be limited to a point of law it is that everybody else that has done this has got a machinery relating to the appeal with further appeals, how can we have only one appeal reflected in two lines."* So, rather than pass the legislation as we would have passed it if we would not have done that digging with a skimpy two line appeal provision even if I had corrected which I would have done, the hon Member's point, to extend the appeal that we had originally to law and fact……….

**HON F R PICARDO:**

Which you did.

**HON CHIEF MINISTER:**

…..which we have done, everything else is to add further Rights of Appeal beyond it. I understand that the hon Members want to read it and that they have not read it before but they should not view it suspiciously. Whatever it says it is not something that the Government have done to gain, it is all to the benefit of the arrested person. It is all to give more Rights of Appeal, to get more court scrutiny, to reduce the automaticity of the whole process.

**HON J J BOSSANO:**

In the light of the explanation that we were given that this was replacing what was there which was simply an appeal on a point of law, in terms of the amendment to the original provision it says *"the appeal is now on a point of law of fact in accordance with the provisions of Part 4".* So, the whole of this for us as we understand it is in order to be able to interpret how the Right of Appeal against an order to be surrendered against ones wishes has to proceed. I do not see that this is adding to the Right of Appeal, this is just explaining how it will work.

**HON CHIEF MINISTER:**

My view is that the whole of sub section, now 8 on page 350, can probably be done away with but I think that he is reading it too narrowly for a start that only applies to the appeal under that section and all it is saying is if one is aggrieved by the decision of the Magistrates' Court under that particular section one can appeal to the Supreme Court on a point of fact of law in accordance with Part 4, Part 4 sets out what the Supreme Court's powers are on appeal and then provides for an appeal upwards from the Supreme Court. So if the hon Member is reading this somehow to mean that the in accordance with Part 4 is only as sort of a housekeeping exercise or an administrative provision in a sense almost explaining the power, that would be completely wrong.

**HON J J BOSSANO:**

The law says one has the right to appeal on a point of law or on a point of fact which I think was an omission that has been put right by putting fact as well as law then presumably in the absence of Part 4 he would appeal like people appeal on any other matter where they have got the Right of Appeal to the Supreme Court. As far as I am aware we do not legislate each time saying that when they appeal to the Supreme Court the Supreme Court can do one of those two things which is to say yes or no to the appeal. Is it that if we did not put it in Part IV what would the Appeal Court do other than be able to say yes or no?

**HON CHIEF MINISTER:**

There is a specific regime here bearing in mind that this is a European Arrest Warrant that is supposed to be an accelerated process of Europewide bringing of people to justice and therefore there is a tailor made appeals procedure. For example, the Leader of the Opposition will have noticed that the Court of Appeal is skipped that the appeal from the Supreme Court is to the Privy Council just as in the UK it goes from the High Court to the House of Lords. I have not invented any of this this is exactly how it is done in the UK.

We can delete the whole of sub clause 8 on page 350 and then the entirety of the Appeals Procedure is in Part 4.

**HON J J BOSSANO:**

In clause 40 what we are doing is saying what the Supreme Court may consider in terms of the circumstances in order to allow the appeal so they have got very little discretion but is it in fact that if we did not have *"their"* there would be less discretion? Because the argument that has been used is that this is going to be for the benefit of the person that is being surrendered. It seems to me that the Court hearing the appeal has to go to the law and we are telling the Supreme Court that they can only……..the appeal if a certain set of conditions are met.

**HON CHIEF MINISTER:**

If somebody appeals to a court there are only two things that the court can do. It can allow or dismiss the appeal.

**HON J J BOSSANO:**

I have not mentioned anything about allowing the appeal or dismissing the appeal. I said that when I first spoke the first time when I said it was ridiculous that that should be there. I am not talking about that I am talking about 43 that we have just been looking at where we have said if the court and it says the judge in the United Kingdom. So, if the Court of Appeal is going to say yes then it says here *"..the court may allow the appeal only if the conditions in subsection 3 or the conditions in subsection 4 are satisfied.."* That is what I am talking about. My

question is if we did not have the conditions in (3) and (4) would the Court be able to allow an appeal on more grounds than the ones we are laying down or unless because the argument that is being used in support of this is that we are giving more rights to the appellant.

**HON CHIEF MINISTER:**

The answer to the Leader of the Opposition's question is *"no".* If he reads (3) the conditions are that the Magistrates' Court ought to have decided a question before it in a different way at the surrender hearing differently. What that is saying is if the Magistrates' Court has made an error either of law or fact that had he not made the error he would have decided the question differently then the Court has the power to allow the appeal. So in other words it is a full re-hearing and the Court can substitute its findings of fact and law for that of the Magistrates' and that is all that can ever be done by the Supreme Court. One may ask why this is necessary? This is necessary because in the time that is available to us we have not wanted either not to expand our appeal procedures which would have been the case if we would have let it and we would have wanted to use a drafting kit that is already tried and tested.

**HON J J BOSSANO:**

The answer is that this is the only thing that the Court of Appeal could have done even if we had not put it there. Is that the answer? My question is quite clear and quite specific. If I am being asked to vote in favour of putting something in the law which is going to improve the chance of the person that is appealing, I am in favour. If we want to have it there but it does not make any difference I suppose it is just that we are having such a nice time together at 10 o'clock that we might just as well do unnecessary and useless things but if it is not clear and normally since I react to the legislation on the basis of reading the English and trying to read it as if it were normal English I assume that if somebody says to me *"…you can allow an appeal.."* or somebody says to me *"…you can allow an appeal only if the conditions are met…"* the second one constrains my freedom of action more than the first one, as a question of common sense. If in fact what I am being told is that even if the conditions that we are laying down did not exist a Court of Appeal can only allow an appeal on the basis of those conditions then fine we will vote in favour but I do not see we are doing anything different from what is already there.

**HON CHIEF MINISTER:**

The Leader of the Opposition's view appears to be predicated on the belief which is mistaken that laws do not often curtail an Appellate Court freedom of action and laws often do that. There are, for example, if the hon Member looks at the Income Tax Appeal Legislation and the Transport Appeal Legislation and many other Ordinances he will see that laws very often specify a specific role for an Appellate Court and if the Leader of the Opposition thinks that all statutes in Gibraltar simply say appeal to the Supreme Court leaving it to some general regime applied to the Supreme Court as to what the remittal of the case to the Supreme Court means when it gets there, I agree that is the run of the mill that is most but it is not all there are plenty of statutes in Gibraltar that specify the powers of an Appellate Court in different circumstances and this one I believe although it is not for me to proffer the hon Member legal advice or interpretation [*INTERRUPTION*] he has asked me to explain, no, no…………….

**HON J J BOSSANO:**

The Chief Minister is not going to sit down?

**HON CHIEF MINISTER:**

The Leader of the Opposition…………

**HON J J BOSSANO:**

We are going to be here a long time I can see that.

**HON CHIEF MINISTER:**

We are going to be here a long time because it is clear to me that the Leader of the Opposition wants us to be here a long time but the hon Member has just stood up and given me an explanation of the circumstances in which he would vote four things and the circumstances in which he would not leaving it to me to explain to him what this means otherwise what was his question. I am standing up to explain to him what this means since I am not myself the Privy Counsel all I can be doing is giving him my assessment of what it means. My assessment of what it means is that this in effect paints the canvas of the Supreme Court's freedom of action, putting it in layman's terms, which is complete. The Supreme court says, *"..has the Magistrates' Court made a mistake of fact or law?" "If they have not made the mistake would it have made a different decision?"* If the answer to that is *"yes"* appeal allowed decision reversed. There is no more than an Appellate Court can do than that and therefore there is no curtailment of the Supreme Court's powers.

**HON J J BOSSANO:**

First of all I want to correct that there is nothing in what I have said justifies the opening remark of the Chief Minister that I seem to be working on the premise that non of our other laws do not lay down what the Appeal Court may do. I am not concerned with any of the other laws I am concerned with this law and I am concerned with the reason for the new addition of Part 4 to the law that we have here and the explanation that we have been given for this being here is that it is better for the appellant because the original one which simply said that the guy could appeal to the Supreme Court was not as good as this one. What is in other ones or not in other ones for me is irrelevant. I am just looking at whether this does what we were told before the break it was intended to do. That does not mean that I require legal advice from the Chief Minister, in fact with a number of changes we have had here I would seriously think of not going to get legal advice on any issue if ever I wanted legal advice from him.

**HON CHIEF MINISTER:**

If that is the view that the Leader of the Opposition is going to take…………..

**HON J J BOSSANO:**

I have not finished either we can both do it as the House can see. So, therefore the position is that having had the chance to read this and taking into account indeed what he said that he said the norm, the majority of the laws, just say appeal and leave it to the Appeal Court to decide on how they do it but that there are some, the tax and some others, which specify how the Appeal Court has to do it. We are supporting this if by specifying it we are benefiting the appellant which is what we were told originally was the reason. If by specifying it we are neither benefiting it nor hindering him then it is irrelevant and if by specifying it we are curtailing the grounds on which the courts may grant the appeal by saying they can only do it if this happens then that is not the reason that was given to us for putting it there in the first place.

**HON CHIEF MINISTER:**

What I suggest Mr Chairman does is put the clauses one at a time and we just vote on them and if the Leader of the Opposition does not want to support them let him not support them but if he does not want my explanation of what I think they mean because he does not want my advice and I am the last person that he would go for advice then there is no point in my getting up to give him explanations and I will do so no more. Let us just vote on it. These are the legislative proposals before this Committee.

**HON J J BOSSANO:**

If the Chief Minister thinks that when the Government bring legislation to the House and are asked to explain the policy of the Government that is giving legal advice to the Opposition then that can only be because he is a lawyer because if any other Member was moving, I know that the Chief Minister is the one that moves most of the Bills, but on the rare occasion that other Ministers move Bills I would ask the mover for an explanation and I would not be asking legal advice from them so I suggest that we do what he says we put the sections and then we get over with this and then we look at this in our own time and then we decide what we do with it.

**HON CHIEF MINISTER:**

If the Leader of the Opposition only wants to know what the policy of the Government is, the policy of the Government is that the Appeals Procedure, rights, extent, and sequences in the law of Gibraltar should be the same as the equivalent law in the United Kingdom. That is the government's policy and that is what he has got in front of him.

**HON J J BOSSANO:**

Therefore I take it that if we can do better than the United Kingdom the Chief Minister would not want to do so?

**HON CHIEF MINISTER:**

I do not believe that we can.

**HON J J BOSSANO:**

Then we are talking about hypothetical situations and matters of opinion. The Chief Minister might believe one thing and I might believe another.

**HON F R PICARDO:**

There is a serious error in section 41 which is that the European Arrest Warrant is referred to as the European Surrender Warrant which I imagine is how it is referred to under the English Act and that there is a reference to something happening when a person is discharged under section 48 (2) which does not provide for discharge apart from that [*INTERRUPTION*] with the time that we have had I do not have anything else I can add apart that the issue which was flagged which is the issue at 35 (4) I still believe should be dealt with as the Chief Minister indicated by adding those words at the front of it at the very least.

**HON CHIEF MINISTER:**

So what is the proposal?

**HON F R PICARDO:**

No, the Chief Minister made a proposal because at the moment it is just standing there the Magistrates' Court….

**HON CHIEF MINISTER:**

*"In a case to which subsection 2 and 3 applies……"* we are on page 374 going back to the clause we had left aside a while ago and the red writing on that page in 3(3) the second 3(3) because that should be 3(4) because they have got a 3 immediately above it does Mr Chairman see that?

**MR CHAIRMAN:**

Yes.

**HON CHIEF MINISTER:**

Where it says the Magistrates' Court must order the person's discharge that should start, *"….in a case to which subsection 2 and 3 apply the Magistrates' Court must order the person's discharge."* Does that cover the point the Hon Mr Picardo wanted?

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

Thank you.

**HON F R PICARDO:**

If I am allowed to make two more points then there is no need for section by section.

**HON CHIEF MINISTER:**

The hon Member can continue to make in the vane in which he was previously making them as many points as he likes.

**HON F R PICARDO:**

We have the concept here that the appeal must be brought in section 45 (7) page 380 and then certain things happen consequent on an appeal not being brought within a particular period. It is essentially the discharge of the appeal. I just want to raise with the Chief Minister the point that I do not think we have the concept of appeal being brought. I think we have the concept of a memorandum of appeal being filed or a record of appeal being filed. So, I think and confess I forget which one is the one that comes first but I think there one needs to have a reference to a record of appeal which has not been filed within the permitted period.

**HON CHIEF MINISTER:**

Is that not a matter for a Court of Appeal rule? I accept that the bringing of an appeal is ………

**HON F R PICARDO:**

Shall we just flag it for the draftsmen to look at?

**HON CHIEF MINISTER:**

It is what comes after the lodging is……………

**HON F R PICARDO:**

When does the lodging occur when notice of appeal is given or when record of appeal …?

**MR CHAIRMAN:**

Notice of Appeal must be given first.

**HON CHIEF MINISTER:**

Then if given notice and one does not comply with the subsequent procedural steps thereafter under the rules of the Appellate Court ones appeal will…………..

**HON F R PICARDO:**

So, then really what we are saying is that section 7 should say, *"Notice of Appeal must be filed before the end of the permitted period."*

**HON CHIEF MINISTER:**

Section 45, Sub section 7 deals with the granting of leave because remember that at that stage one is before the Privy Council. One cannot appeal to the Privy Council without leave so whatever one wants to do cannot be by means of removing the need for leave to appeal. If there is a similar point in respect of the previous step which is appeal from the Magistrates' Court to the Supreme Court that would be the point to deal with.

**HON F R PICARDO:**

It only arises there but it can stay in that section and go back to sub section 4. I think there is an *"and"* between the sub paragraphs which I do not think should be there. It says, *"…leave to this section must not be granted and this is an appeal to the Privy Council unless the Supreme court has certified as a point of law of general public importance involving the decision and it appears to the Court granting leave that the point is one which ought to be considered by the Privy Council."* That cannot be the case where one is going to the Privy Council because the Supreme Court has not granted leave on the grounds that there is a point of law of general public importance so the Privy Council must be free to grant leave only on the basis of (b).

**HON CHIEF MINISTER:**

Yes. One can always seek need to appeal from the court itself. Sub section 3 says, *"..an appeal under this section lies only with the leave of the Supreme Court or the Privy Council."* So, if one wants appeal to the Privy Council one must seek leave either from the Supreme Court or from the Privy Council.

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

So, leave to appeal under this section must not be granted by the Privy Council unless the Supreme Court has certified that there is a point of general public importance. By the time one gets to 4 one is already in front of the Privy Council because the Supreme Court said *"No"* , [*INTERRUPTION*] fine but then one does what one has always got to do and one goes and one gets

them to seek leave directly from them. That is the position under the normal rule.

**HON F R PICARDO:**

Yes, but then one finds oneself with a section that says *"..leave to appeal….."* even if one is in front of the Privy Council, *"…must not be granted"* imperative *"unless the Supreme Court has certified and the Privy Council wants to give you leave."* I think it should be an *"or"* because the Privy Council has to be free to give leave to appeal even where the Supreme Court has…………

**HON CHIEF MINISTER:**

Not certified a point of law of general public importance.

**HON F R PICARDO:**

Because the Supreme Court has just given the wrong decision as far as one is concerned.

**HON CHIEF MINISTER:**

I have to tell the hon Member that regardless of whether there is merit or not to his points it is exactly the same except that the references are to High Court instead of Supreme Court and House of Lords instead of Privy Council, and I am reading directly from the English Act so it must be intended as a curtailed access to the Privy Council. The point that I am trying to make sense of is what is the point of the reference to the Privy Council in subsection 3. If the Supreme Court gives leave it is because they have been willing to certify a point of law. If they do not give leave it is because they have not been willing to certify a pointof law so there are no circumstances in which one might need to seek leave from the Privy Council following the refusal of the Supreme Court.

**HON F R PICARDO:**

Even if the Privy Council were prepared to hear you one is not allowed to go before them.

**HON CHIEF MINISTER:**

What I think 4 is intended to mean is that even if one gets leave from the Supreme Court the Privy Council can still refuse to hear one on the grounds that it appears to the Privy Council that the point is one which ought not to be considered by them, no, because it appears to the court granting leave.

**HON F R PICARDO:**

That is right.

**HON CHIEF MINISTER:**

If the hon Member does not mind we should leave it on the basis that we are replicating the United Kingdom's Appeal Process.

**HON F R PICARDO:**

As far as I am concerned that is the worst reason for leaving it but I stick to my view firmly that it should be an *"or".*

**HON CHIEF MINISTER:**

An *"or"* where between (a) and (b)?

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

Yes. The other interpretation which I think would make sense, would make more sense of it for the hon Member, is to say "little (3) always protects ones rights to seek appeal of leave from the Privy Council and what (4) says because one must remember that (4) is formulated in the terms of the court granting the leave so, leave to appeal under this section, that is to say leave to appeal by the court considering the application for leave to appeal must not be granted unless the Supreme Court has certified that there is a point of law of general public importance involved in the decision and it appears to the court granting leave whether or not it is the Supreme Court that the point is one which ought to be considered by the Privy Council. What the hon Member is saying is if the Supreme Court under (a) declines to certify and one finds oneself in front of the Privy Council under little (3) seeking leave the Privy Council ought to be able to invoke little (b) to grant one leave even though the Supreme Court has not certified a point of law because it, the Privy Council, being the court granting leave considers that it is one that ought to be considered by the Privy Council. I am happy to depart from the UK's model to achieve that result even if it is not the UK's model without conceding that the UK's model does not have its own effect but in any event willing to allow leave to the Privy Council unfettered by any view that might have been expressed by the Supreme Court below.

**HON F R PICARDO:**

So the *"and"* for (a) should be an *"or".*

**HON CHIEF MINISTER:**

To achieve that at a different regime.

**Part 4** - as amended, stood part of the Bill. The Opposition Members abstained.

**<u>Part 5</u>** - stood part of the Bill. The Opposition Members abstained.

**<u>Schedules 1 and 2</u>**

**HON CHIEF MINISTER:**

There are a couple of amendments to the amendments. In Part 5 going back to the section Costs Orders. In 5(1)a) it should be *"..the person's surrender.."* not *"..the person's extradition…"* In Clause 51 (1) instead of the records to "*Part 1 warrant* " it should read "*European Arrest Warrant".* In clause 51 (7) on page 387 the letters "*JUDG"* in front of *"court"* should be deleted. The third last word in the introductory paragraph in sub clause 7. There are amendments there in red as well and in the Long Title to add the words as appear in red and to make similar arrangements as between Gibraltar and the United Kingdom. Schedules 1 and 2, as amended, stood part of the Bill. The Opposition Members abstained.

**<u>The long Title</u>** – stood part of the Bill.

**THE DRUGS (MISUSE) (AMENDMENT) BILL 2004**

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

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

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

**THIRD READING**

**HON ATTORNEY GENERAL:**

I have the honour to report that:

(1) The Mutual Legal Assistance (Schengen Convention) Bill 2004;
(2) The Data Protection Bill 2004;
(3) The European Arrest Warrant Bill 2004;
(4) The Drugs (Misuse) (Amendment) Bill 2004;

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

The Data Protection Bill 2004 and the Drugs (Misuse)(Amendment) Bill 2004 were agreed to.

The Mutual Legal Assistance (Schengen Convention) Bill 2004 and the European Arrest Warrant Bill 2004;

Question put. The House voted.

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

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

The Bills were read a third time and passed.

**ADJOURNMENT**

The Hon the Chief Minister moved the adjournment of the House to Thursday 5th February 2004 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 10.30 pm on Friday 16th January 2004.

**THURSDAY 5H FEBRUARY 2004**

The House resumed at 10.35 am.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

**IN ATTENDANCE**

P E Martinez - Clerk of the House of Assembly (Ag)

**DOCUMENTS LAID**

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

(1) The Ombudsman's 4th Annual Report for the year ending December 2003 and the Annex thereto;
(2) The Gibraltar Community Projects Limited annual reports for the years ended 31st March 2002 and 31st March 2003.

Ordered to lie.

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

(1) The Consolidated Fund Reallocations – Statement No 1 of 2003 - 2004;
(2) Supplementary Funding – Statement No 2 of 2003 - 2004.

Ordered to lie.

**SUSPENSION OF STANDING ORDERS**

**HON CHIEF MINISTER:**

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

Readings, the Committee Stage and the Third Reading of the Bills for the European Parliamentary Elections Ordinance and the Equal Opportunities Ordinance. In moving this motion I should indicate to the hon Members that it is not my intention to proceed beyond the Second Reading today on either of those Bills.

Question put. Agreed to.

## BILLS

## FIRST AND SECOND READINGS

### THE EUROPEAN PARLIAMENTARY ELECTIONS ORDINANCE 2004

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Ordinance to make provision for Gibraltar's participation in European Parliamentary elections and for the regulation of programmes included in television and radio services in Gibraltar in relation to European Parliamentary elections, and for connected purposes, be read a first time.

Question put. Agreed to.

### SECOND READING

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members I know are united in welcoming the event that this Bill assists in bringing about, namely Gibraltar's participation at the forthcoming European Parliamentary Elections due in June of this year and therefore in considering the Bill I do not intend to address any question relating to the history by which that right was secured, I think the House is of one mind that it has been a long, hard-fought battle which Gibraltar should not need to have fought, but needed to fight and won, and we are at the threshold of enjoying the first fruits of that success. Hon Members will have noticed that there are references in this Bill, for this Ordinance, to two types of UK legislation. One is legislation in the UK that is already in place and another is legislation in the UK which is envisaged, remains in draft, I have obtained clearance to give the hon Members a copy, which I will pass in just a moment, that is the 2004 Regulations which are not yet in place.

Mr Speaker, ideally we would have wished to have waited to bring this legislation until all the UK legislation to which it refers is in place in the United Kingdom, but unfortunately it has been impossible to wait any longer for the UK to finish putting in place its part of the legislation, the 2004 Regulations remain outstanding, because until this legislation is in place our Registration Officer cannot formally initiate the canvas that he must conduct to compile the new election register, and we are now at the limit of the period of time which is the minimum period of time that he needs in order to do that in time for the June elections. So, we have been left with no choice but to take this legislation before the United Kingdom's legislation to which it refers is fully in place, because otherwise we would not be ready logistically, locally, with the register that needs to be drawn up. The legislation to which I am referring as to not yet being in place is the 2004 European Parliamentary Election Regulations, which are regulations made under the UK principal legislation. I will now hand to the hon Members a copy of the draft of those Regulations which is dated 3rd February, just a few days ago. I have been asked to impose as a condition that this document be given to the hon Members confidentially and whilst it is possible to refer to them in debate in this House it is not otherwise for wider publication, given that this has not been laid in the UK. These Regulations have not been published in the

UK to Parliament where it has to be laid and they have to be considered. So in a sense this House is going to see them before they have been seen by the UK Parliament. The other caution that I have been asked to make in giving them to the hon Members, is that it is subject to change, they are still in draft form. They do not think that the changes will now be very many but technically they are still drafts and may change.

Mr Speaker, in a sense the fact that we are debating this issue at all, this Bill, is in itself the result of a position taken by the Gibraltar Government in negotiations on this issue with the UK. It had been the UK's intention that all the legislation affecting Gibraltar and Gibraltar's participation in relation to our enfranchisement, should be United Kingdom legislation primary and subsidiary, and they were of that view because although it is a combined constituency, the United Kingdom starting point is that all parts of the combined constituency had to be subject to the same body of law. In other words, we could not have the Gibraltar bit of the constituency subject to Gibraltar law, and then the UK part of the Southwest constituency subject to a different body of law, when we were all in effect voters in one homogeneous constituency and the UK, as a matter of policy, took the view that they had to do the legislation to ensure that it was not just the same body of law, in other words that the whole of the constituency was subject to the same legal regime affecting all aspects of the elections, but that it had to be from the same source of law so that there would be no issue of difference between one part of the constituency and the other, as to the source of the law regulating them. That was the UK starting position. In contrast, the Gibraltar Government, well as the hon Members know because I have said it in this House before, in the whole issue of the manner in which we are enfranchised, the Gibraltar Government have always attached quite a lot of importance to the principle which we have discussed in the House before, that it should not be just the people enfranchised but the territory. In other words, that no one not a million miles from us could say "Ah, the Gibraltarians are being treated as if they were residents of Penzance and they are being divided from their territory, and from their constitutional institutions", rather like they go to universities in the UK so that they can vote in the UK but not linked to our right as Gibraltarians in this area of land. So the Gibraltar Government set about, not in any way that is important from a quantitive point of view but from a qualitative point of view, we set about trying to persuade the British Government of the importance of allowing us at least some measure of institutional participation in this process so that it could not possibly be argued that the making of these legislative arrangements in the UK for perfectly good and sound reason, should not be used by others to distort that our Constitution and our territorial rights had been ignored and that Gibraltar was not being territorially enfranchised as opposed to the people being allowed to go off to vote in England. We set ourselves two flagship issues in that respect, one, that this House as Gibraltar's Parliament and legislature, should play some role in creating the legislative framework on the basis that this House must play some role in the legislative framework, then Gibraltar's parliament was acting and intervening in the election process and no one could say that this was entirely made in the UK process and that Gibraltar's constitutional institutions had not participated. The second flagship role that we sought for our constitutional institutions is that our judiciary, our courts, should have jurisdiction in matters to do with election petitions and the sort of things one complains to courts about in the conduct of an election. That has been achieved in two ways, first of all the Gibraltar courts have jurisdiction in a large area of election litigation and in respect of the areas of litigation which have to be conducted in the UK election court for example, if somebody challenges what happens in Gibraltar during the elections, they are not just challenging the election of MEPs in relation to Gibraltar, they are challenging the election of the MEPs for the whole of the Southwest region. In other words, they are saying the election of these seven MEPs for the combined region of Gibraltar and the Southwest is invalid because there has been this and this irregularity. So there are certain types of election petitions which the UK has insisted should be dealt with by the United Kingdom election court but has agreed that a judge of the High Court of Gibraltar, of the Supreme Court in Gibraltar,

should be an ex-officio, should be seconded as a judge of the United Kingdom election court. So our judiciary has obtained two methods of participation and therefore our constitutional institution, the judiciary, participates in this process in two ways. First of all that the local courts, both the Magistrates' and Supreme Court, have direct jurisdiction territorially in an area of litigation relating to the election and in the residue of areas relating to litigation, Gibraltar judges sit in as judges of the UK election court when the dispute involves something that affects the combined region. Now, I say therefore Mr Speaker that in a sense, given the reason why we wanted this House to play some role, the Government are not overly concerned by the extent of that role in terms of the width of areas of operation, the important thing for the Government was that Gibraltar's participation in elections should not be possible without some part of the legislative process that is contributed by the Gibraltar Parliament so that we will have a stake institutionally as a territory, as a constitutional institution of this territory in that process, and that is why we are debating this Bill otherwise all of this would have been contained in the United Kingdom legislative framework like everything else that regulates our participation in the electoral process.

Mr Speaker, the Bill for the Ordinance therefore deals primarily with two areas of legislative framework for our enfranchisement. All the rest has been contained in United Kingdom legislation. Those areas are basically the regulation of political broadcasting and the composition, administration and management of the electoral register. And through that second part we gain a very important role for a third local constitutional institution namely, the public administration in Gibraltar, the Civil Service, the local registration officer is the Clerk of this House, the Gibraltar Government are responsible for the provision of administrative support statutorily now mandatory under the Bill, for the provision of human and financial resources to the electoral registration officer, not just for the composition of the register but for the conduct of the electoral process itself. The Bill is divided as the hon Members will have seen, in two parts. The Bill itself is only 14 clauses long and much of the nitty gritty is contained in the schedule, in Schedule 1 to the Bill. So, Mr Speaker, clause 2 of the Bill provides definition sections and the need for the definition of Accession States will be relevant to the consideration of the second schedule of the Bill, because of course it is envisaged that these Accession States will join the Community, or the Union on 1st May, that is before voting in the European Elections is due, it is due in June. So on the one hand arrangements have got to be made to enfranchise them, when they are entitled to vote as they are in other Member States, their citizens, but only if they do actually sign the Treaty of Accession before the elections in June. So the effect of Schedule 2 is that citizens of Accession States are written in to the register in circumstances where citizens of other Member States are entitled to be included in the register, but then they are not allowed to vote, in fact, come voting day, if by voting day their country has not actually joined the Community, given that the joining of the Community comes before the election but so close one event to the other that they would not have time to start drawing up the register in May. So there is this sort of contingency procedure whereby one draws up the register on the assumption that they will join in May as envisaged, but that then one can disenfranchise them, if for reasons which are not described, their countries do not in fact join before June. Clause 3 of course makes reference to the United Kingdom legislation to which Schedule 1 is subject, and of course Mr Speaker it has to be clearly understood by us all that it is not we through this Bill that are invoking United Kingdom law, so the United Kingdom law will not apply to Gibraltar because we are referring to it in this Bill, the United Kingdom law will apply to Gibraltar because on its face, Parliament is legislating for Gibraltar as well as for the UK. So in other words, the United Kingdom law will apply to Gibraltar by its direct effect and not because we are applying it through this. So this is a separate piece of local legislation which is part of the jigsaw of the total legislative framework, quite a complex one it is too, to allow us to participate in the voting system, but this is just one of the pieces of legislation, there are other pieces of legislation, there are two Acts of Parliament in the UK, there is the Political Parties Elections and Referendum Act of 2000 which has been

extended to Gibraltar to the extent that it is necessary for the purposes of our participation in European Parliamentary Elections. There is the European Parliamentary Elections Act of 2002 which similarly has been extended to Gibraltar with the modifications necessary to allow us to participate in the European Parliamentary Elections, there is the European Parliamentary Representation Act 2003 which is the principal Act of the United Kingdom which enfranchised us and then there is subsidiary legislation. There is the principal body of subsidiary legislation which is these European Parliamentary Elections Regulations 2004, which are not yet in place which are dated 3rd February and which the hon Members now have a copy of, and then there is the subsidiary legislation which I think was debated in the House of Lords last week and which was reported in the last few days in the local press, and that Order has now been adopted by the House of Lords and that is the European Parliamentary Elections Combined Region and Campaign Expenditure United Kingdom and Gibraltar Order 2004, and that is together with this Bill, the whole corpus of statutory law that will regulate and enable, facilitate our enfranchisement. So Clause 4 modifies Schedule 1 in relation to Accession States citizens just for these next elections, because of course by the elections after the 2004 elections, they will either be in or not going in, so the transitional arrangements in favour of Accession States is limited to these 2004 elections. Clauses 5 and 6 are housekeeping in the sense that they impose duties on the Registration Officer and officers that he appoints to act for and assist him, and Clause 6 creates an offence for such officers who without reasonable cause are guilty of any act or omission in breach of their official duty. Then Clause 7 provides for the regulation of political broadcasts and the basic mechanism through which this is done is the same as in the United Kingdom, in other words, there is a code of standards published which is binding on broadcasters produced by the regulator, in the UK this is OFCOM. OFCOM does what the Gibraltar Regulatory Authority is going to do here, is done by OFCOM in the UK as regulator of the independent broadcasters and insofar as the BBC is concerned, that is regulated by their charter. I will be making a small amendment of which the hon Members have now hopefully been given written notice, I will be making a small amendment at Committee Stage in sub-clause (5) of section 7. Clause 8 provides for what the code of conduct, the code of standards has got to be based on and these are lifted from the UK provisions they provide for the same effect. Basically due impartiality and undue prominence and how that is to be measured, objects of a political nature and political ends are defined given that advertisements of that sort are not permitted in radio or television broadcasts. Clause 10 provides for the statutory entitlement to party political broadcasts in relation to European Elections. It is important to remember that this Bill regulates only European elections. Clause 11 deals with the Gibraltar Regulatory Authority establishing a procedure for the handling of complaints about the observance of the standards set in the broadcasting code of standards. Clause 12 gives rights of audience to citizens of the rest of the combined constituency in the Gibraltar courts and also the equivalent UK legislation does the same for our citizens having right of access to the UK's court, otherwise there would be no right of litigation in a court in which one does not reside, and incidentally Members of the Bar will be interested that the effect of this legislation is that our lawyers will get a right of audience and get a right of audience in the UK Courts in relation to proceedings related to the conduct of European elections. Clause 13 designates the courts in Gibraltar for the purposes of the exercise of the Gibraltar Courts jurisdiction in such matters, and the hon Members will see that it provides for the Magistrates' Court, the Supreme Court and our Court of Appeal and Clause 14 provides a regulation-making power in favour of the Government. Now the Schedule provides for the nitty gritty administrative provisions relating to basically the compilation and the administration of the register. The basic entitlement, the basic definition of who is entitled to register and vote in Gibraltar is contained primarily in the 2003 Act of the United Kingdom, the 2003 Act and in Schedule 4 of the 2004 Regulations. So the hon Members will see that paragraph 1 of Schedule 1 provides a definition, the rest of the sections of paragraphs 2 to 7, that is the remainder of part 1 of that schedule, the first schedule, deals with issues such as how communications are to be given, how

electronic signatures and related certificates are to be issued, how documents may be copied and how the concept of time is defined, in other words what days do you exclude from the computation, if a provision says seven days notice, what days does one exclude from the computation of those days, the sort of things that we are familiar with in our own Standing Orders in this House. Part 2 deals with the maintenance of the Gibraltar Register, and the hon Members will see what these provisions are for themselves, the principal factor is the conduct of the canvas. Although it is an open rolling register there is an obligation to conduct canvas, obviously one has to conduct a canvas for the first one, but thereafter one conducts canvases, I think from memory it says that the canvas has got to be in at least October of the year before an election is due. So the canvas, which involves sending out forms to all households et cetera is done every time there is an election coming, the year before, and that is not a canvas for a new register, that is a canvas to update the existing register which is therefore in a sense an open register, it is not a question of a new register for every European Parliamentary election.

Mr Speaker, clause 11 relates to the publication of the register and separately of any alterations that the Registration Officer has made to the register. Clause 12 in which I will be moving a small amendment just to eliminate some language, three words that have crept in two places where they should not, provides for the Registration Officer's entitlement to alter the register and the circumstances in which he may do it. Clause 14 deals with the concept of the overseas elector. Now the hon Members wish to follow this provision in more detail, not that it makes an enormous amount of difference to our debate on this Bill but if the hon Members for their own general knowledge want to understand in detail what the concept of the overseas electors are, these are defined in the fourth schedule of the 2004 Regulations. Basically it is people, in a nutshell and this is not a complete explanation but just so that the House can know in passing what the concept of the overseas elector is, it is somebody that used to be in the Gibraltar register any time up to fifteen years earlier and is entitled to carry on voting even though he is not resident in Gibraltar at the time of the new elections. For example, when we are doing the next register not this one, somebody can say "Ah, although I am living in Australia, if I were living in Gibraltar I would be entitled to be on the register and I used to be so living and so entitled and on the register during the last fifteen years. This is Anglo-Saxon concept of retaining your voting rights for up to fifteen years after one has moved abroad, but of course one still has to have been an entitled person. So that is the concept of the overseas elector. There is also a concept in the Bill of a person with a local connection and those are people who live in Gibraltar, who have a local connection but have no fixed abode, it is all derived from the UK, the legislation accommodates people who reside in Gibraltar with an address, people who are incarcerated, people who are committed to a mental institution but the UK legislation makes provision for so called in effect, although it is slightly wider than this, in effect homeless persons, so that there is a regime whereby homeless persons, which are called persons with a local connection in the statutory framework, have a means of getting on to the register even though they have not got a fixed abode and address that they can give. That is the concept of a person with a local connection. So it is not Gibraltar-specific, this is not a local status thing particular to Gibraltar.

Mr Speaker, just taking the hon Members through the principal provisions, the hon Members will see that there are detailed provisions as to the application for registration in clause 25 and then in clause 26 we start with the regime for objections to registration and the hon Members will see it is quite a sophisticated process for adjudicating on disputes, not only when somebody applies to register and there is a dispute about his entitlement but also for objections by third parties and how those disputes are resolved, and there are two regimes, resolution with a hearing and resolution without a hearing and both are subject to well, the resolution of dispute with a hearing is subject to appeal to the courts. And then the hon Members may have noticed in Part 3 from clause 44 onwards, the hon Members may have noticed that the provision related to, very

detailed provisions again which mirror the United Kingdom provisions, as to who is entitled to receive a full copy. The principal rule is that the full register cannot be made available to anybody except as provided for in the Ordinance. People can inspect the full register and make manuscript notes from them but the regime is that no one can copy electronically or receive a full copy to take away of the full register. They can inspect the full register and take manual notes from it and the full register is publicly available amongst various other Government buildings and in the Mackintosh Hall library. The reason why all this is the case is data protection legislation because one of the rights that citizens get when they receive their canvas form, is the right to opt, the right to choose as they are entitled to do under the Data Protection Ordinance which we passed the other week, whether they are happy to have their names supplied to somebody, even as one of 20,000 names in an electoral register, so the hon Members will notice in clause 44 onwards of the register that there is a concept of the full register and the edited register. The edited register is the full register minus all those people who positively opted by ticking the appropriate box in the canvas form not to be included in the publishable, not in the publishable in the distributable version of the register. So copies of the edited register are freely available, copies of the full register, because of data protection are available only to the persons listed in all that series of clauses, starting at clause 46 under the heading General Restriction. So clause 46 is the General Restriction and then clause 47 onwards makes exemptions from the general restrictions so that on the terms set out in the legislation, full registers may be made available to all those parties and all those parties have a copy available in John Mackintosh Hall for inspection, the UK and Gibraltar Statistics Office, clause 49, moving on to the Electoral Commission, clause 50, moving on clause 52, elected representatives for electoral purposes and restrictions on use, moving on to clause 57, local constituency parties, clause 54 registered political parties, these are all people who can get the full register on the safeguard terms, notwithstanding the fact that it is not publishable, the Government of Gibraltar and the Government of the United Kingdom, candidates at the elections, police forces and people of that nature. And all that distinction is data protection driven. Then the Appendix sets out the wording of the canvas form and of the electoral registration form canvas questionnaire. Schedule 2 to the Bill deals with the transitional arrangements for the Accession States citizens. Mr Speaker, the hon Members have a letter with three very small amendments to this Bill which I propose to move at Committee Stage. I commend the Bill to the House.

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

**HON DR J J GARCIA:**

Mr Speaker, I am certain as the hon Chief Minister has said, that every Member of the House welcomes the principle of the enfranchisement of Gibraltar for European Parliamentary Elections which has come about after a long and often bitter legal and political campaign. I recall that shortly after the 2000 Elections the House adopted a unanimous motion which appointed a group of British Labour, Conservative and Liberal Democrats members of the European Parliaments to look after our interests in Brussels and Strasbourg. I take the opportunity to thank them for their efforts and to all those others that were appointed previously. We are obviously not appointing anyone this time round because after the 10th June Elections we will have 7 MEPs who will be accountable to us and who we will be able to call our own. This does not mean Mr Speaker, the system is perfect. I for one would have preferred our own Gibraltar MEP elected by the people of Gibraltar in our own Gibraltar constituency. We are told this is not possible given our size. In my view nothing is impossible if the political will to find a solution is there. For example, Britain was allocated new seats in the European Parliament after the Treaty of Maastricht. One of those seats could easily have been allocated to Gibraltar at the time. After German reunification, Germany obtained a series of observers in the European Parliament for the East as a prelude to their full representation. Again this was not even

considered for Gibraltar. So with the years there has been a distinct lack of political will on the part of London on this issue. We have been given a series of absurd excuses as to why Gibraltar could not vote, including that we did not have VAT or that we did not belong to the Customs Union. Indeed, more recently when all the party leaders in Gibraltar went to the House of Lords to support an amendment by Lord Bethell on this issue which sought to enfranchise Gibraltar by changing British law alone, the British Government argued at the time that this was illegal, and that what was needed was to amend the European Act, something that would be vetoed by Spain. In the end, Mr Speaker, the United Kingdom has done now what they previously argued could not be done, and changed British law alone, following on a successful legal challenge. It is shameful that we had to secure our right to vote in European Elections by taking Britain to court, when the right to vote is a fundamental human right. Mr Speaker I would also like to take this opportunity before entering into the details of the Bill, to pay tribute to the Self-Determination Group and to its then Chairman Dennis Matthews and to his daughter Denise, who were at the centre of the legal challenge that took place. Equally I think it is important to the Leader of the Opposition who backed the SDGG and backed the legal challenge when in government, and it is also very fitting that one of the lawyers who handled the case was my honourable Friend and Colleague Fabian Picardo, who is now a Member of this House, and will be able to participate in the debate on the Bill. Mr Speaker, the hon Member has said that this is a complex and complicated piece of legislation and I think the Opposition would share that view. This is one of the few pieces of legislation that I have seen since I have been in this House where the actual schedule to the Bill is actually longer than the Bill itself, and where Schedule 2 to the Bill amends Schedule 1. One of the areas of clarification, I know the hon Member has already elaborated upon that but it is not exactly very clear, that is as to why amendments incorporated into the first schedule rather than having a Schedule 2 amending Schedule 1. I would welcome having clarification on that particular aspect of the Bill. There is another area and that relates to the definition section of the Bill itself and to the position of Malta and Cyprus, which obviously once they join the European Union, there will be apart from the United Kingdom, three countries that belong to the Commonwealth that also belong to the European Union, and it would be useful to know where exactly, to have some clarification from the Government side, as to where exactly Maltese nationals resident in Gibraltar, or Cypriots who live in Gibraltar would qualify to vote, whether they would be doing so as citizens of the European Union under one particular section, or as citizens of the Commonwealth or qualifying Commonwealth citizens under another section. It would be useful to have some guidance also on that particular aspect of the Bill, Mr Speaker. Also on page 6 of the Bill, in relation to the definition of the combined region, and I will be going through these more detailed points in the second reading in order to give the Government an opportunity to look at the points when we come to Committee Stage. The definition of the combined regions says that this means the electoral region which includes Gibraltar, mainly the Southwest electoral region. This is page 6 of the Bill, in the definitions sections. It says the electoral region which includes Gibraltar, mainly the Southwest electoral region. It might be helpful Mr Speaker, to add at the end of that the Southwest electoral region of the United Kingdom which is not actually specifically mentioned in the definition of what the combined region actually means. Mr Speaker, moving on now to page 13 of the Bill which is actually the Schedule, there is a point to be made in relation to the definition given to the full register. It says that the definition of the full register has the meaning given in paragraph 45(1) below. If one looks at 45(1) below in the Schedule, although there is a mention in passing as to what the full register actually means, the fact that it comes under the heading of "unedited register" is something which can create confusion because we look at paragraph 45(1) of the Schedule which is on page 46, one finds that 45(1) reads "at the time when the Registration Officer publishes a version of the register under paragraph 11(1) or (3) above and then (the full Register) which presumably that is a definition, it should also publish a version of the register under this paragraph and then (the edited register), because all that comes under something called edited version of

the register, I think it is something which is liable to create unnecessary confusion. In relation to again in Schedule 1, paragraph 9 page 17 of the Bill, there is a reference in 9(2)(b) "thereafter on 15th October in any year preceding a European Parliamentary General Election", I am not sure whether the word general in reference to a European election is actually correct, because as I understand it there are only European elections, European by-election is something which does not actually exist, the people are elected on list and then the next person automatically gets selected if somebody vacates the seat. So that is another area we would welcome some clarification to see if the Government would take on board the comments made.

Mr Speaker, in relation to the publication of the register on page 20, the hon Member mentioned that this is an open register and I am not sure exactly whether the process being used here is identical to the process used in the United Kingdom in relation to the production of the register itself. Although the wording of the Schedule on page 20 allows the publication of more than one version of the register between elections, my understanding is that the United Kingdom practice is that there is actually a draft register published every month containing the amendments, containing the divisions, containing changes of address, new people who want to put themselves in the register, and others may want to remove themselves. We had one particular query as to whether the procedure being used to publish the register in Gibraltar is exactly the same as the procedure being used in the United Kingdom because our understanding from the Electoral Commission is that that process may be different and we were under the impression that the two had to be identical processes. The other area where clarification would be welcomed from the Government, relates to the question of qualifying Commonwealth citizen and a Commonwealth citizen. This arises, for example, on page 29 of the Bill where we see both terms are used in the text of the Schedule and paragraph 23(2). If one looks at the definition section in the Schedule itself, the impression given is that the definition used is that provided in the 2003 UK Act for Commonwealth citizens but there is reference to qualifying Commonwealth citizen and Commonwealth citizen, without the use of the word qualifying. So it is something that we would also welcome some clarification on that. The UK Act seems to distinguish between them on the grounds of residency, that a person who is registered, a person who is entitled to be registered if he is resident is not subject to legal incapacity, is a qualifying Commonwealth citizen or is at least 18 years of age. This is in section 16(1) of the 2003 Act and then in section 16(2) it applies to somebody who is not resident in Gibraltar, so we would just like to have some clarification on that or some confirmation on that particular point as well. There is also the question that the hon Member referred to at the beginning and this was the 2004 Regulations. In page 12 of the Bill, in the definitions section of the Schedule it refers to these Regulations. I mean there was no indication given there, we have seen the amendments that the Chief Minister intends to move this morning that the Schedule actually refers to regulations made under UK law and not Gibraltar law, and although we appreciate that this was only available on 3rd February, it certainly would have been very helpful to Opposition Members to have had the UK draft Schedule earlier, because it appears, I mean I counted no less than 35 references to the Regulations, to the 2004 Regulations in the Bill and it would have been helpful to obtain a picture as to what exactly it is that we are trying to do.

Moving on now to paragraph 22 of the Schedule and page 29 of the Bill, this is the procedure for determining applications for registrations and objections without a hearing, that is what the heading says. If we look at subsection (7) of that paragraph which is, sorry I am looking at the page, page 29 paragraph 22 so I will just go back. No the Chief Minister is right, it deals with the power to require information and that is the section we are on now. There is one point to be made in relation to paragraph 22(1) which is that the Registration Officer may require any person to give information required for the purposes of his duties in maintaining the Gibraltar register. I do not know whether qualifying that by saying within a reasonable period of time might be something which is relevant in the context of what the Bill is doing, given that the failure to supply information

makes one liable to a fine not exceeding £1,000. Mr Speaker moving on now to paragraph 28(7) which is on page 35 of the Schedule, which is the one that I was looking at earlier, this is the one that refers to the procedure for determining applications for registration and objections without a hearing, there is a case to be made that in subsection (7) which is on page 35 which reads as follows: "in cases to which subparagraph (6) above applies, the Registration Officer shall state the grounds for his opinion that he intends to disallow the application or objection unless that person gives the Registration Officer notice within three days from the date of the Registration Officer's notice". There is an argument to be made that three days is actually too short. Especially three days from the date of the notice of the Registration Officer which may have been dated a couple of days earlier before it was posted, so there could be a delay from the production of the notice, the dating and posting of the notice and then the receipt of the notice by the person to whom it is addressed. So there is a case perhaps there for extending the three days.

The next point which I want to make relates to page 36 and that is paragraph 31 of the Schedule. This paragraph deals with the hearing of applications and objections. It says that the person entitled to appear and be heard are as follows: (a) on application – the applicant; (b) on an objection – the objector and the person objected to; and (c) on an application or objection, any other person who appears to the Registration Officer to be interested. I think (c) is rather loosely drafted because anybody who appears to the Registration Officer to be interested is rather a wide discretionary power which begs the question like who and might it not be better to say who it is, a legal representative or whoever it might be. In paragraph 32(5) which is on page 39, it defines an elector and then it defines a relative and a relative means a husband, wife, parent, grandparent, brother, sister, child or grandchild. Given what it is that the relatives would be doing, which if I am not mistaken is actually notifying the Registration Officer that somebody has died, might it not be pertinent to add after husband, wife, parent, brother, sister, child or grandchild, of voting age, otherwise we are leaving that open to being exercised by people who are not of voting age and may even be schoolchildren. There is also a couple of points in relation to the notices which the relevant officer has to publish in relation to these elections, and that is on paragraph 35 which is on page 40 just over the page, the notices in connection with registration. A notice under 11(3), which is basically a notice to publish a revised register is being published. It then gives three ways in which that is made known to the public. The first one is not less than 14 days before the publication of the revised version of the register, which must be published in the Gibraltar Gazette and by posting a copy of it at his office and at some conspicuous place or places in Gibraltar. There is something to be said, Mr Speaker, I mean those three areas might not be, I cannot imagine many ordinary citizens reading the Gibraltar Gazette or going around coming over here to the House of Assembly to look at a notice board, and it might be better to include the local media as a (d) where also notices can be published. In relation to the alterations to the register, which is what subsection (2) does on the same page, it is paragraph 35(2), again there is something to be said there although this is simply alterations to the register, not as important as publishing a revised register, again a copy of it is available for inspection and supervision at the office of the Electoral Registration Officer and at such place, if any, in Gibraltar to allow members of the public reasonable facilities for that purpose. I do not whether again it might be in the public interest to make sure that there is a wider public circulation of this notice as well, or perhaps what places the Government have in mind where somebody can go under supervision to examine the notices in question. In relation to page 49 and paragraph 48 of the Schedule it seems to me that in paragraph 48 and in paragraph 49 which is overleaf, we are actually legislating for what can happen or what can not happen in the British Library. This is that we supply a free copy of the Register to the British Library and to the John Mackintosh Hall Library and the descriptions as to use. For example, the 48(2) says no person employed by the British Library or the John Mackintosh Hall Library may supply a copy of the Register et cetera, et cetera or make copies of it, so there is something to be said that

from a colonial point of view it is something which is very commendable that we should seek to legislate, for what can happen in the British Library or in the National Statistics Office, but would welcome some clarification from the Government on these two points, because we seem to be legislating for what can happen there and for what they can do there. There is one general point to be made, also on the same page, page 49, at paragraph 4 which allows what the Chief Minister said in his introduction, it allows people to inspect the register at the British Library and the John Mackintosh Hall Library, they may not make copies of it or they may only record particulars included in it by means of handwritten notes. I understand the point made about the data protection legislation but it is a question of whether it is actually possible for somebody to sit in the British Library every day and make handwritten notes of the whole register, or of entire pages of the register because that is what this allows. Mr Speaker, some of the points also apply to the National Statistics Office of the UK which is overleaf on page 50, paragraph 49 of the Schedule. In relation to 49(2) it says in subparagraph (1) the duty to supply is the duty to supply in data form unless prior to publication the office has requested in writing a printed copy instead. My question is the way that is drafted it does not allow the office being both the National Statistics Office or the Gibraltar Statistics Office to have both, that is to say to have a copy in writing, a printed copy which they may want for some purpose and to have a data copy which they may want for another purpose. It seems to allow one or the other by the use of the word instead at the end of that particular sub-clause.

In relation now to the political parties receiving copies of the register, that is on page 54 of the Schedule and also paragraph 54 of the Schedule, I cannot seem to find any provision in the Bill to allow Gibraltar political parties to obtain a copy of the register for European Elections other than by registering in the United Kingdom under British law as a British political party, which would then give one access to a register. I would like confirmation where that is the case and whether perhaps any provision can be made for political parties in Gibraltar who may not necessarily be contesting the European Elections but who certainly have an interest in registers of electors, to receive also copies of the register itself without having to register in the United Kingdom under the United Kingdom Act. Then also in terms of supplying the register, on the next page in page 55 paragraph 55, in subsection (3)(b) it says that the Government of Gibraltar or the United Kingdom Government departments may supply copies of the register, or disclose or make use of information contained in it that is not contained in the edited register, for the purposes of the vetting of employees and applicants for employment, where such vetting is required pursuant to any enactment. That seems very odd Mr Speaker, that in a Bill that deals with voting for European Elections and in the section that deals with the production of registers and the supply of registers that people who put their name down in order to vote, that information ends up being used in order to vet them for employment purposes by either the UK Government or the Gibraltar Government, that is an area we would like the Government to look at. In relation to page 60 there is something about postal voting that this is actually in the appendix to the Bill. If one looks at page 60 it says "would you prefer to vote by post." Anyone on the electoral register will be able to vote by post. We know here in Gibraltar elections people can only vote by post if they are not in Gibraltar. It says anyone can vote by post. One can have a postal vote for just one election, for all elections in a set period or for all elections indefinitely. I think that is an area which needs an explanation because not only is the procedure used in Gibraltar very different but I am not sure whether people can register in a register for European elections in order to vote in all elections indefinitely, which includes House of Assembly elections, which is a different register to the one being produced here. So certainly that is another area where we would welcome some clarification from the hon Chief Minister. Also on page 62 of the Bill, which refers to the canvas of European parliamentary electors in Gibraltar, it also says under the subheading "the full register" halfway down, it says that the information supplied may be used for other purposes such as the prevention and detection of crime, and for checking ones identity when applying for credit. I am not quite sure again

how that falls into the spirit of the Bill which is supposed to deal European elections with people exercising their democratic right to vote, they then have the information that they supplied used to vet them for employment or used to check against when they apply for credit. So I think that also looks slightly peculiar. These are the comments that I have for now and I look forward to the reply from the Chief Minister. Thank you.

**HON F R PICARDO:**

Mr Speaker, we have got to get through a lot of business at this sitting of the House and a lot of it is very important but both the motion of the report on the Select Committee of the House, which I do not know whether we will be taking before we adjourn again, and the Bill for the Equal Opportunities Ordinance are both of them tremendously significant for reasons that obviously we will each refer to when we are dealing with those. But I must confess Mr Speaker, a particular delight and pride in welcoming wholeheartedly this piece of legislation to this House. In fact I am sure that the Bill for the European Elections Ordinance will find no enemy in this House, and that I am sure we all agree that the enfranchisement of our people irrespective of the European Parliamentary Elections is very long overdue. Indeed in my view, all previous elections to the European Parliament have been flawed, given that they have not resulted from direct universal suffrage in all the Member States of the Union as required by the Treaty of Rome, as a result of the exclusion of Gibraltar from the franchise in each case. That democratic anomaly is now to be resolved with the inclusion of Gibraltarians in Gibraltar in the coming elections, and I think that the fact that we are going to be included in Gibraltar is particularly important. I have to disagree with the Chief Minister because in order to do justice to the exercise of legislating in relation to this Bill, it is right and proper that we should refer to the history of Gibraltar's exclusion, which he has said he does not want to refer to, and to the success of having clutched enfranchisement from the jaws of the United Kingdom's denial of the vote. For that reason I think it is proper that I should speak to the general principles and the genesis of the Bill and not just to the details which my Colleague has already done.

Mr Speaker, in recent years the European Parliament has developed from what euro-sceptics used to laughingly refer to as just a European talking shop. Each European treaty which has delivered ever closer union, has also delivered greater powers to each of the institutions of the EU, giving the European Parliament a role akin to those parliaments in the rest of the Member States of the Union, a role akin to the national parliaments of each Member State. It is in that context that as the European Parliament gained more powers, there was also I think a rolling momentum in Gibraltar urging representation in that place. Mr Speaker, the editors of The Sun newspaper in London often seem more concerned with the fact that the European Parliament was debating the size of the European banana and whether or not salt and vinegar crisps and the great British banger were going to be banned by Europe, than by the real power that might reside in that institution. But in Gibraltar I think we had as a people a jealous eye on what it was that the European Parliament was becoming and the fact that we had no influence, no even observer status there and certainly no representation. It is that that brings me to recall a meeting of the Self Determination for Gibraltar Group, held in the very early nineties, which addressed this very issue, with a Gibraltarian lawyer then resident in Paris, who kept Gibraltar and the denial of our rights very much in his mind even though he was by then no longer a resident with us. That lawyer was Michael Llamas and since I met him I have the pleasure to say that I have consistently held him in the very highest regard. The meeting of the SDGG which I referred to, was followed by a public meeting also addressed by Michael Llamas and all parties present there agreed that a representative action should be taken in the name of a young voter who would be able to vote for the first time in the elections following that meeting. The case that followed is the case of Matthews versus the United Kingdom, and I was very lucky to have had a chance to be involved both as a law student and as a very junior lawyer because I was a Member of the SDGG, with a very minor logistical role in providing what

little help I could to Michael in this case. All credit must go to Michael Llamas for having achieved the legal victory in the Matthews case. That is what brings this Bill to this House and this House must consider Mr Speaker, how it recognises Mr Llamas' achievement in the future because it was an achievement for all of Gibraltar.

Mr Speaker, the action in Matthews versus the United Kingdom was commenced during the course of the last GSLP administration. The Hon Joe Bossano himself believed in the case from the beginning and provided support morally and logistically throughout. From the very beginning the United Kingdom unmeritoriously and to their eternal discredit, fought tooth and nail to have our case dismissed and have the disenfranchisement of our people perpetuated. But every set back that Gibraltar suffered seemed to give Michael Llamas a greater zeal to succeed in the case and his boundless energy and nationally unparalleled knowledge of EU law galvanized resolve to win the case. And Gibraltar did win Mr Speaker, having been heard by the full Court of Human Rights, the decision delivered on 18th February 1999 does credit to the true independence of the court and to the single-minded determined conduct of the case by Mr Llamas. But I want to recall one particular thing at this stage. The dissenting opinion was delivered by the English judge. I think it is important and fair at this stage to refer to the contributions made to that case by three others. The first is Mr Dennis Matthews who was the Chairman of the SDGG at the time when the case was started and he was instrumental in ensuring that the case was seen through to a conclusion. Second is Louis Baglietto, a close friend of mine and until recently also one of my partners at Hassans where he is the head of the litigation department, who was involved in his professional capacity. And the third and final person I think we have to recognise Mr Speaker, is Mr Rafael Benzaquen, who I recognise in this House sitting behind the Chief Minister, of the Legislation Support Unit, who attended the final hearing also to answer difficult questions, very difficult questions about the transposition in Gibraltar of European law and other European legislation, especially as to its volume compared to legislation emanating from this our national parliament.

Mr Speaker, the case of Matthews in the United Kingdom did not just establish the right of Gibraltarians to vote at European Parliamentary elections. It did much more than that. It has become European authority for two particular important issues. The first is that the European Parliament is now to be regarded as a legislature, with the right to initiate legislation. The second is that by Matthews versus the United Kingdom, the Court of Human Rights in Strasbourg exerted jurisdiction over the institutions and emanations of the European Union, to ensure that they comply with its own statutes and the convention of human rights. So the effect of the Matthews judgment reverberates beyond our shores and permeates now the whole jurisprudence of the Union. Gibraltar having won the right to enfranchisement in the court, we were not yet in the clear, how would we be enfranchised? The manner of our enfranchisement still remains to be determined and there were two particular concerns which I think the Chief Minister has flagged himself. The first was obviously that we should have a constituency for ourselves, if at all possible, so that Gibraltarians would be electing their own representative to the Parliament. Gibraltar is quite distinct to all the other regions in the United Kingdom and to all the other regions of Europe that have a European parliamentary constituency. That may sound fanciful for me to suggest that 18,000 or 20,000 voters should have their own representative, their own constituency may sound fanciful. If we put that in the context of the fact that Luxembourg itself has constituencies where the total number of votes is less than 50,000 people, it appears more obvious that perhaps we could have enjoyed such a constituency for ourselves. Admittedly in the context of the United Kingdom as Member State, each constituency is much larger than those that we might find in Luxembourg and the Government have not been able in its bilateral negotiations with the United Kingdom to be able to secure a constituency for Gibraltar. As a result there is therefore a second concern and consideration. If we are to be enfranchised as part of another constituency, will that

constituency be part of the United Kingdom or of another Member State? Clearly all Members of this House would not have countenanced accepting that we should form part of a constituency in a territory other than that of the United Kingdom. That was particularly relevant when addressing the fact that we must vote in Gibraltar and from Gibraltar. We must not in the next European Parliamentary Elections have found ourselves voting in the United Kingdom from Gibraltar with the territory suspended. I believe that the Bill that is presented to the House in its framework secures that position. Therefore the Bill presented to the House in that respect today will certainly enjoy our support. But it is a highly technical piece of legislation that we are looking at today. It has to be read with the Political Parties Elections and Referendums Act of 2000, The European Parliamentary Elections Act of 2002, the European Parliament Representation Act of 2003, a draft Statutory Instrument which is the European Parliament Elections Combined Region and Campaign Expenditure United Kingdom and Gibraltar Order 2004, which I think may now already no longer be draft, and the document passed to us by the Chief Minister this morning, the European Parliamentary Elections Regulations of 2004.

Mr Speaker, that model and I do not know what it is that I may have said that may give rise to mirth, it may be that one of those is no longer to be considered relevant, but that model means that we are talking about a very complicated elections framework. Our analysis would unfortunately not have had the benefit of our being able to investigate the regulations which we have been given today, so I hope that we will have some time before Committee Stage because the document we have been given today is substantial, and it does interlace at least on 35 occasions as my Colleague has said, with the Bill that we are to pass. But in principle of course, the United Kingdom code for parliamentary elections, for European Parliamentary elections and for referenda is generally, of course as far as we are concerned, unobjectionable, but there will be some technical and substantive issues that we have to take at Committee stage. There is one particular issue that I want to highlight now, which is that we are dealing with an English Act that Parliament is extending to Gibraltar and that our Parliament, this House, is also extending to Gibraltar by its Bill today. Having regard to the English Law Application Ordinance, although the Chief Minister seems to suggest that that is not the case and section 3 thereof, in particular, at 3(1)(b) an Act of Parliament at Westminster can be applied to Gibraltar either by an Order in Council of Her Majesty or an express provision in the Act or necessary implication or by any ordinance. We seem to be doing, and I do not necessarily think that this is wrong, I am just highlighting the fact, we seem to be doing the extension by way of ordinance and by way of express provision in the Act. That may just mean that we do it more effectively than if we were to do it by only one method but I highlight that issue in relation to the English Law Application Ordinance. Mr Speaker, finally, I think that the fact that this Bill is before this House is a great reason for celebration and I certainly will do nothing but support the passage of this Bill through the House.

**HON J J BOSSANO:**

Mr Speaker, just making a brief reference to the UK position on Gibraltar being able to participate in European elections, which has not been mentioned so far in the debate, I think it is worth recording that in fact the United Kingdom was arguing even after the court case was won, that we could not be enfranchised without the European Act being amended which required unanimity, and indeed when the Hon Dr Garcia and I went to give our support to Lord Bethell’s attempt to include us in the UK constituency through an Act of Parliament, the only argument that Baroness Symons gave to the House of Lords was that much as they would have loved to do it they could not do it because it was ultra vires European law. I think it is worth recording that because it shows either the degree of incompetence of the legal advice that we get from the United Kingdom or the degree of duplicity that they exercise when they interpret the correct legal position as it suits them. Subsequently, Peter Hain let the cat out of the bag when he informed Parliament that indeed it was now possible to proceed

unilaterally by the United Kingdom legislation because Spain had given the green light, and Spain had given the green light to this breach of European law so that United Kingdom could act illegally in respect of Gibraltar as one of the early fruits of the relaunched Brussels Process, which Mr Hain tried to convince Parliament and the Gibraltarians, was indicative of all the good results that would flow if we were willing to swallow the shared sovereignty concept. Since all this is a matter of public record I think it is an appropriate time to put it in the record of the House because here we are looking at a piece of legislation which from the beginning, according to the expertise of the UK and according to the information provided to the House of Assembly, is in fact in conflict with the Member States' obligations under EU law because it is the Act that should have been changed. And it is significant that the last element in this bizarre episode is that having boasted in Parliament that he had managed to persuade the Spanish Government to support unilateral action by the United Kingdom when the joint sovereignty deal is sabotaged by us in Gibraltar, Spain seems to withdraw its green light and starts threatening to block the UK legislation by complaints to the Commission and by possible commencement of legal proceedings in the European courts. Since we believe in this House in the rule of law, and we believe that as a parliament we have to act constitutionally, it shows that it appears that we subscribe to higher standards than some other parliaments and some other governments do in other places. Clearly we are totally committed to the concept that it is the territory of Gibraltar that is part of the territory of the European Union and that therefore what we are doing is making Gibraltar territorially, the whole of it including the isthmus, where many of the voters will be residing in Laguna and Glacis, part of the Member State UK. So I do not know whether Spain given its argument in the European Court in respect of the airport and the isthmus has woken up to that particular nuance on this occasion, and of course, in making sure that in the part of the constituency that is the constituency of the Member State UK comprised of the Southwest region and Gibraltar, we are today putting in place what is required to have the electoral process taking place this year in Gibraltar, when for the first time since we joined in 1973 we will be participating in the election of a Euro MP. It is, in my experience in this House since I joined it in 1972, we have not had anything like it before, where we are debating a Bill which refers to legislation which is not legislation of this House and where we have to look at that other legislation to find out what it is that we are doing. Although we are fortunate that my Colleague has been able to produce for us all the stuff, I really think the House ought to have in front of it provided for all Members of the House, without them having to spend their time and effort to chase it up for themselves on the internet or whatever, that if in this House I am being asked to vote on a section that says that something means what it says in a particular piece of UK legislation in a particular paragraph then, what it means should be available to me here when I vote. I raise this point in relation to EU Directives where there has been an informal system that when we need it we ask for it and we get it, and I know that it is possible to get it on the internet and certainly if we have the Journal where all this stuff is published, regularly available as part of the information that is available in the House, we might not need to go asking the Legislation Unit. But in this particular case we are talking about the whole range of UK laws which have been mentioned by my Colleagues to which we have just added what the Government has provided to us this morning, which is this fairly bulky document and which has got a schedule dealing with Gibraltar and where there are definitions here which refer to what is in that schedule, and that raises I think some important issues as regards the general principles of what we are doing in this occasion when we are legislating. If we take, for example, just to take an arbitrary point for the sake of illustration, if we take a reference to definitions in our laws which say "service voter means a person who has made a service declaration pursuant to paragraph 17 of schedule 4 of the 2004 regulations" which is here, not only do we have a situation where we are voting something in the House which may mean something different if they decide to amend it when they approve this in Parliament, but in respect of this reference and in respect of many other references, we are going to be voting in this House today things that may subsequently be changed, and if the content of any of

the sections that we are referring to here subsequently get amended, then without us having had anything to say here, the law that we have passed acquires a new meaning. Now I am not aware of having done anything like that before, it may be that in the context of this particular piece of legislation, where most of what is going to be done in Gibraltar by definition has to be practically the same as what is being done in the United Kingdom, because presumably the requirements are driven by the EU, given that the whole concept is that one is voting a European parliament and indeed, the concept goes further than that. The concept is that the European elections are fought on a Europe-wide basis along ideological lines, so that to some extent theoretically we are moving into a situation where they will be for the whole of Europe, and a socialist party manifesto for the whole of Europe, as opposed to different manifestos in different Member States. That is the direction in which it is going, then logically the framework ought to be as near identical as possible in all the Member States. But of course we are looking to adapting things here and, for example, if in Gibraltar's case the person that has to ensure the standards of independence and impartiality of GBC is the Regulatory Authority in Gibraltar, then that I imagine, is because the Government of Gibraltar have taken a policy decision that that should be, it has nothing to do with what is being done in the United Kingdom or what is being done in Spain or what is being done in any other Member State. Since we have had no participation in any of this negotiating process between Gibraltar and London, we might think, when the crunch comes, that we do not agree that it should be the Gibraltar Regulatory Authority that it might be somebody else. So what we are talking about, the general principles of the Bill, they were talking about a situation where there are elements in this Bill which reflect the preferences of the party in government with which the Opposition Members might not necessarily agree, because although we are talking about something that has to do with participation in the European elections, the entire exchanges have been between the Government and the British Government and therefore, in this House, we may find ourselves voting against bits of this law with which we do not agree, which has nothing to do with the object of the Bill. Equally, I imagine, that the stuff that refers to Gibraltar in the United Kingdom legislation has been the result of the negotiating process between the United Kingdom government and the Government of Gibraltar. We might find things there, when we study this, with which we are not in agreement but that we can do nothing to change of course. But if we are in disagreement with something in the United Kingdom legislation, which is then referred to in the Gibraltar legislation, we may then have to oppose that because we do not agree to what is being referred to in the UK and we have to assume that it is there because that is what the Gibraltar Government either has settled for in its negotiation with the UK, or has proposed to the UK and the UK has accepted. In looking at the actual Bill before the House I do not think my Colleague mentioned the second schedule, which was something we had noticed was rather peculiar, I do not remember seeing that mechanism before, which is the second schedule in page 66 which appears to consist of a series of amendments. If we look at the first clause in the second schedule it says in paragraph 1 of Schedule 1, in the definition of elector, after the word age insert or subject to section 61(a) of the 2003 Act and so on. Well, why do we need a second schedule to amend the first schedule when the first schedule is what we are debating in this House and we can amend it at Committee stage. So why do we vote an unamended first schedule first and then we vote a second schedule to amend what we have just voted unamended. It is a most peculiar way of introducing amendments in the House that the amendment is actually printed, when all that was needed, presumably, was to actually do what it says here and print it in Schedule 1. Although the Chief Minister went through most of the sections in the Bill he made no reference at all to the second schedule or what it was there for, in his opening remarks.

The question of the overseas electors declaration, which we were told was a provision where somebody that has been residing in Gibraltar and able to vote in European elections up to 15 years ago, can apply to vote. Well, of course, if that is something that everybody in the European Union that was in the

European Union 15 years ago has, then what we have here is a situation where people who ought to have been enfranchised 15 years ago and were not, will not now be able to vote in this election either simply because their right was denied to them 15 years ago. So although we are making a provision here for overseas electors on the explanation we have been given, it appears to be a provision which nobody can exercise, because there was no register of electors 15 years ago from which people have since been removed. But I wonder whether that does not raise a point of principle as to whether people who ought to have been able to vote then, because we have been claiming that they should have been able to vote all the time, and who might want to vote now that they finally can, should be in fact deprived of that opportunity. Without having gone into the actual detail of the way the provision is contained, it is a question that I am putting as a matter of principle so that when we come to deal with that particular section we see whether in fact this is something that should be happening, given that if we are putting it there it is because we think it is right that they should have that, and presumably because everybody else in every other Member State and throughout the territories of the European Union, in respect of those Member States which of course have been over 15 years in the Union, will have that right.

As regards the provision of the full register and the explanation that has been given about the data protection well, we will look to see to what extent in fact the explanation of the data protection actually fits what is contained here, but I must say I find it very peculiar that we should be legislating so that the full register of electors appears to be available to lots of entities for which we see no justification. For example, I think certainly the Gibraltar archives ought to have a full register for posterity, given that we believe that all the documents that we produce here should be there, and we would want to see that included unless there is a peculiar reason which determines at EU level, who can be provided with the full register and who cannot. The Gibraltar Data Protection Ordinance is the one that has been mentioned and we shall look at that, but certainly if there is an element of discretion, if there is an element of flexibility in the way we do things, then in terms of the general principles of this Bill and indeed of all the Bills that have to do with European provisions being transposed in Gibraltar, the basic philosophy on which we have operated in this House since 1972 has been that the discretion is exercisable by this Parliament and in this territory, independent of the option that may be exercised by the United Kingdom Parliament in respect of the United Kingdom. Now therefore, the degree of autonomy, the degree of self-government that we enjoy under our Constitution means, that if European law permits choice then we are not required to choose the same alternative that the United Kingdom as the Member State does, because we are the European territory for which they are responsible but of course, the fact that they are responsible for this European territory does not mean that we cannot exercise a different choice. We will be looking on the basis of that principle to see whether in fact we have maximised the range of possible choices here because we do not know to what degree, given that we have said that we have been told that this is primarily UK-driven, we do not know to what degree other than in the points mentioned when the Bill was introduced by the Chief Minister opposite, by the mover, we do not know to what extent the Government have been pressing or whether they have actually chosen as a matter of Government policy, to do things in a range of areas in the same way as the UK has done it because they think that is the best way, or whether in fact it has been the other way round, that the United Kingdom having started from a position of wanting to apply everything to Gibraltar the same as in the UK, has effectively been resisting us doing different things. I think it is important to get an answer as to whether of those two scenarios has been what has dominated the context in which this has finally been arrived at. As my Colleague has said clearly, the more time we have to go into the detail, the better equipped we will be to put views across at the Committee Stage in things which concern us.

The House recessed at 12.20 p.m.

The House resumed at 4.35 p.m.

**HON CHIEF MINISTER:**

Mr Speaker, I am grateful to the Opposition Members for the indications that they will support the legislation. I am not quite sure what the Leader of the Opposition meant when he said that they might vote against some of the proposals but I generally gleaned that they were supportive of the legislation on the whole and in principle. If I could just take their comments in the order, or some of their comments in the order in which they made them. The Hon Dr Garcia said that the system was not perfect and that he would have preferred his own Member of Parliament and he felt that nothing would have been impossible for Britain if it had had the political will. Well, of course, we can deal in ideals and in perfect worlds and all that if he likes but the reality of it is that if a dedicated MEP for Gibraltar would, I think have been politically difficult for the UK to deliver, even when they had single Member constituencies for the European Parliamentary elections. The moment that the UK moved away from single Member constituency to regional lists system, so they had for example, 5 or 6 million people in the southwest of England represented by 7 MEPs in the case of the southwest, collectively in that system, there would be no way to give Gibraltar within the context of the UK Member State and its arrangements, there would have been no way to give Gibraltar, much as we would have liked it, our own MEP without obtaining head for head as individuals, massive over-representation compared to an equivalent 30,000 people in any part of the United Kingdom. That is the mathematical realities of the consequences of the UK's movement from single Member constituency to regional list system, and I do not say that because if I pretend that that had not happened, we might then have been more successful in getting our own dedicated MEP, I think we would have been equally unsuccessful because I agree that the UK does not have and never has had the political will to give Gibraltar its own separate and distinct MEP. So regardless of how likely or unlikely with or without the required measure of political will, something else might have been possible or not possible in historical terms, that it should not be available to us today given that the UK's movement subsequently to regional list system, I think is simply too easy for them to defend and too difficult for us to make the alternative case. Ultimately, our case would have to be, "well, we are not part of metropolitan UK, we are not actually part of the United Kingdom, therefore you should treat us separately and give us one of your MEPs, leaving, I think we have got 87 now, leaving 86 so you know share one less amongst your remaining population, so 30,000 of us can have our own MEP". Mr Speaker, we can debate the desirability of it, well I am not sure that there is any need for us to debate the desirability of it, we are probably both agreed on that but I think there is no point in debating whether it was ever realistically available. I think it was never realistically available, it is worth bearing in mind now with the principle of enlargement, or rather with the enlargement of the EU, I understand that the UK and some of the other Member States are having to give up some of their MEPs thereby increasing the number of millions of citizens that each MEP is representing, and therefore even less likely that there would be one available just for us 30,000 people. I agree at least with the factual analysis, not necessarily with some of the comment, that has been made by the Hon Dr Garcia and the Leader of the Opposition, as to the history of the UK's refusal to deal in this way from the outset. The hon Members are absolutely right in their analysis, successive Gibraltar governments have been urging the UK to do precisely this. I remember the first Minister of State that gave me any indication that this might be a way forward was Keith Vaz, who, first raised the spectre that if Spain did not play ball then the UK might have no alternative. The hon Leader of the Opposition went on to develop that point, to point out the chronology of events following the breakdown of the joint sovereignty negotiations and the Spanish complaint. Well I think he is probably right in that assessment too. Clearly, there was some sort of understanding in the context of the joint sovereignty negotiations between the UK and Spain about Spain "allowing",

in other words not making a fuss, about the UK proceeding unilaterally. I think it is also clear that for Spain, quite apart from any consideration such as that the Leader of the Opposition has mentioned about whether Spain reacted to the breakdown of the joint sovereignty talks by sort of reversing its cooperative attitude, there is also the question that Spain believes that the UK breached their understanding by the way that the enfranchisement was actually given. Spain believes that it is a breach of that understanding that Commonwealth citizens should have been allowed to vote in Gibraltar, or that Gibraltar should have been so territorially enfranchised, and it was really when Spain saw the detail of the way this was going to be done when the 2003 Act was first published as a Bill, that she started kicking up the fuss saying 'hey chaps, this is way beyond the scope of what we had understood at the time'. So I agree with that analysis and would venture to suggest that there was this additional dimension to it too.

Mr Speaker, I do wish that one of the new Members of the House would not change the words that I have said in order to make it fit more easily with something that he wants subsequently to say. The hon Mr Picardo said that the Chief Minister had said that he did not want to go into issues of the history but he thought that it was necessary to do so. I did not say I did not want to, I said I did not think it was necessary to, given that I thought that the House was of one mind on that issue and if I had been minded to give the House a history lesson, I can assure the hon Member it would have been more accurate an account than the one that he gave. The view that I was asking Opposition Members to take was that by not addressing the history of the Matthews case we might have had a chance, which I am afraid the hon Members have now rendered impossible by their statements, we might have had a chance of avoiding the somewhat undignified spectacle of one side trying to claim the right whilst denying the other side any credit at all, or the other side trying to take all the credit whilst denying the other side no credit at all, which unfortunately, either the hon members did not read between the lines that was the signal or they were so determined to take credit for something for which they frankly have none, that they decided that my suggested approach did not suit them. Mr Speaker my own personal style is that I take responsibility for the things that I do badly or the things that I might have done better, but that I allow others to judge the extent to which I might have done things well or the extent to which praise is due. Frankly, it is not particularly dignified to see the hon Members standing up one after the other to give themselves credit frankly for events which if they wish to be accurate about it started in their term of office but mainly occurred in ours. I do not say that the Government is solely responsible for the success but what I can tell the hon Member is not true, is that the Government have no credit to be recognised either. I think it was noticeable by its obviousness that the hon Members between them thanked and recognised the achievements and contributions to this first and foremost of themselves, then of the law draftsman and of Mr Dennis Matthews and of Michael Llamas and of all manner of people, at no stage did they mention the Government of Gibraltar either, because they genuinely believe that the Government of Gibraltar had no role in the prosecution and conduct of the Matthews case or because they cannot bring themselves to recognise any measure of success on the part of the Government. And all of this part and all of this discussion and all that I am now going to say on the matter, would have been totally unnecessary if the hon Members had not quite inelegantly in my opinion, sought to claim credit for themselves in respect of achievements which frankly is down in very small measure to any political input on their part. I mean, I do not know whether the hon member's recollection is not as good as it should be but, I am certain he would benefit from being reminded of what actually happened and the dates and the chronology of events which are these. That in April 1994 as an initiative of the Self Determination for Gibraltar Group a complaint was filed with the European Commission of Human Rights in the name of the daughter of the then chairman of the SDGG Mr Dennis Matthews. That is to say Miss Denise Matthews. By May of 1996 that is to say when there was a change of government in Gibraltar in favour of the party which now forms Government, by May 1996 all that had happened is that there had been an oral

hearing in front of the European Commission, not court, the matter was not even before the court yet, that the European Commission had considered the limited question of admissibility, of admissibility of the complaint, that is all that had been achieved by May 1996 when the GSD came into government. On 16th April 1996, that is to say a month before the change of government, the European Commission ruled that the complaint was admissible, in other words that they could hear it, that is all an entirely procedural preliminary stage. That is the entirety of the progress achieved in this matter during any time that any of the Opposition Members were politically connected with this matter and before that it was not the Opposition Members in government, it was the SDGG whose authorship of this initiative the Government have always recognised. But Mr Speaker, surely the hon Members must know that Miss Denise Matthews did little more than lend her name to the process, that from the day that the Commission ruled in April of 1996 that the complaint was admissible the case was in effect under the care and conduct of the Government and that it was conducted with Government funding by the Government's lawyers with the Government making decisions about the arguments that should be adopted or not adopted. Surely the hon members must know that. It is not a matter for which I want to take particular credit, it is one of many decisions and one of many litigations in which the Government have participated and helped but look, I do not want to claim any credit for the Government but frankly, there is all the difference in the world between not wanting to take credit for the Government and allowing the hon Members repeatedly as they have been doing during the last six months, repeatedly trying to claim for themselves credit fraudulently for something which is frankly of absolutely no credit of theirs. Well Mr Speaker, the hon Members can continue to re-familiarise themselves with the chronology of these events. On 16th April 1996 the Commission ruled that the case was admissible. The Commission then said 'now that the case is admissible please give us proper arguments in support of the substance of your complaint'. Between May 1996 and January 1998 not Miss Matthews or Mr Matthews or the Leader of the Opposition Mr Bossano, nor even the ever-present Hon Mr Picardo, had anything whatsoever to do with the formulation of this case or this argument. I am sorry to have to speak in such stark terms but there is no other way of addressing a phoney claim for credit where frankly, not only is there no need for credit but in fact there was no intervention or involvement at all. When the Commission having received all these arguments rejected the application, the Commission the hon Members will recall, the European Commission of Human Rights rejected the complaint and the matter had to be referred to the court and that did not happen until 1998, Gibraltar had been long rid of them for two years by then. And in 1998 the court says we now accept jurisdiction in this matter and the Government through their lawyers, Miss Matthews I do not know what she was doing at the time but she certainly was not conducting this case, right, the Government through its lawyers you know, I was asked from time to time to approve arguments and to say whether the Government were content for this or that argument but I was not compiling the case, I am not claiming credit, I was not the author of the arguments, I was not the author of the strategy, I was not the author of the proceedings but that they were occurring during our term in office and that it was under the conduct, care, control and cost of the Government exclusively there is no doubt.

Mr Speaker, having started in the court from scratch, from square one with new pleadings, new arguments, everything had to be started from the beginning. Eventually in 1999 that is three years after the hon Members, it is odd, they hate us reminding them of their history when it is bad but when they think it is good they immediately take us back to their own history. So history is something that we can all have recourse to when it is good for them but not when it does not suit them. Three years later the court eventually ruled and the Government have never, the Government in all the time that has passed from 1999 through the elections that immediately followed thereafter in 2000 or more or less thereafter, and then again at the last elections, the GSD Government hav never put out a press release saying this is a feather in the cap of the GSD Government or anybody else, the Government have recognised

the work of the lawyers Michael Llamas and that is all. Therefore for the Opposition Members to try to claim credit for anything other than the fact that it was during their term in office that the SDGG lodged the first complaint, for them to claim credit for anything other than that is a massive political heist. About the only thing that I can agree with of what the Hon Mr Picardo said this morning on this particular aspect of the matter is that it is in effect all down to the conduct of this case by Michael Llamas, that is what it is down to, I spent many hours with him going over his argument because he wanted some sort of political comfort as to whether the Government of Gibraltar thought it was a good argument. Now, these are the realities of the matter and then the Hon Mr Picardo may wish to, or I can not remember if it was him or the Hon Dr Garcia on his behalf, because of course listening to the hon Dr Garcia, his Colleague Mr Picardo was leading counsel on the matter. When the Hon Mr Picardo himself then got up he had at least the decency to recognise that his role had been minor, which is a reality, and certainly perhaps as a Member of the Committee of the SDGG he was instrumental in the decision to make the complaint, if that was the case I warmly congratulate him for it. But that was really the extent of his involvement and when the case eventually came to the European Court for the oral hearing by which time we were in Government, this is 1998, I was asked, Mr Picardo says that he is no longer instructed on the case but as he was originally involved as a Member of the SDGG and he has got an interest in the matter, please would the Government mind if he went along to the Court and sat with their team of lawyers, and I said no I do not mind at all as long as he does not expect to be paid a fee for it. That is exactly what happened. To now, these years later, for the hon Member to stand up in those circumstances and really for us to have to hear the things that we have had to hear, I regret to say to the hon Member, I had offered the hon Member through my own omission in my own initial address, I desisted from commenting on the history of the matter altogether but I am afraid the hon Members have left me no alternative but to deal with the matter just to put the record straight. Just to put the record straight.

Mr Speaker, I will respond to the hon Members in respect of their more detailed points at the Committee Stage given that I understand that they were raising them with me in a sense to alert the Government to the fact that the areas upon which they would want some detailed clarification. The Hon Dr Garcia said that it would have been helpful to have the 2004 draft regulations earlier which in fact are not, contrary to what the Hon Mr Picardo I think he said at one stage that he believed that they were no longer draft, they are still draft, they have not been settled, still less have they been adopted.

**HON F R PICARDO:**

The Combined Region were in draft.

**HON CHIEF MINISTER:**

Well, the Combined Region have certainly been adopted in the House of Lords, whether they have also been adopted in the House of Commons I do not know. They may have been adopted in the House of Commons. Alright I accept that. It was not clear when he said it but I accept it now that he clarifies it. I had given the hon Member the explanation the only reason that is available, that this is not our legislation, it is late in being produced by the UK and in a sense although I recognise that the hon Members need to see that in order for them to have in their minds a clear understanding of what the electoral regime in Gibraltar is going to be, it is a mistake to think that we can look at the UK regulations and decide whether there are things in them that we do not like. I mean we can decide that there are things that we do not like and sort of say so but it forms no part of the consideration of this Bill because this is not a proposal from the UK, this is UK legislation and the laws of the UK are what the UK wants not what we want.

Mr Speaker there is one or two other points that they made that I think are worthy of being considered at this stage where we are discussing the principles and I will respond to them. For example, the Hon Dr Garcia yes I think it was him, almost

certain it was him, he would correct me if it was not him. Dr Garcia when alluding to the contents of page 60 said, queried how that in the UK one could vote by post and how was this going to work in Gibraltar, we have got to do the same. In the UK voting by post is not something that is allowed only in the circumstances in which we allow it in our general elections, in other words when you are going to be away on polling day. In the UK one can vote by post even if one is next door to the polling station on polling day. In other words, it is every voters right to vote by post even if he is not absent, even if he is standing outside the polling station on polling day. We have got to do the same. When the Electoral Registration Officer publishes the voting procedures, this will be included amongst them and the hon Member will then be able to see that we shall all be able to vote by post on the day, and this is nothing to do with the postal voting system that we have in our own domestic general elections.

Mr Speaker the closest that the Hon Mr Picardo came to acknowledging that the Government might have had a very small measure of success in anything whatsoever to do with this matter was when he recognised that we had succeeded or rather that the legislation, I am not sure that he gave us the credit for it, but certainly he recognised that the legislation saved in his judgement the point that Gibraltar was being territorially incorporated into the arrangement and that we were not, to borrow the phrase that I used publicly myself two or three weeks ago, voting as if we were residents of Cornwall. It is an important achievement. I do not claim it, I have no doubt that others in Government would have taken the same point but it was not a point that was obviously available to us at the very beginning. But one can see now subsequent events have revealed in a sense the pincer movement to which the UK was subjected. On the one hand they had the Gibraltar Government pressing for territorial incorporation and for participation and institutional role and all of that, on the other hand, we did not know it at the time but I think we have all discovered it since, from the other side the Spaniards were saying "well don't you dare do this and don't you dare do that and if you do this I will do that", so one can just see the UK doing the usual sort of high-wire rope act and this is what they have come up with. But as I have said publicly in the past, I think that we have got the better of it because I do not think it is possible, I mean one can argue about whether we might have liked to do more locally in our own legislation, one can add certainly a debateable point but it is not possible to look at the totality of the legislative framework dealing with this issue and come to any conclusion other than that Gibraltar as a territory has been enfranchised. And that Gibraltar's constitutional institution at several levels are playing a role, judicial, legislative, executive, playing a role not just in bringing about the voting framework but then in administering and in policing it through its own courts. I think that that is a substantial and significant victory for Gibraltar because had it been different, I think what would have happened is that we as individuals would have been enfranchised in the southwest of England, and they might have put a polling booth here to save us the 30p stamp of sending the letter the post, but the reality on any proper analysis would have been that the territory was not being enfranchised, and I believe that this Bill, without saying that it could have been done even better, but I think this Bill sufficiently, this Bill and the UK legislation sufficiently saves that point. I think I have already said enough to recognise and in any case I wish to take the opportunity by endorsing the remarks of the Hon Mr Picardo, in recognising Michael Llamas' role in this. I think it is no secret that the Government in general and I in particular as a fellow professional lawyer of his, hold him in the highest possible regard. It is not for nothing that at considerable expense we have recruited him to be the Director of the Gibraltar Government office in Brussels and that in addition to that he conducts almost the totality of European Union related legal advisory work for the Government and I think Gibraltar, without going further than one should, I think Gibraltar is fortunate that one of its own chose that particular professional career path of going to Brussels and Paris and becoming steeped in European Union law. It is of course always possible to buy in legal advice but it is almost always impossible to buy legal advice where one gets more for ones fee than just a technical legal opinion. Where the technical legal opinion is

given with the passion and commitment that Mr Llamas as a Gibraltarian shares with us all in this House. The hon Member said that the House must consider how his achievement might be recognised, well I do not know, I suppose one does not quite know what sort of things he might have had in mind, perhaps put up a bust to him but I suppose perhaps there are others that might claim that, I think that he feels valued and I do not think he needs more recognition than that. He knows the esteem in which the Government, indeed the whole House holds him and the people hold him, which is one of the reasons why we invite him to come to Gibraltar every year round National Day, so that he has the opportunity to absorb some of that sentiment, and indeed now that there are regular meetings of a European Legislation Committee that I have formed and of which he is a Member, he is in Gibraltar once a month to attend this Committee, and I think it is good that his links with Gibraltar should go from strength to strength.

So that is the backdrop against which I think the House and others have got to evaluate the Hon Mr Picardo's statement, "that the Government was not able in its negotiations with the UK to secure a separate constituency/MEP for Gibraltar". It is true that the Government were not able to secure that, I think it was unsecureable, it is also true that I do not recall having seen any great ground swell of public lobby coming from any opposition party in Gibraltar during the last two years pressurising on this particular aspect of the matter, but still the statement is certainly true, the Government were not able to secure that, it was certainly worth trying but that we should not have secured it frankly is not something that comes as a great surprise to us in terms of the logic of the UK's own voting system. Quite apart from the lack of political will which would have been present anyway as the Hon Dr Garcia quite rightly said, even if they did not have that ready excuse of the UK's system available to them. The Leader of the Opposition also raised this question about the fact that you could not analyse or investigate the regulations, no I do not think it was actually I am still at the stage of the Hon Mr Picardo who asked for indication he expressed the hope that the Committee Stage would be delayed, I really do regret to tell him that it is just not possible. The Committee Stage will take place tomorrow. But I would urge him, I would urge him to accept the view that he has got plenty of time to familiarise himself with the 2004 Regulation and that we must not confuse familiarising ourselves with the 2004 Regulations on the one hand and the legislative process that we are engaged with in this Bill. Whatever the hon Member may find in the 2004 Regulations that he does not like, whatever might be the references in the 2004 Regulation to the 2004 Regulation in our own Bill, it is not changeable, it is not changeable because it reflects that provisions of United Kingdom law either in the 2004 Regulation or in our own, the only area where there is a little bit more of home-madeness and we will come to this I am sure in the Committee Stage, is in the sections relating to broadcasting. But all the other references to the 2004 Regulation are there by compulsion and this is a draft that the UK has wanted to see, because of course the UK having agreed to allow us to legislate for institutional reasons, then also wanted to make sure that our legislation delivered their concern that the law in this part of the combined constituency would be the same as the law in the other part of the combined constituency. Therefore, the references to the UK legislation in our Bill which are capable of being debated by us and changed if for example they could persuade us that it was not a good idea, there is almost no scope for that except in relation to the broadcasting sections and I will indicate those parts to them in the Committee Stage. For the rest of it the Government's position as I explained in my first address to them this morning, is that frankly we are just pleased to have been able to get a legislative role, albeit a token legislative role, only in three areas, broadcasting, a little bit about the judiciary and the register, because for us this was in effect a monument to our institutional constitutional participation in the franchise, much more so than the actual content of the legislation. Were it not for that it might all have been done in the United Kingdom and then we would have had nothing to debate and nothing to analyse because that was the UK's starting position.

The Hon Mr Picardo then concluded by saying, well he explained to the House that there were two ways in which the United Kingdom legislation could apply to Gibraltar, he explained that one way was by the Application of English Law Ordinance or the other one was by direct reference in the UK Act and that he felt that we might be doing both here on a sort of belt and braces approach. That actually is not true as I explained in my own first address. As I explained in my own first address nothing in our Bill makes UK law applicable. The fact that our Bill says that the provisions of our Bill are subject to UK law is very different to making UK law applicable by virtue of us applying it in this Bill. That is not happening. UK law is applying to Gibraltar by virtue of its own direct provisions. In other words, the 2003 Act says on its face that it applies to Gibraltar and gives the Lord Chancellor, I think it is the Lord Chancellor or the Secretary of State, power to make regulations, subsidiary United Kingdom subsidiary legislation applicable to Gibraltar. Because they take the view that this is one combined constituency. That is the point. I can assure Opposition Members that it took a lot of meetings including visits by me to the Lord Chancellor's Department to persuade them to get them to accept the principle of the House playing some legislative role in this matter.

The Leader of the Opposition also had occasion to regret that it was well, perhaps he did not express it in those terms, he made the point that it was unusual for us to have to be passing legislation which requires the interpretation of UK law and which refers to UK law and things of that sort, and I think he said that this was a unique or unusual situation. Well I think he is absolutely right, it is a completely unique and unusual situation. I suppose the full-blooded integrationists amongst us in Gibraltar would have preferred if all the legislation had been dealt with in the United Kingdom. But anyway, the fact of the matter is that it is a joint legislative effort, it is a unique situation. Never before has part of the territory of Gibraltar and part of the territory of the United Kingdom been lumped together for any purpose, in this case for the purpose of organising an election and the same, the resulting combination been subjected not just to the same, I mean our original starting point in the discussion with the UK was that it was possible, even if it meant that the UK had to approve our legislation. It was possible to replicate the law in Gibraltar and the law in the United Kingdom by laws that we passed here. All we had to do was make sure that the legal provisions were the same, even if it meant photocopying the UK legislation then adopting it here. We could have done that with the whole lot. The UK took the view that not only did the law have to be the same but, save in the areas where we eventually extracted concessions from them, it had to come from the same source. In other words, it was not enough that the same law came from two different sources namely, Parliament in London and the House of Assembly in Gibraltar, it was not acceptable to them that two bits of the same constituency should have, in respect of one bit laws made in Westminster and in respect of the other bit, which was as far as they were concerned the same constituency, it was almost as if Gibraltar had been towed up the Atlantic and parked next to the Scilly Isles, as far as they were concerned was one indivisible unit, not acceptable that the law in relation to our bit of that should have been made here and the law. And that was the position on which we could not shake them from that position, they swore to have legal advice. So it is very much a unique, one of the points that I forgot to comment on from his own contribution about the Hain volte-face on this was that of course they used to swear in-house to have legal advice that rendered as I have said before, both his Government and mine were saying to the British Government, we have legal advice that says that we can do this. Well we have legal advice that says that we cannot. But of course I think it is now pretty notorious that in-house legal advisors in some of the United Kingdom departments of State are really there to give legal shape to the result that the department wants politically rather than to shape policy by virtue of the correct statement of what the law is, and I do not think that this is the only example, I do not think it is the first example and I feel almost certain, to stake my pension, my reduced pension on the fact that this will not be the last instance in which self-serving legal opinions will be provided by in-house departmental lawyers. So the combination of the fact that it is genuinely a unique situation, that it is

genuinely a joint legislative framework effort, that the United Kingdom part of the laws are not all ready, that the United Kingdom laws do apply, I think renders some of the things that the hon Member said about the uniqueness of this situation and the strangeness of it correct. But I think that is a reflection of the genuine uniqueness rather than about something that could be avoided. Surely if there had been more time we might have had the 2004 Regulations in the public domain, a better period of time before this House had to debate this Bill, so that when we are saying in a sentence if there is a reference, even if we cannot change it at least we can understand it, that is of course absolutely right but it has not been of the Gibraltar Government's making and frankly we have waited for as long as we could to bring our legislation forward until we could wait no longer given that I am advised by the Chief Secretary and the Registration Officer that six weeks is the absolute minimum that they need to prepare the canvas and that without this Ordinance, the canvas has no statutory basis and therefore insufficient validity for the purposes of the European Elections. I am satisfied whilst recognising the constraints that it has put on the hon Members, I am quite satisfied that it is not for anything that the Gibraltar Government could have done more quickly or could have remedied.

I would also just like to say to the hon Member that he is mistaken in assuming that the United Kingdom has engaged us in a sort of detailed process of consultation, let alone negotiation on the references to Gibraltar in the UK legislation. The areas of consultation have been mainly, well I say mainly not to say almost exclusively, on the areas that I have been talking about persuading them to let us do it ourselves, and the arguments have been, "well why can't we do this, why can't we do that", and there has been arguments about that. The fact is that the UK legislation has always been produced rushed, last-minute, short of time and with practically no consultation, let alone negotiation with us, so what has driven this what has driven the UK legislation is not any idea that the Gibraltar Government should agree with it, but the United Kingdom's requirement that it should replicate their law in a way which renders uniform the legal regime across all parts of the constituency. I suppose it is arguable that if that is the imperative, for which there is some logic I have to say, but I suppose it is arguable that if that is the imperative there is really not a lot of point in engaging the Gibraltar Government in negotiations if the position of the British Government in any case is going to be, well whatever the consultation, whatever negotiation, whatever discussion, this is how it has got to be because our in-house lawyers have told us that this is how it has got to be so that it is the same law here and the same law there. That has been the reality of the process.

Mr Speaker, I think the hon Member must have been momentarily distracted in relation to the point that he made about the second schedule and his remark that I had made no reference to it in my opening statement, which I did. I explained what we were told and I repeat for his benefit now, what the second schedule is for and why it is there, and really if he had heard the explanation which obviously he did not, the hon Member would not have been left with the impression that the second schedule are amendments which could have been made in this House. The second schedule are transitional modifications to Schedule 1 to accommodate the accession States in the context that I also explained in my first address, that they might or might not vote, depending on whether they acceded and depending on the fact, and that is why it only applies to the 2004 elections and not to subsequent elections. The content of the second schedule is not a permanent amendment to any provision of the Bill. It is a transient modification to accommodate a circumstance which straddles the 2004 elections in the context of the fact that it coincides, almost coincides, with the accession date of some new Member States. Therefore whilst recognising that the hon Members would have benefited from seeing this longer in advance, the 2004 Regulations, I think we are agreed, whatever else we might have disagreed on in relation to this matter, I think we are agreed that the most important aspect of this is that we are voting in 2004, that we are voting in June 2004 for the first time after never mind who brought it about, a hard-fought and hard-

won political and legal struggle, that this Bill is just a small part of the legislative framework to bring about that highly desirable result and that we should focus on the big picture of facilitating the election and perhaps on this occasion pay less attention to the small detail of exactly how it had been done, which in any case is outside of our control. In that spirit I would urge the hon Members to support the Bill in all its stages.

Question put. Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

I beg to give notice that Committee Stage and Third Reading be taken on another day.

**THE EQUAL OPPORTUNITIES ORDINANCE 2004**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar, Council Directives 1997/80/EC of 15th December 1997 on the burden of proof in cases of discrimination based on sex as amended, Council Directive 2000/43/EC of 29th June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27th June 2000 establishing a general framework for equal treatment in employment and occupation, and to amend the Employment Ordinance; and for connecting purposes, be read a first time.

Question put. Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Member States of the European Union have established a common framework of legislation to tackle unfair discrimination on fundamentally six equality strands, sex, sexual orientation, race, religion, disability and age. Council Directive 2000/43 implements the principles of equal treatment between persons irrespective of racial or ethnic origin. Council Directive 2000/78 establishes a general framework for equal treatment in employment and occupation. Council Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions as amended by directive 2002/73 read with Council Directive 97/80 relating to the burden of proof in cases of discrimination based on sex. Now Council Directive 76/207 was implemented in Gibraltar by way of amendment to the Employment Ordinance in 1989. That is, of the ones that I have just read out, the one on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion. That was done in 1989 in the context of amendments to the Employment Ordinance. But Council Directive 97/80 has not yet been transposed in Gibraltar. Unlike the United Kingdom, Gibraltar does not have legislation covering the ground on religion or belief, race or ethnic origin, sexual orientation, disability and age. In view of the circumstances evolving out of the three recent framework directives namely, 2000/43; 2000/78 and 2002/73, Gibraltar requires to have a comprehensive piece of legislation in place to tackle unfair discrimination and ensure equality of opportunities on the six equality strands. The ground of sex, as I have said, is already covered by the Employment Ordinance. There is a need to make an amendment to the Employment Ordinance to update that provision, to make it entirely consistent with some of these directives and the hon Members will see, if they glance at the back of the Bill, at clause 55, that there is in fact there a clause

introducing a new clause 52A to the Employment Ordinance, I do not intend to proceed with that. I have given notice to delete that. I think it is not the best legislative practice to amend an Ordinance in one name, in a completely different Ordinance, because it is then very difficult for people to know that it exists. Lawyers and trade unions and employers are not going to think to look in the Equal Opportunities Ordinance for amendments to the Employment Ordinance. So what I am intending to do is to bring back to the House, but in a different Bill, not today, that same provision but as a Bill amending the Employment Ordinance so that when it comes to consolidation of laws and things of that sort, it will be more logically located.

Mr Speaker, the House will be aware that unfair discrimination has a damaging impact, whatever the basis on which people make assumptions about the needs, ability or potential of others but the extent to which discrimination arises and the way in which it occurs differs across the six equality strands. The Bill covers the grounds of race or ethnic origin, religion or belief, sex and sexual orientation. In broad terms the new legislation outlaws four types of behaviour. Direct discrimination, indirect discrimination, harassment and victimisation, and I am just pulling out for the benefit of the hon Members what is the common strand what is in effect the model of the Bill which is then replicated in various different strands. So it is six strands and four discriminations, four methods of discrimination the ones I have just read out, indirect discrimination, direct discrimination, harassment and victimisation. These concepts are defined in their legislative forms by sections 4 to 11 of the Bill. Just by way of summary direct discrimination occurs where a person is treated less favourably than another on grounds of religion or belief, sex, race, ethnic origin or sexual orientation. Indirect discrimination occurs where a provision, criterion or practice which is applied generally, puts persons of a particular religion or belief, sex, race or ethnic origin or sexual orientation, at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. Well the hon Members can see how one can devise a set of rules and say that they apply to everybody but that in practice they only victimise particular minority groups. That is indirect discrimination. Victimisation occurs where a person receives less favourable treatment than others by reason of the fact that he has brought or given evidence in proceedings, made an allegation or otherwise done anything under or by reference to the Ordinance. In other words, one can just see victimisation means in effect when an employer victimises an employee for having dared to invoke the law against him or to make a complaint against him. Harassment occurs where on grounds of religion or belief, sex, race or ethnic origin, or sexual orientation a person is subjected to conduct which has the purpose or effect of violating his dignity or creating an intimidating hostile, degrading, humiliating or offensive environment for him. More or less what the Opposition Members do to the Government on a continuous basis, that is the definition of harassment for the purposes of this Bill.

The Bill transposes into the law of Gibraltar Council Directive 97/80 of 15th December 1997 on the burden of proof in cases of discrimination based on sex. Council Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78 establish a general framework together for equal treatment in employment and occupation. So the hon Members will have seen that the first of those that transfers the burden of proof in cases of discrimination based on sex, actually says that when certain allegations or facts are established from which this discrimination can be deduced or implied, the onus of proof switches to the person complained against to disprove that it is in breach of the Ordinance. The Bill is designed to ensure that people have equal opportunities, there is nothing to prevent an employer from deciding not to recruit or promote a particular person if he or she could not do the job as well as another candidate but there are some limited circumstances when it is legitimate to treat people differently because they have a particular characteristic. These are called occupational requirements in other words, when one is allowed to discriminate against or in favour of somebody because of a particular characteristic that they have which is a legitimate

occupational requirement. These are called as I say occupational requirements and in some circumstances an employer can also take positive action to compensate for disadvantages which particular groups have experienced in getting jobs or at work.. So for example, I suppose, examples of legitimate occupational requirements are that Chinese restaurants like to employ Chinese people and if there is a West End production of a play and there is a character in the work of art of Asian origin, it is not a breach of the Equal Opportunities Ordinance to choose somebody of Asian origin and to turn down white Caucasians because that is a legitimate occupational requirement. There are of course many others and those two are not typical of the various examples that one could choose. The Bill applies to the Crown by virtue of section 3(5), sections 12 to 36 of the Bill, prohibit discrimination, victimisation and harassment in the fields of employment and vocational training. In particular they protect employees under section 12, contract workers under section 17, officeholders under section 21 and partners in firms in section 22. Unfortunately for the hon Member, there is not a provision protecting partners in firms who want a political career to remain partners in the firm so there is no protection against discrimination against politicians. They not only prohibit discrimination in all its various manifestations by employers, but also by trade organisations, section 18, bodies conferring professional qualifications, that is section 28, trading providers section 23, employment agencies section 27 and further education institutions section 28. By virtue of section 36 discrimination, victimisation or harassment occurring after a relevant relationship has ended is unlawful if it arises out of and is closely connected to that relationship, an interesting concept. Not all differences of treatment on grounds of religion or belief, sex, race or ethnic origins or sexual orientation are unlawful. There are exceptions in sections 39 to 41 for differences of treatment relating for example to public order and public security, and positive action and in section 40 for benefits dependant on marital status. So for example it is not discrimination to say that something is available only to married couples, that is not discrimination, there is a particular permitted under the directive exemption for that. Section 14 provides an exception where sex is a genuine occupational qualification and section 15 provides an exception where being of a particular racial group is a genuine occupational qualification. Section 16 provides exceptions where being of a particular religion or belief, sex, race or ethnic origin or sexual orientation is a genuine and determining occupational requirement for a post if it is proportionate to apply the requirement in the particular case. Section 16 also provides an exception for employers with an ethos based on religion or belief, where being of a particular religion or belief, sex or sexual orientation is a genuine occupational requirement for a post and it is proportionate to apply the requirement in the particular case. The Council Directive 2000/43 is the most extensive in scope. It prohibits race discrimination in employment and training, the provision of goods and services including housing, education and social measures and protection. Hence section 32 makes it unlawful for a person concerned with the provision of goods, facilities or services to the public to discriminate another person on the ground of race or ethnic origin who seeks to obtain or use those goods, facilities or services. Similar provisions are made in section 33 in the area of disposal or management of premises and in section 35 in the area of assignment or sub-letting of premises. Individuals have the right to complain if they believe they are the subject of unlawful discrimination. Cases about discrimination in employment and workplace training are mostly within the jurisdiction under the Bill of the Industrial Tribunal. Others about providing goods, facilities or services for example, are in the jurisdiction of the Supreme Court. The Industrial Tribunal can award compensation for example to cover a loss of earnings if a person or company is found to have discriminated unlawfully. To this end sections 42 to 49 are designed to cater for remedies for individuals including compensation by way of proceedings in the Industrial Tribunal and in the Supreme Court. There are special provisions about the burden of proof in those cases in sections 44 to 47, which transfer the burden of proof to a respondent as I said earlier in a case, once a complainant has established facts from which the court or tribunal could conclude in the absence of an adequate explanation that an act of discrimination or harassment has been committed by the

respondent. Section 48 and the Schedule also include a questionnaire procedure to assist complainants in obtaining information from respondents.

Finally Mr Speaker, the Bill does not cover the grounds of disability and age which are two of the six equality strands. That is because tackling age discrimination raises new wide-ranging and complex issues. Indeed the Directive, that is 2000/78, gives Member States an additional period of three years, that is to say until December 2006 to transpose the provisions of the Directive on age and disability discrimination in order to take account of the particular difficulties in those two areas. Indeed the UK has not yet finalised any legislation on age discrimination. The Disability Discrimination Act dealing in the UK with disability 1995 Amendment Regulations 2003 covers disability discrimination and does not come into full effect until 1st October 2004, that is towards the end of this year. So, we have got time to complete the job in terms of discrimination and age, the Government are currently in the process of drafting that legislation and we would hope to be able to bring it to the House if not towards the end of this year certainly by the beginning of next and we would not expect to have to avail ourselves of the full period for implementation that we would have under the directive. I should just add before I sit down, that the hon Members will have already hopefully received a letter with a list of amendments. Tomorrow when we come back the hon Members will also have the pages of the Bill marked up as I did the other day showing those amendments tracked. I commend the Bill to the House.

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

**HON F R PICARDO:**

This is, as the Chief Minister has said, very important piece of legislation and in fact Opposition Members have been calling for it for some time. Mr Speaker the Constitution that we already have provides some protection in respect of the discriminations of the grounds of sex, race, slightly in relation to religious belief and ethnicity but only to a very limited extent. The Employment Ordinance as amended provides as the Chief Minister has already indicated some protection in relation to the discrimination on the grounds of sex in the workplace. Obviously the whole body of law in Gibraltar must also be read to an extent subject to the European Convention of Human Rights which provides similar and relevant protections. This is the first time that we see in our law the concept of discrimination on the grounds of sexual orientation in any form and that must be welcome. The legislation also makes redress in respect of certain of the discriminations that are referred to within it easier to enforce through action in the industrial tribunal rather than through necessarily an action in the Supreme Court under section 15 of the Constitution. But Mr Speaker there are issues that we have to address about the way that the legislation is framed and the structure of it, and the structure of it as I understand it and as I see it is based loosely on the United Kingdom Employment Equality Sexual Orientation Regulations of 2003, no doubt I will be corrected if I am wrong but they are almost identical.

Mr Speaker, there are principally I think two issues of concern to highlight. The first relates to the question of the displacement of the burden of proof which we have been referred to in the terms set out in the relevant articles of the directives which we believe are not adequately provided for. Secondly, that the Ordinance provides in our view, far too subjective a test in respect of positive discrimination which could have the effect of making this Equal Opportunities Ordinance a bigot's charter, which would be totally contrary to the intention of the directives and I am sure of all the Members of this House regardless of what side we sit on. Mr Speaker I think it is important to discern two particulars in going through the Bill at this stage, although not in as much detail as we will tomorrow. Since 1969 we have had a great advantage in having in our Constitution a chapter of fundamental rights which avails us of some of the protections which I have referred to. We also have the advantage of having

regard to the Convention of Human Rights. An advantage Mr Speaker that we have had long before the United Kingdom citizens had it, who have also only been able to enjoy it in the past decade in their national law. I am sure that members on both sides of the House will agree that the discriminator, the party that comes with prejudice to a transaction, be it in employment or in any other field of life, has been afforded a certain protection by the sheer complexity and expense involved by any citizen going to law, however accessible a system of justice may pretend to be. As I said before in Gibraltar enforcement of constitutional rights required an application under section 15 of the Constitution Order to the Supreme Court. The expense has always been considerable and sometimes unaffordable, especially given the standards of legal aid and assistance remuneration in Gibraltar and the amounts which are so low which an individual has to be in possession of in terms of assets or income before he qualifies. The procedures under the Court of Human Rights without getting caught up in the argument we were caught up in a moment ago, are even more torturous and an individual has first to exhaust all national remedies before he is able to have recourse to court and that court is in Strasbourg. All of that is relevant because in defending the rights not to be discriminated on or against in respect of sex, sexual orientation, racial or ethnic origin, religion or belief, accessibility to justice is as important as the protection of the rights otherwise they become barren, constitutional legal provisions and prejudice is allowed to reign over right. In fact because of the expense issue which I am referred to and labouring at the moment I think that the legal system at the moment allows the richer to take advantage of the poorer because the poorer cannot defend their rights in that respect. So I welcome and I say that obviously giving recognition to the mover of the Bill, I welcome the fact that a lot of these rights will now be justiceable by the Industrial Tribunal and that that will make them more easily enforceable by normal citizens and members of our society, usually the most vulnerable who have to avail themselves of these protections. It is in that background that we are going to make a contribution on the debate which we hope will be seen to be positive because of this Bill. I said I had to make two points in particular in the way that the Government brings the Bill. The first is that the three directives that we are transposing have been allowed to pass their long stop date for transposition. Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, should have been transposed into law by 1st January 2001. Our exercise in transposing certain provisions of that directive into law today are already three years out of date. Council Directives 2000/43 and 2000/78 should have been transposed last year. Now I understand that there are areas of EU law that create real difficulties for our economy and for our society. This is not one of them. This is an unobjectionable issue to prevent discrimination and to make the prevention of discrimination more easily justiceable and we should not have failed to meet the transitional provisions in respect of these directives. The directives establish the principle of equal treatment and they entrench it further than it is already and I am sure that all sides of the House embrace it now as they would have in 2001 and as they would have last year in relation to the transitional provisions which expired then. Mr Speaker, I recognise that the Gibraltar Gay Rights Group has rightly also made the call in relation to the introduction of these prohibitions in relation to the discrimination on the grounds of sexual orientation and also in relation to minorities generally for some time. The time for this legislation is overdue and we welcome the Bill caveated on that basis that it should have come earlier.

The second point I have to make relates to the main substantive areas of concern to Opposition Members which relate to the standard of burden of proof in the case of discrimination and to the subjectivity test in relation to positive discrimination. When I am making criticisms of this I am fully conscience that some of the criticisms that I am making are criticisms as much of this Bill as they are of the blueprint from which they are taken which is the United Kingdom Employment Regulations and part of the Sex Discrimination and Race Relations Act. All of those three UK provisions transpose parts of the Directive which we are transposing today. Let me start with the burden of proof. All of the directives use the same language in relation to the shifting of

the burden of proof, and it is the language which the Chief Minister himself has used in introducing the Bill. The three directives say the following: where persons consider themselves wronged because the principle of equal treatment has not been applied to them, are able to establish, and I emphasise the word establish, before a court or other competent authority, facts from which it may be presumed, and I emphasis the word presumed, that there has been direct or indirect discrimination it shall be for the respondent to the complaint to prove that there has been no breach of the principle of equal treatment and I assume that there we should read by the respondent. That is the language of the directives. What the Directives are telling us is that it is a free stage test. Let us distil that language into this. Where a complainant establishes facts from which something may be presumed, namely that there has been discrimination, he has discharged at that stage the burden of proof and I think it is certainly not an issue of dispute between us that that is what the Government is trying to do in this Bill because that is the language that the Chief Minister himself has used when introducing the question of how the burden of proof is relevant to this Bill. At that stage Mr Speaker, it is up to the respondent to prove that there has been no breach of the principle of equal treatment and although the directives are not clear on this I assume it is up to the respondent to show that there has been no breach by the respondent, by his servants or agents, because the Bill also deals with the issue of precarious liability. Mr Speaker in the Bill before this House however, in relation to the burden of proof, we reproduce the language of section 63(a) of the Sex Discrimination Act 1975 as amended in 2001, I believe, in order to give effect to the directive of section 54A of the Race Relations Act as amended in 2003 to give effect to the 2003 directive, although the transitional provision which expired in 2003 in relation to race, and in regulation 29 of those Employment Equality Sexual Orientation Regulations 2003 which gave effect to the sexual orientation aspects of those directives. I have to accept that all of those UK provisions have to date not been challenged by the EU Commission as falling short of adequately transposing the relevant articles of the directive which they are required to transpose, although they assume the language of complainants establishing facts in which discrimination may be presumed. In fact the language used which is the language in our Bill, favours a reference to complainants proving facts from which a tribunal can conclude that discrimination has occurred. I think those two things are very different. That language in our view makes the burden higher, makes the standard of proof higher before the burden shifts. I flag that point for consideration by Government because our preference is for the language of the directive rather than for the language of the Acts and the Regulations which has been adopted.

Mr Speaker the other very important aspect and I do not know whether this is addressed in the amendments which have been passed to us by the Chief Minister this afternoon, I obviously have not had an opportunity of going through them, but the next point I want to highlight Mr Speaker relates to the subjectivity element in cases of positive discrimination. What I am referring to in particular relates to the provisions of section 41 of the Bill. That section is transposing the provisions of article 7 of the Framework Directive which is the 2000/78/EC Directive and article 5 of Directive 2000/43/EC. Now both of those directives in those respective articles provide that a Member State may maintain or adopt specific measures to prevent or compensate for disadvantages linked to discrimination on the grounds of the discrimination addressed. That is what the directives say we are allowed to maintain within our law. The purpose of that article as provided for in the preambles in recital 26 and 17 respectively of Directive 2000/78 and 2000/43 is to enable the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial, sexual, ethnic or religious group and/or to promote the special needs of that group. In the UK the way that that has been given national effect is regulation 26 of the Employment Equality Sexual Orientation Regulations which says the following: “nothing in part 2 or part 3 of those regulations shall render unlawful any act done or in connection with (a) affording persons of a particular sexual orientation access to facilities for training which would help them fit for

particular work, and the reference there is just to sexual orientation because the UK does sexual orientation, race and religious origin in different places, or (b) encouraging persons of a particular sexual orientation to take advantage of opportunities for doing particular work, and these are the important words, where it reasonably appears to the person doing the act, that is the act of positive discrimination, that it prevents or compensates for disadvantages linked to sexual orientation suffered by persons of that sexual orientation doing that work or likely to take up that work. That is a direct quote from the Act. Our Bill in section 41 follows that to the letter save that of course there should not be a reference just to sexual orientation but to we will say all the issues which arise under the directive. At the moment the section deals only with religious beliefs, sex or sexual orientation and ignores race or ethnic origin, but I believe that we should be certainly be doing that in respect of all the discriminations. That is one of the issues.

**HON CHIEF MINISTER:**

The exclusion of race and ethnic origin is in several places in the Bill.

**HON F R PICARDO:**

Yes. So I do not need to address that then, that has been dealt with, I appreciate that. Mr Speaker the effect of the way that the transposition is to be entertained in this draft section, we do not believe closes the loophole in respect of discrimination which is what was intended. The reason is that the arbiter of reasonableness under the section is the person who is doing the act which is complained of. Now in our view what the directive is saying and what the section is seeking to enable is positive discrimination in favour of minorities, but as presently drafted I do not think the Gibraltar Bill or the UK provisions actually do that. Read mischievously I accept but we are trying to test the section at extremes to make sure it works in all the circumstances in which it is intended to work. Instead as drafted, I think that the section actually will allow somebody to negatively discriminate using the cloak of positive discrimination by favouring one person over another, in fact over a member of a minority group on the blatant basis that discriminating in that way prevents or compensates, which is the language of the directive, for disadvantages linked to religion or any of the other discriminations et cetera, suffered by people of those groups in the mind of the person committing the act of discrimination. Given that the only arbiter of reasonableness would be the person committing the act of discrimination, the act will be unchallengeable on every basis, even on the basis that it is absurd. Notionally Mr Speaker, as a result of that language a person could give an advantage, a job which is really most of the Bill deals with employment et cetera, or a property or a consent in relation to a property or a good or a service, to one party simply on the basis that he is not a member of a minority race. In other words somebody could say that he felt that was necessary in order to compensate for his own perceived disadvantages of the majority. So this notional bigot could say "I shall discriminate in favour of white Anglo-Saxon Christian males" because in this notional bigot's own subjective view, he believes women, gays, lesbians and non-whites already have too much sympathy and too many advantages already in society. That is not what the section is setting out to do or what the directives are setting out to do, but that is one potential effect in my view of the present wording. The answer, as is habitual in English law in these circumstances is to provide wording where a judicial tribunal can replace for itself the decision as to whether the standards of reasonableness have been met. In this case it would be the Industrial Tribunal, Supreme Court. In fact Mr Speaker, in the circumstances of Gibraltar, you said yourself in another capacity and in another place, I am sorry to remind you, in a maritime case that the standards of the reasonable man were to be set by the standards of the man who buys his Chronicle at the Piazza kiosk and I think that is probably to put it as perfectly as could. That would impute a necessary objectivity to the decisions which are complained of and which might be complained of in

respect of section 41. So we will be proposing at the Committee Stage that section 41, section 41(1), section 41(2) and section 41(3) which all use the same language, should be amended so that the words “where it reasonably appears to the person doing the act that it prevents or compensates” should be replaced with the following words “where it is reasonable to prevent or compensate”. Mr Speaker then the arbiter of reasonableness ultimately on a complaint will be the judicial tribunal determining the issue.

**MR SPEAKER:**

The chap buying the Chronicle.

**HON F R PICARDO:**

The chap buying the Chronicle, in whose mind the judge will put himself. There are a few other miscellaneous points also to be highlighted but not many. The first relates to section 43 which deals with the jurisdiction of the industrial tribunal. As I have said, I welcome the fact that the industrial tribunal will have very wide power to deal with the inequalities which might arise out of discriminations of the sort addressed by this Ordinance. But although the Ordinance rightly brings therefore within the tribunal matters of discrimination dealing with issues of employment, the Ordinance as drafted would not prevent a person of a particular racial or ethnic origin, and I say that in particular because in the sections that I am going to speak of there is only reference to those but it may be that as a result of what the Chief Minister has already said that we are talking about persons of any of the discriminatory classes addressed. From bringing before the industrial tribunal claims arising from breaches out of sections 32, 33, 34 or 35 of the Bill, which deal with the prohibition of discrimination on the grounds of race, in respect of the provisions of goods or services, the disposal or management of premises and in the consenting by a landlord to applications by tenants for assignments or sub-lettings. That is how I read the Bill as presently drafted. I do not know whether the amendments change that. All of these matters would previously have been justiceable only under the Constitution in the Supreme Court. If the industrial tribunal is to have jurisdiction, acts as justice in respect of those issues will be more accessible but those issues do not relate to employment or occupation in any way and the industrial tribunal is set up to deal principally, in fact at present only, with matters relating to employment and occupation. I would flag up that if that is the case and if that is the intended case then it may be necessary for another amendment to the Employment Ordinance to be effected in relation to the jurisdiction given to the industrial tribunal by that statute which creates it in the amendment which the Chief Minister has foreshadowed he will bring to that Ordinance separately. I will wait to hear what the Chief Minister says about whether that was the intention in any event, or whether the amendments will take those issues back to the Supreme Court. If the industrial tribunal is to have that jurisdiction Mr Speaker, firstly it must have the resources to meet the expanded role and secondly, it may be that there is no need for me to make this point, then the parties subject to discrimination should not be limited simply in those sections to discriminations on the grounds of race and ethnic origins.

Finally some very general points. Mr Speaker section 54(1)(a) trails the creation in Gibraltar of an equal opportunities commission, which will follow shortly, I hope. The commission, in the context of this Bill, will be a very important extra limb for the enforcement of the rules against discrimination before even getting to an industrial tribunal or to a supreme court, and will certainly help to establish even further the principles of equal treatment that I am sure we all believe in without hesitation. I was going to refer to the fact that certain parts of the Bill refer only to one type of discrimination, the list I have without checking it off against the Chief Minister’s….

**HON CHIEF MINISTER:**

If I can just hold the hon Member on this point, obviously he has not had an opportunity or sufficient opportunity to see the phrase race or ethnic origin is excluded from quite a number of places and they are inserted by the amendments. But there are areas where race or ethnic origin do not belong but I cannot think of any right now, though I hesitate to say that there are not any, because race and ethnic discrimination is the widest protected, that applies to almost everything, it is the others that are limited in their scope of application, it is the other strand in equality, sex, sexual orientation, religion or belief, those are the narrow application, but race and ethnicity have the widest scope of application so I would be surprised if there were any that were not in the list that we have corrected through the amendment, but we shall, I do not know if he has got the list we can give it to him but I do not think so.

**HON F R PICARDO:**

It is a very short list but I will try to make it short by clubbing together those sections which deal with what. Sections 32, 33, 34 and 35 of the Bill are limited only to racial and ethnic discrimination and based on what the Chief Minister has said, it may be that those sections are intended only to do that. Section 23(4) of the Bill omits reference to discrimination on the grounds of religion or belief, although it relates to all the others. Section 20(1) of the Bill fails to refer to discrimination on the grounds of race or ethnicity which on the basis of the what the Chief Minister has said must be an omission which we will undo, because it is supposed to be covered in just about all of them. Section 44, which shifts the burden of proof, at the moment on the basis of what I have said I am not happy with, shifts it only in relation to the issue of sex. All of the directives require the shifting of that burden and that means that that burden must be shifted in relation to the question of discrimination on the grounds of sex, race, et cetera, et cetera et cetera, all of the discriminations must be the subject of the shifting of the burden. I hope that list might make debate between us in relation to those easier, we may be able to narrow down which are the ones that we need to address and debate if the amendments already tabled deal with a lot of that but there are very few areas where I think Opposition Members will be prepared to agree that a discrimination should be allowed to continue to be an issue, except perhaps in the issue of the specific exemptions for marriage et cetera.

Mr Speaker one of the issues that arises has been addressed by the Chief Minister in his address but we must emphasise that there is no good reason in our view for not moving as soon as possible, and I am glad to hear that we will be doing that even before 2nd December 2006 which is the end of the transitional provision, to make discrimination on the grounds of disability or age as subject to these provisions as all the other discriminations. What good reason as a legislature have we got not to try and bring that about as soon as possible, and I am heartened to hear that we will be doing that even though I am disappointed that we are not already doing it in this Bill. We will be keeping, therefore, a hawkish eye on how soon those amendments to this Ordinance to include those discriminations and those prejudices are brought. Why are we going to urge that urgency upon the Government? Well very simply for this reason. It is a reason the Chief Minister himself accepts when he says that these are new prejudices to our law. There is no protection under the Constitution or under the Convention of Human Rights in respect of discrimination on the grounds of age or disability. Therefore it is important that we move quickly to prevent that any citizen should suffer discrimination on that basis in this land of ours. I am going to say that I have deliberately avoided political point-scoring in relation to this Bill in particular because it is a Bill that really is uncontroversial as to its subject. In fact totally uncontroversial as to its subject and will enjoy no doubt that both, the moral support sorry of both sides of the House. Mr Speaker but we believe that the passing of this legislation will really only mark the end of the beginning in relation to these discriminations. As a legislature we will need to keep also an eye on how the enforcement of this Bill operates

whether any loopholes not spotted by us on either side of the House are spotted, which allow discriminations to occur which should not be occurring and also, we will keep an eye on the fact that the Bill does not come into effect when passed by this House or signed by the Governor but when brought into effect by the Government by legal notice, and I hope that that will happen very shortly after the passing of the Bill in this House. Mr Speaker despite what I have said about the technical issues that arise in relation to this Bill, we will strongly endorse the principles of the Bill and we hope that the Government will consider with pause and with a fair wind, as Mr Cook once said of our constitutional proposals, the suggestions that we are going to make in relation to this draft at a committee stage. I do not think that there is anything else that needs to be said at this stage except that everything we do must be designed to ensure that we quash each of the aspects of the discrimination that are identified, all the strands of discrimination that are identified, as soon as possible, it is a Bill that merits and deserves the support of both sides of the House, although perhaps unnecessarily in quite this form.

**HON C A BRUZON:**

Mr Speaker, I am also personally disappointed that the questions relating to the disabled and the aged are not being dealt with now. I think it is of paramount importance that we stress the human aspect of this and I believe that it is the weakest in our society who should be given the closest attention, namely the disabled and the aged. I think the Chief Minister has said that the UK will not transpose the European Directives until October this year. I would appeal to him and to his Government to ensure that this happens this year. It is a pity that it is not happening now. I would also remind the Chief Minister that in article 18 under the heading of "implementation", the Council Directive says, "in order to take account of particular conditions Member States may, if necessary, have an additional period of three years from 2nd December 2003." That is to say a total of six years to implement the provisions of this directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. Now obviously we would not be under that condition or under that obligation of reporting annually if we transpose this EU Directive this year. I would appeal to the hon the Chief Minister to do his best to ensure that this happens this year.

**HON J J BOSSANO:**

Mr Speaker, since there are 20 odd amendments that have just been circulated, obviously we will need to revisit the text to see when we come to the Committee Stage whether the amendments have now taken care of some of the areas that we want to change, and if not, given that this presumably is the state with the amendments, that the Government think it is sufficient, we shall be if we find that there are other areas that they may have missed out, be moving amendments ourselves for tomorrow morning after going through the ones that have been circulated today. I think on the general principles of the Bill, if I might just follow up the last point my hon Colleague Charles Bruzon has made, in fact it will be interesting to know whether the Member State UK has in fact told the Commission that we have got a problem in meeting the deadline and that we need more time, because the Commission clearly requires under article 18, and when we have been talking about this additional period, the wording of the article seems to me to be indicative that the Commission considers that the additional period should be the exception rather than the rule, because it says that any Member State who chooses to use the additional period must notify the Commission forthwith that they intend to do it. So in fact if the United Kingdom has not informed the Commission forthwith, and I do not know whether forthwith means by the expiry of the deadline on 2nd December or forthwith when the directive came in in the year 2000, but either

of the two dates are now passed so presumably on a strict reading of the text, in order to avail ourselves of the additional time the Commission should have been warned beforehand. I would welcome confirmation that this in fact has been done by the UK Government, presumably it means we have and presumably also on our behalf. It says in order to take account of particular conditions and I am not sure what the particular conditions in our case, I can understand that this might be particularly complicated in a Member State the size of the United Kingdom or any of the other ones but here we actually have a register, we have got information, in the case of disability as to the number of people that presumably the numbers that would be protected against discrimination would be the numbers that are officially recognised as being persons with a disability. If not we would need to have some definition beyond that which exists today to identify that particular group, but it is an identifiable group and I would have thought that although in practice we would expect in our society frankly, that most of our employers, most of our landlords and the vast majority of them would need to do it, it is nevertheless important to have the legislation there in the event that there has to be use made of it.

Another point that occurs to us on the general principles of the Bill is in fact what happens with instances where in the cases where there is no extension beyond 3rd December, that is other than disability and age, where the act complained of may have taken place between the time of commencement of this Bill and 3rd December 2003, given that on a number of occasions it has been said that our failure to transpose a directive can deprive somebody of his EU rights because EU rights flow from EU law and consequently the lack of transposition. In fact it has been suggested that if it were to be a defence on the part of an employer for example, that he did not have to do something or that he could not be accused of discrimination, or that he could not be asked to give compensation because this House or the Government had failed to transpose the thing earlier, then the victim as it were of that act of discrimination would have the ability to take action against the Government for failure to give recourse to their rights within the timescale provided, which was of course in one case between 1997 and now, and in the other case between the year 2000 and 2003, so we have three years to do much of this and even longer in the case of the burden of proof which was originally only on questions of sex discrimination. So as part of our analysis of the general principles of the Bill I think it is something that we would like to have a reaction from the Government on that point so that people will know what their rights are irrespective of whether this takes a number of weeks or whatever to actually go through the final stages after it is approved by the House to become law and for people to be able to take action. The point raised by my Colleague in terms of the jurisdiction of the Employment Tribunal, as the Hon Fabian Picardo has said, we are not sure, it is clear to me that this is intended to be so because it says jurisdiction of the employment tribunal, so I do not see how it could have been put there by an oversight, it looks as if the intention is that all the cases irrespective of whether they relate to employment or to anything else should go to the industrial tribunal. But if that requires a change to the Employment Ordinance, then presumably that will have to be done very quickly otherwise even after this happens people will have one law telling them they have to complain to the industrial tribunal and the industrial tribunal and then another law may not have the power to admit the complaint, given that from my experience of dealing with unfair dismissal cases the first stage is to get the tribunal to accept that the complaint is a complaint that is admissible under the unfair dismissal provisions of the law and if it fails that test then they cannot even listen to the complaint. So I would have thought that that may need to be addressed independent of the fact that at a later stage the Government intends to introduce into the Employment Ordinance as an amendment to that Ordinance, the provisions that are now contained in clause 55 here, which we think is a good idea because of course it is more complicated to discover the change if it is in another law and I think it is a sound principle to do it that way but if the Industrial Tribunal under the Employment Ordinance is supposed to be in a position to receive complaints as soon as this becomes law, then that I think needs to be checked but that is possible as the law stands at the moment.

In terms of the question of discrimination on grounds of age, well presumably that can be because one is too young or it could be because one is too old. I do not know whether there are Members here that need to declare an interest in that matter, but given that it just says age I suppose that one could argue that it could also be discrimination because one is in the mid 40s or in the mid 50s or any other age. So since everybody has to be of some given age and it does not say here at which age people may feel discriminated against, I would have thought that the discrimination on grounds of age are things that need to be addressed in the context of the fact that today we do see advertisements where people are told only apply if you are under such and such an age and that there is indeed a concern generally I think in many places in Europe in that in a kind of society where the lifelong employment is becoming a less common phenomenon and movement, we are seeing it here, we are seeing it with the figures the Government provides in terms of the number of contracts terminated and vacancies filled in a given year, which is of the order of 6000, it shows the level of movement that there is in employment. Of course that level of movement is fine but when people find themselves over 50, it appears that they have increasing difficulty in getting re-employment. I do not know whether the question of age is intended to tackle that problem but certainly it is a problem that needs addressing and if this is the avenue to address it, then I think it is an important issue for people in that category who today are you know, in that situation in Gibraltar, less than in other places, it is a much bigger problem in other places but it is already happening here as well. So in the context of the general principles of the Bill we are 100% behind what is being intended and therefore any amendments that we seek or any clarification that we seek is merely to make sure that it goes at least as far as the Directives go and whether we are able to go further the Directives clearly say that there is nothing to stop the Member State going further in the direction where it is the political wish of the parliament to do so and where you know the nature of our structure of our economy and our society can take it. That is the context in which we will be looking at it.

**HON CHIEF MINISTER:**

Well to start with that last point first, the Bill as amended or as to be amended intends only to transpose the requirements of the directive. It does not go further and that is the basis of the legislation. The Hon Mr Picardo finished by saying that he had wanted to avoid political point-scoring, but yes there is nothing wrong with political point scoring and indeed I think it is the Opposition's role, I mean that is what politics is, one tries to score points against ones opponents. My objection and certainly the things that I respond to is not political point-scoring, we all political point-score against each other, that is the nature of politics. What we respond negatively to is where we think there is an attempt being made to score political points unfairly, unreasonably, wrongly or on a false premise. The earlier debate that we had was one based on what we think is an attempt to score political points unjustifiably and that is why we highlight it.

Mr Speaker the hon Member said that the Opposition had been calling for this legislation for some time. I do not have an enormous recollection of having heard too many calls or indeed over a very long period of time but still I suppose he must know what he is referring to. He has also regretted that there has been delay and has said so in relation to the call by the Gay Rights and has said that these things are overdue. Well some of them are overdue but the ones that are based on sexual orientation, which is the one that the gay rights were for obvious reasons most closely interested in, are not long overdue, they are overdue by a few weeks, I think they were due in December. They were due in December and yes they are four or five or six or seven weeks overdue and that I think has got to be viewed in that context and I think in fairness to the Gay Rights Group, even they have acknowledged in expressing their appreciation for the fact that the legislation has been taken, that they do not see this short delay over the deadline, I am sure they would have liked to have seen it in place long before the deadline, [*INTERRUPTION*] but that the delay over the deadline is understandable and not unduly long given that we have had

general elections and then Christmas and then one thing and another and that this is the first meeting of the House after the end of the deadline. Well, Mr Speaker, I will respond to the hon gentleman on his two points when I have had an opportunity to consider them in more detail but my first reaction to his point is that it does not seem to me, subject to looking at them more closely, that there is a great deal of merit in either of his two main points. Certainly the points that he makes about what he rather dramatically calls a bigot's charter would be true if the section were capable of having the effect on which he bases the view but we do not think at first sight that it is capable of having that view. It is not open to the abuse that the hon Member appears to believe that it is subject to but I will give him a more considered response at Committee stage.

In answer to the point made by the Leader of the Opposition if I could just jump to that for a moment since it comes to mind, it is true that the Bill as drafted gives the Employment Tribunal jurisdiction in all cases and indeed we have had a change of heart on that because the Employment Tribunal is really geared to employment related issues. It is an ad-hoc court, it is a chairman that is appointed from amongst practising lawyers usually although not necessarily limited to that, and that such an industrial tribunal should be dealing in things that have got nothing whatsoever to do with employment issues like health, education, social security, denial of goods and services, landlord and tenant issues, things which have really got nothing whatsoever to do, struck us as being odd. One would have to change the name of the tribunal as it could not continue with the concept of an industrial tribunal bedded in the Employment Ordinance. One would have to create an equal opportunities tribunal or something but it would not be so simple as just to shunt the jurisdiction into the existing industrial tribunal for things that were a tribunal. We did toy with the idea of giving this jurisdiction to the Magistrates' Court as being a court that would at least be cheaper to access than the Supreme Court and may be something that the Government once we have seen how it works in this way and once it transpires, I do not think we would consider changing the legislation at this stage, because I think that there is not enough time to consider the implications but if certainly the experience of this Bill in operation were that lots of employment related discrimination cases were being pursued, because it could be easily and cheaply pursued through the industrial tribunal but that very few cases were being brought in relation to discrimination in the other areas, we would I think be forced to the conclusion that the only logical reason for that is either that in reality most acts of discrimination actually do relate to employment issues, or alternatively that it is because one was easier to access justice in respect of rather than the other. If we found that to be the case I think there would be a case at some future date that there would be a case to amend the legislation perhaps to either constitute some sort of equal opportunities tribunal more along the lines of the industrial tribunal or perhaps send the jurisdiction downwards towards the Magistrates' Court rather than leaving it in the Supreme Court.

**HON F R PICARDO:**

I must ask, at present in the Bill is it framed as we suggested, straight to the tribunal and that he is changing that in the amendment which he is giving us but which we have not yet had a chance to see, is that the position?

**HON CHIEF MINISTER:**

The amendments, when I was considering the draft again and I took this point is it not odd that the industrial tribunal should have jurisdictions in matters of health, I actually called for the UK legislation to see how they did it and the division proposed in the amendments is how the UK separated what we are giving to the industrial tribunal is what the UK give to I think they call it the employment court, and what we are giving to the Supreme Court in the UK is given to the County Court. Now the County Court which used to be more or less equivalent to our Court of First Instance, which was a bit quicker, a bit cheaper and a bit

simpler to access, that is more or less, I do not know if under the Woolf Reforms the distinction has disappeared altogether, but this is something that traditionally in Gibraltar where in the UK they have given things to the County Court in the last 10 or 15 years in Gibraltar they have been given to the Supreme Court. But look this is an issue which the courts can take into account, I understand the Chief Justice is about to make proposals to the Government to amend the Supreme Court Ordinance to give the Woolf Reform fast track, fast track proceeding which is much more the sort of thing that used to be in the County Court and that maybe that would be an opportunity to deal with these issues. So those are my first thoughts on that point which I accept is an important point. I agree in principle with the view that if rights are too difficult or expensive to access then it all looks very nice in print but the effect on the ground is limited.

The hon Member flagged up the possibility of a racial equality commission and he will see that there is an obligation on the Minister to consider that and to pass regulations and before such regulations are passed, there is an obligation on the Minister to designate some interim body to deal with promotion of equal opportunities and the Government have designated and that is about to be notified to the Commission. The Government have designated the Citizens Advice Bureau in the meantime until the regulations are passed creating a more permanent body if indeed we should decide to have a different one. But there is an obligation prior to regulations designating a commission, to designate some other body, some other independent body to take an interest in promotion of equal opportunities issues and we have chosen the Citizens Advice Bureau. The hon Member said that the Opposition would oppose allowing discrimination in any area, well, Mr Speaker the Bill does not eliminate all forms of discrimination in life in all walks of life. There are many forms of discrimination that are not covered by this Bill. This Bill intends to cover all the anti-discrimination obligations required by the existing corpus of EU law except in relation to age and disability where we have already debated the reasons why we are not doing it just now. But of course, if the hon Member is of the view that he wishes to eliminate all forms of discrimination and wishes to propose an amendment that Chief Minister should not be discriminated against by being paid so obviously less than they are worth, then it is an amendment, that is a form of discrimination which is not covered by this Bill and I suppose there are many others.

**HON F R PICARDO:**

Or so much more that they deserve.

**HON CHIEF MINISTER:**

And so much more others. Well the electorate does not seem to think so. Anyway, Mr Speaker the hon Member says he will keep his hawkish eye on the Government. Of course it is entirely, not just his right but his obligation to do so, it is his obligation and right to ensure the Government complies with its international obligations. Of course it is not his right to ensure the Government do as he likes, when it is a matter of domestic policy he can lobby and it may be that he finds himself pushing against an open door but having said that Mr Speaker, I do not know where he was in 1992………

**HON F R PICARDO:**

In Oxford.

**HON CHIEF MINISTER:**

In Oxford, I see. Well had he been then an activist in the GSLP and had his hawkish eye then been trained in this matter of disability discrimination to which he now attaches such importance, rightly so let me say in passing and I say this in half jest, he would have noticed that in 1992 the then government led by the now Leader of the Opposition sitting immediately next to him, introduced an enabling ordinance called the Disabled Persons Ordinance 1992, which was actually a completely

meaningless and toothless piece of enabling legislation which did not even define disability or disabled person, because it required regulations to be passed giving it all its flesh, and since between 1992 and the day that they left office, those regulations were never put in place. Now I think we have got to accept that when we are making what we call social progress in Gibraltar, whether it is catching up with international obligations or whether it is by domestic decision, it is always possible to say, "well we could have done this earlier". Whenever one does something it is always possible to say that this is very good, we should have or could have done it earlier. Any Gibraltar government in the last 50 years could have introduced legislation eliminating discrimination. We did not need to wait for Brussels, none of us, not this government, not the previous government or the one before that. No government of Gibraltar, if something is really a matter of moral conscience, no government of Gibraltar should ever have had to wait for bureaucrats in Brussels to gather in a little cluster to establish what is in effect the lowest common denominator of anti-discrimination provisions. Yet no government has done so and I take the view of these things that society has progressed gradually and as they progress it is really quite childish to look backwards and say, "why has this not been done before?" When it is a matter of an international obligation as one or two of these directives are where Gibraltar is clearly late, then I accept it is legitimate for the hon Member to say, "well look, one thing is not to do it voluntarily as a matter of domestic policy but you have not even responded to an international writ, that is a more legitimate observation". Frankly, until the fuss arose, and this is really one of the problems Gibraltar has, until the fuss arose about the sexual orientation thing, when it first arose earlier last year, I was not even aware that Gibraltar was in arrears of these things. Ministers in the Gibraltar Government do not have in their minds and unfortunately the UK does not provide a list of directives saying, "oh, by the way chaps, there are these 200 directives going back to 1997 that you have not provided". So there is not a sort of consciousness that something is in arrears and there is a sort of conscience decision not to do them, they are just not brought to our attention and therefore one does not do them. So I hope to be able to accommodate the plea by the Hon Mr Bruzon to do this as quickly as possible. I do not think that his plea was sort of doubting my intentions, I have indicated to the hon members that the legislation is already being drafted and that it is the intention of the Government not to exhaust the deadlines until the very last minute, there is no reason for doing that. Here it has been because we just have not been able to get the legislation drafted more quickly but now that the draftsmen are on the job, the Bill will come to the House when the legislation is ready, not on the expiration of some artificial time period.

I am glad that the Leader of the Opposition himself made the point because it was one of the points that I was going to make, which is that although it is right that we should have the legal protection so that things are a matter of right and not a matter of sort of charity so to speak, but I think we are fortunate in Gibraltar that so many of these pieces of social engineering legislation which are necessary in other countries where there is genuine racial discrimination, where there is genuine discrimination based on ethnic origin, that we are blessed in Gibraltar that we are a community that does not on the whole partake of such behaviour. Which is not to say that there are things in the Disability Ordinance, I do not know what the Disability Directive says I have not yet focused on it, I do not know whether it deals with sort of ageism which is a point that the hon Member was hoping it would deal with, we shall see when we look at it, but I think that it is something that Gibraltar ought to be rightly proud that even without legislation prohibiting it, I think the instances of disability discrimination and the instances of many of the forms of discrimination, age, disability and all the others that we have been discussing today, actually are not right or prevalent. I am sure they may exist and there may be cases of people who are the victims of it and if we help only those people it will be enough but it is not a problem in this society which is as marked as racial discrimination is in others. I do not know whether all societies in Europe think that they do a very good job in this area and that the problem is really with the others and whether we are falling into that trap by sort of the

self-congratulatory statement. But on the whole I think Gibraltar is recognised internationally for the harmony of the coexistences of the various races and things of this sort and I have often thought, even when the local Gay Rights Association lobbies publicly on the question of sexual orientation discrimination, I ask myself is there in Gibraltar an enormous disrespect for peoples' freedom to have the sexual orientation of their choice. Where is the evidence that people are not given jobs because they are gay or because they are not gay or because they are heterosexual and things like that. I have never heard of a case, look they may exist, I am not saying that they do not exist but it is not an issue about what one hears as sort of a hubbub, so anyway that is not to say that things that are required to be legal rights should not be enshrined in law, I think it is right that that should be the case because that accrues to the body of human rights as opposed to things that communities just do voluntarily.

The hon Member asked what happened to cases arising before the time due for transposition. Well as he knows, fixed and well-established and much litigated about rules about the limited circumstances and the very strictly defined circumstances in which individuals are entitled to take legal action against the State for the personal consequences to him of the State's failure to transpose an EU Directive, and these are basically called the Frankovitch principles. There are a series of criteria, it has got to be a very clear personal right, it has got to be for example under a directive that is self-explanatory and requires no more discretion in the transposition of. In other words the legal right has got to be clearly established on the face of the directive. There has got to be financial loss arising from the non-transposition. There are a series of conditions which if met, do entitle people to take action against the State for non-transposition. I do not actually know the answer to the question, whether those principles help once the transposition takes place in respect of acts prior to transposition or whether one has got to bring the action before transposition. Interesting question. I do not know what the answer to that is. In conclusion, I will come back to the hon Members in answer to their more specific points in more detail at Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

The Hon the Chief Minister moved the adjournment of the House to Friday 6th February 2004 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.00 pm on Thursday 5th February 2004.

## FRIDAY 6TH FEBRUARY 2004

The House resumed at 10.15 am.

**PRESENT:**

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

**GOVERNMENT:**

The Hon P R Caruana QC - Chief Minister
The Hon Dr B A Linares - Minister for Education, Employment and Training

The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs
The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities

**OPPOSITION:**

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

**ABSENT:**

The Hon J J Holliday - Minister for Trade, Industry and Communications
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon R R Rhoda QC – Attorney-General
The Hon T J Bristow – Financial and Development Secretary

**IN ATTENDANCE:**

P E Martinez – Clerk of the House of Assembly (Ag)

## COMMITTEE STAGE

**HON CHIEF MINISTER:**

I have the honour to move that the House should resolve itself into Committee to consider the following Bills, clause by clause:- The European Parliamentary Elections Bill 2004 and the Equal Opportunities Bill 2004.

The House recessed at 10.20 am.

The House resumed at 10.30 pm.

**THE EUROPEAN PARLIAMENTARY ELECTIONS BILL 2004**

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

**Clause 2**

**HON J J BOSSANO:**

Mr Chairman, having read overnight the regulations that may or may not have been approved by the United Kingdom Parliament by now, I have to say that we are even less happy than before we read them. I therefore propose to move an amendment to clause 2 in respect of the definition of Gibraltar Register, deleting the words "has the meaning given to it in section 14(1) of the European Parliament Representation Act 2003" and substituting, in fact the definition that exists there. As I mentioned in the general principles of the Bill, as far as we are concerned if we are quoting unnecessarily in our judgement, a meaning given currently in a UK piece of legislation, tomorrow without the House having any involvement, without anybody in Gibraltar knowing it, the meaning can be changed and although it is unlikely to be the case in this particular one, because I do not see what other meaning they could put, nevertheless the principle is reflected here as it is in other instances. Therefore we propose that our law should state what the Gibraltar Register means and reflect what is in the UK Act. That should read, "means a register of European Parliamentary electors in Gibraltar, maintained by the European Electoral Registration Officer for Gibraltar". And coming to the definition of Registration Officer,

**MR CHAIRMAN:**

Will you pause for one second. As this is an amendment could you put it in writing for the Clerk.

**HON J J BOSSANO:**

Yes Mr Speaker. I am explaining what the amendment is and have got a note here.

**MR SPEAKER:**

All right.

**HON J J BOSSANO:**

I am mentioning the other one simply because it is in the same clause. I do not know whether we should take a vote on the first amendment to that clause and then a separate vote for the second amendment to the clause.

**MR CHAIRMAN:**

Yes. I think that would be better.

**HON J J BOSSANO:**

Okay.

**MR CHAIRMAN:**

So you move an amendment which reads as………

**HON CHIEF MINISTER:**

Mr Chairman, the Government do not accept the Leader of the Opposition's amendment. There is a definition of Gibraltar Register in the Bill, it is whatever the European Parliament Registration Act of 2003 defines to be the Gibraltar Register. That is an essential part of the legislative framework because the nature of the Gibraltar Register has got to be in tune with the nature and the rules relating to the register for the remaining part of the constituencies and therefore the Government do not consider it appropriate or indeed possible to accede to the hon Member's proposed amendment and therefore the Government would be voting against it.

**HON J J BOSSANO:**

Well Mr Chairman, all I can say is that it is very peculiar since the Chief Minister told us in the general principles of the Bill that he had offered the United Kingdom precisely to do what I am moving, which is to photocopy in Gibraltar what the UK provisions are. Therefore it is clear that as far as we are concerned the responsibility for the fact that this House will have no say in any changes in the definition of the Gibraltar Register, is now a matter of political philosophy and a division within the House where the Government will do that by majority but without the support of the Opposition.

The next amendment I propose to clause 2 is that our legislation should say who our Registration Officer is. Therefore I propose that we replace the definition of Registration Officer with the words "the Registration Officer means the Electoral Registration Officer for Gibraltar" which is already in the Ordinance, delete what follows in brackets and substitute for that "*who shall be the Clerk of the House of Assembly by virtue of his office*". I cannot for the life of me understand why this House cannot decide who should be the Electoral Registration Officer in Gibraltar and the United Kingdom can determine at any time that he shall be somebody else without us having a say in the matter.

**HON CHIEF MINISTER:**

Well Mr Chairman, if the hon Member wants to decide what should be the law in the United Kingdom, he has to stand for Parliament in the United Kingdom. The Government of the United Kingdom and its Parliament, who have legislative jurisdiction over the Colony of Gibraltar, has decided in its infinite wisdom or in its infinite lack of wisdom, that is a matter we could debate, has decided that its law designates who is the Registration Officer in Gibraltar, and whatever might be his desire or mine, without conceding that I attach any such degree of importance as he appears to attach to the point, is neither here nor there. The law of the United Kingdom, which supersedes the law of this House, as a matter of constitutional necessity which neither he nor I can unilaterally remedy, says that the Registration Officer for Gibraltar is designated in the law of the United Kingdom and that is an inescapable reality for as long as Gibraltar remains a colony of the United Kingdom. Therefore we cannot accept the Leader of the Opposition's amendment and we shall be voting against it.

**HON J J BOSSANO:**

Well Mr Chairman, not only do not I agree with the Chief Minister's position, I do not agree even with his interpretation of what is the legal and constitutional position between us and the United Kingdom in this particular point. As far as I am concerned we are saying in this House that the Registration Officer means what the UK Act says, and I do not see that there is anything to stop us in this House saying what the Act says in and putting that in our law. That is precisely what he said he had tried to convince the United Kingdom to accept and they did not accept. The fact that they did not accept it does not prevent us from doing it, because there will be nothing in the amendment that I am putting which is in conflict with the provision of the UK Act. I am in fact repeating what the UK Act already says. So in fact the law of Gibraltar and the law of the United Kingdom would both say that the Registration Officer in the elections due in May would be the Clerk of the House and I do not see that there is any conflict with that or that the colonial relationship would somehow been put in danger. If at a future date the United Kingdom wanted to change the provisions in its Act so that the registration officer would be somebody else, then obviously the fact that the definition that they have is the one in our law would make it necessary for them to contact the Government of Gibraltar on this and seek the support of the Government of Gibraltar for the change. I do not see why the Government should resist that because then the Government of Gibraltar would be able to say yes or no or argue and then if it came to the crunch that it was so important that the United Kingdom insists on imposing it, then it would be something in the public domain and it would be a political issue. So I cannot see that actually repeating what is in the UK Act and putting it in our law in any way has the effect that the hon Member says or is in any way an attempt to declare UDI.

**HON CHIEF MINISTER:**

Well I do not know Mr Chairman whether the hon Member is just being intentionally disingenuous or whether he really does not understand the nature of this piece of legislation. If Gibraltar wants to participate in European Parliamentary Elections as a part of a combined constituency with the Southwest region of the United Kingdom, which is the only basis upon which it is open to us to participate in those elections, then it has to do so on terms dictated by the United Kingdom Government and its legislative process. That is the inescapable reality of the matter. Now given that that is the starting point, we can have this discussion on every sub-clause if he likes, because every single clause in this Bill, every single one is there because it is required by the United Kingdom as part of the legislative framework that it requires should be in place so that Gibraltar can be combined with its southwest region. That is the reality. I am not going to say give the hon Member this explanation on every single clause, I am going to give it to him on this clause

and then I am not going to repeat it again throughout the whole of the Bill. But he should know that it applies to every single piece of this legislation and I would not have thought it necessary for me to have to explain either that to the hon Member or indeed what I am about to explain to him. Namely, that if the United Kingdom's position is that it must decide who our registration officer is and if its legislation says that the electoral registration officer is the Clerk of the House and we ourselves designate our registration officer by reference to some mechanism other than alluding to the United Nation's own section, then I can see why it would attract the hon Member's sense of mischievousness, but from the United Kingdom's point of view one can see why it would not be acceptable because it would only take a piece of legislation passed in this House for the United Kingdom law to say that the election officer is one person and for the law of Gibraltar to say that it is another person. Then we have a non-resolvable conflict which can only be resolved either by the United Kingdom instructing the Governor to withhold the consent from the legislation, or a Secretary of State denying exercising his constitutional powers of disallowance, or the United Kingdom saying in those circumstances the basis of the enfranchisement has been destroyed and you cannot vote. Frankly, the hon Member may wish to make constitutional points, I who spend much more time than he does in trying to make constitutional points of that sort, think that there is absolutely no constitutional point at stake here of the sort that he is making as is clear by the explanation that I gave to the hon Member yesterday about the circumstances in which we were debating any legislation at all in this House. So the Government are not persuaded by any of the hon Member's arguments and will be voting against the amendment.

**HON J J BOSSANO:**

Mr Chairman, the fact that the Government have capitulated to the UK pressure does not mean that the Opposition has to do the same. It is complete nonsense to suggest that he understands the UK position because what the UK is worried about is that at a subsequent meeting of this House we will alter the definition of registration officer in order to have a different person from the one in the UK Act. Well, look that presumably the United Kingdom can only be afraid will happen after the next general election in Gibraltar because given his willingness to do what they want they can hardly expect that he will be introducing legislation to do that, and of course we would only be able to do it by seeking the leave of the House to introduce a Private Members Bill to change the definition, and given the Chief Minister's position that attempt presumably has absolutely no chance of success, if he is not even willing to accept an amendment which repeats what the UK Act says, it is hardly conceivable that he would give leave of the House for a Private Members Bill in order to put somebody different from the UK Act. So if that is what the United Kingdom is afraid of, it can only be because they are afraid that he might do it not afraid that I might do it, because it is a sheer impossibility for the Opposition Members to do it. In addition, the argument that he has put suggests that every single element of this Bill and every single word in it are cast in tablets of stone and that we cannot change a full-stop and a comma, because anything that we seek to change would be unacceptable to the Government because it would be unacceptable to the United Kingdom Government. That is the implication of what he just told us. Well that makes a complete nonsense of our role in this House, what are we debating clause by clause if the clauses are all like the ten commandments in tablets of stone, we cannot alter anything. Well I have to tell him that the argument does not seem to make sense because there are other parts of this Bill where we are doing in our legislation what is also being done in the UK legislation, so why can we do it in some circumstances and not in others. Or is it that it has been overlooked, which is likely to be the most probable result. Therefore I can understand that he may not want to do it, I can understand that he may have told the United Kingdom Government that he would take the Bill through the House in tact but I have to tell him that since what we are doing in this Parliament is what the United Kingdom Parliament is doing in respect of things that would be the laws of Gibraltar, over which we have no control at least in the

Parliament where we have been voted we will say what we think, it will be on the record, it will be in Hansard.

**HON CHIEF MINISTER:**

Mr Chairman the hon Member's analysis is both factually and argumentatively inaccurate in almost every respect. Firstly I told him yesterday that there were bits of this legislation that were made in the UK for reasons that I explained and that there were bits of this legislation which were made in Gibraltar and I pointed out to him that those were mainly the broadcasting bits and that I would point those areas out to him in Committee Stage. So I do not know why he mounts that assertion which is completely contrary to what he was told yesterday and the hon Member's now traditional debating technique of having a monologue argument whereby he says not only what he wants to say in the argument, but attributes to the other side of the argument, arguments that they have not put so that he can then rebut it himself all without pausing for breath, is hardly I would have thought a productive way of conducting the affairs of this House but the hon Member can of course do that if he wants to.

Mr Chairman, there are bits of this Bill as we explained yesterday which are not changeable and there are bits of this Bill which are, if the Government can be persuaded, the Government may or may not be persuaded, but I should say to the hon Member who appears to think that passing through this House legislation in the terms required by the UK or agreed with the UK, where he tries to paint the picture that somehow that is an unvirile, unmanly, undesirable apologist, weak, constitutionally unsound process, is a view that I do not share. I am delighted, I am delighted in the circumstances of this Bill, in the circumstances that I described yesterday, why it was particularly important that this Bill should be debated in this House and given that the United Kingdom has agreed to allow us that constitutional emblematic role, frankly, to then suggest that when they agree to do that, that we should then not pass the legislation in terms that they can live with, which they could have guaranteed had they not agreed to let us debate the legislation but to do it themselves, is not a vision of life as there are so many other visions of life that I do not share with the hon Member. Frankly I am delighted and the Government are delighted to bring through this House and use their majority to secure the passage of in terms which does the trick of ensuring (a) that the legislative framework is in place for Gibraltar to be able to vote at the European Elections; and (b) that has given this House a role in that legislative process in the terms that I have described that role yesterday, which was I recognise to a large extent symbolic in the sense that we were only dealing with two or three issues of a legislative framework, which is very wide and extends to many more issues than that, so it is symbolic in the sense that it is only three issues when it could have been three hundred issues, the other 297 being dealt with under UK legislation. That is the Government's position, we are delighted to be able to be here today passing some legislation and frankly I do not agree with the hon Member's attempt. He may have it and I recognise that that is his view, I do not share it, he may record his view as he says he wants to do, opposed to it for Hansard and for the record, at the end of the day the legislation of this House will be carried by the Government majority and that is how it always is when the Opposition and the Government do not agree on legislation.

**HON J J BOSSANO:**

Yes Mr Chairman, it will be carried with the Government majority and will not be carried with our support because we do not agree with the approach of the Government and we do not agree because in fact the Government are delighted we are now being told that it failed to achieve what it set out to do, because in the general principles of the Bill the hon Member told us that they had actually said to the British Government that they would be willing to go to the length of guaranteeing that the House, using the Government majority they are in a position to guarantee, the House of Assembly would in fact virtually photocopy their provisions and they failed. Well it may be the

philosophy of the Chief Minister that when he fails to achieve what he thinks is best for Gibraltar, he is delighted to achieve second-best. Because that is clear from the statement he has just made and the statement he made in the general principles of the Bill, and he is wrong. He is wrong, he always stands up in this House and prefaces what he says by saying either the hon Member not only read in the last ten minutes, or the hon Member does not understand legislation or he does not know what he is talking about or he switches my arguments around and he puts all these prefaces before, in the knowledge that enough of them will eventually reach some headline and the people of Gibraltar will fail to understand what the issue is. Well the issue is that he is wrong. The issue is that yesterday when he circulated this and I said to him, is it the case that this has been negotiated with the Government, what he told the House was we have not even been consulted let alone having negotiated it. Well, if he has not even been consulted and he is delighted with that position, then I can tell him we are not delighted, and if he had been consulted and we did not agree with what was there, and it was on the basis that the Government of the United Kingdom had consulted the elected Government of Gibraltar and the elected Government of Gibraltar was in favour of what was being done, even if we did not agree, at the very least we would accept that they had been elected by the people of Gibraltar, by 51 per cent of the people of Gibraltar, and therefore they have got a right to move in this House legislation even if we disagree. But when we have a situation where they are moving in the House legislation because the United Kingdom have said to them, "Look this is as far as we are prepared to go and you can take it or leave it, and either you do this or you get nothing". Well look, now the legislation is here and they may have brought it on that basis but we have not been involved in that process and therefore we have not got any inhibitions or constraints on what we can propose in this House and what we can say in the debate in the Committee Stage. And I tell him that when we come to a later clause, which according to the definition he has just repeated is UK manufactured not Gibraltar, perhaps he will explain to the House why in that particular clause we have the same provisions as there are in these regulations, and what happens if in these regulations that provision is altering the future and there is a conflict between what we have in our law and what is here which at the moment is identical. And whether that will mean that the Secretary of State will have to use the powers or that there will be a collapse of the colonial system, because what I am proposing that we do now is already elsewhere in the law, presumably done by the United Kingdom according to the information he provided in the House, assuming he is telling the House the truth, which I am assuming. Therefore I am afraid he has as little success in persuading me as I seem to have in persuading him.

**THE HON DR J J GARCIA:**

Mr Chairman, during the second reading of the Bill I flagged the point which I wish to move as an amendment and that is in the definition of combined region, which presently reads "means the electoral region which includes Gibraltar, namely the South West electoral region", to add the words "of the United Kingdom" before the semi-colon at the end. I have that amendment in writing which I can move in writing if necessary.

**HON CHIEF MINISTER:**

Well, Mr Chairman, the amendment is not strictly necessary because the region with which Gibraltar have been combined is a matter which is established under the law of the United Kingdom, but the Government have no difficulty with adding the words "of the United Kingdom", we do not think it is necessary because the combined region means the electoral region which includes Gibraltar, it could actually stop there. That would be a sufficient definition to identify the combined region given that it is established by the United Kingdom. The words "namely the South West electoral region" are actually superfluous, but look, the superfluous description of the geographical region can be added to by adding the words "of the United Kingdom" if the hon

Member wants, so the Government's position on that is that we do not think the amendment is necessary, but we would not oppose it if the hon Member moves it.

**THE HON DR J J GARCIA:**

Mr Chairman, I would like to formally move the amendment and the amendment is that the definition of combined region in clause 2, to add the words "of the United Kingdom" after the words "South West electoral region".

Question put. All agreed.

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

**Clause 3**

**HON J J BOSSANO:**

We are voting against clause 3.

**MR CHAIRMAN:**

All right. Stands part of the Bill. There is no amendment before the House, all there is is information that they are voting against, nothing else.

**HON J J BOSSANO:**

Mr Chairman, are we not voting in favour or against the clauses?

**MR CHAIRMAN:**

Yes.

**HON J J BOSSANO:**

Irrespective of whether it is amended or unamended? Presumably if we all voted against a clause it would disappear notwithstanding the fact that there is no amendment.

**MR CHAIRMAN:**

You have got to put through an amendment that the clause be deleted, which you have not done so far.

**HON J J BOSSANO:**

In order to be able to take a vote I have to put an amendment saying it should be deleted?

**MR CHAIRMAN:**

Of course. Well you have been here long enough for that.

**HON J J BOSSANO:**

I have been here long enough to know that this has not been done before, but am prepared to do it for the first time and create a precedent. I therefore move an amendment that clause 3 be deleted.

**MR CHAIRMAN:**

Do you want to speak on it?

**HON J J BOSSANO:**

Yes. Mr Chairman, in clause 3 we have a reference to Schedule 1 which makes Schedule 1, which is in fact a big chunk of the Bill, subject to what is contained in the European Parliamentary Elections Act 2002 and the Representation Act 2003 and any subordinate legislation whenever made. What we are doing by this provision is in fact that when we come to Schedule 1 and we vote the provisions in Schedule 1, we are voting it in the knowledge that anything and everything in it can at any time be altered by the United Kingdom through subsidiary legislation, that is through regulations in the United Kingdom made by the Minister, and we will not even know that it has happened. Presumably the law of Gibraltar unless somebody catches up with it will say one thing and the law of the United Kingdom will have altered the law of Gibraltar. I think that to say here we are in this Parliament being given an opportunity to do something when effectively what we are being given the opportunity to do is to deprive the Parliament of the right it currently enjoys to amend its legislation by votes in this House carried by a majority. So we are now saying that everything in Schedule 1, may tomorrow be deleted by the Secretary of State, by a regulation saying Schedule 1 of the Gibraltar Ordinance no longer applies, and there is nothing we can do. Well it may be that the United Kingdom has that power under the Constitution or under some other provision but it has certainly never been put in as stark a term as that and it has certainly never been put on the basis that we have an opportunity in this House of saying whether we support that or we do not support it, and we do not support it.

Question put. The House voted.

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

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

Clause 3, stood part of the Bill.

**Clause 4**

**HON J J BOSSANO:**

Mr Chairman, we are not proposing the deletion of clause 4 because in fact that deals with the Accession States, and obviously we are not in a position to negotiate the position of the Accession States in this House.

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

**Clause 5** – was agreed to and stood part of the Bill.;

**Clause 6**

**HON J J BOSSANO:**

Mr Chairman, in accordance with the guidance that you have provided in order to be able to speak on this, I want to move the deletion of clause 6. I would draw the attention of the House to the provisions that there are in regulation 25 of the Regulations that were circulated yesterday which deals with breach of official duty. Regulation 25 provides that it is a breach of official duty for a person to whom this regulation applies, to be guilty of any act or omission in breach of his official duty and he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale. Now we are making an identical provision in our own legislation, and in fact, the regulations that are being approved by the United Kingdom Parliament state two things. It says that they are of general application to Gibraltar and it includes in the definition of registration officer "the registration officer for Gibraltar who is the Clerk of the House" and therefore, regulation 25 breach of official duty, contains identical a photocopy of the provisions that we are currently debating in this Bill. Now given everything that we have been told that we should not have identical provisions in our Bill and in the United Kingdom Bill, because then if it is changed in the United Kingdom and we do not change it here there is a conflict, which is one of the fundamental arguments used by the Government for not supporting what we have moved, perhaps the Government can explain why in this case it does not matter. Let me take a very simple example. What happens if in the United Kingdom they change the level of fines and we do not? Will they then use their powers to change our law or will the regulations in the United Kingdom override our law? All the things that he says will happen if we provide the same thing here. Well we are providing the same thing here as in the United Kingdom and the hon Member has told us that that is not Gibraltar-driven, that this has been done by UK. So the UK has done what I have tried to do in this House and which the hon Member thinks is so bad. This is what I was telling him before that the argument that he was using was not valid because he was saying that I was putting words in his mouth when I was telling him that the argument that nothing could be changed did not make sense. I was not putting words in his mouth I was simply referring to what I have read.

So, Mr Chairman, given the position that they have adopted, the inescapable logic of that position is that they should now remove the provisions of clause 6 because they are a repetition of what is in the United Kingdom law and because if the United Kingdom law is changed, ours would need to be changed or there would be a conflict between the two, so he would have to bring an amending Bill to the House to make the same provision here, or we would then have the situation where we would be inviting the Secretary of State to use the reserve powers to legislate for Gibraltar to change an Ordinance of this House. All those arguments that were applicable in respect of the original amendment that the Government defeated, in my judgement and on the basis of my reading of these two pieces of legislation, apply here. If the provision in the United Kingdom regulations are almost identical to the Gibraltar provision but not quite, but in fact leave no doubt that the UK provision applies, so in fact in our case, and uniquely in our case, the only registration of electoral registration officer who would in fact be breaking two laws simultaneously by one act would be ours, in the entire European Elections. If our registration officer in Gibraltar, without reasonable cause commits or is guilty of any act or omission in breach of his official duty, he is liable to a fine under our law not exceeding level 5 and he would also be liable to a fine for the same offence under the United Kingdom law by virtue of the provisions of regulation 25 of the United Kingdom Representation of the People European Parliamentary Elections Regulations 2004. Now, we have no problem with the thing being in both, because we think that that is what we would like to see and we think that is what the Government wanted to see from the beginning, which the Chief Minister told this House he had tried so hard, having innumerable meetings, meeting with the Chancellor he tried to persuade the Chancellor that we should photocopy the provision. Well we have photocopied the provision and presumably they have done the photocopying

because this is not one of the local things that he mentioned which were Gibraltar Government-driven. Perhaps we can find out whether the Government in this case wants to do it and if so, if they can explain to us why in this one and not in the others.

**HON CHIEF MINISTER:**

Mr Chairman, contrary to what he says, the hon Member's logic is not inescapable. Gibraltar regulation makes provision for the level of fines amongst other things in this regulation, and it mirrors the United Kingdom's provisions. But this may be one of the areas in which the United Kingdom is content, for example, for the level of fines to be different. That the registration officer is then subject to two regulations. As to if we try to change our level of fine, or rather as to whether an amendment in the future to the UK's regulation 25, for example, to use his example, changing the level of the fine, would or would not extend to Gibraltar would depend on the terms of that amendment which might be said not to apply to Gibraltar. So, it would only be until the United Kingdom tried to change the regulation setting a level of fine that we would know whether there is a conflict between ours and theirs. If they simply amended the level of fine and remained silent as to Gibraltar, then there would be a conflict. If on the other hand they amended their regulation and added that the amendment did not apply to Gibraltar, then our regulation would remain valid. Therefore, whilst I understand the point that the hon Member is making as being the one that he identified earlier on in this discussion he would make when it comes to a future section, the Government nevertheless do not accept there is any need to delete this section. Or rather, let me rephrase that, this section could be deleted and our Bill would be one section shorter. If we were to delete this section it would already be covered by the UK legislation and therefore there is nothing to prevent us from deleting the section in this case, but we do not see that that is a good reason for doing it given that we want our legislation to provide for as much as possible. But I agree that in this case, if we wanted to delete it for some reason, we safely could and then this would just be an item that would not be provided for under the law of Gibraltar.

**HON J J BOSSANO:**

Well Mr Chairman, then in fact whether he wants to recognise the inescapable logic of the argument or not, it shows that it is possible to have a provision in here which is identical to the one in the United Kingdom and that if we delete it from here, it does not alter anything because the United Kingdom legislation makes exactly the same provision, and therefore the fact obviously is that we can delete it and the United Kingdom cannot argue that we are doing anything wrong because it is already their law. But the argument that they did not want us to have it in our law falls. Well if they did not want the provisions in the United Kingdom legislation to be in our law for all the arguments that have been put, and that is why we have had, although the Chief Minister is over the moon as a result, we have had a minimalist control of the legislation, the bulk of which is drafted by the United Kingdom, that is what we are being told today. Then presumably the United Kingdom has put it here, not him, not the Gibraltar Government.

**HON CHIEF MINISTER:**

That is because the United Kingdom is content that it should be there. Yes.

**HON J J BOSSANO:**

Well, all I can tell him Mr Chairman is, that that presumes a degree of knowledge of what they are doing which is not consistent with all the experience that we have had in this House with the United Kingdom telling us what to do with legislation and how to do things, which in nine times out of ten history shows we have been right and they have been wrong. I

put it to the Chief Minister, Mr Chairman, that this is not evidence that the United Kingdom was content that this should be repeated, it is evidence that the United Kingdom overlooked the fact that it was here when they put it in the UK one because in fact the UK one came subsequent to the Gibraltar one. That is what it shows. Therefore what it shows is that it is not such a sacrosanct issue that we should not have it. In fact, the reality of it is that since they had already agreed that it should be in the Gibraltar Ordinance, there is no reason why they should have put it in theirs. And I am sure that this is not the only example. I am sure that this is not the only example, this is one of them, given the time that we have had this available to us, which meant that after finishing last night in the House it has been a question of trying to reconcile what we are voting in the House today with what we know is here, which is very voluminous as well as to all the stuff to which this makes reference which was there previously. I am sure we will find after today that there are inconsistencies between the law of Gibraltar and the United Kingdom Regulations and certainly that we will find that there are repetitions which in fact in our judgement means, that the United Kingdom if they are willing to defend and accept that it is perfectly OK to say that something is an offence in the law of Gibraltar in relation to the conduct of the electoral process, which is already an offence in the law of the United Kingdom extended to Gibraltar, if that is possible then all the other things are possible in our judgement, and we do not accept that we should have simply let the UK decide what can be repeated and what cannot be repeated, or to put things here which are complete nonsense as I will explain when we come to subsequent clauses.

**HON F R PICARDO:**

There is just a technical issue here that we could have some help with. This clause for the first time in the Bill, the words "European Parliamentary Election" appear, other than in the preamble. Now, a European Parliamentary Election is not defined in this Bill. I cannot find it defined in the Acts and Regulations referred to in the Bill. Now that may be because as a result of the combination of the different pieces of legislation the definition has fallen away, and therefore, having spotted it there I ask whether perhaps we should include in our clause 2 a definition of "European Parliamentary Election". It need not be anything other than whatever definition has been adopted by the United Kingdom in whatever piece of legislation the United Kingdom has chosen to adopt that. I am sure that that would be a sufficiently clear, technical definition of what a European Parliamentary Election is.

**HON CHIEF MINISTER:**

We are debating a motion by the hon Members to delete the clause not to improve it. We have not voted on the motion.

**HON F R PICARDO:**

Fair enough, let us vote on that then take my point.

**MR CHAIRMAN:**

All right. Motion for the deletion of the clause.

Question put. The House voted.

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

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

**HON F R PICARDO:**

I am asking first in Committee whether in fact that is an issue which we should be dealing with and whether we should then go back and include the definition in 2.

**HON CHIEF MINISTER:**

Mr Chairman, the view of the draftsperson is that what the phrase European Parliamentary Election means is clear. Look there are lots of words used in this Bill, not every word is defined otherwise one would have to add the Oxford Dictionary to the definition clauses of the Bill. I think everybody understands what European Parliamentary elections are. It is not capable of being confused with any other concept and as the view of the Government's draftsperson is that there is no need for the amendment, the Government are not minded to add it.

**HON F R PICARDO:**

Can I just say that in relation to the way that the Chief Minister has explained that, I think it is unfair to say that I am asking by my interpretation of this that the whole of the Oxford Dictionary should be added to the definition clauses of the Bill. That is frankly a ridiculous and mischievous way of approaching it. As the Chief Minister knows from his experience and his legal experience, the words European Parliamentary appear capitalised in the text, and capitalised terms in any document usually have a definition. That is why I am raising it not because I want every single word defined.

**HON J J BOSSANO:**

Mr Chairman, the law which in this clause applies, is that the law of Gibraltar, the law of Gibraltar/UK or is that equally evident or do we need to have the dictionary as well for that?

**HON CHIEF MINISTER:**

By the Hon Mr Picardo's logic, when we come to debate clause 10, given that the words "the Gibraltar Broadcasting Corporation" are in capital letters, we should add a definition of that too.

**HON F R PICARDO:**

Certainly not, the Gibraltar Broadcasting Corporation is a statutory body created in the corpus juris of Gibraltar under the Gibraltar Broadcasting Corporation Ordinance. There is absolutely therefore no need whatsoever to do that. That answers that short point.

**HON CHIEF MINISTER:**

I do not think that answers that short point, I am not saying that the point is a good one, I am saying that in his logic, his justification of the need to define the term, he explained it by saying that it needed explaining because it was in capitalised

letters. Then when I point out that there is another phrase in capitalised letters, he then explains the fact that it is in capitalised letters it does not need to be explained. I think neither his second nor his first point is justified. But my point was simply an attempt to explain that his first point was not justified on the terms that he has chosen to articulate it. Now if he wants to make another argument for the need to define it, which is not dependant on the fact that it is a term that appears in capital letters, then the Government are willing to consider it. The Government are not willing to consider it on the basis that the phrase is in capitalised letters, which is the only argument that he has presented so far.

**HON F R PICARDO:**

Well Mr Speaker, the question of whether the term is in capitalised letters or not is only relevant in relation to the fact that I moved the original question dealing with whether or not the whole thing required an element of clarity which was not there because the definition was not there. That is what I put on the table and frankly, to deal with the point of the capitalisation by reference to GBC, or even as he could have done, by reference to the Gibraltar Regulatory Authority does not deal with the fact that there is nowhere else in our law, the use of the words European Parliamentary in capitalised letters or otherwise, which we could therefore read as part of this Bill. So the whole point is clarity.

**HON CHIEF MINISTER:**

That is what I had assumed his original reason to be and then when he added the second one, I had already dealt with the first one. The first one was that to the extent that his view is based on the need for clarity, I think there is sufficient clarity. I do not think that there is anybody that is under any misapprehension about what the phrase European Parliamentary Elections means. It is a phrase that has a normal meaning and therefore does not need to be defined. He then went on to say, "Ah it needs to be defined because it is in capital letters". I explained to him that I do not agree with that logic either, which I did by reference to the example of GBC. Now we come back to the clarity point and I repeat my original argument. I do not think there is anything unclear about the phrase European Parliamentary Elections, and because we do not think that there is anything unclear in it, we do not feel the need to further define the term. There are lots of words and terms which are not defined because it is thought that the meaning of them is clear, and one only defines words and phrases when one wants to give them a particular meaning or when the meaning may be ambiguous and needs clarification. We do not believe that this is such a case. If there was that degree of lack of clarity then I think that there would be a justification for adding the amendment that he proposes, but honestly we just do not believe that there is any scope for doubting what the phrase European Parliamentary Election means.

**HON J J BOSSANO:**

Mr Chairman, I want to move then, given that they have had no reaction to what I said before, I want to move the amendment to introduce the word "Gibraltar" before the word "law", in the final sentence so that it would say that the duties to which this clause refers, are those duties which are included, that is to say that it does not apply to duties imposed otherwise than by the Gibraltar law relating to European Parliamentary Elections. Therefore I propose inserting before the word "law" the word "Gibraltar".

**HON CHIEF MINISTER:**

No, Mr Chairman, whilst I understand the point that the hon Member is trying to make, I do not think it is a point well made and I hope to be able to persuade him that it is not in any event sensible. Firstly, when he says the law of Gibraltar, he is interpreting the phrase the law of Gibraltar as the law made in

Gibraltar. Well the law of Gibraltar is not just the law that we make here, whilst we remain a colony the law of Gibraltar also means the law made for Gibraltar by the United Kingdom Parliament. I mean there are lots, not lots but some United Kingdom Acts that apply to Gibraltar, and they create law for Gibraltar and indeed for other Overseas Territories. So the laws, the provisions let us just call it, the provisions of the UK Acts and the UK Regulations to the extent that they have been applied to Gibraltar by those Acts and Regulations, are law of Gibraltar. They have not been made by him and me but they are law of Gibraltar. And in addition to that, if the House were to accept the hon Member's amendment, it would have the effect that if there was a breach by a Gibraltar official of the law of Gibraltar, which is this and the UK legislation which is also law of Gibraltar, he could not be tried by, there would be a question whether it would then be in the jurisdiction of the Gibraltar Courts or whether he would have to be carted off to the United Kingdom to be tried there. Now, even if we had the amendment that the hon Member has proposed, I am certain it would not mean what he hopes and thinks and would like it to mean, that we would thereby be excluding the provisions of the United Kingdom legislation. Because to the extent that that had been extended to Gibraltar, it could be included in his phrase laws of Gibraltar, and that therefore the amendment would not have the effect that I understand the hon Member wants it to have, and that is that we should be providing a sanction here only for breaches of this as opposed to, but he would not be achieving it by that formula of words. I am not sure it would be desirable to try to achieve it for the second reason that I have given, for the full validity of which I would need to think more carefully but that is the first reaction. In any case the formula of words he proposes does not achieve even his intentions. I beg his pardon, for his formula, for his amendment to have the intention that he moves, it would not have to say breaches of duties under the laws of Gibraltar, he would have to say breaches of duties under this Ordinance. That perhaps would have the effect that he wants.

**HON J J BOSSANO:**

Then the answer to my original question, Mr Chairman, the point of the amendment is that as it stands now we are saying by the phrase "otherwise than by duties imposed by the law relating to European Parliamentary Elections" we mean which law? The law of Gibraltar and the law of the United Kingdom or what? That was my starting position.

**HON CHIEF MINISTER:**

No, it would mean that this section sanctions only breaches of his duties arising from legislation regulating Parliamentary Elections. So, for example, this section does not apply to the registration officer's duties under the House of Assembly Ordinance and elections relating to the House of Assembly. In other words, that the duties referred to in this breach of official duty section, are only duties related to European Elections and not duties related to any other form of elections.

**HON J J BOSSANO:**

Yes, but my question Mr Chairman is, that it is duties imposed, it excludes duties otherwise than those imposed by the law relating to the European Parliamentary Elections. Now presumably our absent Clerk who is caught by this section, needs to know which are the laws that impose duties on him if he is to avoid finding himself before the courts and fined at level 5. Now, I would like to know whether what we are about to vote, which creates an offence is triggered off by duties imposed by the law relating to European Parliamentary Elections found in the UK legislation and in Gibraltar. What about if there is law which is EU law. For example, would that also be EU Regulation imposing duty. Because I have never come across something being defined. I think there are lots of new words in the Ordinance on this occasion because of the peculiarity of the situation and I do not recall having seen a reference to an

offence being described as being an offence against a law without saying where the law is coming from.

**HON CHIEF MINISTER:**

Mr Chairman, there is no EU directly-applicable law. There are no EU regulations. All the law relating to European Elections is national law. So that aspect of the hon Member's point does not arise. But the first part of it does. In other words the law of Gibraltar relating to European Parliamentary Elections, which imposes duty not just on the absent Clerk but indeed on his present deputy, which is also covered by it, is also covered by the Bill, is to be contained in some Gibraltar legislation and some United Kingdom legislation which becomes part of Gibraltar law because it has been extended to Gibraltar by the United Kingdom Parliament. And those are all his duties and those are the ones that he has got to be familiar with and those are the ones under which he can incur breaches of duty. Absolutely right. It would not be the first time that officials in Gibraltar need to have regard to laws of the United Kingdom in order to know what their duties are. It happens frequently with Orders in Council. Orders in Council, which are UK sources of Gibraltar law, have exactly that effect and when they are laws of the United Kingdom which have direct applicability to Gibraltar, which admittedly is not as frequently the case now as it used to be much more historically, that was then the case and still is the case in respect of those UK Statutes which continue to apply to Gibraltar. There are lots of Statutes. I only give this one as an example because it was the last one that I had to research when we were considering whether to give a discount to fleet arrests, remember when we were giving that discount, there are lots of UK bits of legislation relating to the Admiralty jurisdiction of the Supreme Court which are still provided for in Gibraltar in a UK Act of Parliament. It is nothing new. It is certainly true that it is quite some time since it has happened before this Bill. But there are lots of UK Acts of Parliament that create body of law which officials in Gibraltar then have to administer.

**HON L A RANDALL:**

In his explanation the Chief Minister said that there was not need to define European Parliamentary Elections, or for that matter Gibraltar Broadcasting Corporation. Would the Chief Minister then explain why they have felt a need to define the Gibraltar Regulatory Authority. Is this not obvious as well?

**HON CHIEF MINISTER:**

No it is not obvious. One is an entity and the other is a phrase with a common meaning in the English language. The Gibraltar Regulatory Authority is a creature of statute.

**HON L A RANDALL:**

So is GBC.

**HON CHIEF MINISTER:**

Well, true but this is a creature of statute that has jurisdictions in areas which we are giving it by this Bill. In other words, the Gibraltar Regulatory Authority Ordinance does not give the Gibraltar Regulatory Authority jurisdiction in this area or in any other area. And because we are by this Ordinance giving the Gibraltar Regulatory Authority specific statutory authority in an area of life, namely broadcasting, it is important to make absolutely clear the authority that it is that we are giving this authority to.

**MR CHAIRMAN:**

Well, clause 6. There are two amendments.

**HON CHIEF MINISTER:**

If I could persuade the Leader of the Opposition to withdraw that amendment but I do not know if I have or not.

**HON J J BOSSANO:**

Well yes, if the introduction of the words laws of Gibraltar will not change what it means without the words laws of Gibraltar then we would all be agreed to the proposed amendment, yes.

**MR CHAIRMAN:**

So you would be quite happy if I said clause 6 stands part of the Bill.

**HON J J BOSSANO:**

Actually Mr Chairman you are absolutely right. We all are quite happy because I moved the deletion only in order to be able to proceed with the explanation that I gave but in fact, on this occasion we are replicating the UK provisions and risking the edifice of the empire collapsing. So we are quite happy.

Clause 6 – was agreed to and stood part of the Bill.

**Clause 7**

**HON CHIEF MINISTER:**

Mr Chairman in clause 7 I have an amendment of which I have given the House written notice, and it relates to the reference in the penultimate line of the clause, that is in sub-clause 5, where it says "for the purposes of this Ordinance broadcaster means the broadcaster of television and radio service", I would like that to read "television or radio service or both". In other words one is not caught by this only if one provides both television and radio but one is caught if one provides television or radio or both. That is the note of the amendment that I move.

**HON J J BOSSANO:**

Yes, we will support that amendment, we see the logic of it. Am I correct in thinking that in fact in the absence of that amendment, the only broadcaster would have been GBC? And as a result of the amendment it now applies to GBC and BFBS.

**HON CHIEF MINISTER:**

Yes, for the purposes of this particular sub-clause that would be the effect of it. Given that BFBS does not provide television stations but does provide radio. I just have an eye to sub-clause 10 which specifies GBC, that is because BFBS is not expected to provide party political broadcasts.

**HON F R PICARDO:**

What would be the position once broadcasting liberalisation comes and we have our independent television stations, are they to be expected to follow suit with the provision of party political broadcasts et cetera? I note that in the United Kingdom I believe the BBC has certain obligations which the independent television stations do not have but I think the independent television stations do have to provide the political broadcasting space, so for that reason we may want to look again at section 10.

**HON CHIEF MINISTER:**

Indeed we are not at section 10, absolutely. We are aware that when there is liberalisation and when there are more broadcasters, clause 10 will have to be amended. In fact there was a proposal from the drafting office to bring an amendment at this stage in anticipation of the broadcasting liberalisation directive but it came too late for the Government to consider it, and in any event we thought no harm would be done by awaiting the debate on the broadcasting directive to ensure that the definition that is inserted here is compatible with whatever definition of broadcaster emerges from this House as a debate of that directive's legislation in due course. We could of course have gone, and this was in fact the proposal that came too late in the day to be incorporated into this debate, but we could of course have just taken the language directly from the directive and shoved it here and then I could have tried to persuade the House that that was the language of the broadcasting directive. We did toy with the idea of anticipating to that extent a directive which has not yet come before this House but on balance, we thought it would be better just to leave it to reflect the current position as to political broadcasts.

**HON F R PICARDO:**

So if we had a broadcaster with a broadcasting licence in Gibraltar or from Gibraltar who is not broadcasting for Gibraltar, I do not know whether that is envisaged to happen, what would their obligations be? Say for example somebody who is broadcasting from Gibraltar but selling reception cards in the former Soviet Union or in Finland where our party political broadcast is not relevant, we should of course be careful to ensure that we do not oblige them in the English language to feature us giving our particular views of who should be voted for.

**HON CHIEF MINISTER:**

That is why clause 7 is based around the concept of radio or television services which is made available for reception by the public here in Gibraltar.

**HON F R PICARDO:**

Then we might well have to say in Gibraltar or the South West region because the public is not defined in the Interpretation and General Clauses Ordinance, the definitions are of public holiday, public officer, public place and public seal but there is no definition of public.

**HON CHIEF MINISTER:**

Yes I think that when a piece of Gibraltar law refers to the public, we have got to assume that it means the public in Gibraltar but I also accept that no harm is done and the possibility for ambiguity is eliminated, by adding the words "in Gibraltar" after the words "by the public". There are lots of Ordinances of Gibraltar that just refer to the public and it is assumed that the public means the public in Gibraltar. But if the House prefers on this occasion not to leave it to its usual, fine, it does no harm to add there in Gibraltar.

**HON F R PICARDO:**

I would have taken the view the Chief Minister takes of the definition of public until he told me last time in the meeting of the House that we are now legislating extra-territorially. Something which I believe we could not do but which he now tells me we can do. So for that reason I would be happier with it but I think it has to be in Gibraltar or the South West region. Certainly people in the South West region would be covered and a

broadcaster in Gibraltar who transmitted to the South West region………

**HON CHIEF MINISTER:**

It would be covered by the UK legislation.

**HON F R PICARDO:**

But he would be in breach of UK legislation but he would be in Gibraltar. So one could have Sky Southwest in Gibraltar transmitting to the South West from Gibraltar, subject to rules of what he can transmit to the public in Gibraltar but not subject to rules that he can transmit to the public in the South West, except for the rules in the South West which would not catch them here.

**HON CHIEF MINISTER:**

I am not prepared to go that far. The amendment that I am accepting in Gibraltar is in a sense also unnecessary because section 7(1) talks about television and radio services in Gibraltar, and I am going along with the fact that adding the words "in Gibraltar" where he is proposing it, adds something to the language because I suppose it is possible to have a broadcaster in Gibraltar broadcasting for out of Gibraltar but not for in Gibraltar. But that would be covered by the UK Parliamentary legislation for the South West. We do not have to legislate in Gibraltar for broadcasting into the South West there may be French television stations that can be received in the south, I do not know in England that is a matter for the South West, but I am happy to go along with an amendment that adds the words "by the public in Gibraltar" in sub-clause 5.

**HON F R PICARDO:**

In that case I formally move that amendment. Of course if we had included "and the South West" that would have been an obvious and excellent example of extra-territorial jurisdiction of this House, but so be it.

**HON CHIEF MINISTER:**

I think with respect it would have been more than that. It would have been usurping the power of legislature for the South West of England.

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

**<u>Clause 8</u>**

**HON J J BOSSANO:**

In clause 8 is the wording of that clause something that has been taken from the United Kingdom or is this something that is Gibraltar?

**HON CHIEF MINISTER:**

Yes it is taken from the United Kingdom legislation, I am just checking the particular legislation. I think it is the legislation that regulates independent television that is called the Communications Act.

**HON J J BOSSANO:**

Is it that in the Communications Act there is a specific provision relating to European Parliamentary Elections and that is what we are copying, or is it that that is in the Communications Act in respect of other elections.

**HON CHIEF MINISTER:**

It is in the Communications Act generally in relation to political broadcasts for political elections in the UK and under UK legislation covers also the European Parliamentary Election, but not limited in the UK to the European Parliamentary Election. This is a provision that in the UK would also apply to national parliamentary elections, and which, when we have to make alternative arrangements for our own political broadcasts for our own elections, one of the consequences of the television liberalisation directive is that much of the stuff that is presently in the GBC Ordinance, has got to come out and be put in a piece of legislation that applies to GBC and others, and we may wish to copy these provisions as well for our own House of Assembly election party political broadcasts in due course. At the moment the hon Member knows this is regulated by half GBC Ordinance, half Governor's Directions that sort of thing.

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

**<u>Clause 9</u>**

**HON J J BOSSANO:**

What are we actually doing in clause 9 is that we are deciding the parameters within which they have to do and that this is not a matter that the Regulatory Authority can………

**HON CHIEF MINISTER:**

We are defining due impartiality and undue prominence and how it should be measured.

**HON F R PICARDO:**

On 9, the matters listed in 9(1) in my view, should be read disjunctively but there is an "and" after 9(1)(b) which I think should be an "or". Otherwise something is of a political nature or is an object of a political end, only if it is designed to influence the outcome of a European Parliamentary Election, and influence public opinion on a matter which in Gibraltar is a question of public controversy, so it has to be also a question of public controversy, and promotes the interests of a party or other political groups of persons organising Gibraltar or else for political ends. So all those have to be present for it to be a matter of political nature and political end. Now unless we are going to take as read that any issue in a European Parliamentary Election is an issue of public controversy in Gibraltar, I think that should be an "or" rather than "and".

**HON CHIEF MINISTER:**

I do not agree. What there is is a list and when my wife is making the shopping list she says she wants to buy milk, sugar and tea, it does not mean that she can only buy the tea if she has also bought the milk and the sugar. I do not think it is a case where the hon Member is right as he was in the Bill that we discussed last month.

**HON F R PICARDO:**

I do not think I am going to persuade him, it is just that when my partner makes the list for the shopping and she includes an "and", she is very disappointed if I do not bring it all back, but I

do not think that we can reduce this particular list to that level of frivolity.

**HON CHIEF MINISTER:**

English grammar.

**HON F R PICARDO:**

And the question of English grammar is particularly relevant because I see that the Chief Minister seems to have made up his mind on this but I think there is a conflict in using the word "include" and the word "and". If it is 'include any of these,' it is or, I think it is a very simple grammatical point. Usually we have differences on issues of politics and law but if it is with such a simple grammatical point, if it says include and it is any one of the following, it has got to be or, otherwise it has to include them all. It is that simple.

**HON CHIEF MINISTER:**

No, Mr Chairman, and the Government do not agree. The Government agree that if it read or it would mean it would be OK to, but the Government do not agree that the fact that it is "and" in that context means that they all have to be present. We just do not agree, he is making assertions as to the natural and inescapable meaning of the presence of the word "and" and we believe he is mistaken.

**HON F R PICARDO:**

Well, fair enough, at least they want to show that not all of these have to be included despite the use of the word "and".

**HON J J BOSSANO:**

I am not clear what the provision that is in this clause is intended to achieve when it says influencing public opinion on a matter which in Gibraltar is a matter of public controversy. Because if we are told that these are all alternatives then in fact, (b) does not have to be something that as a consequence influences the outcome of a European Parliamentary election. Now, this is in relation to the responsibility given to the Gibraltar Regulatory Authority under 7(2)(b). So what are we saying, that there cannot be advertising carried by GBC which expresses a public opinion on a controversial matter, and that the Regulatory Authority will instruct GBC not to accept such an advertisement?

**HON CHIEF MINISTER:**

Well, it has got to be read in conjunction with 7(1), the code of standards has got to be limited in relation to European Parliamentary elections, and then 9 says that the advertising, the issues upon which advertisements are not permitted during a European Parliamentary election campaign include things influencing public opinion on a matter which in Gibraltar is a matter of public controversy. For example, I suppose, during the European Parliamentary Elections campaign it would be a breach of the code of standards for an advertisement, this is not for somebody to make points, remember this is paid advertisements, for somebody to place an advertisement just to use a different newspaper to the one that we always cite in this House as an example, for somebody to place in the Panorama an advertisement marked "sovereignty of Gibraltar, remember which party opposed joint sovereignty and which party did not", that would be a matter which is a matter of public controversy in Gibraltar about which there could not be a paid advertisement in breach of the code of standards. On television and radio so, for example, the Panorama no doubt in due course they will open a television station when there is liberalisation, but at the moment it is only television and radio yes.

**HON J J BOSSANO:**

Mr Chairman, then the words in 7(1) in relation to the European Parliamentary Elections mean in fact during the European Election campaign, is that the case?

**HON CHIEF MINISTER:**

This is the sort of thing that would be specified in the code. I believe there is an official date when the campaign begins across Europe. I think it is February, I think it is 10th February when there is a…….

**HON J J BOSSANO:**

If that is the case what the Chief Minister is saying is that this would apply from that date.

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

**<u>Clause 10</u>**

**HON J J BOSSANO:**

Mr Chairman the Chief Minister has told us that the Government were considering altering this clause 10. It seems to me peculiar that we should be saying in 7(1) that the Regulatory Authority can set this code of conduct for all the broadcasters in Gibraltar, and then in section 10 we tell GBC what it has to include in its radio and television services, political broadcasts but we do not say it in respect of any other broadcaster.

**HON CHIEF MINISTER:**

I made this point to the hon Member that the justification for that is that clause 10 deals with party political broadcasts, which traditionally have not been carried in Gibraltar on BFBS. If 10 were not limited to GBC, then BFBS would have to carry the party political broadcasts on its radio station. Now, we could do that if we wanted to. I told the hon Member that in the area of broadcasting, it was an area that we did have greater degree of flexibility than in other parts of the Bill, we can make it compulsory for BFBS to carry party political broadcasts in Gibraltar. The Government have not proposed to do it because traditionally BFBS does not participate in the local political process. For example, we never ask BFBS to carry party political broadcasts for our own House of Assembly elections, but there is nothing to stop the law of Gibraltar requiring BFBS to carry on its radio station party political broadcasts. We can do that if we want to.

**HON J J BOSSANO:**

Well one of the things of course that we have got in this legislation is the concept of service voters, no, which we do not have in our elections, which presumably would be the audience that BFBS broadcasts to.

**HON CHIEF MINISTER:**

There is the concept in this Bill, in fact, that if one needed a justification for including BFBS, that was it. BFBS I do not know whether they broadcast particularly to one or the other but if it is the case that their principal audience is the local military personnel and their families, MOD civilian personnel, some of those are not eligible to vote in our House of Assembly elections. They would all be entitled to vote in the European Elections. If one needed a reason to force BFBS to carry party political broadcasts, that would be a perfectly good one. I think

we could do it without a reason but if we wanted a reason, I think that would be a perfectly logical one.

**HON J J BOSSANO:**

Well then I move that we amend this so that in fact we replace the Gibraltar Broadcasting Corporation by saying "any broadcaster shall include in its radio or."

**HON CHIEF MINISTER:**

We do not have to do that, we can just refer to the definition of broadcaster in clause 7(5). May I just use the word broadcaster, clause 7(5) says for the purposes of this Ordinance, broadcaster means. So instead of GBC it could just say any broadcaster in Gibraltar. It has to be consistent with 7(1). Any broadcaster in Gibraltar. In other words we are not catching for example, we are not purported to catch La Linea radio. What is the Algeciras television channel? Telesur, actually purports to broadcast for Gibraltar, it is part of what they regard as their footprint. Well we are not here suggesting that they would be required to carry party political broadcasts, it has got to be broadcaster in Gibraltar and we would have to change No. 7 to support that amendment the hon Member wishes. The amendment in clause 10 is delete the words 'the Gibraltar Broadcasting Corporation', and insert 'any broadcaster in Gibraltar'.

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

**Clause 11**

**HON J J BOSSANO:**

Just before we do clause 11, I take it that what the Regulatory Authority has to do in terms of determining in respect of each candidate and each political party, the length and frequency of the broadcasts, this follows what they do in the UK, is it?

**HON CHIEF MINISTER:**

Yes, I have not focussed on this code of conduct although I know that work has already started in Gibraltar for a draft drawing heavily on the UK equivalent code of conduct. I have skimped through it, it is not a matter for the Government it is a matter for the GRA, but I have seen an early draft and it raises the concept of parties choosing different lengths of broadcast, because what it raises are issues of cost. As one has got a certain limit of expenditure one might want a two minute broadcast or a four minute broadcast or want a six minute broadcast. I seem to recall, in the UK for example, one can choose, the Regulatory Authority in the UK has designated three broadcasts of three durations. Two point something minutes, three point something minutes, four or five minutes or whatever, and one can choose, because otherwise one would be saddled with a broadcast of a length that one does not want to pay for because one would rather spend the extra cost on something else. But it is a matter for the GRA and the GRA does not need to follow those UK slots, he can decide well I want three slots, I want two sizes of slots and I want them to be three minutes and five minutes or five minutes and eight minutes. This will be a matter for the GRA.

Clause 11 – was agreed to and stood part of the Bill.

**Clauses 12 to 14** – were agreed to and stood part of the Bill.

Clause 1 of Schedule 1, Part 1. Stands part of the Bill.

**Schedule 1 – Part 1**

Paragraph 1

**HON J J BOSSANO:**

In the definition of "candidate" it says that this has the same meaning as in Part 2 of the 2004 Regulations. In the 2004 Regulations the provision is in page 25 of the Regulation and it is paragraph 31(1) and (2). It says, "a candidate shall be construed in accordance with paragraph (2) below", and then there is a paragraph (2) below which says, "a person becomes a candidate at an election (a) in the case of a person included in the list of candidates of a registered party to accompany his nomination for the election on the day on which the list is submitted by the party; or (b) in the case of a person not included in the list of candidates of a registered party, to accompany his nomination for election (i) on the last day for publication of the notice of the election if or on before that day he is declared by himself or by others to be a candidate in the election; and (ii) otherwise on the day in which he is so declared by himself or by others or which he is nominated as a candidate for the election whichever is earlier". I am proposing the amendment of the provisions currently shown in the Schedule by deleting the reference to the meaning in Part 2 of the 2004 Regulations and in fact incorporating an identical provision in our own legislation, namely, that it should say in the definition of a candidate, it should have the words "shall be construed in accordance with sub-paragraph (2)" and that we should add at the end of paragraph (1) sub-paragraph (2) containing the same wording as I have just read out. That is the amendment I propose. So that we have in our own law what a candidate means and therefore persons in Gibraltar who are interested in finding out what it requires to be a candidate, should not have to go and look for the UK legislation to find out. He should be able to get it in the legislation that is available in Gibraltar.

**HON CHIEF MINISTER:**

The Government do not accept the amendment because Gibraltar's law does contain a definition of a candidate. The 2004 Regulations is the law of Gibraltar, will be the law of Gibraltar when it is adopted.

**HON J J BOSSANO:**

Mr Chairman, in respect of the declaration of local connection, where in the interpretation it says has the meaning given to it in paragraph 12 of Schedule 4 of the 2004 Regulations. I know the Chief Minister says this is the law of Gibraltar and therefore presumably since it is the law of Gibraltar which we are legislating as if it was in fact something we are doing in incorporating it into this Ordinance, I take it that we are able to get explanations of everything that is here because what we are doing is legislating this now as the law of Gibraltar according to the last answer we have had.

**HON CHIEF MINISTER:**

No that is not true.

**HON J J BOSSANO:**

Well if that is not true I do not know what it is that we are doing here when we are voting saying the declaration has the meaning given in paragraph 12 of Schedule 4 to the 2004 Regulations. It seems to me that if the Chief Minister has just defeated the amendment, for example, to candidate and then voted to say that candidate has the meaning that I have read out, which is on page 25 of the Regulation, they have just by their vote made that meaning a part of this Ordinance, because that is what we are voting. Therefore if they vote in favour of the declaration having the meaning in paragraph 12 of Schedule 4,

then I imagine it is because they have read paragraph 12 of Schedule 4 and they agree with it and that is what they want it to mean. Now, I can only find a reference to declaration of local connections in one area in the actual thing but it may be somewhere else, which is towards the end where it says in paragraph 10(7)(c) that sub-paragraphs (4) or (5) do not apply in relation to declarations of local connections. Declarations of local connections, as far as I can make out from the very lengthy explanation that is contained in paragraph 12 of Schedule 4, appears to deal with people who are in mental institutions, in mental hospitals. I would have thought it was important that we should be able to debate in this House what it is that we are doing in relation to our patients who are mentally ill, in terms of their being able to vote in the European Elections, and it is not enough to say what we were doing in connection with them is whatever it happens to be in paragraph 12 of Schedule 4 of the Regulations. So therefore I think we will have to proceed on the basis that we are now legislating this as if this was in fact written down in here, in the Schedule, which is the Schedule that deals specifically with Gibraltar.

Schedule 4 deals with entitlement to registration and legal incapacity to vote in Gibraltar. Paragraph 12 of Schedule 4 says notional residence declarations of local connections and therefore, on the basis of the interpretation clause included here, I take it therefore that in order to discover what the declaration of local connection is, one has to go through paragraph 12 which is divided into seven sub-paragraphs, and thirdly which then talks of the effect of a declaration of local connections. The opening of paragraph 12 says a declaration under this sub-paragraph may be made only by the person to whom this paragraph applies. And then sub-paragraph (2) says this paragraph applies to any person who on the date when he makes a declaration is a person to whom paragraph 10 applies. Then we have to go to paragraph 10 to find out who are these people who can make this notional residence declarations. And in paragraph 10 we are told this paragraph applies to a person who is a patient in a mental hospital in Gibraltar. Quite extraordinary that here we are, the elected representatives of the people of Gibraltar in the House of Assembly, making provisions which apply to mental patients in our hospital, we have to go through a maze of directions in UK Regulations to discover what is the position of our mental patients to vote in the European Elections in Gibraltar in May of this year. And the Chief Minister tells the House that this is the law of Gibraltar and that is it, on a technical view of reality even though one can hardly expect a mental patient, or even somebody who is not a mental patient, to be able to discover what it is that he is entitled under the new law to do or prohibited from doing. Because in fact this deals with the right of people to vote, the right of people in Gibraltar, the right for which we have fought, the right for which he says we tend to take the credit when the credit belongs to him. The entitlement and the legal incapacity to vote in Gibraltar is what we are supposed to be voting here and we do not know what we are doing. We do not know what we are doing because nobody on the Government side, I am sure, has read this and it has taken me many hours to try and read it, I am not sure I understand it all in the time that it has been available to us. And they just vote because they are told by the British Government that that is the way that they have to vote, and therefore, I believe we have no choice in the circumstances in which we have been placed but to debate what is here on the basis that what we are voting by voting in favour or against the interpretation clause, is the same as if we were voting in favour or against the regulation that I have just quoted. In this provision the patient to whom this applies we are told, as I have just explained, in paragraph 12, we are told two things in paragraph 12. That they can only be made by a person to whom the paragraph applies and that the paragraphs applies to somebody to whom paragraph 10 applies. When we go to paragraph 10 we find that the person to whom it applies is a patient in a mental hospital who is not a person to whom paragraph 12 or paragraph 11 applies. So, here we are in our legislation we are told declaration of a local connection has the meaning given in paragraph 12, we get the United Kingdom Rules and we go to paragraph 12. In paragraph 12 we are told it only applies to somebody that is specifically identified in this paragraph. We go to the next sub-paragraph and this tells us

that in order to find out who we are talking about we go to paragraph 10. We get to paragraph 10 and we are told he has to be a patient in a mental hospital provided he is not a person to whom paragraph 4 or paragraph 11 applies. We have already read hundreds of things, hundreds of words and we are still no wiser as to who it is that is going to be able to exercise the right to vote for the European Parliament so far. In paragraph 4 it says legal incapacity to vote of offenders detained in mental hospital, so therefore, if the person in the mental hospital is a person who is a legal offender then that removes him from the entitlement to make a declaration of a local connection. Then we go to 11 and we find that if a person who is in a mental hospital is somebody who has been detained on remand without being convicted, he is also eliminated from the possibility. So by a process of elimination I believe, although I stand to be corrected by the Government that is responsible for this, that we are now saying that as long as the patients in KGV are neither persons who are there because they have been taken there from a prison or there because they have been taken there from being remanded in custody without being convicted, they will be able to make this declaration and that will enable them to vote, if I have understood what the declaration is all about before I proposed the deletion of the declaration, since to propose the amendment would require that I spend half an hour writing it out, given the length of what is in the UK legislation and the references to many others, so presumably it is impossible to incorporate this without, I mean it would take more than incorporating it in as part of the interpretation clause, given the voluminous explanations that there are in the regulations. I therefore propose the deletion on the basis of giving the Government an opportunity to explain to the House exactly what it is that we are making provision for in our law and who it is that can exercise this new right of making a declaration of local connection.

**HON CHIEF MINISTER:**

Since I have already explained the matter to the hon Member three or four times, and I do not believe that it is possible for him to be as intellectually obtuse as he is in determined to be repeatedly, I can only come to the conclusion that he is trying to string out the debate on this Bill for as long as possible. Fine. I have cleared my diary for the rest of the day, I do not mind being here until midnight. We are not here today debating the virtue or lack of virtue of the content of the 2004 Regulation or the content of the 2003 Act or the content of the Combined Region Political Contribution Regulations or of the 2002 Act or of the 2000 Act. That is legislation of the United Kingdom which his colonial master and mine have decided to exercise their lawful right to legislate on our behalf. Now if he likes I can explain this to him every 45 minutes from now until the debate on this Bill has finished. That is the reality of the matter. The United Kingdom has exercised its lawful right in the special circumstances of this combined region, to legislate for the South West of England and for the territory of Gibraltar, as it is entitled to do under United Kingdom primary legislation. That is the reality. So that is the law of the land, not just of the United Kingdom but of Gibraltar as well. And the fact that our Bill here contains cross-references to the United Kingdom legislation which is not just law in the United Kingdom but also law in Gibraltar, as much as anything that we might pass in this House might be law of Gibraltar, the fact that there are those cross-references does not entitle us to debate the UK legislation as if we were free to change it. We are not. It is UK legislation, it has the effect that it has whether he likes it or not, whether he understands it or not, or whether he has read it or not. What he can say is, is it necessary for us to cross-refer to that piece of legislation, but that is not a debate on the UK legislation which is not up for debate. What is up for debate here is this green paper. That is what is up for debate here.

Now, if the United Kingdom legislation is to quote the hon Member's words "a maze", it is the same maze as homeless people in the United Kingdom have to navigate. Whether the

maze is contained in a piece of legislation that applies to Gibraltar that we pass in this House or whether the maze is contained in a piece of legislation which is law of Gibraltar but passed in another place, does not derive from whether we have debated it here or not, from whether we have written it here or not, it is the law as much for us as it is for locally connected persons in the United Kingdom. The hon Member may wish to paint a picture of a very complicated, unintelligible piece of legislation, frankly, it does not seem unduly complicated to me, but whatever may be the levels of its complication, it is the same for the citizens of Gibraltar as it is for the citizens of the United Kingdom, and the suggestion that somehow the citizens of Gibraltar are at some disadvantage to the citizens of the South West region in understanding their rights, or in accessing their rights, or in finding out what their rights are, or in working out whether they are entitled to vote or not, is a figment of the hon Member's imagination. They are in exactly the same position here as the citizens are in the United Kingdom. This is not, to quote the hon Member, a technicality of the reality of life, it is the reality of life in its glorious technicolour, in full, not a technicality. These are not laws of the United Kingdom, these are laws of Gibraltar made by the United Kingdom and once made are laws of Gibraltar. We can have a debate on some other occasion whether we enjoy the fact that that should be possible or not, but that is a whole different debate. But at the moment, with the constitutional status that we enjoy and with the constitutional relationship and legal relationship that we enjoy with the United Kingdom, those are not the technical realities of life, those are the realities of life, which the United Kingdom Government to their credit never exercise, except on this occasion when it has been necessary to exercise it because of the unique nature of the circumstances of a territorially combined region comprising the territory of Gibraltar and part of the territory of the United Kingdom. It seems to me that the hon Member is, for reasons which I cannot fathom, I can fathom them because I know him, but which others will not be able to fathom, seems to be determined not to make due allowance and to assimilate due understanding of both the legal and constitutional realities of the situation, and the uniqueness of the factual realities of the situation, given that we are dealing with laws that do not apply to Gibraltar in isolation or to the South West of the United Kingdom in isolation but which apply to the whole territory as if they were one. If the hon Member is not willing to acknowledge that that situation throws up unique legislative circumstances which are being dealt with appropriately, then all I have to say to the hon Member as I have said to him four or five times already, is that I disagree and he can stand up on each and every clause in this Bill and make the same philosophical analysis, mistaken in law and fact but nevertheless philosophical analysis, he is wrong. He is wrong on the merits, he is wrong on the analysis but he is free to make it. He is not going to persuade the Government, the Government is not going to accept any amendment that the hon Member moves, based on that analysis of the situation. This is not what the debate in this House is about, the debate in this House is about this particular Bill. So the hon Member can move in this respect whatever amendment he likes, it will be defeated by the Government majority.

**HON J J BOSSANO:**

Well, Mr Chairman, it will be defeated on the basis of the explanation the Chief Minister has been given by the colonial power, who happens to have a tame government in the colony. That is obvious. Because that Government have spent, according to the Chief Minister, countless meetings including with the Chancellor, trying to persuade them to accept the philosophy which he castigates me for and which he said in an earlier part of this debate he shared. Having shared the debate he has not succeeded and therefore we are stuck with this. I am not disputing that, I was not making any philosophical points, except one, which is not philosophical and that is what is it that we are doing in the House. Now, in this House now Mr Chairman, in this Committee what are we doing? We are being asked to put our hands up and vote that the declaration of local connection has the meaning given to it in paragraph 12 of Schedule 4 to the 2004 Regulations. Right. What is the meaning, nobody knows what the meaning is in this House. So

we are all being asked here to act like complete idiots as if we were in the Victorian empire where the white man tells the natives what to do. Because at the very least if he is so proud of his work, and he is so proud that this is something that is to the United Kingdom's credit because of the uniqueness of the situation, at least he ought to be able to give me the answer to the question that I put to him. I did not put to him on this occasion the question of why are we doing it. We know they are doing it, he has already given that explanation in the general principles of the Bill. I am asking him, given the fact that he provided us with this, which incidentally is not law unless he knows it has already been passed by Parliament, we are talking about what this says is in reality, not technically but in full technicolour as he likes to put it, what this says is declaration of local connection with the approval of the elected Parliament of Gibraltar has the meaning that may or may not be given to it, to vote in favour of what is here, without amendment or amended.

So we are at the stage where we are accepting the meaning for something which we assume, because those are his words, we assume, are likely to be changed but may be changed here or there. Well, assuming that it is not changed, if I am asked by the Government that is bringing this Bill to the House to either support or vote against a provision, then I am entitled to seek what it is that I am casting my vote for or against. I am entitled to have that information in this House. Whether the people that represent the rest of the south west region do it or do not, that is their business, but as far as I am concerned the people who have voted us here, expect us to know what it is we are doing when we are voting laws. The Chief Minister may say, "well look, this will apply to the people of Gibraltar even if we have no reference to it because the colonial power can do it", well fine. But if the colonial power passes in Parliament tomorrow, in the House of Commons and the House of Lords, regulations affecting the patients in KGV and we have had nothing to do with it, well then there is nothing we can do about it. But if we are here saying a local declaration in Gibraltar made in the context of the elections that are going to take place in the next few months means what they are legislating in Parliament in the United Kingdom, then the very least is that we should know what it is that it means. And what I have asked is for an explanation of what it means. And what he telling me? That it is because he knows who I am, the people may not understand it, well look I hope that everybody who is listening on the radio understands what it is. We are being asked to vote something that affects KGV patients and provides how they may vote and he says that the provision is the same here, whether one is homeless in the South West region or homeless in Gibraltar. Well I have not come across in what I have read, the declaration being about people who are homeless. What I have read is that this declaration is about people who are in a mental hospital in Gibraltar. The reference in the declaration of local connection says it has the meaning in paragraph 12 and paragraph 12 Gibraltar and Gibraltar alone. Nobody else. We are not making any reference here to anything that happens anywhere in the South West region. Paragraph 12 is in the fourth Schedule and is about the right to vote in Gibraltar, and we are making references in our law about entitlement to registration and the legal incapacity to vote. I think that to take it as a wonderful achievement that we should be here voting and quoting the UK law that will become the Gibraltar law and will determine who may vote and who may not vote, without knowing what it is, and that that is a great achievement seems an incredible thing. I think it is the most uninformed debate on any law in Gibraltar in the 32 years that I have been here, because normally the Government move Bills here and if they do not know why a clause is there, the very least is that they are able to say well look we will get the people in the Legislation Unit to give us an explanation so that the Opposition Members know what it is that it is doing. And if they find that in fact what it is seeking to do does not appear to be what is actually written down, this Parliament is able to make amendments. Now why should the Government want to deny us in this House the right to know what it is we are being asked to cast our vote for or against. Why? Because we are a colony. What has that got to do with it? Therefore I find it incredible. I think that the Chief Minister should have had the decency to say to the House well look, I do not know what the explanation is and I do not know exactly what

the implications for this are for patients in KGV, because that seems to be the real reason, that he does not know and that he cannot give me an explanation.

**HON CHIEF MINISTER:**

Mr Chairman, none of what the hon Member has just said in the last 20 minutes is true or accurate or consistent with the legal analysis of what we are doing here, which I have now explained to him five times and which I will not explain to him again. The hon Member may continue to distort and to describe in a false fashion for the benefit of the people listening on the radio who may not have heard my previous explanations. We are not, for the last time, we are not here legislating. This Bill is not a Bill which gives or does not give, or determines how or they do not have or do not have, anybody has voting rights whether they are in KGV or anywhere else. All those voting right entitlements including the regime applicable to locally connected persons and to service persons and to overseas electors, and all the other regimes that the hon Member can read for himself about in Schedule 4 of proposed, the fourth schedule of the proposed 2004 Regulations, all that will be laws made by the United Kingdom for Gibraltar. There is nothing in this Bill which we are voting on here today, which justifies the 20 minute sermon that the hon Member has just given about not understanding what he is being called upon to vote for. There is nothing in this Bill which determines the voting rights or the voting entitlements, or the registration entitlements of anybody. So, nothing that he is voting for or not voting for, understanding or not understanding, determines whether somebody in KGV can or cannot vote. All of that is to be found in the laws made by the United Kingdom, for both itself and for Gibraltar, some of which has already been made and some of which, which has not yet been made and which he has in draft in front of him. That is the correct analysis of the situation. I explained it to him during the debate on the Second Reading. I have explained it to him on numerous occasions on the debate in this Committee at the Committee Stage, either he does not, cannot or will not comprehend the simple analysis of the situation that I am making out for him.

When we were debating the principles of the Bill, which was the Second Reading, I explained to him what we were doing. It seemed to me, given the views that he is now expressing at the Committee Stage, that what he ought to have done was to vote against the principles of the Bill, not the nitty gritty of the detail in Committee, because it is clear for all to hear that assuming that he understands the nature of the arguments that he is fielding, and assuming that he genuinely believes the spirit that underlies the arguments that he is articulating, assuming both of those facts, what his actual position really is, is that he objects as a matter of principle that we should be playing this robotic role in the legislative process for the European Elections. In which case, if that were his position, what he should have done is to have voted against the Bill on principles at the Second Reading. But he did not. He voted in favour of the principles of the Bill, he voted in favour of the principles that we should legislate in Gibraltar in a way that refers to laws made or to be made in the United Kingdom. He has accepted that principle, yesterday by his vote. So why all of a sudden, why all of a sudden this Government is such a tame colonial poodleish government when it is no more tame, no more colonial and no more poodleish than he was roughly at this time yesterday when he voted in favour of the principles of this Bill at Second Reading. That is the inescapable reality of the situation. So the hon Member, as far as the Government are concerned, the debate on this point is over. If the hon Member has an amendment to put, let him put it and let us put it to the vote. And if he has not, let us move on to the next clause.

**HON J J BOSSANO:**

Well Mr Chairman, fortunately for the Opposition it is still not a matter for the Chief Minister to decide when the debate is finished. Fortunately for the Opposition.

**HON CHIEF MINISTER:**

As far as the Government are concerned. The hon Member can carry on debating for as long as the Speaker wants.

**HON J J BOSSANO:**

I see. He sounded Mr Chairman as if he thought he could give us orders the way he gives orders to the people on that side of the House when he said it is finished and we can now put it to the vote. That is what he said. Apart from all the arguments that he keeps on repeating, the point is that he obviously cannot give me an answer to my question because he does not know the answer. Having had the benefit of reading overnight what he provided yesterday after we had debated the general principles, I must say that it became clear that the situation was even worse than he had explained when he opened. In fact that was reflected in his closing remarks on the general principles when he actually described the position as merely a token one, having originally gone much further in defending it. He has fluctuated quite a number of times as the record will show, from admitting that what else could we do given that we are dealing with a colonial power, to saying what a wonderful job he has done in getting as much as he has done. But that is not the point. The point is that we are being asked to vote for or against a statement in our law, forget what the law of the United Kingdom is doing for Gibraltar which will become the law of Gibraltar because Gibraltar is a colony, in our law we are being asked to say the declaration of local connection has the meaning given in paragraph 12 of Schedule 4. The question I put to the Government that is introducing this Bill to the House is, what is that meaning? What is that meaning? In order to discover it I have taken advantage of the fact that they have been good enough with the permission of the colonial power, to give us a copy of the Bill that has not yet been passed, or the Regulation that has not yet been approved by the Houses of Parliament, and I have read out for the benefit of the House, since it seems to me that few other Government Members have bothered to read what it is that they are voting for, I have read out what regulation 12 tells me, to try and establish what is this meaning that is given here. Now all I know is that when I read it out the initial reaction of the Chief Minister was that well, look, it does not matter what it says there because the rights of patients in the KGV are no different to the homeless in the South West region. Well, in fact, regulation 12 is just about Gibraltar, not about the South West region, it is just about Gibraltar. It is unique to Gibraltar. There may be another regulation somewhere else that says the same thing, I do not know. I have just looked at the one that refers to Gibraltar. There is a point of principle which I have already raised, which he appears to agree with but does not consider that it is a great loss if we are not able to do it, which is that why cannot we have what it says in regulation 12 in our laws. The answer is because the UK does not want it. Then I ask why is it that in other cases we have it. The answer is because it is what the UK wants. Well look, if the Government of Gibraltar brings a law to this House and whenever one asks them for an explanation they say that the explanation is that that is what the UK wants, it may not be evidence of how tame they are but I can see a more inoffensive way of describing it. All the explanations we have ever had as to why it is somewhere and why it is not somewhere is because that is the preference of the United Kingdom Government. Well, is it that the Government of Gibraltar themselves have no views on this? Have not expressed any preferences?

The question that I am putting to the Government for the third time is what is the implication of this that we have here. If I am being told in the law of Gibraltar, the declaration of local connection has the meaning given to it in paragraph 12. If tomorrow one of our citizens, who believes he may be entitled to make such a declaration, comes to us as his elected representative to be advised what it is, how it is that he discovers whether he can make a declaration or not, what do we do? Do we get this and say, "well look you go to regulation 12 and when you get there you will find that it tells you to go to regulation 10 and when you get to regulation 10 you will find it tells you to go to regulation 4". Well that is as far as I have been

able to get in the time I have had this. Obviously we will continue to look at this UK legislation so that we are able to answer peoples' questions when the time comes and the election takes place. I think it is the responsible thing to do in this House of Assembly. If we do not have the power to do it ourselves, which I think we should, and if the Government of Gibraltar tried and regrettably was not successful in persuading Her Majesty's Government that there was no reason why we should not mirror image their provisions and have it in our own law, is this not the same principle that the Chief Minister defended earlier when he said he was not going to put the provisions in the law on the Equal Opportunities of amending the Employment Ordinance, because of the difficulties that citizens have and lawyers have of having to find out in the Employment Ordinance that what the Employment Ordinance says is not correct, because they have to find another Ordinance that has changed the Employment Ordinance. Well this is even worse. They have to find regulations, running to hundreds of pages, in order to find out what it is that the law of Gibraltar intends them to do, because we have a reference to it here. The hon Member may say that even if the reference was not there this would still be the law, and I agree, I am not disputing that that is true. But if the reference was not here we would have no need to debate and we would have no need to vote. I think it is completely irresponsible to be voting things without knowing what it is we are voting, even if whether we vote or we do not we cannot change it. At the very least if we cannot persuade the British Government, at the very least we ought to have a level of information as to what it is that these things mean, which is simply not here today. Therefore, it seems to me that whether he likes it or not I can only assume that he himself has not been briefed on the meaning of this local connection in the context of the four different paragraphs in the UK Regulation. The UK Regulation on my limited, initial reading of this over lunch today and yesterday evening, appears to be saying that this provision of local connection is for residents in mental hospitals who are not detained offenders or on remand. Fine if that is what we are talking about, then that is the meaning of a declaration of local connection but is that the meaning or does it have any other meaning? Now, why should the Government be so upset that they should be asked that question they are responsible for bringing the law here and we are entitled to ask for explanations before we vote.

**HON CHIEF MINISTER:**

Mr Chairman, the Government have not brought any such law to this House. If anyone should approach the hon Member as to whether he is or is not entitled to vote and he has by then not worked out for himself what the law means, then since he asked me the question what he should do with such a person, what I suggest he does with such a person is either refer him to a lawyer or refer him to somebody who does understand what the law is. The Government will be happy to help, or much more likely, the Registration Officer and the Election Officer whose job it is, will make sure that people have explained to them what the laws of eligibility and registerbility are. This House is not debating these laws and frankly the idea that a debate on the Committee Stage of a Bill in Gibraltar is the place where the Government analyses the UK legislation which is not being legislated as a result of the Bill under debate in the House, so that the hon Member has a sufficient understanding of it so that he can advise people who go to their offices seeking that is not the purpose of the debate in this House today. We are debating whether this Bill, which the Government have brought to the House, the House approves of or does not approve of. The hon Member is free to approve, disapprove or to propose amendments, that is what he is entitled to do. Frankly, I am very surprised that the hon Member should now say the things he is now saying. Yesterday his lawyer colleague, the Hon Mr Picardo told this House and I quote, "enfranchisement of Gibraltar is long overdue and this Bill would find no enemy in this House". That is what they said about the Bill yesterday, and today, just 24 hours later, apparently on a line by line basis, they do not know what it means and they do not see why they should vote. Well Mr Chairman, we have been now in this House for what an hour and twenty minutes, we have not progressed

beyond the first clause, and I now move that this clause be put to the vote in this House.

**HON F R PICARDO:**

Can I just clarify one thing because the Chief Minister has quoted selectively. I know that the Hon Mr Vinet very helpfully found the quote in the report in the Chronicle to what I had said. I must reaffirm that this Bill finds no enemy in this House because as we said yesterday and despite our differences on the history of this, that we all believe that the enfranchisement of Gibraltarians was overdue. I recall also that I did say to the House at one stage, there will nonetheless be some issues both technical and substantive, both technical and substantive that we shall have to raise at Committee Stage in relation to the draft Bill before this House.

**HON J J BOSSANO:**

Mr Chairman, we are debating in Committee the Bill clause by clause and therefore I do not know what he means “we now move”. He has already moved that the Bill should be voted in Committee.

**HON CHIEF MINISTER:**

The hon Member seems to think that this is Question Time.

**HON J J BOSSANO:**

No, it is not that I think it is Question Time, it is that I think and that I know that it has been the normal standard practice in this House that if there is a piece of legislation before the House, the Government are unable to give an explanation of the meaning of words in this law. Not in the UK law. We have no choice but to go to the UK law because the way that it is drafted is that unlike any other legislation that I have seen before, the interpretation requires us to go to the UK law to understand what it means in the Gibraltar law. What we are saying here in this Schedule, Mr Chairman, is declaration of local connection in the law of Gibraltar which is passed by the House, not in the United Kingdom. Forget what the United Kingdom has passed. In the law of Gibraltar which is the one that the House of Assembly passes, what do the words declaration of local connection mean?

**HON CHIEF MINISTER:**

In the laws of Gibraltar the words declaration of local connection mean what they say, what is said they mean in paragraph 12 of the Schedule 4 to the 2004 Regulations. Now which of those nine words does the hon Member not understand the meaning of and I will be happy to explain them to him.

**HON J J BOSSANO:**

Yes, I will tell the Chief Minister because it seems that his ability to understand the ordinary English language deteriorates the longer the day lasts in this House. All those words do not tell me what the declaration is. In order to find out what the meaning is, I have to look to paragraph 12 and I have just read out to him paragraph 12. Therefore having read out paragraph 12, if I take paragraph 12 and I substitute the words the meaning given in paragraph 12 by the text of paragraph 12, I am not able to decipher what is the meaning of that declaration. Presumably they know. If they have brought the Bill to the House on the basis that the meaning is self-evident from paragraph 12, I would expect them to know. If he does not know, I can guarantee that none of the rest know. Now they might be quite happy to vote in favour without knowing what it is that they are voting, we are not.

**HON CHIEF MINISTER:**

Mr Chairman, I tend to wonder what it means but I am not going to fall into the trap that the hon Member is quite clearly laying, of the device that he thinks he has invented, of getting us to debate line by line the UK legislation by means of debating it because it is referred to. I am perfectly well aware of the contents of the fourth Schedule of the 2004 Regulations and all the references to Gibraltar in all the other pieces of legislation, and the fact of the matter is that we are not debating that here today. We are debating a Bill which says that a declaration of local connection is what the UK has said it means, and we are not free to change that. So a debate on whether the hon Member understands it or does not understand it, or wants to understand it or does not want to understand it, is not a debate on this Bill. The hon Member can say I vote against because I am not just accepting the UK making laws for me. But there is no debate on a Bill when we are not at liberty to alter the content of the Bill even if he disagrees with the content. Even if I disagree with the content. The consequences of this House disagreeing with the content of this Bill, at least in areas such as this unlike the broadcasting areas where I have given him an indication there is more leeway, is that we cannot take part in the European Parliamentary Elections. Because the position of the United Kingdom is, these are the terms upon which Gibraltar has been enfranchised. The United Kingdom has not said, hang on, would Mr Caruana and Mr Bossano please tell me what they, the legislature of Gibraltar would like the law to be in order for them to vote. The hon Member knows this, I am not telling him something he does not already know but if he wants to go through the theatre of having this debate for the benefit then I am perfectly happy to have it. I said at the First and Second Readings that this was the case and that is the position, and therefore, it is now clear to the hon Member that the Government are not going to debate with him, at the Committee Stage of this Bill, the content of United Kingdom-made laws for Gibraltar, which we are not making in this House today, which nothing that we are voting for in this House today can influence as to whether it becomes or does not become the law of Gibraltar and which is not law of Gibraltar or not law of Gibraltar by reference to anything contained or not contained in this Bill. That is the debate that the Government are not willing to have with the hon Member on the consideration of this Bill. If the hon Member wants to have with the Government, which I am perfectly happy to have with him, a debate about the merits or lack of merits, the virtue or lack of virtue of the electoral law affecting Gibraltar generally, in relation to the European Parliamentary Elections, he is perfectly free to move a motion on that subject, which I will then happily debate with him but I am not going to allow him to convert a debate on these 62 pages of local legislation into a debate on laws that will apply to Gibraltar, not by virtue of what we are doing in this House today or some other day, but by virtue of the legislative process of the United Kingdom for Gibraltar.

**HON J J BOSSANO:**

Mr Chairman I find it very odd that the hon Member should say that he knows what it means and then he simply reads out the words that say that in order to find out what it means we have to go to the United Kingdom legislation. He says he has read it all, he understand it all, but is not willing to tell the House what it means. I find that quite extraordinary and I have to say without calling him a liar because that would be unparliamentary language, that I have great difficulty in believing him when he tells us that he knows. I do not believe he knows. If he were to say to me, "look I have only seen this twenty-four hours before you did and I have not really had the time to look into it and digest it", I will understand him. But the truth of the matter is that we are saying here in our law that the declaration of local connection has the meaning given in paragraph 12, this will now be passed by the Government, the words declaration of local connection will be part of the law of Gibraltar, and what it means, the people who have passed it do not know. That is a reality other than by going to the United Kingdom Government, or going to the United Kingdom Regulations and deciphering what it means. The only reference that I have been able to

make out is that it seems to be about patients in a mental hospital in Gibraltar, period. Now if it is not just that, if there is more, because I remember the Chief Minister talking previously about people being homeless being the ones who make the declaration of a local connection. In fact, in the earlier part of this debate on the actual clause, he said the people homeless in Gibraltar were no different from the people homeless in the South West region. This definition is exclusive to Gibraltar and therefore we cannot support and vote in favour of something when in fact the Government claim that they know exactly what it means, but that it refuses to share the information with us in the House. My amendment therefore would be to delete the declaration.

**HON CHIEF MINISTER:**

Mr Chairman, the hon Member can think entirely what he likes about what he thinks that the Government know or do not know. I can tell him that he is completely mistaken.

**HON J J BOSSANO:**

Well, I wish he would explain it.

**HON CHIEF MINISTER:**

Well let me just give him a little titbit. Let me just tease him a little bit in a way that might persuade even him that I am much more familiar with the content of the fourth Schedule than he thinks. He has now said three times, I let the first two pass, he has now said three times, "and the Chief Minister said in his second speech address that this related to homeless people and it does not relate to homeless people it relates to people in mental homes". So where does he get this reference to homeless people from. Well look, I suggest that he reads clause 12 that he has been quoting liberally, I suggest that he reads paragraph 12 sub-section (2)(c) of the clause that he says that I am ignorant as to the provisions of and he will see that it refers to a person who does not fall within paragraph (a) or (b) and is not otherwise in legal custody and who is not for the purposes of section 16(1) resident at any address in Gibraltar, namely "a homeless person". This is just a small teasing indication for him that the Chief Minister is much more familiar with the provisions of the Schedule than he seems to give me credit for.

**HON J J BOSSANO:**

Well, then I regret that if the Chief Minister is much more familiar, he allows debate in this House to continue unnecessarily because he refuses to share the information with the rest of us. I am sorry.

**HON CHIEF MINISTER:**

No Mr Chairman, because I am not willing because having done it once I would be obliged to do it in every line. It is quite clear, it is now quite clear what the hon Member's animus is towards this Bill and towards this process, and having allowed him to lure me once into a wholly inappropriate debate which does not arise on this legislation, I would then have to do it on every line thereafter that he subsequently chooses to provide, and I am not willing to submit to that process.

**HON J J BOSSANO:**

Mr Chairman, I doubt if the Chief Minister submits to any process except perhaps when he is up against the Foreign Office. I think in Gibraltar he never does anything he does not want to do, it is everybody else that has to do what he wants. We all know that, so I do not think he runs any risks that because he may be tricked, although I thought he was teasing

me and not the other way round, he has just been tricked by me he says, by me into giving an explanation he is going to have to do it with every other line. Maybe I will be able to persuade him or provoke him into doing it occasionally sometimes and not others. But certainly I do not think that he should assume that there are all these sinister motives. I really believe we ought to be given explanations if he has information that we do not have and I regret that he does not feel he needs to do it.

**MR CHAIRMAN:**

Would it be all right if I said to now vote on this. It is up to you.

**HON CHIEF MINISTER:**

Let us ask the Opposition to decide.

**HON C A BRUZON:**

Vote on what, on that particular sentence?

**MR CHAIRMAN:**

Vote to delete the meaning of declaration. Those in favour of the amendment.

Question put.

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

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

**HON C A BRUZON:**

Mr Chairman, I would like to say to the Chief Minister that I cannot afford to have a lawyer to explain to me all the aspects of the law. In this House I have a duty to perform and as far as my capabilities allow me, to understand as far as is reasonably possible what we are legislating on. So I would request the Chief Minister and his Legislation Unit to explain to me in the simplest possible terminology what is the meaning of full register, because like my hon Colleague the Hon Mr Bossano has explained, it is indeed, and I am just talking not about the UK law but about what is contained in the green papers that have been given to us for discussion concerning this Bill.

**HON CHIEF MINISTER:**

I am perfectly happy to answer the hon Member's question which arises entirely……..

**HON C A BRUZON:**

I have not finished, but what I would like to suggest is that if the Legislation Unit were to give us a simple explanation under the section interpretation, because as I move, full register has the meaning given in paragraph 41, section 45(1). If I read what it

says there section 45(1), at the time when the Registration Officer publishes a version of the register under paragraph 11, so section 11 paragraph (1) or (3) above, and in brackets it says full register, he shall also publish a version of the register under this paragraph, in brackets the edited register. So we have two concepts there, edited register and the full register, which as far as I am concerned does not give me an explanation. Mr Chairman, I think it is important that the elected Members not only have the chance to be given explanations, but if we have to vote on this it is important that we use the simplest possible terminology, so that the humble members of the House who are not lawyers will understand it and will be able to vote on something that makes sense to them.

**HON CHIEF MINISTER:**

Well Mr Chairman, I am sorry, I really cannot think of simpler terminology in the words full register. I am perfectly happy to explain it to the hon Member again, because I explained it at the time of the Second Reading, but as it clearly is an issue that arises from the legislation that we are debating, it is a perfectly, perfectly reasonable issue for the hon Members to raise, although I have to say, Mr Chairman, it is not for the Government to explain. The Government have to explain the principles of the Bill and it is usually the Opposition that reads the Bills and forms a view as to whether they support the Bill, do not support the Bill, want to move amendments, the idea that it is the Government's job in the floor of parliament to explain to the Opposition what ordinary simple words in the English language mean, is not a process that I have ever experienced in this House before but I am perfectly happy, without wishing to set any new precedent that might last another 300 years, I am perfectly happy to explain again to the hon Member the concept of the full and edited register. The hon Member will I am sure recall as soon as I start with the explanation that I said this at the debate yesterday. I gave this explanation yesterday.

The full register is the register which contains the names of everybody that has been put in it, and one can get on it by responding to the canvas when the Registration Officer does a canvas or by some of the other means of alteration of the register at different times other than canvas time, which are provided for, that is everybody's name, everybody that gets onto the register, that is the full register. The edited register is, as I explained yesterday, the full register minus those people who on the canvas form have opted to be excluded from the publishable register. Remember I explained to him about data protection. In other words, one of the rights that the data protection legislation gives us all as citizens is the right that information about us, except in circumstances set out in the Data Protection Ordinance, that information about us should not be published in documents by otherwise. The fact that I have got a list with his name and address on it, which is what the registration list would be, does not entitle me to publish that and give copies of it to all and sundry because that document that I am publishing that has details about him, name, address, et cetera, is information that he is entitled to decide whether the State should publish or not publish. So when eventually as he will get very soon, he gets his canvas form from the Registration Officer in his household, he will see that one of the questions that he is asked to answer on it is do you want this information, this might not be the way the question is formed, but the question to the effect of whether he wishes to consent or withhold his consent to this information being published, his name, his address, whatever gets into the register. If he says I consent or if he does not tick the box that is the withholding of consent, his name can go into the full register, the name goes into the full register but if he says no I do not consent, I do not want my name published in any list, then he will be left out of the edited register, and the only register that the Returning Officer may publish at large is the edited register. So the edited register is the full register minus all those citizens who exercise their right to choose not to have their names published by the Returning Officer. When one goes to vote one can vote because the full register is not published, it is made available to the people listed in the Ordinance that we debated yesterday and no doubt we shall come to again later today, but

it is not published to anybody who wants one. The edited register which only contains the names of those people who do not mind their names being published, that edited register is published willy nilly at large, and that is the difference between the full register and the edited register. One is a free publishable version and the other is the full non-publishable version and the difference between the two is the choice made by the individual citizen as to whether he wants his name published or not. I hope that that explanation is clear to the hon Member.

**HON C A BRUZON:**

Of course I understand the meaning of full register. When I started to get into trouble is when I started going into the different sections of the Bill. It might have been better just simply not to have put it in there because we all know what full register means as far as the English language is concerned. What started to worry me was having to go through different sections of the Bill but I thank the Chief Minister for his explanation.

**HON DR J J GARCIA:**

Mr Chairman, I want to elaborate on the point made by my Colleague Charles Bruzon. This is one of the points that I flagged during the Second Reading of the Bill. There is a two-step process before one gets to what the definition actually means. I think my hon Friend has also made the point that it might be better to actually have the definition of full register where all the other definitions are in the first paragraph of the Schedule and suggested amendment, which I flagged in Committee Stage, was that perhaps where it says full register it could say full register means a version of the register published by the Registration Officer under paragraph 11(1) or (3) of this Schedule.

**HON CHIEF MINISTER:**

It would clarify nothing, Mr Chairman, one would still have to read the whole of the sections to understand what the full register is. There are some things in life that are a little bit complicated and cannot be reduced into two or three words, there are lots of laws in Gibraltar that are not easily understandable by the average citizen. The comment that the Hon Mr Bruzon makes that he is only a layman and not a lawyer and cannot easily navigate his way around the laws with immediate understanding, frankly is something that could be said of 95 per cent of the citizens about 95 per cent of the laws. That is the reality of the nature of legislation. Most of them are not drafted, some might say regrettably, are not drafted in a way that are necessarily most easily understood. There is an organisation known as the campaign for Plain English which firmly believes that no one with a legal background should ever be allowed to draft any document at all that anybody else might ever be required to read and understand. There may be some virtue, it may result in a significant loss of income for some people who dedicate themselves but that is not unique to this Bill. This Bill actually is relatively straightforward, that to understand a particular aspect of it one has got to read more than one clause does not make the Bill complicated or badly drafted or anything of that sort, I think that is inherent in the concept of legislation. I just say to the hon Member that we do not intend to accept his amendment to have a full definition in the definition section and the only reason why we are not agreeing to his amendment is that it would have to contain more or less what it contains in the sections that they say is too complicated. There is no simple way of saying what the full register is.

**HON F R PICARDO:**

I think the proposed amendment is actually much more straightforward than the Chief Minister suggests. It is just that the definition clause should say full register has the meaning

given in paragraph 11(1) and (3) below and that the definition should be there instead of 45, which then bounces one back to 11. So one goes to the definitions section, section 45 back to 11 and rather than do that we should just say, full register has the meaning given to it in 11(1) and (3), there should be there the brackets and then the comma before register, and then 45 gets amended to simply say, when he publishes the full register he shall also publish the edited register, and there we find a further definition of edited register. It could be just so that we do not have to do ping pong across the Ordinance to get the definition.

**HON CHIEF MINISTER:**

Yes Mr Chairman, it really is perfectly possible to do what the hon Member suggests. This law is not going to be read by people short of three seconds, which is all that they will save by the amendment proposed by the hon Member, which is of course perfectly viable, saves somebody three seconds, in other words, the definition section refers to section 45 then turn to section 45, it immediately says refers to section 11. Of course one can eliminate one of those two steps and go straight to section 11 and one saves three seconds. Well, fine, I am not sure it is worth spending 30 minutes debating a point which is designed to save just three seconds. I would be perfectly happy to accept that amendment with the caveat that the Government do not think actually that it is necessary but because it does no harm we will accept it. It really is quite simple, the reference to paragraph 45(1) should simply read paragraph 11.

**HON F R PICARDO:**

The definition of elector is I think in the wrong place, it needs to move up one space to just under the definition of election, that would put it in the right place alphabetically. That definition is going to be added to by the Schedule so the whole definition will actually include the words after the word "age" "or subject to 16(1)(A) of the 2003 Act, those shown in the register as a relevant citizen of an Accession State for the date fixed in the poll". Now I cannot find in the edition of the 2003 Act that I have, a (1)(A). I am using the Butterworth Edition of the Act, otherwise there may be a problem, I am just bringing to the attention of the draftsman the fact that I think there is a problem with the cross-referencing there.

**HON CHIEF MINISTER:**

Mr Chairman can we return to that one just a little bit later.

**HON J J BOSSANO:**

Mr Chairman, on the question of the overseas elector and the Overseas Elector Declaration, the overseas electors refers to the provisions of the principal Ordinance in section 16(2) of the 2003 Act, which deals with who may vote in Gibraltar. As I read what is in the UK law and what is in the Gibraltar law that we have got before us, this overseas list is supposed to be the list of Commonwealth citizens who are not currently in Gibraltar but who had been included in previous registers to vote in previous European Elections. None of which exist of course. I cannot see why we have to make all these provisions in our law, certainly none of this will apply in the current election. Given that we are talking about legislating as we are with a deadline, do we really need to be putting all these things at this stage in the laws of Gibraltar, where we are saying, for example, if one goes to page 24 and we have overseas elector and service voter, we are laying down all the information that has to be provided by people who presumably do not exist. If I have read the UK provision correctly, we are talking about people who have been registered in previous registers in the 15 years ending with the date of the new register. If the new register comes up in say April, we were supposed to be going back 15 years from April and seeing who was a Commonwealth citizen who was in Gibraltar in those 15 years and voted in EU

Elections or had the right to vote, and has lost that right, and that is what the overseas list has become, if I have correctly interpreted this. Well of course we know that that is not possible, none of that can happen. There are no previous elections and no previous registers. If that is not what these provisions are for then perhaps the Government can inform us what it is that this is for. I am raising it at this stage simply because, although we shall want to say other things about that when we come to the particular provisions in the law, this is the first reference to it and I do not know whether we ought to be doing something to remove the references now. I know that in the UK Act it says it, but in fact nothing is going to be done, nothing can be done. So before we propose the removal of these things we would like to know whether in fact the interpretation is correct or not.

**HON CHIEF MINISTER:**

Well the hon Member is right in that there is nobody who is going to be able to avail themselves of this on this occasion but we are advised that it should remain in the law because this will be the corpus of law going forward and over the period of time this may be so. In other words, between now and the next 15 years as these registers are updated and renewed, there will be people that will fall into the provisions of that regime.

**HON J J BOSSANO:**

Well the people that might fall into the provisions I will agree that in Gibraltar's case would be Commonwealth citizens, not other EU nationals. Commonwealth citizens who would have left Gibraltar after these elections will continue to be able to vote in the Gibraltar EU elections by post and they will become the overseas voters.

**HON CHIEF MINISTER:**

The regime as to overseas electors and what that regime is for and who can avail itself of it, is set out in paragraph 14 of the 2004 Regulations. It is the law. There is nothing that we can change about that however much he and I may debate it. He is right in saying that it is of no practical use now for the 2004 Elections but by the next elections in 2008 it will be. There will by then already be a register, there will be four years during which people will have been able to accrue the right to be, this is not just for people who were here 15 years ago, it is a period up to 15 years. So by the time of the next register there will be people who may fall to avail themselves of these provisions. The only occasion in which it does not arise is on the occasion of compiling the first register.

**HON J J BOSSANO:**

Yes I am aware of that, that is why I am saying, given that it is not going to happen for the next four years in the time we have had available to us there is a limit to what we can say then. It is all very well for the Chief Minister to say well look but there is nothing we can change anyway, because it is the same argument. That presupposes that everything here is word perfect.

**HON CHIEF MINISTER:**

But it is not here Mr Chairman, this is what I cannot get the hon Member to understand. The regime for overseas elector is not in here. It will be when it eventually is promulgated in the 2004 Regulations and regardless of whether we postpone here or whether we do not postpone here, it will be available to people in relation to Gibraltar by virtue of the 2004 Regulations. This Bill is not implementing the overseas electors regime for Gibraltar.

**HON J J BOSSANO:**

Well I hear what he says but of course this Bill actually says, on page 24, contents of overseas elector's declaration, and it lays down things that have to be done in addition to what is in the UK Regulation, which we are deciding here.

**HON CHIEF MINISTER:**

No, it is not in addition.

**HON J J BOSSANO:**

Ah, no? Well that is what it says here. It says in addition to the information required by paragraph 15(3) and (4) of Schedule 4. Well if addition does not mean in addition then we need to have an amendment and say what it means. On page 24, the top of the page 14(1).

**HON CHIEF MINISTER:**

No, it is not necessary to delete it just because it is not going to arise between now and June. That is what the hon Member is saying, to the extent that he is not saying that it is just a repetition of the debate on locally connected persons which he knows I am not going to have with him. The only new dimension to his point here is that it does not arise on the occasion of this first election.

**HON J J BOSSANO:**

That is one new element, the other point that I made which he answered incorrectly before was that he said in any case it is irrelevant because it is the same argument again. We cannot change here because here we are not providing anything, it is all provided in the UK Regulations. I then stood up and said to him no that is not correct because it says in addition to what is provided in the UK Regulations we are providing things here. Now if we are doing something here in addition to the UK Regulations then presumably we are free to do it or not do it or do something different. Otherwise it is not in addition. Now if it is in addition and it does not apply in this election, why are we legislating to do something in addition that will apply in four years time. Is it not better to look at it in slower time and bring, if necessary, in a few months time an amending piece of legislation which will give us more time to look at this, given the fact that we have had very little time to look at something that we would like to have, we have understood the argument that the Government have put as to why we find ourselves in this position. They waited until the last possible minute, they have been waiting for the United Kingdom to do its bit of the legislation, the bit of the legislation has come so late that even now it is not UK law and we are doing things in anticipation of it becoming UK law, but it has to be done by today because if it is not done by today, the Registration Officer has got a problem of doing the register in time for this year's election. We understand all those arguments but none of those arguments apply to the overseas list because there is not going to be an overseas list this year. So I do not see why we cannot, in the case of the overseas list, have more time to look at it and we may find that we are happy with the way it is but it seems to me given that all those arguments that explain the need to do the job that we are doing in the timescale that we are doing it, which we cannot dispute because look it is just a physical impossibility for the Registration Officer to have everything in place for the elections in May if he does not start next week, then obviously we have to make sure that the law is there to give him the power to start next week. There is no getting away from that, but this is the one thing he is not going to do. It will not alter everything the United Kingdom says can be done, except that all that the UK says can be done cannot be done anyway, even if the law is there, because there is nobody that meets the criteria that enables them to avail themselves of it.

**HON CHIEF MINISTER:**

No Mr Chairman, the Government are not willing to delete for that or any other reason, it is not willing to delete this provision from the Bill.

**HON J J BOSSANO:**

For that or any other reason, I suppose the other reason is sufficient that I should suggest it so that it should be deleted. There is another one which is the question of service voter, which means a person who has made a service declaration pursuant to paragraph 17 of Schedule 4 to the 2004 Regulations and is registered or entitled to be registered in pursuance of it. I move the deletion of the brackets and the words in it and the words in pursuance of it in the final line of that. I mean it does not alter the fact that that is in the UK legislation but I do not see why there is a need for us to say it. If we say a service voter means a person who has made a service declaration and is registered or entitled to be registered, it seems in our law what we are saying is something which does not need gratuitously to include the reference that it is being done pursuant to paragraph 17.

**HON CHIEF MINISTER:**

No Mr Chairman, the Government would not support any such amendment.

**HON J J BOSSANO:**

I take it the Government accept that that will not change the position if we do that amendment. It will just mean that we are not in fact condoning it.

**HON CHIEF MINISTER:**

No the hon Gentleman is not entitled to cross-examine me as to the reasons why Government make their voting decisions. The Government will not support the amendment that the hon Member has proposed.

**HON J J BOSSANO:**

Well, I was not cross-examining, it is not a skill that I have developed, probably the Chief Minister is thinking of his experience in court. All that I was doing was in fact questioning whether this was the explanation, given that on other occasions, when he has accepted amendments, he has said he is accepting the amendment even though the Government feel that the amendment does not alter the position. The amendment he has accepted so far he has actually volunteered that that was the explanation, that it did not change anything. So I thought maybe if he realised that this did not change anything either, he might be persuaded.

**HON CHIEF MINISTER:**

Can I just before we move on clear the answer that I owe to the Hon Mr Picardo about the alteration of the definition of elector for the purposes of the second Schedule. Section 16(1)(a) of the 2003 Act, which he says he cannot find a reference to 16(1)(a) in the Act itself, the reason for that is that it is introduced by Schedule 5 of the 2004 Regulations. Or will be introduced when they adopt it. I think I remember saying to the hon Members at the Second Reading that the UK had had to do this too in the Order that was approved in the House of Lords the other week. They had to approve a reference to the European Parliamentary Elections Ordinance 2004 even though we had not yet taken it and it was still not in existence.

Paragraph 1, was agreed to and stood part of the Bill.

**Paragraphs 2 to 5** – were agreed to and stood part of the Bill..

**Paragraph 6**

**HON CHIEF MINISTER:**

Mr Chairman, the hon Member overlooked to point it out to me and I have overlooked to raise it, but I have given written notice to you. The Hon Dr Garcia may recall that at the Second Reading in the definition of 2004 Regulations, he suggested that they be sort of domiciled in the UK by adding the words "made or to be made" in other words that it should be clear that they were Regulations of the United Kingdom. Does he remember making that point? I would be quite happy to agree, we would be quite happy to agree to what he proposed by adding the words of which I have given written notice. In other words, by adding at the end "made or to be made under the European Parliamentary Elections Act 2002 and the 2003 Act". Sorry I should have raised that before we moved on from clause 1. If the hon Member does not want to proceed with the amendment I am perfectly happy. I am advised it is not strictly necessary, but if he wants to maintain the amendment we are happy to support it.

**HON DR J J GARCIA:**

I think what I suggested was that originally when the Opposition was looking through the Bill we were not sure whether the Regulations were Gibraltar regulations or UK regulations. But it was not something we requested an amendment as such, if I remember correctly.

**HON CHIEF MINISTER:**

I fear his recollection is letting him down. He clearly made the suggestion. But fine, I am perfectly happy to drop it. I would not have made a note of it otherwise, I made a note from his speech on the Second Reading. The point that he made was that it says "2004 Regulations" means the European Parliamentary Elections Regulations 2004 and somebody might think that means regulations to be made in Gibraltar under this Ordinance by the Minister.

**HON DR J J GARCIA:**

We thought so.

**HON CHIEF MINISTER:**

No, no, but they do not exist yet. So the point that the hon Member was saying is, should we not make it clear, this is the point that I thought he was making, should we not make it clear that when they do emerge that they are UK regulations and not Gibraltar regulations.

**HON DR J J GARCIA:**

No Mr Chairman, it was in the context of our looking at the Bill and wondering whether these were going to be local regulations made under this Ordinance or UK regulations and that was the confusion we had when we were looking at the Bill. But at the time we had not received the amendments.

**HON CHIEF MINISTER:**

I have given notice of the amendment and we will proceed with it.

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

**Paragraph 7**

**HON J J BOSSANO:**

Mr Chairman is there a particular reason why 7 says a fine not exceeding £1,000 given that everywhere now it has got levels?

**HON CHIEF MINISTER:**

Only because that is the level of fine that there is in the UK which we wanted to replicate and none of our levels correspond to £1,000. None of the standard levels.

Paragraph 7, was agreed to and stood part of the Bill.

**Part 2**

**Paragraph 8** – was agreed to and stood part of the Bill.

**Paragraph 9**

**HON DR J J GARCIA:**

Mr Chairman, also on the Second Reading I remember querying the use of the word "general" in European Parliamentary General Election in 9(2)(b). And I remember them saying they would get back to us on that.

**HON CHIEF MINISTER:**

Yes, I think that the point that the hon Member was making was that there could not be any by-elections. I am advised, although it had not occurred to me at the time he made the point, I am advised of course that there can be a by-election. There can be a by-election when seats are won by candidates whose list is not long enough to fill the vacancy, or when an independent candidate wins the seat. Therefore, although I do not think it has ever happened, and although it is certainly very rare even if it has happened, it is theoretically possible for there to be a need for a by-election for the European Parliament.

**HON J J BOSSANO:**

Is there a particular reason why in the first line, it says the Registration Officer shall conduct a canvas in relation to the area for which he acts. I think that kind of wording appears to be lifted out of the UK where in the region there are different areas. I mean it almost suggests that there are bits of Gibraltar for which he does not act.

**HON CHIEF MINISTER:**

On this occasion I think I agree. That is lifted obviously from the UK where there are different registration officers for different areas and here we have just one registration officer. So there we could just have the Registration Officer which is the only one we have, and I think we can safely delete the words "in relation to the area for which he acts" and add Gibraltar.

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

**Paragraph 10**

**HON J J BOSSANO:**

Mr Chairman the registration officer is required by paragraph 10 to determine all the applications that are made to him in accordance with the requirement of this Schedule in our legislation or by virtue of paragraph 6 of Schedule 4 and this says that where in connection with a canvas under paragraph 9 of Schedule 1 to the European Parliamentary Ordinance 2004, our law, this is the UK Regulation talking about us, the form completed in respect of any address specifies any person as a person entitled, who is entitled to be registered and that person is not for the time being registered in respect of that position shall be deemed as having made on the canvas date within the meaning of the Ordinance, in question an application for registration in the register in respect of that address. I do not know why this is being done in such a complicated way. Because what we have here is a situation where the duty of the Registration Officer is triggered by this Schedule or by virtue of paragraph 6, and paragraph 6 sends the person to our Ordinance and tells him to look at paragraph 9 of this Schedule.

**HON CHIEF MINISTER:**

That is the reverse of what the hon Member has been complaining about all day.

**HON J J BOSSANO:**

I know. I know it is the reverse, but it does not make it any better, because we send the guy off to London.

**HON CHIEF MINISTER:**

The reverse must be better

**HON J J BOSSANO:**

No because what we are doing and I am asking for an explanation, is that we are saying that the Chief Minister might be right that it is the reverse, but what we are saying is if one wants to know whether one is entitled under (b) one goes to the UK law and then the UK law says go to the Gibraltar law to find out. Now why do we not send him to the relevant paragraph ourselves?

**HON CHIEF MINISTER:**

I suspect that it is because it relates to people who are treated as having made an application by the 2004 Regulations.

**HON J J BOSSANO:**

No, it says where the person in connection with the canvas under paragraph 9 of Schedule 1 of the European Parliamentary Elections Ordinance, ours. The person that is treated by virtue of section 6, one goes to paragraph 6 to find out who is this person, and paragraph 6 tells circumstances in which an application for registration in Gibraltar in the Gibraltar register may be treated as having been made. It says "where the person has completed the form, in accordance with paragraph 9 of Schedule 1". And paragraph 9 of Schedule 1 is a paragraph which has voted. The maintenance of the Gibraltar register canvas. So I am really totally mystified why it is we have to have a reference here to the United Kingdom legislation and the United Kingdom legislation refers us back to the paragraph we have just finished voting, the one before, where we turn and it tells us to come back to 9. Why cannot (b) say what the UK

Regulation says. In this case when all the regulation says in this case in the United Kingdom is that if the guy fills the form under the provisions that we have made in 9, and he is not in the register and he can show that he has filled the form, presumably because there has been an oversight, then he ought to be treated as if he was in the register. At least that is my reading of it. He shall be treated as having made on the canvas date within the meaning of that Ordinance, that is this Ordinance the Gibraltar law, an application for registration in respect of that address.

**HON CHIEF MINISTER:**

This is another example, our Bill does not establish who has a right to be registered. This is a change of address provision basically. The provisions of paragraph 6 of the fourth Schedule is part of the definition of eligibility for registration. Our provisions are about the maintenance of the register but our provisions do not contain the entitlement to register. The entitlement to register is contained in the UK legislation and therefore, what (b) is saying is the Registration Officer shall determine all applications for registration which are made to him in accordance with the requirements of this Schedule, or treated as made to him pursuant to paragraph 6. In other words, or which arise from an entitlement to registration set out in paragraph 6, ours not having the entitlements for registration. Paragraph 6 of Schedule 4 is an entitlement to registration. Our Bill does not contain any entitlement to registration even for him and me.

**HON J J BOSSANO:**

Well that is not how it reads to me because in fact if that were indeed the case, why is it that in the case of (a) the Registration Officer is able to put in the people who meet the requirements of this Schedule.

**HON CHIEF MINISTER:**

Well, because in this Schedule the requirements of this Schedule are to put in people who are entitled under the provisions of the 2004 Regulations. That is what the rest of the Schedule goes out to say. So the entitlement to get onto the Gibraltar register is always to be found in the 2004 Regulation. What our Bill does is provide for the maintenance of the Gibraltar register and the administration of the Gibraltar register, in favour and in respect of people whose entitlement arises under the 2004 Regulation.

**HON J J BOSSANO:**

Yes but the entitlement of that person here is that the person has in fact filled in the form in the canvas. When one reads paragraph 6 it says "where in connection with the canvas under paragraph 9", which is the paragraph we have just approved, the form completed in respect of any address specifies any person as a person who is entitled to be registered, that is the form is what specifies him as a person to be entitled according to this, our form, and the person is not for the time being registered in the register in respect of that address, he shall be treated as having made on the canvas date within the meaning of our Ordinance, an application in the register in respect of that address. Now is the Chief Minister saying that if that text was in our provisions in (b) the person would not be able to be registered?

**HON CHIEF MINISTER:**

Yes, because people in the circumstances described in 6 would not fit, would not be entitled for registration under the other eligibility provisions of the 2004 Regulations, which are invoked by our Schedule. In other words this is a modification by way of widening of registration eligibility. In other words, even though one is not resident at the address that appears on the canvas,

the individual shall be entitled because he shall be deemed to have applied for registration in respect of that other address. So this is a change of address provision which widens………

**HON J J BOSSANO:**

The word "resident" does not appear. The Chief Minister said even though we are not resident in that address.

**HON CHIEF MINISTER:**

No I am not saying that. I am saying that these provisions for what happens when a form is completed in respect of any address in respect of a person who is entitled to be registered in the register, and that person is not for the time being registered in the register in respect of that address, in the circumstances described in (a) or (b), but for this paragraph 6 he would not be entitled to be registered.

**HON J J BOSSANO:**

Well he would not be entitled to be registered if we do not give him the right.

**HON CHIEF MINISTER:**

But all the rights are here.

**HON J J BOSSANO:**

No, no but Mr Chairman, 6 in the UK Regulation says, "in connection with a canvas under paragraph 9" which is the canvas that our Registration Officer has to carry out by the beginning of next week, right. The form completed in respect of any address specifies any person as a person who is entitled to be registered, so we have got somebody who is included in the form as being entitled to be registered not, and that entitlement at that point does not flow from paragraph 6. Paragraph 6 is simply describing somebody who has filled in the form in accordance with 9 in our law. That is all it needs to say. And then it says, "and the person is not for the time being registered in the register in respect of that address". To be quite frank Mr Chairman, I am not quite clear what (b) does to remove the person from the register in (a), because it has nothing to do with being resident and there is no mention of residence, and there is no mention of eligibility. The person is deemed to be entitled under (a) because he fills up the form.

**HON CHIEF MINISTER:**

No, the hon Member is not reading the paragraph, he is not reading the paragraph properly. Let us just illustrate it by reference to an example in the conduct of the canvas. Remember that (b) is a person who is not for the time being registered in the register. So this does not arise in the first registration, this cannot arise in the first register. So let me give an example, canvas forms are not sent to individuals, they are sent to properties, that is the way that the canvas is done for European Elections. It is sent to property holders. The property holder then has to fill up the canvas in respect of anybody resident in the property to which the canvas form relates. The form comes back, let us use me as an example, 10/3 Irish Town, I fill in the canvas form that says my oldest daughter Georgina Caruana in respect of 10/3 Irish Town, let us say that this is the second register, there has got to be a register in existence so it cannot be the first one. When it comes to my sending in the canvas form, I am declaring her for the second time round so to speak as being resident at 10 Irish Town because she is now living with me. But when the first register was done, in the previous register she is under some address or not at that address. This is a change of address provision because at the time she found herself a flat in Ocean Heights or

something. She was not then, this is in respect of people who are entitled to be registered, that is (a), but who are not in the existing register shown as being in that address. So when I send in the canvas form showing a person living with me at home who in the last register was registered under some other address, then under this, that person the person who has now moved in with me but who was at the time of the last register registered under some other address, that person shall be treated as having made on the canvas date, an application for registration in the register in respect of that address. That is what it means.

**HON J J BOSSANO:**

That presumably applies not just to people who change addresses but to everybody who enters the register for the first time after the first one. Because everybody who appears in the second register, we had an example in the referendum, where 3000 people appeared who were not there in the previous elections in 1999.

**HON CHIEF MINISTER:**

It is a deeming provision, in other words, when a canvas form comes back with new information on it, with a new address for somebody who is already on the register in a different address shown under a different address, that shall be deemed to be an application for registration in the register under that new address.

**HON J J BOSSANO:**

Yes but the eligibility surely does not flow from this deeming provision. What we have here is having just voted how the Registration Officer shall conduct the canvas under section 9, what do we have? We have a situation where he conducts the canvas the day after this provision comes into force. So it means that in fact the moment this law comes in.

**HON CHIEF MINISTER:**

There is nobody caught by this first time.

**HON J J BOSSANO:**

There is nobody caught by this no. The first time round.

**HON CHIEF MINISTER:**

One cannot be in the previous register under a different address, there is no previous address.

**HON J J BOSSANO:**

Well, I do not think it says in the previous register under a different address. It says that the person is not for the time being registered in the register in respect of that address, the present one. That does not mean that he is in a different one. He might not have been there at all.

**HON CHIEF MINISTER:**

But there is not a register for any of us to have been on at all. Until the first canvas is done there is no first register.

**HON J J BOSSANO:**

Well assuming that the provision in (b) which is that the person is not for the time being registered in that register, does not apply to anyone because there is no register. What I am saying, this is not that it is deemed to be there because he has changed address because it does not say anything about changing address. It seems to me what this would mean is that in the second canvas right at any time after the first register there are going to be additions to the register made or amendments to the register made. The amendments will be the people who have shifted and the additions will be the people who are here for the first time. The people who appear for the first time will be in a form and they will not be with that address in the existing register because they are appearing for the first time. So it is not just a question of people changing. It is a question of people either attaining the age when they can be entered or coming to Gibraltar from outside and acquiring that right as EU nationals, for example. So anybody that takes up residence in Gibraltar between one canvas and another canvas will appear in the second one, in the second register. Now I cannot understand why his eligibility to be there is somehow undermined by the fact that he was not there the last time round, and therefore requires a provision deeming him to be entitled. I do not see anything here that gives him an entitlement that he did not have already. Therefore if the whole argument is that the reason why we are referring to the United Kingdom law is because entitlement flows from the UK law and not the Gibraltar one, then I am afraid that I do not think that that is a possible interpretation of this. Here we have the situation where we say the Registration Officer immediately after we pass this, will hold a canvas and produce a register for these elections. Then at some time in the future he will hold another canvas whenever he sees fit, or before or in October in four years' time before the next EU general election. When that happens and he gets the forms back he will find that there are people in those forms who are not in the register produced in 2004, that is a perfectly normal thing. Why is it that in order to be able to include them in the register he needs to have this provision in the UK Regulations which our law sends him to and their law sends him back to us. I mean, if the person's right to fill in the form, nothing that I have read either here or in the UK says one cannot fill in the form unless one has filled it in the last time. No, and therefore why do we say if he fills in the form and he did not fill it the last time we deem him to be at that address. Why should we not deem him to be at that address. That is where the guy is and that is what we are doing.

**HON CHIEF MINISTER:**

No it is not. We are not deeming him to be at that address,

**HON J J BOSSANO:**

He shall be treated as having made on the canvas day, within the meaning of the Gibraltar Ordinance an application for registration in the register in respect of that address.

**HON CHIEF MINISTER:**

In other words the new address, the address in the latest canvas.

**HON J J BOSSANO:**

The latest canvas.

**HON CHIEF MINISTER:**

Absolutely. In those circumstances the Registration Officer has a registration application in front of him and the United Kingdom has chosen to regard the definition of the circumstances in which there is a registration in front of the Registration Officer as part of the eligibility requirement and has wanted to anchor them

in the United Kingdom legislation. The law refers you to the UK and the UK law then refers you back but as far as they are concerned the definition of when a registration application is a registration application is contained in their law.

**HON J J BOSSANO:**

But the point that I really fail to understand is if an EU national comes to Gibraltar, takes up residence in Gibraltar, meets the criteria for voting and fills up the form, what on earth does it matter in terms of accepting him to be in the register, that he was not there the last time.

**HON CHIEF MINISTER:**

But all that is provided for under the UK law.

**HON J J BOSSANO:**

Well not in anything I have seen. I mean this is what I am saying. I think we must not fall into the trap of thinking that these things are being done correctly and that therefore when we are questioning it and we are questioning the way we are doing things in our legislation, we cannot question anything they have done in the United Kingdom because they know what they are doing, when we come to the service voter I will point to the hon Members that there, there are some very odd things as well. Certainly we do not see any logic at all and we see no reason why we should not say, we do not even think there is a need for this frankly but if there is a need for this we do not see why the Registration Officer cannot be told in our Ordinance, "when you have done what you are being asked to do by section 9, in section 10 you accept the guy's application notwithstanding the fact that he was not there the last time round", Because this is all it seems to say. I do not see anything that would make the Registration Officer reject the person without this provision. That is to say, the implication of this is that without this safety net, the Registration Officer would not have to accept a new addition to the register after the first one. Well look then the first one would be the only one because nobody could join it, because everybody that joins the second register is not going to be there in the first, and the people who join in the third will not be there in the second. In my laymans knowledge, it does not seem to be good legislation. I really believe that if there was a need for it there is absolutely nothing stopping us telling the Registration Officer to accept such an application but I cannot see that he would have any choice. We are talking about somebody, this is not widening anything. This is not treating somebody who is not residing in Gibraltar with a right to be here. This is simply saying the only difference between (a) and (b) is that (b) is the guy that is not there in the first register that we will be doing next week. Well so what. The implication of this is that in the four years time the Registration Officer would have to produce a register which would not include anybody new, but for the provision in (b). That cannot possibly be right.

**HON F R PICARDO:**

Still on the same paragraph, in sub-paragraph (8) I note to an extent I am going to be delving into the arguments that have been running across the House, but only very simply. Over the page on page 20 the word "resident" appears and says "resident means resident for the purposes of 16(1)(a) of the 2003 Act", which having I think personally that one needs to delete the inverted comma after the word "at", but having checked the Act what the Act says in 16(1)(a) is resident in Gibraltar. I wonder whether we could not just say there, resident means resident in Gibraltar, I think that would be much easier in that particular instance. I do not think it raises any of the issues of having to seek HMG's pleasure to enable us to do that, I think it is a very straightforward and unnecessary cross-referencing exercise there. So I move the amendment that that sentence be amended to say resident means resident of Gibraltar.

**HON CHIEF MINISTER:**

No the Government are not willing to consider applications for amendments of which notice might have been given but has not been given and I do not know whether the amendment has the innocence or the lack of read-across elsewhere that the hon Member is asserting. It is not worth taking the risk for something which as the hon Member himself admits, is just to avoid one step of cross-referencing. In other words, for the sake of introducing a small degree of ease, I am not willing to make a legislative change without having a proper opportunity to consider whether it has other implications that I may not be able to think of here on the spur of the moment or which the hon Member may not for the same reason have been able to think of. As it is not an amendment that is necessary in order to secure the effects of the Bill the Government would not accept it.

**HON F R PICARDO:**

In that case I will have to lump it but move the amendment that the inverted comma at the end of the sentence be deleted.

**HON CHIEF MINISTER:**

It is not necessary to move amendments to remove unnecessary punctuation marks. There is a convention in this House that liberates the draftspeople from doing that before Bills are published as Ordinances.

**HON F R PICARDO:**

Yes I appreciate it, it is just that I am pointing it out in any way.

**HON J J BOSSANO:**

In sub-paragraph (4) we have got a provision that the person remains on the register, at page 18 and 19 which is paragraph (4), when the name of a person is entered in the register in respect of any address the elector is entitled to remain registered in the register in respect of that address until such time as the Registration Officer determines on the conclusion of a canvas under paragraph 9 above, that the elector was not resident at that address on that canvas date.

**HON CHIEF MINISTER:**

Yes on that same paper there is a (d) continuation of entitlement unless the Registration Officer discovers to the contrary. In other words the register is not invalid because it has people on it who actually do not know the address that they declare. The entry remains valid until such time as the Returning Officer positively discovers that the information is inaccurate as to address.

**HON J J BOSSANO:**

I see. So it means that unlike the elections for this House………

**HON CHIEF MINISTER:**

The hon Member has got to recall that this is a rolling register. This is not a new register at every elections. The purpose of the canvas is to update the register not to establish a new one. So anything that is in the register, is in the register.

**HON J J BOSSANO:**

Therefore as long as people are not removed from the register they can exercise what, a postal vote or come back and vote here?

**HON CHIEF MINISTER:**

Until they are removed from the register by the Registration Officer, pursuant to one of the provisions entitling him to remove people, they remain with the entitlement that the existing entry gives them, whatever that entitlement might be. If they are in, certainly postal vote yes. Because everybody gets the right to postal vote.

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

**Paragraph 11** – was agreed to and stood part of the Bill.

The House recessed at 6.25 pm.

The House resumed at 6.55 pm.

**Paragraph 12**

**HON CHIEF MINISTER:**

In paragraph 12 I have given notice of an amendment just to eliminate some superfluous language that has crept in there. Delete the words "regulations made under" in the two places where those words appear, once in (a) and once in (b) of paragraph 12(1).

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

**Paragraphs 13 to 18** – were agreed to and stood part of the Bill.

**Paragraph 19**

**HON J J BOSSANO:**

In paragraph 19 we have got the service voters. Here it says that where the declarant in 19(2), the declarant claims a service qualification on the grounds that he is a member of the Royal Gibraltar Regiment, or the spouse of such a member, the service declaration shall state the rank or rating of that member and the service number of that member. My reading of that is that it is possible to make a declaration where the declarant is claiming a service qualification on grounds other than that he is a member of the Royal Gibraltar Regiment. If that is the case then the information required in (a) and (b) does not apply. Now I find that most peculiar because in fact in page 142, it says that the service declaration can only be made by somebody who is in the Gibraltar Regiment. How can you say where the declarant claims the qualification on the grounds that he is a member of the Royal Gibraltar Regiment when there is no other ground.

**HON CHIEF MINISTER:**

The service declaration procedure is in fact under paragraph 16 of the 2004 proposed Regulations, limited only in the context of the Royal Gibraltar Regiment. So the language where the declarant claims a service qualification on the grounds that he is a member of the Royal Gibraltar Regiment is just helpfully excessive language in that it reminds us that it is for a member, but it would be equally effective if it just stopped after the word "qualification". It will be just as effective if it read "where the declarant claims a service qualification the service declaration shall state", because the words in between are surplus wordage.

**HON J J BOSSANO:**

The point that I am making is that not only are they surplus but in normal English

**HON CHIEF MINISTER:**

No I do not accept that they imply the contrary.

**HON J J BOSSANO:**

I see. So if in normal English one says where a person does it on such a ground he has to do the following, does not suggest that where a person does it on a different ground he does not have to do it, even though there are no other grounds.

**HON CHIEF MINISTER:**

No it is reciting those grounds. Unnecessarily recites the ground upon which the service provision can be exercised. I accept it is unnecessary but I do not accept that it has the implication of suggesting that there are other parties other than the Royal Gibraltar Regiment who can, other grounds.

**HON J J BOSSANO:**

Although still in paragraph I am pointing out that in 20 it says the service declaration made by a member of the Royal Gibraltar Regiment as if it could be made by anybody else, although the Chief Minister says it does not say that. I would say that non-lawyers reading this would say well, a service declaration made by a member shall be transmitted to the Registration Officer. What about if he is not a member? The answer is well if he is not a member he cannot make a service declaration at all.

**HON CHIEF MINISTER:**

Mr Chairman, I accept the hon Member's analysis that the words are to the extent that the analysis takes us to the point where the language adds nothing to the phrase service declaration or Gibraltar Regiment. But I do not agree with him that the consequence of that correct analysis is the one that he draws. Namely, that somehow this might give somebody else rights that they are not intended to have or even to imply that there may be somebody else that has those rights.

**HON J J BOSSANO:**

Well it cannot give the rights because as the Chief Minister has pointed out this gives no rights to anybody anyway. The rights are given here. But it appears to be laying down conditions for a category of people, and by implication it suggests that that………

**HON CHIEF MINISTER:**

I doubt that is the implication that is given. It is an analysis but not the consequence which he deduces by implication.

**HON J J BOSSANO:**

Well, we think it would be preferable to delete the words given that certainly some people can read it like that, because I read it like that, so it is quite obvious.

**HON CHIEF MINISTER:**

But so what if the hon Member has read it that way.

**HON J J BOSSANO:**

The point is that given that we have got this peculiar situation that reading the law of Gibraltar does not tell us much unless we also get hold of the UK law in fact………

**HON CHIEF MINISTER:**

The laws were made in the UK.

**HON J J BOSSANO:**

Until I went to this which was given to us yesterday, when I saw that at the beginning I thought well look, it is quite obvious that the guys that are service voters from the Gibraltar Regiment have to put their rank and rating, and my original question would have been, what does that mean. Does it mean that if there is, for example, a service voter in Gibraltar who is somebody from another regiment, he does not have to, that was my initial reaction.

**HON CHIEF MINISTER:**

It is not discrimination against the Royal Gibraltar Regiment.

**HON J J BOSSANO:**

No, but that is how it looked originally. Until I got hold of this yesterday when the Government provided it to me and when I started going through it, I discovered that the definition of a service voter is a voter who is in the Gibraltar Regiment. So what we have is a situation where our law says if a person who is in the Gibraltar Regiment claims a service qualification on the grounds that he is a member of the Gibraltar Regiment, as if there was any other grounds on which he could claim it, or as if there was any other person that could claim it, then he has to state the rank and rating and the service number. Well we think the law would be better drafted if it did not say that, if it just said where a declarant claims a service qualification the service qualification shall state the rank and rating of that member.

**HON CHIEF MINISTER:**

No, I would accept the hon Member's proposed amendment if leaving the words in had some unintended effect of altering the meaning or purport of the Bill. It does not do that. I accept that the section would mean the same if the words that he wants to delete were not there. I accept that, but leaving the words in do not alter the sense of the Bill except that somebody might draw the conclusion that he drew until he reads the 2004 Regulations, but it does not alter the sense of the Bill. The Government would prefer not to delete this language which relates to one of the sections that is agreed with the UK.

**HON J J BOSSANO:**

Whilst looking at the provisions on page 142 and 143 for service voters, I was somewhat surprised to learn that the arrangements for securing that everybody who has a service qualification shall be able to exercise this opportunity, shall be made by the Gibraltar Ministry of Defence.

**HON CHIEF MINISTER:**

Yes so was I. But as it sounded good I did not challenge it.

**HON J J BOSSANO:**

I see. But that is now, given that this is UK law and that the colony can no longer do anything to influence the colonial

power, we can in future refer to them as the Gibraltar Ministry of Defence.

**HON CHIEF MINISTER:**

It is still a draft.

**HON J J BOSSANO:**

Can I ask what is the position of UK servicemen in Gibraltar then, do they vote in the constituency from which they came?

**HON CHIEF MINISTER:**

This replicates the provisions in the UK where it is much more likely that servicemen will be moving around away from home, away from barracks, perhaps posted abroad. That is how it works there. A UK serviceman that is resident in Gibraltar, is entitled to be on the register just like everybody else just as a Gibraltar Regiment person who is resident in Gibraltar does not need this to get on the register. Only needs this if he is not in Gibraltar, or if Gibraltar were a bigger place not in Gibraltar at his address. In the UK it is possible to be deployed within the United Kingdom. Absent from Gibraltar is possible I suppose some of our people have been posted elsewhere.

**HON J J BOSSANO:**

So in fact the UK based workers in the MOD and servicemen would be included in our register.

**HON CHIEF MINISTER:**

Absolutely, yes. Just as other EU nationals.

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

**Paragraphs 20 to 31** – were agreed to and stood part of the Bill.

**Paragraph 32**

**HON DR J J GARCIA:**

Mr Chairman, there was a point which I raised during the Second Reading of the Bill in relation to the definitions given in paragraph 32(5) of the Schedule, and that was the definition of the word “relative”, which means the husband, wife, parent, grandparent, brother, sister, child or grandchild. The suggestion that I made then was qualifying that by saying of voting age otherwise a child under the age of 18 could carry out the requirements of that particular sub-paragraph. They will remember that he was going to come back with some views on that.

**HON CHIEF MINISTER:**

Again this is an amendment which the Government do not believe to be strictly necessary but one that can be made for the sake of clarity. The way that we would propose to cover the point is after the words “grandparent” put the words “or (provided they are at least 16 years of age) a brother, sister, child or grandchild”. It does not apply just to the child or grandchild, the brother or a sister could also be underage. We have taken the view that 16, which is the age one can go to war, is old enough to sensibly do the things that this applies to, as opposed to voting age which is 18 years.

**HON DR J J GARCIA:**

We would be quite happy with that amendment.

Paragraph 32, as amended, was agreed to and stood part of the Bill.

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

**Paragraph 35**

**HON DR J J GARCIA:**

Again this was another point raised here during the Second Reading of the Bill in relation to the notices which need to be published, publicising that a revised edition of the register is going to be produced and the suggestion was to add a small (d) in 35(1) where it says (a), (b) and (c) and to include the local media, so that the relevant notices are also published in the local media as it is rather unlikely that people would read the Gazette or go and see where there is a copy posted on a notice board. That was a suggestion that I also made during the Second Reading and has the Chief Minister had a chance to think about that.

**HON CHIEF MINISTER:**

Yes, we do not intend to accept any amendment on the grounds that these are minimum requirements. The Registration Officer has an overriding obligation to ensure that there is publication of electoral related information. He is free, as I am sure he would, as he does in general elections which do not require him, to use the newspapers. He does and I suppose that it is up to the Registration Officer to decide what publicity a particular notice he feels needs. This does not prevent him from using the press, just as he is not prevented from using the press but not obliged to use the press for the existing Regulation. So I have no doubt that the Registration Officer will do precisely what the hon Member is suggesting as he does now for full notices that are so relevant, and will use the press and will use notice boards as he uses now. I do not think it is appropriate to put in an obligation in specifics, because the moment he does that then he has got to say well, in which newspapers, in every newspaper, in every edition of every newspaper. Then one gets into all sorts of difficulty about what is a newspaper. There are lots of things that get distributed to peoples houses full of lies which are not really newspapers, there is one particular one called The Key which I suspect is not a million miles removed from the party which the hon Members sit in. But still, nevertheless it really would be quite invidious for the editor of The Key to feel that he is being left out of. I know who it is and he is going to discover soon I know who he is.

Paragraph 35, was agreed to and stood part of the Bill.

**Paragraphs 36 to 43** – were agreed to and stood part of the Bill.

**Part 3**

**Paragraphs 44 to 47** – were agreed to and stood part of the Bill.

**HON DR J J GARCIA:**

There were a number of points made during the Second Reading also in relation to paragraph 48. That was the general point as to whether by adopting the paragraph as it is there we

were actually legislating for what can happen in the British Library in the United Kingdom, and that I do not know if the Chief Minister had a chance to think about that.

**HON CHIEF MINISTER:**

About 48?

**HON DR J J GARCIA:**

Yes the general point as to whether we actually legislated for what can happen in the British Library in the United Kingdom.

**HON CHIEF MINISTER:**

Well we are legislating as to whether what happens in the British Library is a breach of the laws of Gibraltar, given that it is Gibraltar-owned information.

**HON DR J J GARCIA:**

I made the point that Opposition Members do not really have a problem with that but I just wanted to establish that this was the case.

Paragraph 48 - was agreed to and stood part of the Bill.

**Paragraph 49**

**HON DR J J GARCIA:**

In relation to paragraph 49(2) in sub-paragraph (1) the duty to supply is a duty to supply in data form unless prior to the publication the office has requested in writing a printed copy instead. Basically is it referring to the Statistics Office in Gibraltar or the National Office of Statistics in the United Kingdom? The question is why they cannot have both. Is there a reason for that? The use of the word "instead" means they can either have a data copy or have a printed copy but not both and we want to know what the rationale behind that was.

**HON CHIEF MINISTER:**

We did think about this proposed amendment carefully. We do not think it is necessary because it relates to the duty to supply, it does not mean that they cannot have both. It means that they are not entitled as a matter of right to both. But the Registration Officer can provide both if he wants to. Given that this only affects official bodies so to speak and does not affect any of the other, this formula is not repeated in the sections affecting political parties and all that. We really do not see a problem but it does not mean that they cannot have both. It means that they are not entitled as a statutory right to receive both.

Paragraph 49 – was agreed to and stood part of the Bill,

**Paragraphs 50 to 53** – were agreed to and stood part of the Bill.

**Paragraph 54**

**HON DR J J GARCIA:**

There was one point I made during the Second Reading and that was in relation to the provision, these clauses in the Bill that we are going through now make provision for the supply of the full register to different parties, the Electoral Commission, local constituency parties, to the National Office of Statistics et cetera. Now that particular paragraph, paragraph 51 is for the supply of the full register to registered political parties. Our reading of the paragraph is that this means registered political parties in the United Kingdom. I would like confirmation that that is the case, because that is what we think it says. And is it not possible then for parties in Gibraltar to obtain a copy of the full register, and if so if it is not under the law, could an amendment be introduced as a point (c) in 54(1) which allows political parties that have contested the general election in Gibraltar to receive a copy of the register.

**HON CHIEF MINISTER:**

No we are in the same position as political parties in the UK. In other words, we are entitled to a copy of the full register in connection with an election for which you have to register, and if he and I, his party or my party wanted to contest these elections, we would have to register. That register is maintained in the UK. So I am not sure whether it would say registered in the UK that might be correct, but register under the Regulations made by the UK which apply both to the UK and to Gibraltar. So we would require to register under what would be law of Gibraltar or for Gibraltar, and only when we have so registered are we entitled to receive a copy of the register, just as to obtain copies as a candidate we must also register to be a candidate in the UK. There is no provision here or in the UK for that matter, for any old political party, I mean I do not know if there was something called the Penzance Liberal Party or the Penzance National Party, they could not get a copy of the full register either unless they were registered. So it is the same regime for us all except that the register is 1,500 miles further away from us than it is from them.

Paragraph 54 – was agreed to and stood part of the Bill.

**<u>Paragraph 55</u>**

**HON DR J J GARCIA:**

There was a point at 55(3)(b) and that was that we thought it was rather odd that information supplied by potential electors for inclusion in the register can then be used for the vetting of employees and applicants for employment, where such vetting is required pursuant to any enactment, whether that is part of the UK legislation or perhaps can explain why that is there.

**HON CHIEF MINISTER:**

No it is part of the UK legislation and that is what the UK does, it uses these registers when it has a statutory duty to vet people. This is not just vetting, not vetting in any old circumstances, it has got to be vetting where vetting is required pursuant to any enactment. So it is statutory vetting and that is what they do so this is a complete replication. A replica of the UK provision.

Paragraph 55 – was agreed to and stood part of the Bill.

**<u>Paragraphs 56 to 58</u>** – were agreed to and stood part of the Bill.

**<u>Appendix</u>**

**HON DR J J GARCIA:**

In the Appendix there was one point that I made during the Second Reading of the Bill, and this was a similar point to that

just made in relation to vetting. On page 62 under the heading the full register, in line 7 it mentions that the information supplied by persons who are included in the register can then be used for other purposes such as the prevention and detection of crime and for checking ones identity.

**HON CHIEF MINISTER:**

The Government agree with the hon Member's point.

**HON DR J J GARCIA:**

When one applies for credits. We thought that looked very odd.

**HON CHIEF MINISTER:**

It is used for that purpose in the UK and what has happened is that the UK's form has just been replicated here. But we do not use our forms for that matter, so we are going to delete that. It is only in the guidelines for the forms but that can be deleted. I propose that we delete the whole of that sentence beginning with the words "the main use of" and ending with the words "for credit".

The Appendix – was agreed to and stood part of the Bill.

**HON S E LINARES:**

Mr Speaker on page 65 I presume that we are going to do exactly as we have just done on the amendment, removing the main use of "for credit" in one of the two versions of the register. Would that be possible?

**HON CHIEF MINISTER:**

The hon Member is quite right. If we are going to delete it from page 62 we must also delete it from page 65 where it appears right in the middle of that long paragraph there. The same sentence the main use of the full register down to the word for credit. Exactly the same sentence appears because this is just a different version of the same form.

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

**<u>The Long Title</u>** – was agreed to and stood part of the Bill.

**THE EQUAL OPPORTUNITIES ORDINANCE, 2004**

**<u>Clause 1</u>**

**HON CHIEF MINISTER:**

Just before we start this process, attached to the letter of amendments was a schedule with the amendments on it. Although we shall be conducting this exercise by reference to the annotated version, there are three changes to the schedule, are the hon Members with me? In the letter of amendments, there was a schedule attached with my proposed amendments. I am now going to circulate a new schedule with just three changes on it and I will point those out as we get to them.

**HON F R PICARDO:**
In the marked up copy that has been passed round I note the one passed round to me and I think to Miss Montegriffo and I imagine all the others, we start at 203. Have we only been given the pages that have changes?

**HON CHIEF MINISTER:**

Yes.

**HON F R PICARDO:**

Right. In that case Government Members will also have received from me a letter with a schedule setting out a list of proposed amendments for ease of reference. In fact really there is in some of them that I have put in, they are repetitive throughout the Bill, so once we have debated one of the amendments we get rid of quite a few. I seek an element of guidance because the first amendment that I will move is in relation to the preamble to the Ordinance, although I note that the Clerk starts with Clause 1. The amendment to the preamble is consequential to the amendment which is the last amendment of the Chief Minister which deletes the whole of section 55, which requires consequential amendment in the preamble to delete the reference to also amending the Employment Ordinance by this Ordinance.

**HON CHIEF MINISTER:**

Yes it is an obvious consequential amendment to the amendment of which I have given notice. It will no longer be amending the Employment Ordinance.

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

**<u>Clause 2</u>**

**HON F R PICARDO:**

Before the definition of "detriment" Mr Chairman, there is a definition of "collective agreement", and I think that there I have given notice that one of the references to employer should be a reference to employers, s apostrophe. That is in amendment No. 2 in the schedule to my letter.

**HON CHIEF MINISTER:**

Yes I think we have established and at some stage the hon Member will accept, that punctuation marks are not, I am grateful to him for pointing it out but it does not require a formal amendment.

**HON F R PICARDO:**

In that case where it is just a punctuation mark, I just leave the fact that it is on notice in the schedule that I provided which brings it to the attention of the draftsman.

**HON CHIEF MINISTER:**

The definition of 'detriment' according to the present definition does not include harassment within the meaning of section 8, and that should be sections 5, 8 or 10.

**MR CHAIRMAN:**

5, 8 or 10. Have you got anything on clause 2?

**HON F R PICARDO:**

I agree, because note 3 in my schedule is that in the definition of civil definition connected agreement, there is a paragraph (f) which talks about official trade unions. I think in our law the reference is to registered trade unions, registered under the Trade Unions Dispute Ordinance, so I move that we change the word official for registered there.

**HON CHIEF MINISTER:**

Delete the word "official" for consistency with the third reference in the second line of the definition of collective agreement.

**HON F R PICARDO:**

Yes, I am quite happy with that, because all the other references in the Ordinance are just reference to trade union, so I am quite happy with that.

**HON CHIEF MINISTER:**

I have given notice in my letter to delete the definition of "Member". The entire thing should be deleted.

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

**Clause 3**

**HON CHIEF MINISTER:**

I have moved an amendment which the hon Members can see marked up in page 205 of the loose pages they have. To add the words "equal treatment between persons irrespective of racial or ethnic origin pursuant to Council Directive 2000/43/EC" to be inserted there in the place indicated. In other words, this is one of the places where two of the equality strands have been left out, by omission of the reference to the Second Directive. In sub-clause (3), I have given notice of amendment to delete the words "this Ordinance shall apply to people making harassment and victimisation calls in relation to employment on grounds of" and replace with the words "subject to sub-sections (1) and (2) this Ordinance shall apply to discrimination, harassment and victimisation caused on the ground of".

**HON F R PICARDO:**

I am moving an amendment in relation to sub-clause (4) of clause 3, where there is a reference to "third country nationals". I think really what we are talking about there is non-EU nationals and stateless persons, so I move the amendment that the words "third country nationals" become "non-EU nationals".

**HON CHIEF MINISTER:**

I cannot accept the hon Member's amendment. Third country nationals is the language used in the directive. The Bill applies to whomever it says it applies on its face and does not apply to these people, that is third country nationals and stateless persons in Gibraltar, relating to entry into and residence of third country nationals and stateless persons. I think the point that the hon Member is alluding to is that EU nationals have a right of entry and residence. Therefore if they have a right of entry and residence it is not possible to discriminate against them because it is not possible, there is no need to exercise any decision. Well, that is not strictly true, the right of entry and residence of EU nationals is not unconditional. EU nationals do not have an unrestricted right of entry or residence and therefore there are circumstances in which an EU national may well be a third country national for the purposes of this legislation. Indeed the hon Member, it may help dissuade him, if I tell him, that the directive itself uses the phrase third country national.

**HON F R PICARDO:**

I am aware of that, It is just that I am concerned that the directive is a directive of the European Union which is dealing with the rights and obligations of all the Member States of the Union, to its nationals and the citizens of all the other Member States of the Union. When it is talking of third country nationals it is talking of non-EU nationals. When our legislation is talking

of third country nationals it is not clear who we are referring to as presently drafted because there is no definition of third country national. Now, if what we are saying is that a third country national is a citizen not of a Member State, or a citizen of a Member State who is illegally in Gibraltar, or in Gibraltar not within his rights under the European Communities Ordinance, would that be a third country national? I do not think it would. I do not think it would make that person a third country national. It would simply make that person an individual not entitled to certain rights under the Ordinance. But certainly not a third country national. There is no second country to speak of.

**HON CHIEF MINISTER:**

I can see some logic to the hon Member's argument but the way that I can accommodate his point in a way which is neutral in the sense if he is right it covers it, and if he is not right then I have not caused any damage to the Bill, is to say third country is to say where it says here third country national in sub-clause (4), to add the words "third country nationals and stateless persons within the meaning of the directives". In other words, the phrase third country national and stateless persons means whatever it means within the directive, and then if he is right in saying that the directive does not apply to EU nationals and the court so interprets it, then our Bill will be consistent with that.

**HON F R PICARDO:**

Yes. I have no problem with that. I think that if one actually reads the paragraph which makes the reference to third party nationals in the Journal, it seems to be talking about non-EU nationals. But I have no problem with your suggestion.

**HON CHIEF MINISTER:**

It is reading the paragraph that has persuaded me that there may be some logic with the hon Member's point.

**HON F R PICARDO:**

I am quite happy with the compromise amendment. There is no definition of 'directives' in the Ordinance so we would either now have to insert the definition of directives which refers to both, or refer to the relevant or both directives.

**HON CHIEF MINISTER:**

What we would need to insert there after the words "third country nationals and stateless persons", after the word "persons" open brackets within the meaning of Council Directive 2000/43/EC or Council Directive 2000/78/EC, which are both signed terms, close brackets.

**HON CHIEF MINISTER:**

Yes I think it is arguable both ways it depends whether we take the contents of the Ordinance are for or that the Ordinance itself is singular. The third word in the second line there could be 'is' rather than 'are'. This Ordinance is without prejudice.

**HON F R PICARDO:**

Yes, I agree. I think it cannot be read both ways. I think it can only be read with an 'is'.

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

**Clause 4**

**HON CHIEF MINISTER:**

In clause 4 the hon Members will see that in both sub-section (1) and sub-section (2) I have given notice of basically just moving the words "on racial or ethnic grounds", from one part of the sub-clause to the other to give it its intended meaning. At present it reads "the person discriminates against another person on the grounds of racial or ethnic origin in any circumstances relevant for the purposes of any matter". That is not true. The discrimination is discrimination if on the grounds of racial or ethnic origin that person treats somebody different. And there is the separation of the words "on the grounds of racial or ethnic origin" from the words "that person treats" presently drafted, changes the sense of the two sub-sections.

**HON F R PICARDO:**

In 4(2), I made this point on a number of occasions, it does not relate to a comma. It is just that the draftsman has used the words "can not" on a number of occasions throughout the text. In my schedule I think I have spotted them all and I say that the word should be "cannot", one word.

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

**Clause 5**

**HON CHIEF MINISTER:**

In clause 5 I have given notice that sub-clause (3) should be deleted. In fact it was inserted in error, there is no need for the hon Member, it is just redundant language that should not have been there. It is a drafting error.

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

**Clause 6**

**HON F R PICARDO:**

I have an amendment to move in relation to clause 6(1). Clause 6(1) and in other instances throughout the text we see the words used "he can not show" forget the "can not". The whole phrase "he can not show" appears on a number of occasions throughout the text in very similar circumstances to references also throughout the text to cannot be shown to which is sort of androgynous reference, as this is particularly a Bill relating to non-discrimination et cetera and this particular section deals with discrimination on the grounds of sex, and we could be dealing with discriminations in either direction. I think it is a lot more sensible to use the form that is used almost everywhere else in the text and delete the words "he can not show" and replace it with the words "cannot be shown to".

**HON CHIEF MINISTER:**

I am almost certain the hon Member is not correct. It has got to be shown by him so cannot be shown would have to read cannot be shown by him. It seems an entirely semantic point. I do not think there is the slightest difference in meaning between the two terms. Well no there is, he cannot show as opposed to cannot be shown by him to be is just more words to say the same thing. Is it not?

**HON F R PICARDO:**

Well no, because I think that logically there are four potential instances of discrimination. A man discriminating against a woman, a woman discriminating against a man, a man discriminating against a man because he is a man and a woman

discriminating against a woman because she is a woman. The first sub-paragraph of section 6 deals with discriminations against women and because it is a gender-loaded section, I think the neatest way of doing it is to do that. There is no other reference and no earlier reference in that sub-clause to "he", anywhere in that clause. So it is not a question of him having to prove anything.

**HON CHIEF MINISTER:**

Wherever you use the phrase "shown" the word "shown", one has got to go on and say by him or her. Then it is exactly the same problem. I think that the point that the hon Member is trying to make is that if we say "which he cannot show" well that does not accommodate the fact when the showing has to be done by a woman when she is the perpetrator of the alleged discrimination. But under the Interpretation and General Clauses Ordinance, he means her when the context so requires. Therefore in the case where the perpetrator of the possible discrimination is a woman, that sentence would be read "which she cannot show".

**HON F R PICARDO:**

Let me have one final attempt at persuading the Chief Minister which is to say that the first words of that clause are "a person discriminates against a woman" which is gender neutral and perhaps we could reach a compromise to the effect that the amendment should be "which cannot be shown by that person" to be justifiable irrespective of the sex of the person to whom it is applied.

**HON CHIEF MINISTER:**

Mr Chairman much as I would like to accommodate the hon Member, not every point can be compromised. I really do believe that there is, on this occasion, no merit to his point. If there was I think I have shown him willingness to amend when I think there is. I just do not think it is worth it. In clause 6, in sub-section (2) the hon Member I am surprised, with his legal eye, has not noticed that the reference to sub-regulation which of course is not a sub-division of a sub-section the word "sub-regulation" in sub-clause (2) of 6 should read sub-section. Also in sub-clause (6) of 6, shall we say for consistency, the word "female" to read "woman". In other words, if it says "in this section man includes a male of any age" and then it says "and female includes a female", so the equivalent of man is woman. So it is man and male and woman and female.

**HON F R PICARDO:**

Not only that, there is no references to "female" anywhere else in the section. There are only references to "woman" so it would only make sense to have it if one has the amendment.

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

**<u>Clause 7</u>** – was agreed to and stood part of the Bill.

**<u>Clause 8</u>**

**HON F R PICARDO:**

I noted when reviewing the Bill that the only aspect of discriminations in respect of which we have no clause relating to harassment is in relation to prejudice on the grounds of sex. So I am proposing to deal with that. We have a section relating to discrimination on sex but not a section in relation to harassment on sex. So I am proposing to deal with that, not by proposing the inclusion of a new section, but by simply adding the word "sex or" in front of the words "sexual orientation". So section 8

would then provide for harassments on the grounds of sex or sexual orientation.

**HON CHIEF MINISTER:**

The directive requires the harassment provisions to apply only to sexual orientation. Now I cannot say or explain the logic or rationale of that, but that is the case.

**HON F R PICARDO:**

I think I might have a view on the rationale of that. It must be that the directive deals only with sexual orientation. The issues relating to sex having been dealt with in the older directives which are in the United Kingdom in the Sexual Discrimination Act, which we do not have replicated in our law, as I understand it. Therefore we have provisions in relation to discrimination on the grounds of sex but not in relation to the grounds of harassment. So what I would ask the House to do because I cannot imagine that anyone sitting round the Table of the Committee who would wish there to be freedom to harass people on the grounds of sex not already dealt with in the same way that we have already dealt with all the other discriminations, that we should simply agree the amendment.

**HON CHIEF MINISTER:**

I am told that there is another directive in the pipeline which is not being transposed by these Bills, and which is not yet due, which will deal with harassment on the grounds of sex as opposed to sexual orientation. So the ill is about to be eliminated but the directive has not yet fallen due.

**HON F R PICARDO:**

I appreciate that and I sincerely do thank the Chief Minister for that information, but I will formally move the amendment in relation to this. I would rather we do it, take a vote and in fact a division on that.

**HON CHIEF MINISTER:**

Well, we are not going to vote in favour, not because we oppose the legislating out of harassment on the grounds of sex, but because having given notice that there is a directive that will require to be transposed dealing with it, we want to be sure that when we do it, we do it on terms which complies with the directive and not in any old terms. For example, just by adding sex here. So the Government will deal with the question of sex harassment in the terms of the directive when it comes to transpose that particular directive. That is much more sensible than doing it now here in terms which may not be proper transposition of that directive, with which I have to admit I am not familiar. I could not express a view as to whether the amendment does or does not comply.

**HON F R PICARDO:**

I am not suggesting that the amendment would comply potentially with the directive which I have not seen, because if the Chief Minister is not aware of its provisions I was not even aware of its existence. I must confess that. But I do not think that the inclusion of the word “sex” we must be dissuaded against simply on the basis that it might be slapdash incorporation, because it is obviously not slapdash, a lot of thought has gone into the way that we have prevented harassment in relation to all the other discriminations. All we are doing is including the reference to “sex”, and the amendment is to include the word “sex or” after the words “ground of”.

Question put. The House voted.

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

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

The amendment was defeated.

Clause 8 - stood part of the Bill.

**Clause 9**

**HON F R PICARDO:**

In 9(2) the reference to religion or belief is in sub-section (1), it is not in sub-section (1)(a) so the cross-referencing is wrong and it just needs to be corrected.

**HON CHIEF MINISTER:**

Yes that is correct. There is an error in cross-reference.

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

**Clause 10** – was agreed to and stood part of the Bill.

**Clause 11**

**HON F R PICARDO:**

There is no formal amendment to move in relation to this part or to this section but I want to say something about the way that the sections that follow in this part have been transposed. Now as I said at the First Reading it is obvious that the framework for the transposition of these directives has been the UK's laws on sexual orientation discrimination in the workplace which has very similar provisions, almost identical provisions in relation to the definitions of "victimisation" et cetera. The way they do it there in order to get round the very convoluted language that we have had to have resort to here, is by reference to a person A discriminating against a person B and then they go on within the section to say A does this against B and B does this against A et cetera et cetera. We have not adopted that which makes for very very convoluted language where we are talking about that person and this person et cetera et cetera to such an extent that by the time we get to the end of the clause, I think we end up having to draw a diagram to work out who is who in the discrimination. I flag it because I think it adds to clarity and the Chief Minister may want to consider whether that is something that should be changed perhaps in the future because I do not think we should delay this Bill any longer, whether there is perhaps legislative time to do that. Because it really would make things clearer. Now I am not trying to do either of us out

of a job when we finish our terms in this House, any of the three of us, but I think it really is much clearer in the UK source-code where there are references to A and B. I am not formally moving an amendment.

Clause 11 – was agreed to and stood part of the Bill.

**Clause 12**

**HON F R PICARDO:**

Amendment 17 which I have proposed, deals with sub-paragraph (3) at the very end of it, where there is an error, no sorry where there is a reference to employment for the purposes of private household. Now, I do not think that makes sense. I think that what we are trying to say there is post of employment as home-help or household assistance in private homes. But that is really just conjecture on my part because I cannot find anything in the source which deals with this but I think if that is what we are trying to do then we need to change the language. Because the language which is there at the moment does not really do anything, I think.

**HON CHIEF MINISTER:**

If the hon Member is not careful, not only is he going to want to do the job of the Gibraltar draftsmen but also the job of the United Kingdom draftsmen and perhaps teach us all how to speak English. This is the language of the UK Race Relations Act. I am only a colonial, I only speak English in my capacity as a colonial citizen and I would therefore, with only insufficient authority, have challenged him in his view that the phrase "for the purposes of household employment" means nothing which is what he said. I would have disagreed with him on that and am glad to say that the draftsman of the UK Race Relations Act and the 730 Members of Parliament that legislated that Act, also would disagree with him.

**HON F R PICARDO;**

I am not deterred. As I told him when I spoke on the principles of the Bill, I said that I realised that on some instances I was not just taking on the local draftsmen but also the draftsmen in the UK. I had not found in what I had thought was the source for this, that reference. But I am still concerned that "do not apply to employment for the purposes of a private household" is a phrase that I find difficult to understand. I would invite the Chief Minister to accept the amendment because I think it simply makes it clearer. Perhaps the 73 Members of the Commons were more concerned with Mr Hutton and his whitewash rather than whoever was being employed to whitewash somebody's private home at that time.

**HON CHIEF MINISTER:**

I will not accept the amendment for the reasons that I have given. We do not accept that the phrase is meaningless like the hon Member seems to think. The phrase is perfectly clear to us and our view would appear to be the preferable view given that it is exactly the same phrase that appears in the UK legislation where no one thinks it is meaningless either. So we will not accept the amendment, no.

**HON F R PICARDO:**

The attitude of slavish following of the United Kingdom code which has been the hallmark of today is to continue in that case.

**HON CHIEF MINISTER:**

No, the fact that it is to be found in the UK legislation is corroboration for the first ground which has nothing to do with being a slave, but rather that the meaning of the phrase which he thinks is meaningless is perfectly clear to us all in this House and the preferable view which seems to be ours, given that our view is supported by an Act of the United Kingdom Parliament which has survived the test of time since 1976, and his view is just his unsupported assertion. So it has got nothing to do with being anybody's slave. Look it is possible to disagree with the hon Member's grammatical pedantry without being a slave of anybody.

**HON F R PICARDO:**

This is not an item of grammatical pedantry. I am just simply not as persuaded as the Chief Minister is that simply because Westminster has done it we must do it in the same way. I believe that although the Chief Minister derives comfort from the fact that the phrase makes some sense, and may even have persuaded me that it does not make no sense, certainly I am not persuaded that the proposed amendment does not in fact make it clearer. Although like he, unfortunately, I am still a colonial but I hope that the progress of the constitutional reform proposals within this Parliament will ensure that that is no longer the case.

Question put. The House voted.

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

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

The amendment was defeated.

**HON F R PICARDO:**

I have not looked at the Race Relations Act in relation to this issue so I do not know whether in fact the sources are the same as what we now have in the Bill, but I am moving the amendment that the words "the appointment", because there is no definition anywhere what the appointment is, no reference to appointment, should be replaced by "persons employment" I think on a number of occasions where that appears.

**HON CHIEF MINISTER:**

It is perfectly obvious that the phrase "termination of the appointment" is a reference to termination of the employment. Technically, the hon Member wants to draw a technical distinction between an employee and an appointee. We do not believe that that amendment is required. I accept that the legislation could easily have said what the hon Member has suggested and that would make sense too. But the fact that one can say something in more than one way does not make either of the ways right or wrong. I am willing to introduce amendments, I am willing to accept amendments required in order to make the legislation mean what the Government intends it to mean. I am not prepared to accept amendments simply to introduce language that the hon Member prefers to the

language that has been used, when both have the same meaning. Now that is a perfectly reasonable attitude. Most of the language in this Ordinance could be phrased differently by a different draftsman. That does not say that it is wrong, even if there is a better way to say it, it does not make the way that it has been said wrong. The definition or right of wrong is, is it effective for the purposes of the Government's intention, for the legislation's intention, and if the answer is yes, then the fact that the hon Member may suggest a better way of saying it is not a reason for amending the legislation. Not least because every time that he proposes an amendment we have got to consider whether it has horizontal consequences elsewhere which he may not have considered and we are putting ourselves under the pressure. So for that reason we only contemplate essential, so to speak, amendments.

**HON F R PICARDO:**

Would not the Chief Minister accept that there are appointments which are not employments and there are employments which are not appointments and therefore as this Ordinance is dealing with discriminations principally in relation to employment, that is why I think that we should use the word "employment". Now if the source for this is the Race Relations Act, then that is not just dealing with employment whilst this Bill, well at least certainly this part of this Bill is dealing principally only with employment, and that is why I seek to persuade him to reconsider his view and to use the clearer employment because I think it is, in this instance, not just preferable but necessary.

**HON CHIEF MINISTER:**

Well the Government disagree. Yesterday the hon Member said that judges are people who think that a reasonable man buys his Chronicle in the kiosk downstairs. Well judges are also people of common sense and they interpret statutory provisions in the context in which they are to be found. In the context of sub-section (6) the only possible thing that sub-section (6) could be referring to is to what has been provided in the previous sub-sections of that section, which is employment, it does not speak about appointments. Therefore we do not accept that the appointment is necessary.

Question put. The House voted.

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

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

The amendment was defeated.

Clause 12 – stood part of the Bill.

**Clause 13**

**HON CHIEF MINISTER:**

In clause 13 sub-clause (2)(c) in the third line the word "or" has cracked in when it should be "of".

**HON F R PICARDO:**

In clause 13(6) I certainly seek to persuade the Chief Minister that this proposed amendment, which is my proposed amendment 20, where the words which include that one appear I propose that we instead insert the words "as the woman is employed", because I must confess I have been trying to get my head round what the section means with the present wording and I find it very, very difficult to do so whether or not the source is an unchallenged, accepted Act of Parliament, which include that one to become as the woman is employed.

**HON CHIEF MINISTER:**

Well, on this occasion I am content to accept the hon Member's proposal because although we can see that the words are capable of meaning what they are intending to mean, it is not by virtue of a normal interpretation, I accept it requires a strained reading in order that it should have that effect. Therefore this is a section that could do with more clarity and I agree that the words proposed by the hon Member make the section easier to follow.

**HON F R PICARDO:**

May I just enquire whether this is sourced out of the English Sex Discrimination Act. I think there is an indication, I think the indication is yes.

**HON CHIEF MINISTER:**

The official are here for me and not for him.

**HON F R PICARDO:**

So be it. I am very grateful that he has decided to assist the House.

**HON CHIEF MINISTER:**

No he is not here to assist the House, he is here to support the Minister not the House.

**HON F R PICARDO:**

He has assisted the House anyway, I am grateful because that obviously deals with the point about the slavish colonials never getting it better than the 730 Members of Parliament.

**HON CHIEF MINISTER:**

Mr Chairman if the hon Member prefers I shall accept none of his amendments on that ground.

**HON F R PICARDO:**

For once I think that at eight o'clock in the evening on a Friday one should be allowed……..

**HON CHIEF MINISTER:**

I am giving the hon Member the benefit of a repeat performance in respect of his public statements after the last meeting of the House, where if accepting the hon Member's amendments means that he then puts out public statements saying look how many amendments I introduced, the hon Member can get away with that once or twice. If he continues in that vein by far the easiest and safest course for the Government is not to accept any amendments that he proposes, which would be a pity because on occasions he proposes some very good amendments.

**HON F R PICARDO:**

I will not be deterred from making public statements although I stand duly chastised at this time on a Friday.

**HON CHIEF MINISTER:**

No he is not being duly chastised, duly or otherwise. I am not chastising him. I am saying that he cannot have it both ways. He cannot in this House pretend to seduce the Government into accepting your amendments in order to make it more clear and to be constructive and then the moment the House is finished, go out and slag the Government for having had to accept his amendments, because if that is the approach that he takes to his contribution to legislation in this House, then it follows without chastisement, it follows that by far the safest course for the Government is to accept as few amendments as possible, so that the stick with which he subsequently beats the Government in public, is as thin, short, narrow and painless as possible. That is not to chastise him, it is simply to explain to him the facts of life.

**HON F R PICARDO:**

Sufficient be that I should have a short stick with which to beat them, that is quite enough for me. But the amendments will continue to be put whether or not I decide to issue the statements thereafter because I shall take my own counsel in that respect.

**HON J J BOSSANO:**

In terms of this concept of work of equal value, would the ETB in looking at the registration of contracts itself do anything? Because I know that in the United Kingdom when the concept came in, it expanded enormously the areas which were challenged on sex discrimination grounds on the basis of the concept that there were areas where the vast majority were women mainly, it was mainly in the direction of lower paid jobs being done predominantly by women and I know many of those were challenged.

**HON CHIEF MINISTER:**

Absolutely but that is how it would need to happen. It requires a complaint, a ruling by an industrial tribunal which then sets a judicial precedent. So presumably then other employers learn the lesson and other employees do not have to follow the same route. Once the employment tribunal has made a ruling on when two jobs are of equal weight then and to challenge that is the law as to equality. But the ETB would not at an administrative level do that, it would require the complaint to be lodged, followed through either to the Industrial Tribunal, yes being in employment. The example that he has chosen it would be the Industrial Tribunal.

**HON J J BOSSANO:**

And even then I mean, if that were to happen, which I think is bound to happen sooner or later once this gets established, would then the ETB as a matter of course in monitoring, like they do with the minimum wage in monitoring registration of contracts, would they bear that ruling in mind or not?

**HON CHIEF MINISTER:**

Well I am not sure that this arises from the debate on the Bill. No, the Government have not addressed its mind to it. It may be something that the Conditions of Employment Board takes an interest in but it is not something that we have addressed our minds to as to what degree of interest is the administration going to take in creating a database of rulings and things of this sort is not something that I have given any, I do not suppose that anybody in the Government has, but I suppose they will at some stage.

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

**<u>Clause 14</u>**

**HON F R PICARDO:**

In two places in paragraph 14(4) I would make an amendment. The first word should be "paragraphs" not "paragraph" and that therefore the words after the little reference to sub-section (2) should be "do" and not "does".

**HON CHIEF MINISTER:**

No, I think the hon Member is completely wrong. It is "or", so it is paragraph singular, (a), (b), (c), (d), (f) or (h). Were it to be plural it would have to be "and" not "or".

**HON F R PICARDO:**

Well we have a grammatical debate because I care about the legislation that I am being asked to pass and will continue to have it if you insist. But………

**HON CHIEF MINISTER:**

No but he is wrong.

**HON F R PICARDO:**

No I am just thinking about it, I am trying to factor into my mind. First the sly reference about having a grammatical debate and second what he said. So if he will give me a few minutes without snide remarks, I am prepared to accept what he says.

**HON CHIEF MINISTER:**

It is generous of the hon Member but there is not really any other possibility. The use of the word "or" makes it perfectly clear in the English language that they have been listed individually, and therefore it can only be that, whether he accepts it or not.

**HON F R PICARDO:**

Well look, this morning, or this afternoon actually, I thought that the example he came up with the shopping list for could only be read one way but he used his majority to ensure that we read it another. I actually still am of the view that it is probably better to read it as paragraphs and do even if there needs to be applied individually. So be it. He can continue to use his majority of one, I will not press this because it is a very minor amendment. My next amendment would have done the same in relation to clause 15(4), I will not pursue it.

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

**Clause 15**

**HON CHIEF MINISTER:**

As I have given notice in clause 15(1) to add the words "and in case of where the provisions of section 16" so as to the part of related to such grounds does not apply. Adding those words after the word "origin" where it first appears in sub-clause (1). So, in other words, it is clawing out the cases to which section 16 apply from that. And consequentially on this if we could go to the very first page of the index of sections, arrangement of clauses, although it is not part of the legislation. In item 16 where it says "clause 16", it should be exceptions in the plural not exception in the singular, because the section actually deals with more than one exception. That is in the index, arrangement of clauses at the very front. 'Exceptions' plural it should be.

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

**Clause 16**

**HON CHIEF MINISTER:**

In clause 16 the same point arises in the heading which should be "exceptions" in the heading. Then in sub-section (2) of clause 16 we have let out two of the six strands of equality, religion or belief, and they should be added after the words "ethnic origin,". So the words "religion or belief" should be added there in the third line of sub-clause (2). Then a new sub-section (5) is to be added which means that it is for example not a breach of the discrimination provisions for the Roman Catholic Church to refuse to employ a woman as priest, or those Jewish communities that are more orthodox, would not have a woman rabbi. In other words that they are allowed to discriminate in employment when it is to comply with doctrines of the religion or avoiding offending the religious susceptibility of a significant number of its followers. So that is where the employer, it refers to employment for the purpose of an organised religion, so the employer has got to be for the purposes of the organised religion. It does not allow an ordinary employer to invoke his own religious beliefs to justify the employer. It is where the employer is a religious organisation like a church or something like that.

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

**Clauses 17 to 19** – were agreed to and stood part of the Bill.

**Clause 20**

**HON CHIEF MINISTER:**

In clause 20 I have given notice that in sub-section (1) and (2) the race and sex strands have got to be added in the two places where we have indicated. At page 225 which the hon Members have to follow, that is in the fifth line of sub-section (1) after the

words “ground of” insert the words “race, sex” and in the third line of sub-section (2) again after the words “ground of” add the words “race, sex”.

**HON F R PICARDO:**

I proposed my own amendments in relation to 21, 22, but I have done it assuming that the Chief Minister’s proposed amendment would already pass or has already passed, which is also to include the words “ethnic origin” which would be the only one of the six then left out. I do not know whether that was left out for a particular reason because if we now include the references suggested by the Chief Minister we have got the five strands missing only the sixth strand of ethnicity, which we are habitually dealing with together throughout the Bill.

**HON CHIEF MINISTER:**

We will check that by reference to the language in the directives and perhaps we could come back to clause 20 and move on whilst the draftsman is checking that point. The clause should stand with our amendments and we will revisit it in the context of the hon Member’s amendments when we have just checked the source document. Also in sub-section (6) the word “employer” needs to be added after the words “deferred Member”.

**HON F R PICARDO:**

I think it has actually got to be inserted in quotation marks,

**HON CHIEF MINISTER:**

Yes it is.

**HON F R PICARDO:**

No he has moved it as he has moved all the others to insert the word “employer” in quotation marks. If he wants it in quotation marks in the text, then he should have moved the amendment with double quotation marks. Just saying that for the purposes of the draftsman, do not just include the word in quotation marks there.

**HON CHIEF MINISTER:**

The hon Member will have noticed that in the marked up version it appears in quotation marks. Suggestion for an amendment in sub (1) and (2). The Government are minded to agree to it if he moves it although for reasons that, although the directive does not actually on terms require it, nor is it clear from the language of the directive that it is specifically not intended to cover it. Therefore it would not be as far as the Government are concerned going beyond the clear terms of the directive’s requirements. In other words, the Government would be happy that this particular section should be extended to ethnic origin, it already extends to race after the Government’s own amendment, so to extend it to ethnic origin as well it is fine. Not quite sure I understand the difference between the two anyway.

**HON F R PICARDO:**

I do not either but there are six strands and we were doing it here for five so I will formally move an amendment in relation to sub-clauses 20(1) and 20(2).

**HON CHIEF MINISTER:**

That would be achieved by adding the words “ethnic origin” after the word “race” where they will now appear following my

amendment. So cut between the column and in between "race" and "sex".

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

**Clause 21**

**HON CHIEF MINISTER:**

In sub-clause (8) of clause 21 there is an amendment there to recognise the fact that it is not the Government who approve all and sundry but the Minister or indeed the Governor who could be the maker or approver of a post or office.

Clause 21, as amended, was agreed to and stood part of the Bill.

**Clause 22**, was agreed to and stood part of the Bill.

**Clause 23**

**HON CHIEF MINISTER:**

In clause 23 the hon Members will see that I am proposing to delete sub-clauses (4), (5), (6) and (7) which were there by way of drafting error in the sense that they add nothing to sub-clauses (1), (2) and (3). It is really covering the same ground, it is duplication. In consequence of that, if that amendment is carried, then the existing sub-clause (8) could be renumbered (4) and so on. The consequential renumberings, consequential on the deletion of the existing sub-clauses (4), (5), (6) and (7).

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

**Clause 24**, was agreed to and stood part of the Bill.

**Clause 25**

**HON F R PICARDO:**

This is a section which deals with barristers and in parts mentions chambers. I think there are three amendments to move in relation to this section. They are my amendments Nos. 26, 27 and 28. The first is to include the words "or firm" after the word "chambers" because obviously there are some barristers in Gibraltar that because of our profession practise in the firms and the organisations are not necessarily changes, and in clause 25(5) because pupillage in Gibraltar is not a term identifiable as it is in the UK, just where the words "pupil" and "pupillage" appear, I think because there are now barristers and solicitors rules under the Supreme Court Ordinance which do deal with that concept of pupil and pupillage. The definition is not at large as it is in the United Kingdom in the context of barristers practising in independent practice that the words "and as more particularly provided for under the Supreme Court Ordinance" should be inserted just at the very end of that.

**HON CHIEF MINISTER:**

No I am hoping to persuade the hon Member that his amendments are not necessary because he may have asked himself, indeed I did when I first read the Bill, why are there separate provisions for barristers? The answer is that solicitors unlike barristers are organised into firms, partnerships and partnerships are covered separately. So, for example, why is there not a separate section dealing with accountants because they practise in firms. So there is no need to make any provision for any profession that practises in firms because there is partnerships separately covered. Barristers are a breed unto themselves because they do not practise in firms. The fused profession point which the hon Member made works in the opposite direction. That is to say because our professions are fused, barristers in Gibraltar are partners or can be partners

in firms and then they are covered by the partnership provisions. We have a separate section on barristers to accommodate barristers organised in chambers, I do not know there are any in Gibraltar. I do not know actually if there is a set of chambers which is not a partner. There used to be one when I first started in practice I am not sure it still exists. They may by now have changed their status. But anyway that is the explanation. If barristers were to get together in the sense of a chambers they would be subject to this regime and not to what he and I would have been subject to under our previous firms in both our cases now, which would have been the partnership provisions.

**HON F R PICARDO:**

Right, let me just work that one through. Barristers arranged as partners will be covered by the partnership provisions so there is no need for the inclusion of the word "firm". Barristers not arranged as partners I assume, would not have to register with anyone except with the Supreme Court and would not be registered under the Partnership Ordinance and therefore would be covered under this section.

**HON CHIEF MINISTER:**

Yes and they could be two things, they could be employees or members of the set. If they are employees they are employees and are caught by the general provisions. If they are members of the set or aspirant members of the set being denied membership of the set, then they are protected by these provisions. It is not because one is a barrister that this covers us, it is when one is a barrister not in a partnership or not in employment. Because of course a barrister that is employed by a company is not covered by these particular rules.

**HON F R PICARDO:**

Right so what of a barrister who is an associate in a firm?

**HON CHIEF MINISTER:**

He is an employee.

**HON F R PICARDO:**

In the Chief Minister's.

**HON CHIEF MINISTER:**

Well there is nothing else he can be. Of a firm one is either a partner or an employee or one is as the hon Member now is a consultant.

**HON F R PICARDO:**

No let me just add a nuance to that. I think he will recall from his own practice that, well certainly in the practice that I was involved in before, associates were not employees of the partnership, they were self-employed individuals.

**HON CHIEF MINISTER:**

Then they were not covered by this anyway.

**HON F R PICARDO:**

Yes I am just trying to work it out.

**HON CHIEF MINISTER:**

This is discrimination in employment and partnerships and barristers. If an individual is a self-employed person offering ones services as opposed to ones service to somebody else, one is not in the realms of the Equal Opportunities Ordinance at all.

**HON F R PICARDO:**

No I am satisfied because an associate who works self-employed but contracted to a firm, essentially what we think of as employed lawyers in firms, who discriminated against a secretary, the secretary would have recourse against the partners of the firm because of the vicarious liability

**HON CHIEF MINISTER:**

Or it is the case of the associates employing.

**HON F R PICARDO:**

Okay I am satisfied in relation to my first two proposed amendments there. But I refer the Chief Minister to my amendment No. 28 which deals with the definition of pupil and pupillage.

**HON CHIEF MINISTER:**

I have to confess that I do not understand the meaning or effect of his proposed amendment. This is a definition of pupil or pupillage. Where is he proposing that the words "and as more particularly provided for under the Supreme Court Ordinance", what is more particularly provided for under the Supreme Court Ordinance?

**HON F R PICARDO:**

The definitions of pupil and pupillage because the Barristers and Solicitors Rules of the Supreme Court Ordinance have provided a definition of pupil and pupillage.

**HON CHIEF MINISTER:**

But that is not part of the statutory definition. No this is the definition of pupillage.

**HON F R PICARDO:**

This is now a definition of pupillage.

**HON CHIEF MINISTER:**

No, no, for the purposes of this Bill generally, not for the purposes of the Supreme Court Barristers and Solicitors Rules.

**HON F R PICARDO:**

But what I am saying there could be in our statute books two different definitions of pupil and pupillage when really we are dealing with exactly the same scenario.

**HON CHIEF MINISTER:**

But I do not know whether it is true or not that pupil and pupillage has been more particularly provided for under the Supreme Court Ordinance. I do not know that one way or the other, but if it were so, so what. Why is it necessary to say it here?

**HON F R PICARDO:**

I just think it makes it neater to do so because the reference here is a reference to those terms almost being at large, it says commonly associated with their use. Whilst there has already been a definition of those as to who can and cannot be a pupil and in pupillage. Because of the differences in Gibraltar with the UK about whether one does the vocational course or so one does not do the vocational course.

**HON CHIEF MINISTER:**

I do not think it is appropriate to introduce, the Government would not support the amendment. If the hon Member is right in saying, and I have no reason to doubt him it is just that I do not know, but if the hon Member is right in saying that in order to be a pupil in Gibraltar and to be therefore in pupillage in Gibraltar, there are certain rules to comply with under the Supreme Court Ordinance, then so be it. That remains so. Then in order to be employed as a pupil in Gibraltar one has got to comply with those rules and this Ordinance does not come into effect until one is a pupil. So if an individual cannot become a pupil until one has complied with the rules of the Supreme Court, then one must necessarily have complied with the rules of the Supreme Court before this Ordinance can apply. I do not see how this widens or narrows the definition of pupil.

**HON F R PICARDO:**

If the Chief Minister looks at the definition that there is in the Bill already it says, "pupil and pupillage have the meaning commonly associated with their use in the context of barristers practising in independent practice", which seems to ignore the fact that there is already a statutory definition of it. But if the Chief Minister thinks that that is sufficient then I am simply asking for the addition of words for clarity.

**HON CHIEF MINISTER:**

I do believe that it is sufficient, not least without wishing to be accused again of being anybody's slave, because in the UK where the pupillage is also subject to rules, different rules and regulations, this is the definition of pupil and pupillage in their Race Relations Act. So they share our view, which in fact is the other way round given that we have borrowed their language, that for the purposes of the Equal Opportunities Ordinance it is not necessary to list, it is like saying when one talks about doctors, every time one says a doctor meaning and then go on to describe the qualifications that a doctor has, well if one cannot be a doctor unless one has got certain qualifications, when we say a doctor practising in Gibraltar we do not then have to go and say doctor practising in Gibraltar that is registered under the Medical and Registration Ordinance, because one cannot practise as a doctor unless one is registered under the Medical Professions Ordinance. So it is just an unnecessary identifying description which is unnecessary. So if the hon Member will not press it we do not need to discuss it.

**HON F R PICARDO:**

No I will not press it but the last example that he gave is perhaps not the best because I think he will find in most Ordinances where we refer to doctor or to pharmacist or anything like that, they will include a reference for them being registered under the Medical Registration.

**HON CHIEF MINISTER:**

Doctor practising in Gibraltar not doctor.

**HON F R PICARDO:**

There is usually a cross-reference to their registration. But in any event look, at the end of the day there are more important things to concern ourselves with to debate.

**HON J J BOSSANO:**

Can I just say something about the previous one, clause 4. In the last line of that there is a definition of police officer meaning any Member of the Royal Gibraltar Police. I do not quite understand how it is that in clause 4 we say sections (1) to (3) applies to the GSP as they apply to the RGP. In such case the Commissioner shall be read as the person or body responsible for the management and control when in clause (1) to (3) it applies to police officers and in the definition in the last line to be a police officer one has to be a Member of the RGP.

**HON CHIEF MINISTER:**

I do not think the point which the hon Member is making which I think I understand is a valid one because sub-clause (4) does not refer to police officer. It says sub-sections (1) to (3) apply to the Gibraltar Services Police as they apply to the Royal Gibraltar Police and in such a case the Commissioner, in other words instead of the Commissioner of Police who is deemed to be the employer of policemen in the RGP, shall be read as I think Superintendent is the title that they have, or body responsible for the management and control of the Gibraltar Services Police because the status of the Superintendent in relation to the Services Police is not equivalent to the Superintendent. The Superintendent is subject to the instructions for example of the Commander British Forces and the Military Command, whereas the Commissioner of Police is not responsible to anybody. In other words the Commissioner of Police has nobody above him.

**HON J J BOSSANO:**

No, that has nothing to do with it. The point I am making is if I take sub-section (5) and it says in this section police officer means any Member of the Royal Gibraltar Police.

**HON CHIEF MINISTER:**

Oh I see the point he is making.

**HON J J BOSSANO:**

Then it would mean in (1) it says the holding of the office of a police officer that is any Member of the Royal Gibraltar Police shall be treated as employment by………

**HON CHIEF MINISTER:**

I see the point the hon Member makes.

**HON J J BOSSANO:**

Yes the body or person responsible for the management and control of the GSP.

**HON CHIEF MINISTER:**

No, we can amend, I see the point that he is making. We could add after “Royal Gibraltar Police” “or Gibraltar Services Police as the case may be”. In other words if we define police officer as necessarily being a member of the Royal Gibraltar Police then how does one read sub-sections (1) to (3) as applying to security policemen. We could correct that by adding it to the

definition of police officer, the words “means any Member of the Royal Gibraltar Police or Gibraltar Services Police as the case may be”.

**HON F R PICARDO:**

And we have got to add a definition of “Gibraltar Services Police” because there is a definition of “Royal Gibraltar Police” in the Ordinance.

**HON CHIEF MINISTER:**

There is no way of defining it. The Royal Gibraltar Police is established by Ordinance and the Ordinance establishes a corp of men which it then says shall be known as the Royal Gibraltar Police. The Gibraltar Services Police is not subject to any such incorporation so to speak, it is just a more employees of the Ministry of Defence who are dressed in uniform as opposed to sitting behind desks. See what I mean, it is not capable of definition and therefore it is just a phrase understood to be the Gibraltar Services Police.

**HON F R PICARDO:**

We have had ding dongs about whether bodies established by Ordinance should be defined or not but he is right to say that it is not a body established by an Ordinance but it is mentioned in other Ordinances is it not. It is mentioned for example in the Criminal Offences Ordinance, sorry the Criminal Procedure Ordinance, given the same powers as the police are they not.

**HON CHIEF MINISTER:**

Well there is no specific definition of it. There we can see the amendment is not necessary.

**HON F R PICARDO:**

Well in fact I think there is a specific definition of them there, or of the Gibraltar Police anyway.

**HON CHIEF MINISTER:**

I think the Ordinance is clear, in Gibraltar everybody knows what the Gibraltar Services Police is.

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

**Clause 26**

**HON CHIEF MINISTER:**

In sub-section (2) of 26 I have added as the hon Members will see from their marked up copies, on any ground with respect to which this Ordinance applies. It used to read that subject to harassment without making it clear what were the strands of equality to which harassment applied and it applies to all of them.

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

**Clause 27** – was agreed to and stood part of the Bill.

**Clause 28**

**HON CHIEF MINISTER:**

In sub-clause (2) again it is the same amendment, adding after the word “harassment” “on any ground in respect to which this

Ordinance applies" to make it clear that it applies to all strands of equality.

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

**Clause 29**

**HON CHIEF MINISTER:**

In clause 29 in sub-clause (2 we have moved an amendment to delete the words "paragraphs (a) and (b) of sub-section (1)" and replaced with the words "this Ordinance so far as they relate to sex discrimination". So it will now read, "the provisions of this Ordinance, not just the provisions of just paragraphs (a) and (b) of sub-section (1), so the provisions of this Ordinance so far as they relate to sex discrimination do not apply to the admission of pupils to any establishment". In other words, the ability to discriminate on the grounds of sex when one is a single-sex establishment is not limited to the provisions of paragraphs (a) and (b) of sub-section (1) but rather to the whole Ordinance, that is the effect of the amendment. That of course is single-sex education as such. In 29(2)(b) there is the word "a" has been omitted in front of the word "particular". And in sub-clause (4) the definition of responsible body which appears in the published Bill should be replaced with the shorter definition set out there in the marked up copy, namely responsible body includes a person or body who is responsible for education and establishment in Gibraltar. I suppose that should be who or which. The amendment is OK I am assured by the hon Member's previous answer but it makes perfect sense.

**HON F R PICARDO:**

Then it must be right.

**HON S E LINARES:**

Last time I mentioned this I was ostracised by the Chief Minister because I did not know or was ignorant of the English language.

**HON CHIEF MINISTER:**

The hon Member is not a headmaster, previous or otherwise.

**HON S E LINARES:**

No but I was right. My headmaster was right and so am I.

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

**Clause 30**

**HON CHIEF MINISTER:**

In clause 30 we are deleting the word in sub-section (2), the first line, the word "to" is to be deleted on the second occasion that it appears on the first line. Just in front of the words "a person" it is to be deleted. In sub-clause (3) the word "certain" should be replaced with the word "some". I think the word "certain" is capable of meaning what it is supposed to mean but I think the word "some" makes it much clearer. In this section public authority includes any person "some" of whose functions are functionable of a public nature as opposed to includes any person "certain" of whose functions are functionable of a public nature. It is not an enormous change but I feel that it is needed, and in sub-section (5) we are deleting the reference to sub-section (2)(a) and that should be instead a reference to sub-

section (3). Sub-section three in brackets that is. I do not know why the word sub-section has been deleted only to be replaced, we might just have done deleting the (2)(a) and replaced the (2)(a) with (3), but still.

**HON F R PICARDO:**

That is one of the differences between the original schedule and this schedule.

**HON CHIEF MINISTER:**

Yes, I beg his pardon, it is indeed. That is the first the other point is that one can read them at point 21 and point 23 in my schedule are the other two, where the amended schedule is consistent with the original. That is one of them.

Clause 30, as amended, was agreed to and stood part of the Bill.

**<u>Clause 31</u>** – was agreed to and stood part of the Bill.

**<u>Clause 32</u>**

**HON F R PICARDO:**

I am going to make a point in relation to this clause which covers my points 29 to 36 and I will not move them all together but they really are essentially the same point. The reason that I make them is because from clause 32 through clause 33 and 35, clause 34 is only a clause dealing with exceptions not dealing with the creation of new rights, we are dealing only and I think I should also say clause 30 which I did not spot last night when I was preparing these, we are dealing only with the strands of discrimination of race and ethnic origin. Now, I do not think that we should do that. I think that we should move on to include, as we have in other places in the Bill, all the discriminations covered by the Bill by saying "discrimination on the grounds in respect of which this Ordinance applies". Now, I foreshadow the reply that will come from the other side which is that Directive 2000/43 which is the one that deals with race or ethnic origin, has a scope clause which includes, and the scope clause is Article 3, little sub-paragraphs (a) to (d) which are identical to those in Article 3 of Directive 2000/78/EC which deals with the framework and deals with all the areas in respect of which we have to prevent discriminations and then it has an extra four sub-paragraphs.

So this Directive which deals with implementing the principles of equal treatment between persons irrespective of racial or ethnic origin, has eight limbs, eight areas of scope, where we have to prevent discrimination. The other directive which is the directive that deals with the framework for all discriminations has only the first four of these eight and none of the other four. What we have done in our Ordinance is therefore what the directive requires us to do in relation to racial and ethnic discrimination, which is to deal with all eight and what we have done is to, in compliance with the obligations under the framework only deal with the four. Now because there is no dispute between us that all the discriminations in the whole framework of the directive are odious, I would move that we immediately cover all the discriminations with those parts of sections 30, 32, 33 and 35 that we are going to deal with. Just for the purposes of the debate being clearer, those which are the ones that deal with the limbs in the directive on social protection including social security and health care, social advantage, education and access to and supply of goods and services which are available to the public including housing, are dealt with in our Ordinance in the transposition in relation to public authorities in part, to the provision of goods, facilities and services under section 32 to

the disposal of management premises and to the consent for assignment or sub-letting. Now why is this important because frankly why would we wish to allow the provisions of goods, facilities or services to be open to discrimination on the grounds of sex, sexual orientation, religion or belief. Why should somebody when deciding to whom to rent premises be able to discriminate on the grounds of sex, sexual orientation, religion or belief, and why should somebody acting as a landlord just consenting to the right of the tenants to assign his tenancy, which is what section 35 deals with be able to allow that decision to be infected with discrimination on the grounds of sex, sexual orientation, religion or belief. If there is a good reason for it I might be persuaded but at the moment I really think that we should be making the amendments in that way, because although we take the view in this House that where there is a cost to our community or our society in relation to the transposition of directives which we feel we cannot meet, we should certainly go down the route of limiting ourselves to the transposition that we are obliged to make. But when we are dealing with policies of social issues such as this, I see no reason why we should not immediately move to make those amendments to the clauses.

**HON CHIEF MINISTER:**

No Mr Chairman, I regret to say that the Government will not be supporting the hon Member's amendment. I made it clear to the hon Member at the debate on the Second Reading that the Government were not willing to move beyond the requirements of the various framework directives. The Government simply have not given sufficient consideration to the implications throughout the community, both positive and negative, of extending the strands of equality to the other strands of equality beyond these two in this section to all the goods and services. In other words, to outlaw discrimination on all the six strands for all goods and services premises issues when most of Europe has not done so and certainly the United Kingdom has not done so, and to expect us in the context of this debate in this House, to do all the thinking about what the implications of that is, I do not think Gibraltar can be at the forefront of social engineering on this broad brush wide scale basis and if Europe and the United Kingdom that so much believe that they are at the forefront of politically correct social engineering have not yet done so, it must be for some rational reason which I am not about to fall foul of in one hasty moment at half past nine on a Friday night in the context.

I said to the hon Member at the Second Reading that there are types of discrimination in respect of certain strands of equality that are not covered by the Bill because they were not a requirement of the directive, this Bill is about complying with the directive obligations. It is not about wider or deeper social engineering of a domestic voluntary policy kind. So for all those reasons the Government will not extend at this time and in these circumstances the effects of this legislation to all the strands in respect of all the discriminations and harassments which is (a) not a requirement of the European Union, (b) is not even the law in the United Kingdom, which is a more sort of open and advanced society in that respect than Gibraltar is, and (c) because the Government have simply not had an opportunity to consider the consequences and implications, either for themselves or for others in the private sector, of doing what we would be doing if we accepted the hon Member's amendments. So for all those reasons I do not think it would be responsible for the Government to simply write in such a large broad brush stroke, what the hon Member has suggested in the form of six words I think he will acknowledge, is a massively wide and broad piece of social engineering and that cannot be responsibly done at the stroke of a pen without careful consideration of the ramifications and implications of doing so. So we will not support the amendment.

**HON F R PICARDO:**

Frankly I impute to all the Government Members as I impute to all Opposition Members without question the fact that all of us

have taken the small not massive step forward of considering all the discriminations that we are dealing with odious in any event and none of us I think would accept that any employer or anybody else should perpetuate any of these discriminations against anybody in any other area. I am imputing that belief to all of us.

**HON CHIEF MINISTER:**

No, the hon Member should speak for himself. Not all discrimination is necessarily odious. Certain types of discrimination may be odious in respect of certain activities but less odious in respect of others. For example, the hon Member has invited the Government to make it the law of the land that one cannot discriminate against somebody on matters of letting property on the grounds of the proposed tenants sexual orientation. Well that is a very bold brush stroke because if one lives upstairs and wants to rent the flat downstairs, one may not fancy the idea of having gay relationships going on downstairs. It is just an example. It is something that we might do but it is something that has to be considered and has to be done more slowly. It is not frankly as odious to everybody, it is not as odious to everybody to discriminate on those grounds in those circumstances as it might be for example, to discriminate against somebody in his employment simply because of the colour of his skin. Different people have different moral positions when it comes to this vexed question of discrimination and what tends to be the case is that the laws of countries tend to reflect the lowest common denominator or perhaps the highest common denominator that consensus has reached. In that exercise Gibraltar normally is a bit further behind rather than in front of the sort of Scandinavian countries which tend to be the ones who trail blaze on this, followed usually by Holland and then some time later by the United Kingdom and then eventually by the Southern European countries always hold out for longer on, I do not know on what grounds, cultural grounds sometimes. That requires, before something can be made a legal requirement, I think there has to be a process of cultural assimilation which is takes place in much slower order than the hon Member does with his pen in the context of this amendment. All I am saying really is that how odious a discrimination is in relation to the different situations in life and the different strands of equality vary between strands, between situations and between people. Though there is not a common denominator of view that would entitle him to say that everybody in this room finds odious, all the forms of discrimination described in this Bill apply to all six strands of discrimination. I think there would have to be a broader process of social consultation, a broader debate in a different context, I think with more notice than can be had with the notice of amendment that we have had in this. It would simply not be right and we will pass this first opportunity to be as socially bold as the hon Member has invited us to be. But I have no doubt that at some stage we shall all find ourselves debating these issues here again.

**HON F R PICARDO:**

Well, I gave way because the Chief Minister rightly wanted to come in on something which I had attributed to the Government. I do not know that he said that his side of the House does not believe it particular odious to discriminate as regards sexual orientation, I think he has just said that to an extent that our society may not generally consider that odious. We have different views perhaps in that respect because I actually………

**HON CHIEF MINISTER:**

No Mr Speaker I am perfectly happy to make my own views known. Look I do not find peoples' sexual orientation in the least bit of interest or concern to me and I certainly do not find it odious. I have friends that are gays I will hope to continue to have friends that are gays, I find it in no way offensive. But that is not to say that somebody having a preference not to have this in their own property, that that is not necessarily odious

discrimination. The fact that I have a view about whether homosexuality and sexual orientation does not put people who do not have my view, liberalish views on that issue, in the same category as people who are racially bigoted. The question of sexual orientation has not yet acquired that depth and breadth of social acceptability that racial discrimination has obtained, or that sex discrimination has obtained and all these various different strands of equality are at different stages of social acceptability. That is all that I am saying and it is not possible to deal with them all in one broad brush stroke. I have no doubt that at some stage in the future sexual orientation will be as entrenched and as established and as accepted as today is racial or sex discrimination. But that is not yet the case today. That is the only point I am making.

**HON F R PICARDO:**

I do equate discrimination on any of the six strands in whatever context with odium, but I think it is important to say the Government are not being asked simply to broad brush make this legislation in relation to the other issue which is what the social cost could be. It is clear from the Bill and from the directives in particular, that nothing we do in relation to these six strands affects the right to have rules in place which relate, for example, to nationality. That is why although there is a reference to a freedom for discrimination on the grounds of social security for example, I do not think we have a problem in doing it which is going to cost us money, because the rules in social security are based already on issues of nationality. But I would ask the Chief Minister two things having accepted, I would ask him to turn his mind to two things. First of all in relation to these sections that I am speaking about, we are not just excluding sexual orientation which is the particular example that he has chosen, but we are also excluding from discrimination or from the protection from discrimination one of the areas which he himself has just said does enjoy general approval in relation to its non observance which is sex, discrimination on the grounds of sex. At the moment, as the sections are drafted, they only apply to prevent discrimination in relation to race or ethnicity. Could he at least turn his mind to the six strands, and though he might tell me that he is not prepared to proceed in relation to sexual orientation, would he tell me that he is prepared to include references to sex, religion or belief? Because I frankly cannot understand why somebody would not want to have somebody in their building who is not of a particular sex. That seems to me as ridiculous as not to employ subject to the exceptions, somebody because of a particular sex. In any event whatever he does today, will he undertake to review whether these inclusions should be made sooner rather than later, perhaps in the exercise of the obligation under the directive which does not require transposition but is an obligation under the directives to continue a dialogue with social groups that represent the minorities.

**HON CHIEF MINISTER:**

I will neither accept the amendment now nor will I undertake to prioritise a review of the extensions. The Government will do no such thing. The Government will introduce such legislation as and when we decide it is politically and socially opportune to do so and appropriate to do so and not in response to any invocation by the hon Member that we should do so. This is not an area in which we have a manifesto commitment, I am not sure that even they accepted a manifesto commitment to in this area, I seem to recall they had a manifesto commitment to introduce the directives, which is what we are doing today. I do not remember reading in their manifesto that they had a commitment to do what they are inviting me to do today. So I will neither do it at such short notice, for the reasons I have already explained to him at length and will not repeat, nor will I undertake to make this a Government policy priority by looking into it with a view to reviewing it but as I said before to him earlier, I have no doubt that all of these issues at some stage in the future will arise but I will not accept any stricture to accelerate that process simply because the hon Member believes that all discrimination is odious.

**HON F R PICARDO:**

The Chief Minister started his intervention this time by saying that he will do it when it is socially and politically opportune, which tells me that being politically opportunistic is not necessarily of his agenda. Now, yes we did not have any specific commitment in our manifesto in relation to this, he is absolutely right, but like he, when we ask him questions about his manifesto, we are not answerable in this House to our manifesto. He has not answered one of the issues which I put to him which was this. Will he nonetheless maintain in the review which he says he will not do, at least the dialogue which the directive requires him to maintain with the special interest groups referred to, to keep this issue at least under the review. Let me give notice that even though the Chief Minister has indicated that he is not going to accept the clause, on these clauses because of their importance, certainly in my view and in the view of Opposition Members and because these discriminations whether their prohibition be prescribed by directive or otherwise, are odious and there is absolutely no other way to put it in my view, we should at least go to the vote and the Government should use their majority to defeat these amendments.

**HON CHIEF MINISTER:**

The Government will happily use their majority to defeat the amendment. I do not know why he thinks that putting it to the vote is somehow something uncomfortable for the Government but I have spent three quarters of an hour explaining that the Government will use their vote to defeat the majority. He has asked me for a personal assurance that I will continue a dialogue with anybody, I am not familiar with the terms of the directive that he quotes as requiring a dialogue, I will certainly not give a personal assurance to begin or to continue a dialogue with anybody. What I can do is give him an assurance on behalf of the Government that the Government will comply with any obligation that it may have under any directive to conduct a dialogue with whoever it is obliged to conduct a dialogue with. In other words, we conduct dialogues with many people voluntarily but if the hon Member is referring me to a legal obligation, the Government will comply with that legal obligation but not necessarily me personally. I doubt very much that the directive says that the Chief Minister must personally conduct the dialogue. The hon Member asked me for a personal undertaking that I would conduct the dialogue and the Government will. I think the Government does. I am not aware of the directive, I shall make it a point in finding out what directives.

**HON F R PICARDO:**

Articles 13 and 14 of the Directive 2000/78/EC.

**HON CHIEF MINISTER:**

Well if there are legal requirements for some arm of Government to conduct dialogue with some party, then certainly the Government will comply with them.

**HON F R PICARDO:**

I move the amendments in the terms of my proposed amendment No. 29 to amend clause 32(1) in the third line deleting the words “on the ground of race or ethnic origin” and inserting therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The House Voted.

For the Ayes: The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares

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

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

The amendment was defeated.

Clause 32, stood part of the Bill.

**Clause 33**

**HON F R PICARDO:**

In clause 33(2) delete the words “on the ground of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The house voted.

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

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

The amendment was defeated.

**HON F R PICARDO:**

In clause 33(3) delete the words “on the ground of race or ethnic origin” and insert therefore the words “any grounds in respect to which this Ordinance applies”.

Question put. The House voted.

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

For the Noes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares

The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

Clause 33, stood part of the Bill.

**Clause 34**

**HON F R PICARDO:**

In clause 34(1) delete the words "on the grounds of race or ethnic origin" and insert therefore the words "any grounds in respect to which this Ordinance applies".

Question put. The House voted.

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

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

The amendment was defeated.

Clause 34, stood part of the Bill.

**Clause 35**

**HON F R PICARDO:**

In clause 35(1)(a) delete the words "on the ground of race or ethnic origin" and insert therefore the words "any grounds in respect to which this Ordinance applies".

Question put. The House voted.

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

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

The Hon R R Rhoda
The Hon T J Bristow

The amendment was defeated.

**HON F R PICARDO:**

In clause 35(1)(b) delete the words "on the ground of race or ethnic origin" and insert therefore the words "any grounds in respect to which this Ordinance applies".

Question put. The House voted.

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

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

The amendment was defeated.

**HON F R PICARDO:**

And finally, in clause 35(2) delete the words "the grounds of race or ethnic origin" and insert therefore the words "any grounds in respect to which this Ordinance applies".

Question put. The House voted.

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

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

The amendment was defeated.

Clause 35, stood part of the Bill.

**Clause 36** – was agreed to and stood part of the Bill.

**Clause 37**

**HON CHIEF MINISTER:**

In clause 37 a small amendment at sub-clause (2) to delete a superfluous word. tThe word "applies" after the word "Ordinance" makes no sense in its meaning and has found its way there.

Clause 37 – as amended, was agreed to and stood part of the Bill.

**Clause 38** – was agreed to and stood part of the Bill.

**Clause 39**

**HON CHIEF MINISTER:**

In clause 39 I have proposed an amendment to delete the section as it currently stands which is headed "Exception for national security" and replace it with a section that is headed "Exception for public security" and which covers wider grounds. It now reads, "This Ordinance shall be without prejudice to any statutory provision or rule of law relating to public security, the maintenance of public order, the prevention of criminal offences, the protection of health or the protection" of the rights and freedoms of others".

**HON F R PICARDO:**

I would like to make a simple point that certainly I will not be voting in favour of this clause because I do not understand why we need to make the exceptions wider and I think that applies, no for me to support this would fly in the face of my earlier amendments. So I take the view that the exceptions should be as narrow and limited as they possibly can be.

**HON CHIEF MINISTER:**

The hon Member misunderstands the animus, the sentiment behind the amendment. The sentiment behind the amendment is not too widen the exemptions so as to narrow the protection against discrimination. The animus, the sentiment of the amendment which incidentally follows the language of the directives, is that these are genuinely issues which need to be saved. In other words one cannot allow the rules against discrimination to result in the commission of criminal offences, or to prejudice public security, or to result in breaches of public order, or to put at risk public health. These are not things that the Government say well let us see how we can narrow the protections. He may still not wish to support the amendment but I just wanted to explain to him that the sentiment of the amendment is not to carve out as much ground as possible from the terrain of the anti-discrimination regime but rather to replicate in the Bill what the directive itself says. This language is drawn directly from the directives.

**HON F R PICARDO:**

The problem is that the Chief Minister himself started moving the amendment by saying that it made the exemptions wider. Now I cannot for the life of me understand, I mean I can understand issues like even public order, prevention of criminal offences I did not think was covered in any event before, and protection of public health and the rights and feelings of others. I do not know how we need to limit the protection against discrimination for the purposes of public security but certainly this language which is being proposed now is more directive language than the language of national security, so I am not imputing it to him to want to extend the ambit of his ability, but I frankly prefer the wording of national security because I think that is much narrower. So this amendment does not enjoy this.

**HON CHIEF MINISTER:**

Fine but the hon Member should not think that the directive refers to national security which I have chosen to define in this wide way.

**HON F R PICARDO:**

No, I accept that it is the language of the directive.

**HON CHIEF MINISTER:**

The language of the Bill is in Article 2 of the directive.

Clause 39, as amended, was agreed to and stood part of the Bill.

**Clause 40** – was agreed to stood part of the Bill.

**Clause 41**

**HON CHIEF MINISTER:**

Clause 41 is the section where throughout it there has been an omission of a reference to race or ethnic origin and it is inserted in all that multitude of places.

The amendment was agreed to.

**HON F R PICARDO:**

In clause 41(1), delete the words "reasonably appears to the person doing the act that it prevents or compensates" and inserting therefore the words "is reasonable to prevent or compensate". Ditto my amendment in relation to clause 41(2) and ditto my amendment in relation to clause 41(3), and that has the effect of imputing the views of the man who buys his Chronicle at the Piazza.

**HON CHIEF MINISTER:**

Well one advantage of retired judges is that their rulings no longer bind. Well their current rulings no longer bind. Mr Chairman, we have considered this particular proposal of the hon Member at some length because were the words capable of meaning what he asserted that they meant but frankly we do not believe that they are capable of meaning that, still less do we think they are capable of resulting in a bigot's charter which I think were the words that he used in describing them. And the reasons why Mr Chairman we do not share his views are the following. First of all positive action, and I think he would accept this I am just adding it to the explanation for the purposes of completeness not because I do not think he acknowledges it. First of all positive action is necessarily a matter of judgement initially for the actor. I mean any regime that allows for positive action necessarily is something that has to be judged on in the first instance by the actor. Secondly, it is not subjective, and this was his first and most serious criticism of the matter, it is not subjective. The appearance has to be reasonably held by the actor, by the person. It says "where it reasonably appears to the person". That is objective not subjective. In other words, it has got the appearance to the person doing the act that it prevents or compensates, that has got to be a reasonably held view, not a subjectively unreasonably held view. Therefore we do not accept the hon Member's under basic premise that this places the definition of reasonableness in the control of the actor, because the reference to where it reasonably appears to the person is to be assessed by somebody who is adjudicating on a complaint, because of course, that is the third limb why we do not think his amendments are necessary. Somebody who is the victim of this alleged bigot that the hon Member fears is going to crawl out of the woodwork, can complain, and then either the

Industrial Tribunal or the Supreme Court judge whether it was reasonably held by an objective standard not by a subjective standard. So we do not accept that it is subjective. In addition to those three reasons, which we think are themselves definitive, we are very reluctant to depart from the UK's language in an area of law which is bound to be much litigated about because then we lose the benefit of the body of UK common law and jurisprudence in interpreting these words. So for those four reasons which I hope the hon Member will recognise even if he does not agree with them, at least show that we have taken his observation seriously and thought about it. We do not believe that the amendments are necessary not because they would not be necessary if the hon Member's interpretation of the language were right, if the hon Member's interpretation of the language were right then the amendment would be necessary. But we feel that his interpretation, his judgement of the need for these amendments are based on a false premise. Namely, the view that this is subjective rather than objective as to reasonableness. It is not subjective it is objective and it is to be tested by the court and it is a subject matter on which there is already established Case Law.

**HON F R PICARDO:**

Let me start with his last point first because it was the one really that concerned me in raising the issue. I am not one to slavishly follow the UK code when we are transposing the directives but I do recognise the benefit of having a code that uses the same wording when we are dealing with issues that are going to be broadly litigated, and that was one issue that concerned me also when I was raising this. I did not have time to research whether there was any case law which established this and I was dealing with it simply on the face of the Bill. I will say this, I do not think that the point is dealt with by saying that the reasonably imputes the objectivity because I think there is still too much about the mind of the individual. I think we have done enough by raising it and debating it to show that the intention of this Parliament is that the issue be dealt with objectively by the tribunal and that the tribunal be free to impute the standard of reasonableness.

**HON CHIEF MINISTER:**

This would be a worse than meaningless provision if it were purely subjective.

**HON F R PICARDO:**

That is why I was concerned. I was concerned that it could be given that interpretation but we agreed that it must be objectively determined whether the discrimination is reasonable.

**HON CHIEF MINISTER:**

Like everything else covered by this Bill somebody engages in behaviour. No one can stop the behaviour, somebody can then complain about the behaviour and then the tribunal or the court judges whether the behaviour was or was not unlawful under the terms of the Bill. Section 41(3) reads as follows, *"Nothing in this Ordinance shall render unlawful any act done by a trade organisation within the meaning of section 18 in or in connection with encouraging only persons of a particular religion or belief or sexual orientation to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to religion or belief or sexual orientation suffered by persons of that religion or belief or sexual orientation who are, or are eligible to become, members."* It is therefore, I think, intentionally limited although the point has been researched. It is therefore I think intentionally limited to those strands of equality where there are lobbies for it. Do you see what I mean? It is saying………

**HON F R PICARDO:**

Yes but cannot reach a social conclusion on whether there is a lobby for the others.

**HON CHIEF MINISTER:**

Adding acceding to the hon Member's request is to add to the permissible forms of discrimination.

**HON F R PICARDO:**

Positive discrimination by a trade union to bring about.

**HON CHIEF MINISTER:**

Well positive or negative it is discrimination.

**HON F R PICARDO:**

Trade organisation.

**HON CHIEF MINISTER:**

It is discrimination

**HON F R PICARDO:**

This is to promote, this is an inclusive.

**HON CHIEF MINISTER:**

To see how all discrimination is not odious.

**HON F R PICARDO:**

Absolutely. It is odious that he does not want to include it here because it is for a positive inclusion in a membership that the discrimination is positive here. That is why I think it should cover all. The equivalent is regulation 26 of the Sexual Orientation Regulations in the UK, which just deals with sexual orientation.

**HON CHIEF MINISTER:**

This is the problem that we have. That the reason why this paragraph is limited to religion or belief or sexual orientation, is that it is only in the UK law dealing with those two strands of inequality that this provision exists. In the UK law dealing with the other strands of inequality, race, ethnic origin, it does not exist. It is not a requirement of the directive, it does not exist in UK law except in relation to religion, belief or sexual orientation. I can see a certain logic to that. I cannot frankly right now think of any harm of extending it to other things but it would not follow anything that exists anywhere else, in effect what we are talking about is trade organisations. Trade organisations saying, come and join our gay section. Well I suppose one can add, come and join our women or men's section, come and join our ethnic but we are not supposed to be encouraging ethnic division of society into its racial origin, there is no point.

**HON F R PICARDO:**

The Government are supposed to be encouraging it to prevent or compensate for disadvantages linked to it.

**HON CHIEF MINISTER:**

Yes, I am being advised that if we added for example "race" to this or "ethnic origin", one could have organisations inviting people to come and join their white section or their black section.

**HON F R PICARDO:**

No but that, frankly with respect, is what we are doing in the whole Bill in relation to everything. We are not saying anywhere what the races are that are to benefit or not to benefit, what the ethnic groups are that are to benefit or not to benefit. One assumes that they must be those races or groups which are in minority.

**HON CHIEF MINISTER:**

No, no, the positive discrimination provisions in this Bill do not permit positive discrimination in favour of the majority as an indirect means of discriminating against the minority. It is precisely the point that he made yesterday.

**HON F R PICARDO:**

Therefore the argument that the Chief Minister has just put about driving the coach and horses over, with respect to whoever it was that advised him it is absolutely erroneous, because this is a section on positive discrimination and therefore it can only be to the advantage of the minorities' respect.

**HON CHIEF MINISTER;**

Well, Mr Chairman, it is not a requirement of the directive. I am just trying to assess the extent to which it is safe at such short notice to, well to consider it. I am not sure it does make sense but because it has got to be again, it is the same argument I used against him the other time which I am now using for him, where it reasonably appears to the organisation that introduces objectivity which can be assessed by a court or a tribunal, which would have to consider whether it could objectively, that is reasonably, does compensate or prevent for disadvantages linked for those. On that basis it cannot be abused. It is not a requirement of the directive.

**HON F R PICARDO:**

Can the Chief Minister see why it could be, it is a positive………

**HON CHIEF MINISTER:**

No I do not. I do not. I do not see that, I see the symmetric logic but I do not see the social logic. I can see the social logic of these two but not of the others. But fine, the fact that I do not see the social logic of it is not, it does no harm, I do not think it does any harm. So fine, we have no difficulty. The hon Member wants to propose an amendment to extend that to all the grounds of harassment to which the Ordinance applies, the Government would not object. What has he actually proposed?

**HON F R PICARDO:**

I am quite happy for the Chief Minister to propose where he has proposed to say………

**HON CHIEF MINISTER:**

No, but we are only talking about sub-section (3).

**HON F R PICARDO:**

Yes but he has proposed an amendment to sub-section (3).

**HON CHIEF MINISTER:**

Oh yes, just to add the words "sexual orientation". Mine would become irrelevant.

**HON F R PICARDO:**

Well no, because I did mine thinking his was in. So it is really just, if his is passed then mine should say………

**HON CHIEF MINISTER:**

No his should say "all the grounds to which this Ordinance applies".

**HON F R PICARDO:**

Right and then we just get rid of, yes. So in that case I will amend my amendment so that it reads as follows: in clause 41(3), insert the words "on any of the grounds to which………"

**HON CHIEF MINISTER:**

No, in fact it does not work.

**HON F R PICARDO:**

It does not work, it has got to be specific, right.

**HON CHIEF MINISTER:**

I have incorporated the words "all the grounds on which" to that phraseology.

**HON F R PICARDO:**

So insert the words "sex, sexual orientation" which will deal with his.

**HON CHIEF MINISTER:**

"Race or ethnic origin, religion or belief, sex or sexual orientation." Right?

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

The list would then read "of a particular race or ethnic origin, religion or belief, sex or sexual orientation".

**HON F R PICARDO:**

In place of?

**HON CHIEF MINISTER:**

In place of nothing.

**HON F R PICARDO:**

Well yes, because there is already words there religion or belief.

**HON CHIEF MINISTER:**

No, it is analogy inserted. Between the word "religion" one has got to insert the words "race or ethnic origin,".

**HON F R PICARDO:**

The Chief Minister has left out the word "sex" there.

**HON CHIEF MINISTER:**

No, no it has nothing to do with it there. After the word "belief" it is far too late for sex [laughter], after the word "belief" we have got to add comma sex. And that deals with it. We then end up with race or ethnic origin, religion or belief, sex or sexual orientation, so the six strands.

**HON F R PICARDO:**

The amendment happens three times in that clause.

**HON CHIEF MINISTER:**

In what clause?

**HON F R PICARDO:**

In that clause it happens three times because the strands are mentioned on three separate occasions.

**HON CHIEF MINISTER:**

So that the act prevents or compensates for disadvantages linked to race or ethnic origin, religion or belief, sex or sexual orientation suffered by a person of that race or ethnic origin, religion or belief, sex or sexual orientation. So it is the same amendment in the three places where they are presently. Is that clear?

**HON F R PICARDO:**

Yes.

Clause 41, as amended, was agreed to and stood part of the Bill.

**Clause 42** – was agreed to and stood part of the Bill.

**Clause 43**

**HON CHIEF MINISTER:**

The amendments to clause 43 is the second instance where the schedule has been amended. The schedule of amendments.

**HON F R PICARDO:**

Yes.

**HON CHIEF MINISTER:**

I shall explain to the hon Members what effect these amendments have. These amendments by deleting part 2 and part 3 together, are all the areas to which the strands of discrimination are applied, employment, health et cetera et cetera, landlord and tenant that sort of thing. By deleting the reference to part 2 and part 3 and replacing it with a list of section numbers and doing the same in the Supreme Court jurisdiction clause a bit later on, we are distributing what we discussed yesterday, we are distributing between the jurisdiction of the two courts, Industrial Tribunal for employment related issues and Supreme Court for non employment related issues. That is the effect of the amendment. So the amendment is in sub-section (2) to delete the reference to the words "Part 3" and replace it with the words "sections 13, 17, 18, 20, 22, 23 or 27", to delete sub-clause (2)(b) and renumber existing sub-clause (c) as sub-clause (b). All that is more properly explained in the amended schedule that we handed and is set out in the marked up copies that the hon Members have.

**HON F R PICARDO:**

Yes I think the Chief Minister will agree that in his original schedule there was some typo which made the whole thing unintelligible so we only really have the benefit of the correct amendment now.

**HON CHIEF MINISTER:**

The consequential on that is something which we have missed. In sub-section (3) consequential to that and something that is cross-reference, in sub-section (3) the reference should now not be to (2)(c) but to (2)(b). 2(c) no longer exists. It has now become (2)(b). With me? I have not given written notice of that so hon Members had better make a note of that. In sub-clause (3) of clause 43 there, it says in sub-section (2)(c) that should be sub-section (2)(b).

**HON F R PICARDO:**

My welcome to the fact that the industrial tribunal was to have jurisdiction in matters unrelated to employment but which were the province of discrimination and prejudice is not long-lived because the tribunal is not to have that jurisdiction. We were concerned that a tribunal that was dealing with employment issues should have that jurisdiction, whilst we welcomed it, and we said that we welcomed it and wanted the jurisdiction of the tribunal to be extended beyond employment in the enabling statute and for it to have the resources to deal with that. In fact the Chief Minister has said there will be potentially in the future another type of tribunal, not the Supreme Court, which will be able to deal with these issues if we feel there is a need for it. We do feel there is a need for it so that there is quick and easy and cheap access to justice in relation to these issues and we would therefore have liked to have seen the industrial tribunal continue to have that jurisdiction and we will not be supporting the amendments for that reason. We certainly hope though that although these amendments will surely pass, that the review which he referred us to of the level of litigation coming in relation to issues of employment and issues not of employment, is one which is kept very much at the forefront of Government business so that we see soon, as we expect we should, a tribunal specific to these issues which can deal with them quickly, cheaply and effectively.

**HON CHIEF MINISTER:**

He wants to have it both ways, he is voting against and also asking for an undertaking. I mean if at least he supported the amendment it might be easier to give him the undertaking that he seeks. I think to vote against and ask for the undertaking is asking too much.

**HON F R PICARDO:**

A slightly mischievous way of putting what I am saying. What I am saying is that because I do not support the amendment, I would at the very least expect an undertaking.

Question put. The House voted.

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

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

Clause 43, as amended, stood part of the Bill.

**Clause 44**

**HON CHIEF MINISTER:**

In clause 44 there is a reference, there is an amendment to sub-clause (2)(a) to delete the words which involve discrimination on the grounds of sex and to replace those words by the words "to which section 43 applies".

**HON F R PICARDO:**

The amendments I am moving in relation to 44 I also foreshadowed in my original address in relation to the Bill, which was that the Bill does not use the directive language, it uses the language of the English Acts, where it replaces the use of the words "established facts" for the word proves and it uses the word "conclude" for the word "presume". So we are purporting or attempting to go back to the directive language by putting those words in place of proves and concludes in the terms of my proposed amendments 43 and 44.

**HON CHIEF MINISTER:**

Mr Chairman this is another area that we might as well, he might as well present them all because it is all the same argument.

**HON F R PICARDO:**

By which he means my amendments 47 and 48 which do the same thing in relation to the Supreme Court.

**HON CHIEF MINISTER:**

Yes.

**HON F R PICARDO:**

Yes, and I formally move them in relation to the provisions of section 47(2) where the words "proves" and "establish" should also be interchanged and the words "conclude" and "presume" should also be interchanged. They relate to the standard and burden of proof shifting in either, in the first instance in 44 the Industrial Tribunal, and in the second instance to the Supreme Court.

**HON CHIEF MINISTER:**

Well the Government do not propose to support these amendments. We have carefully studied the language and we think this is an entirely semantic point. The Bill in common with UK legislation uses the words "where on the hearing of the complaint the complainant proves facts from which the tribunal could conclude" in the absence of an adequate explanation that. The words of the directive are "establish facts from which it may be presumed", and we have not been able to come to the conclusion that the words "prove facts from which it can be concluded" in the absence of an adequate explanation, are any different to "establish facts from which it may be presumed". We think it means entirely the same. We think there is absolutely no difference in burden or onus, we think that they are entirely synonymous terms and we see no justification to depart from the language used in the Bills.

**HON F R PICARDO:**

Can I at least, I think there is little between establish and prove, little but something. But I sort of think there is more between conclude and presume.

**HON CHIEF MINISTER:**

No, that is the mistake he is making. That is the mistake he is making. He must not compare the word "conclude" from which the tribunal could conclude in the absence of an adequate explanation with "presume". Rather that is what he must do. What he must not just do is compare "conclude" and "presume". Of course conclude and presume are not the same but that is a false comparison. Because presume, which is the single word of the directive, is in the Bill conclude in the absence of an adequate explanation, which is exactly what presume means. So it is not that presume and conclude mean the same, of course they do not. But conclude in the absence of an adequate explanation is the same as presume.

**HON F R PICARDO:**

Attractive though that argument may seem, when we go to Article 10 of the Directive 2000/78, the word "presume" is followed by a caveat, from which it may be presumed that there has been direct discrimination it shall be for the respondent to prove that there has been no breach of the principle of equal treatment, which is what happens when we impute the words "in the absence of an adequate explanation from the respondent". So in the directive one presumes when one shifts the burden, in the Bill, as I read it, one concludes before one shifts the burden.

**HON CHIEF MINISTER:**

One concludes in the absence of a reasonable explanation and if you do not provide a reasonable explanation, then the presumption sets and the burden shifts. In both the Bill and in the directive there is a sort of, loosely speaking, a prima facie test. If the prima facie test is not met, the burden shifts and that is the effect both of the directive and of the Bill.

**HON F R PICARDO:**

No if the prima facie test is met the burden shifts. That is how it works.

**HON CHIEF MINISTER:**

In both.

**HON F R PICARDO:**

Yes. Yes that is what we set out to do. That is what the directive requires us to do.

**HON CHIEF MINISTER:**

And that is what we believe the Bill does.

**HON F R PICARDO:**

Right. And I said when I introduced this, that I recognised that that was the language of the UK and that the UK transposition had not been challenged. Right.

**HON CHIEF MINISTER:**

We believe rightly so.

**HON F R PICARDO:**

Well but I believe that a presumption is a much lower hurdle than a conclusion and that they are both subject to the caveat of the explanation. We could argue until the cows come home and they are very likely to come home soon, so I suppose I shall leave it at that but I am not persuaded.

**HON CHIEF MINISTER:**

No of course he is not persuaded, and of course it is becoming increasingly clear that there is not a sufficient body of authority capable of persuading the hon Member once he gets a thought into his head, unless he now wants to add to the ranks of the British Government's colonial slaves the legal services of the European Commission, who in all these years have not challenged the United Kingdom language which the hon Member assumes is because they are dilatory and indolent and which actually I think is because they do not believe that it has the weakness that the hon Member uniquely thinks that it has. So the United Kingdom Government thinks that it does not have that defect, the United Kingdom Parliament thinks that it does not have that defect, the United Kingdom Racial Equality Commission does not think that it has that defect, the European Commission does not think it has that defect, we do not think it has that defect, our draftsman does not think it has that defect. Yet notwithstanding all that the hon Member is still not persuaded on the basis of his sole interpretation. Now if against that threshold of requirement to persuade the hon Member it is not possible to comply with that threshold of requirement. I can understand that if he was asserting one thing and I, or even I and the British Government were asserting one thing, then there is still scope for believing that we are both wrong and he is right. But everybody, the UK Government, the UK Parliament, the Racial Equality Commission, the European Commission legal services, there comes a point which the hon Member surely must be willing to accept that his view is probably on balance not correct, given the weight of opposition to it. Now I do not set myself the task of persuading him, I express my view as persuasively as possible in the hope of persuading him. But look, if I do not persuade him I do not persuade him, and he shall vote one way and I will vote another.

**HON F R PICARDO:**

I am persuadable but I believe that simply by asserting the fact that this has been done a certain way somewhere else I will not be persuaded. The Chief Minister has imputed to me an allegation against the employees of the European institutions of them being dilatory and ignorant, which I certainly, indolent sorry.

**HON CHIEF MINISTER:**

I have never classed them as ignorant.

**HON F R PICARDO:**

Oh no, I am sensitive to most of the things he says for reasons that are surely politically obvious, but I have not said that. I have actually prefaced all my interventions in relation to this clause in the First Reading and now, by saying that I recognise that this has been done already in that way in the UK and has not been challenged. He must at least recognise that. But I am still not persuaded and I believe, and I know I am going to open myself up now for the Government Members to have a bit of a laugh, but I believe myself to be a fairly reasonable man, I am just not persuaded that the word "conclude" has the same meaning as the word "presume". Now at the end of the day I am going to have to live with the fact that this is going to go as it is presently drafted and I am comforted by the fact that the UK Act contains this wording and that the people in charge of the Equal Opportunities Commission in the UK appear not to have had a problem with it, well, at the end of the day I am not privy to what discussions they may have had in consultation with the British Government but I will be comforted by the fact that this is the way it is done in UK. At the end of the day I am still not persuaded, I hope it does not have the effect I think it has because that would mean that before the burden is shifting the standards to be met would be higher than was originally intended in the European Directive, but so be it.

Clause 44, as amended, was agreed to and stood part of the Bill.

**<u>Clause 45</u>**

**HON F R PICARDO:**

I have got something on 45(1) and the Chief Minister has something on 45(7). My amendment in relation to 45(1) is that we have there wording in relation to what happens when the Industrial Tribunal decides that something is well-founded. I think really what we are saying there is when the Tribunal finds in favour of a complainant rather than simply deciding that something is well-founded. I think what the Tribunal has traditionally done is found in favour of a complainant. I would urge that we make that amendment. There is not a similar clause in relation to the Supreme Court, it is only a clause which applies to the Industrial Tribunal.

**HON CHIEF MINISTER:**

No Mr Chairman, this is again complete semantics. Look, if the Tribunal finds that the complaint is well-founded then it rules in favour of the complainant. If the Tribunal finds that the complaint is not well-founded then it rules in favour of the person complained against and the hon Member has just suggested a second formula of words to achieve the same result. I could suggest six or seven other formulas of words that would have the same meaning but the same is true of every line of this Bill. The fact that there are other ways of saying the same thing is not a sufficient reason for changing the way that it is said in the Bill, so we will not support the amendment.

**HON F R PICARDO:**

He knows as well as I that when tribunals reach conclusions that it is not just that they have decided that something is well-founded, they are making a ruling, that is why it is not just the Tribunal deciding if something is well-founded or not, it is that the Tribunal reaches determination when it makes a finding, that is why I thought we should use the words "rules in favour of the complainant".

Question put. The House voted.

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

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

The amendment was defeated.

**HON CHIEF MINISTER:**

Mr Chairman, we have an amendment which hopefully will fare better than that one, to sub-clause (7) which is simply to add the word "into" in front of the word "operation", which is really just to make sense of it.

Clause 45, as amended, stood part of the Bill.

**Clause 46**

**HON CHIEF MINISTER:**

Clause 46 in sub-clause (4) deletes little (a) and replace it with little (a) section 21, 25, 26, 28 as set out there. So delete the language in the present little (a) which is not very much, it is only the words "section 28" and the semi-colon and the or, well only to be re-provided. So little (a) should now read "section 21, 25, 26, 28, 29, 30, 32, 33, 35 or 36; or". Those are the sections which constitute the jurisdiction of the Supreme Court, the matters dealt within those sections.

Question put. The House voted.

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

For the Noes: The Hon J J Bossano
The Hon C Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon Miss M I Montegriffo

The Hon F R Picardo
The Hon L A Randall

Clause 46, as amended, stood part of the Bill.

**Clause 47**

**HON CHIEF MINISTER:**

In clause 47 in sub-clause (2)(a) I have given notice of amendment to delete the words "which involves discrimination on the grounds of sex" and replaced them as I did earlier on with the words "to which section 46 applies". That is a repetition of the amendment which they are going to be reminded of they voted in favour in the equivalent provision of the Industrial Tribunal. This is not about jurisdiction or burden shifting.

Clause 47, as amended, was agreed to and stood part of the Bill.

**Clauses 48 to 50** – were agreed to and stood part of the Bill.

**Clause 51**

**HON CHIEF MINISTER:**

In clause 51 I have given notice of amendment in sub-clause (1) the second line. Where there is a reference to 52 it should be a reference to 54 so that it reads "section 54(1)(a)" not "section 52(1)(a)". So we have just replaced 52 with 54.

Clause 51, as amended, was agreed to and stood part of the Bill.

**Clause 52**

**HON F R PICARDO:**

I have given notice of an amendment in relation to 52(8)(a). All that I propose in it is that we include the word "is" after "he" where they appear in that sub-paragraph. Although it is a small amendment it has a large effect. When we insert it there are three potential parties affected. It means that the person is then not a relevant independent advisor for the purposes of sub-section (6) of this same section. If he is, is employed by or is acting in the matter for another party or person who is connected with the other party. That, I will now avail myself in this respect of the argument which the Chief Minister deployed against me, which is that this is actually, what I am proposing is actually the wording in the United Kingdom, which has those three instances, so I think this has been a slip in copying in the UK source document.

**HON CHIEF MINISTER:**

I do not understand the hon Member's point. There is a word "he" already.

**HON F R PICARDO:**

Yes but it does not have "is" comma.

**HON CHIEF MINISTER:**

So he just wants to remove the comma then.

**HON F R PICARDO:**

No that would be a grammatical point which I would not dare move at this time of night . I am including an extra "is". If he is, is employed by or is acting, and that is what the UK section

says. He has just missed out an “is” in his transposition. I think it is regulation 35.

**HON CHIEF MINISTER:**

No, If he is comma is employed by or is acting in the matter.

**HON F R PICARDO:**

That is what the UK source says, I think it is Schedule 4, Part 1.

**HON CHIEF MINISTER:**

Yes it is here, the hon Member is right. I have it in front of me.

Clause 52, as amended, was agreed to and stood part of the Bill.

**Clauses 53 and 54** – were agreed to and stood part of the Bill.

**Clause 55**

**HON CHIEF MINISTER:**

We are deleting for the reasons that I explained to the hon Member that I would be representing it in a separate Bill so that it is a more findable law. In fact I tried to find a way of whether I could create a Bill to put before the House, but I do not think we can. There is a statutory requirement to give notice, I am not sure whether that is notice that can be waived in the House.

**HON J J BOSSANO:**

It can only be done by suspension of Standing Orders. If we are talking about really for example a small Bill amending the Employment Ordinance and basically containing something of which we had already had sight, it is not that we require time. If the Chief Minister wanted to include it during this session or in an adjourned meeting, then we would be glad to see it coming in even if the seven days’ notice were not there.

Clause 55, as amended, was agreed to and stood part of the Bill.

**The Schedule**

**HON CHIEF MINISTER:**

In the Schedule there is a small point on page 270 of the Bill where there is a reference to the Equal Opportunities Ordinance 2003, which is of course 2004 because it was taken in the new year.

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

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

**THIRD READING**

**HON ATTORNEY GENERAL:**

I have the honour to report that the Equal Opportunities Bill, 2004 and the European Parliamentary Elections Bill 2004 have

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

The Equal Opportunities Bill, 2004 and the European Parliamentary Elections Bill 2004 were agreed to and read a third time and passed.

**ADJOURNMENT**

The Hon the Chief Minister moved the adjournment of the House to Thursday 26th February 2004 at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 11.00 pm on Friday 6th February 2004.

**THURSDAY 26TH FEBRUARY 2004**

The House resumed at 10.30 am.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

**ABSENT:**

The Hon S E Linares

**IN ATTENDANCE:**

P E Martinez – Clerk of the House of Assembly (Ag)

**OATH OF ALLEGIANCE**

The Hon A Trinidad took the Oath of Allegiance.

**DOCUMENTS LAID**

The Hon the Chief Minister laid on the Table the Home Purchase (Special Deduction) Rules 2004.

Ordered to lie.

## BILLS

## FIRST AND SECOND READINGS

**THE INSURANCE COMPANIES (AMENDMENT) ORDINANCE 2004**

**HON CHIEF MINISTER:**

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

Question put. Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker this is a short Bill which completes the transposition of those parts of the Solvency I directive as it is known, the remainder of which has been achieved by Regulations already published in the Gazette on 5th February 2004, and these are the bits of those directives which required principal legislation. The so-called Solvency I directives which are directives 2002/12 and 2003/13, one dealing with life assurance companies undertakings and the other dealing with non-life insurance undertakings are directives that deal mainly with the solvency margins. In other words, provisions in the law to ensure that insurance companies maintain a margin of solvency designed to protect policy-holders from the financial failure of companies that are providing them with insurance cover. The vast bulk of that transposition is done in that set of three regulations. So this is really standing by itself a very technical and a very small bit of what is a very much larger legislative enactment.

In clause 2, the hon Members will see that there is the introduction into section 52 of the principal Ordinance, that being the Insurance Companies Ordinance, a section which in effect creates a one-off filing requirement. The hon Member will see that Part B sub-section (2)(b) lists a series of forms and documents and information and then sub-section (a) says "an insurer shall in respect of any financial year ending from 31st December 2003 to 30th December 2004 inclusive, submit in addition to the documents in sub-section (1), the documents and information in paragraph (b) which it then goes out to list in paragraph (b). Therefore, this amendment only creates a one-off obligation to submit these forms in respect of the financial year, which can only be one, ending in the 12 months period from 31st December 2003 to 30th December 2004. The purpose of this is to provide the Financial Services Commissioner with that information to enable him to make a first assessment of current solvency, and thereafter, the continuation of the provision of the information is provided for in the forms attached to the three Regulations that I have alluded to a moment or two ago. So in short and to summarise, clause 2 creates an information submission requirement but on a one-off basis. Sub-clause (2) introduces a new section 60 into the principal Ordinance dealing with financial recovery plans. Now financial recovery plans are something introduced by the two directives that we are transposing today, to enable the Financial Services Commission or the Regulator, to protect the interests of shareholders when he sees a company's finances deteriorating but before it has actually breached the solvency margins. In other words, whereas previously there were solvency margins and a regulator might be seeing a company's financial health

deteriorating but could not act until the solvency margin had been breached, by which time it might be too late to protect the policyholders, this regime allows the Financial Services Commission, and it is a requirement of this new directive, when he sees that there is a deterioration towards the minimum solvency margin he can, by way of early warning protection say to the company, your financial health is deteriorating, give me a financial recovery plan. In other words submit to me financial proposals to arrest the apparent inexorable deterioration in their solvency margins. Section 60 introduces that requirement, or that power, in our Insurance Companies Ordinance.

Clause 4 amends three parts of the Insurance Companies Ordinance, again in transposition of the requirements of these two directives, so that when an insurance company is the subject of a request from the regulator of one of these financial recovery plans, when the regulator says to a company, "although you have not yet breached your margins, your solvency margins, I believe that your financial health is deteriorating, please give me a financial recovery plan", when a company is subject to that regime its rights to passport into the EEA is temporarily suspended so that we are not exporting into other markets an insurer whose financial health is deteriorating. What the amendments to section 92 and to Schedule 14 of the Ordinance do, is to say that in those circumstances the Financial Services Commissioner is not obliged to notify to his fellow regulator in another European Union country that that particular Gibraltar insurer wants to passport. Hon Members may recall from when we have discussed passporting in the past, that the way it works is that if a Gibraltar licensed entity, whether it is a bank, an insurance company or now an investment services manager, wishes to exercise his passporting rights, in other words his right to do business in any of the European Union markets, on the basis of his Gibraltar supervision and licence and without being subject to further supervision or licensing in say France, Spain or Germany or wherever he wants to do business, the procedure is that the local company writes to the local regulator, the FSC, says I want to exercise my rights to do business in France, the Gibraltar supervisor then sends a notification to his French counterpart saying, company ABC limited who I have licensed in Gibraltar and which I am regulating in Gibraltar has notified me that it is going to business in your territory. That is just a notification. Well this amendment in transposition of the latest directives says that when the company is subject to a financial recovery plan, the local Financial Services Commissioner is not obliged to issue that notification that I have just described in the example that I gave. These amendments and indeed all the transposition of these directives reflected also in the three sets of Regulations, have been the subject of a full and written consultation with the insurance industry in Gibraltar and the insurance industry in Gibraltar has raised no issue that has not been taken into consideration. In fact they raise no issue at all. First of all they thought that the amendments were sensible, secondly they recognised that in any event they were obligatory requirements on us and there was no choice and therefore the industry is content.

At Committee Stage I will be moving an amendment, two small amendments. One is, hon Members will notice that in the Long Title it simply says "an Ordinance to amend the Insurance Companies Ordinance". The draftsman of this Bill overlooked the fact that there is actually a requirement of European Union law that when national law is transposing a European Union directive, the national law must say on its face that it is a law to transpose a European directive. So there is actually a requirement to say an Ordinance to amend the Insurance Companies Ordinance and the amendment that I am going to be moving is to partly implement Council Directives 2002/12/EC and 2002/13/EC on solvency margins for life assurance undertakings and non-life insurance undertakings. In other words we have got to refer to the particular European Union laws that we are transposing in our national law. The second amendment that I will move is to correct a typographical error in clause 5(b) of the Bill, where it says by inserting after paragraph 4(7) that should read paragraph 5(7), and so the amendments of which I have given written notice would correct that typographical error. I commend the Bill to the House.

Discussion invited on the general principles and merits of the Bill

**HON F R PICARDO:**

Mr Speaker, this Bill transposes into our law, as the Chief Minister has indicated, by way of amendment of the Insurance Companies Ordinance, two separate directives. The first is the directive 2002/12/EC which deals with solvency margins in life assurance undertakings. I do not think the Chief Minister focused it in this way. The second is 2002/13 which deals with solvency margins in non-life insurance business. Essentially the directives are designed to provide greater protection for investors and enable the Financial Services Commissioner to put in place financial recovery plans, as the Chief Minister has indicated, and it is a good thing that the Financial Services Commissioner should have that power if there are concerns which he considers are sufficient to require him to raise the capital adequacy required of an insurance undertaking.

Mr Speaker, I agree that the second amendment to be moved by the Chief Minister in Committee is necessary because I have been working with the Insurance Companies Ordinance on the website of the FSC, which I understand is the most up-to-date and it made no sense to amend clause 5(b) with the figure 4 there, because the whole section did not read. This Bill gives an opportunity to raise an important issue of principle. It is important to note that we welcome the implementation of directives or of national legislation which are designed to protect investors but the transposition of legislation to that effect is simply not enough. It is not enough for our Financial Services legislation to be state of the art and up to date if they are not enforced with political or administrative or professional vigour. I am conscious of the fact that that is not a matter for the Government but for the Financial Services Commission which is an independent statutory body. We have a very stringent legislative code which affords very high levels of investor protection but which is not vigorously policed and enforced and that can be very bad for business and very bad in particular for Gibraltar's Finance Centre business. Why, because that would present Gibraltar and its Finance Centre with the worst of both worlds, in this sense, if the code is too strict we could lose business because people go somewhere else where the codes are slacker and we might be seen as being over-regulated. Now that is not a bad thing if the regulations are designed to ensure investor protection or to ensure that those who come to Gibraltar are bona fide players in whichever part of the financial services industry they want to operate but if the regulations are not properly enforced, then we can find ourselves with investors losing money because the protections put in place do not work and they end up finding themselves out of pocket when an investment company or an insurance company in this case, goes to the wall. I have to say that I fear that we may already have had a number of cases in this year alone which have suffered from just the position of very tight regulation but not very tight enforcement of the relevant regulations.

I think it is appropriate at this stage to recall the questions I asked in relation to the TEP plans at the Question Time session of this House. In particular in relation to those TEP plans the Opposition can see what appears to be a slowly unveiling disaster which has affected a very large number of people and which is causing many of them very real hardship. Indeed I and my colleagues have already had representations made to us by a very large number of people who say that they may have lost all their life savings as a result of these TEP plans, and as a result in particular of the way that certain TEP plans have been advertised and sold. I am not advancing in that way an argument for laxer regulations, far from it. The regulations have to be there and they have to be tight if investors are to be at all protected. But the question of policing regulations, in particular regulations which are designed for investor compensation or investor protection, has to be very, very clear as well. I want to comment on a recent and on-going liquidation, which is that of Rock Financial Services Limited, in respect of which I have to declare I am myself professionally involved, and I represent a

number of creditors and investors and I want to highlight that because there again, and I am talking now about two cases, there are regulatory safeguards which are designed to protect investors which appear to have failed and there in that particular case, we find ourselves dealing with small, medium and large investors all of whom may have lost money. Mr Speaker indeed both in relation to the TEPS and the RFS cases which I have dealt with, there appears to be a serious issue relating to the effectiveness and currency respectively, of the professional indemnity cover which these companies had in place and which may or may not effectively provide payments to the investors. In both cases it appears that there may be a problem, and if there is a problem in both cases and in the long term if the Investor Compensation Scheme is determined to be obliged to pay, the question to be asked is, who will foot the bill sent to the Investor Compensation Scheme if it is sent? Will it be the other financial institutions who make up the scheme or will it have to be the Government of Gibraltar? In both cases I am sure on both sides of the House we will take the view that it would be thoroughly unfair for either the Government or the members of the Investor Compensation Scheme to have to meet that bill, if they have to, because regulation has not worked as it should because the regulations have not been enforced as they should. That, Mr Speaker, I want to make abundantly clear is not something for which I lay responsibility, blame or otherwise at the foot of the Government, because the Government are only responsible for bringing the regulations not for policing them. But it is something which I think is worth highlighting and it is important to highlight and which we must take very, very seriously. I just want to round off by saying that the market in financial services in Gibraltar, I am sure the Chief Minister will agree, is increasingly sophisticated and it is increasingly highly regarded internationally and we must do everything we can on both sides of the House to ensure that Gibraltar and its financial services market does not let down either national or international investors. That would not be fair to them and it would not be fair to the professionals in the industry who work very hard to ensure that the service they provide is first class. For that reason we welcome the provisions of this Bill because they will provide greater protection to investors but we flag the fact that policing and enforcement of this type of provision is as important as bringing the legislation to this House.

**HON CHIEF MINISTER:**

I had almost forgotten that we were discussing a Bill to transpose amendments to the Insurance Companies Ordinance which has absolutely nothing to do with anything that the hon Member has just said. I have to say that I am truly astonished by the hon Member's remarks. I suppose that he thinks that by saying I am about to stand on a soapbox for the clients of my legal practice, that that makes it OK for him to use this House as a soapbox.

**HON F R PICARDO:**

Mr Speaker the rules of the House say that if I am going to mention something in respect of which I have a professional involvement, I have an obligation to declare that professional involvement. I have declared that professional involvement and I have made clear that that is something that I am dealing with professionally. I have not stood on a soapbox. The fact that I am professionally involved does not mean that there are serious political issues which I cannot bring to this House.

**HON CHIEF MINISTER:**

Well, I do not know whether the hon Member seeks to interrupt me simply to repeat what he already said before and to pretend that I have said something that I have not said. I am recognising that he has declared the interest and what I am saying is that declaring the interest does not justify saying what one likes and using this House as a branch of the courtroom for his clients. The hon Member speaks in this House in a way that can only be music to the ears of those who constantly allege

that Gibraltar's regulatory regime is deficient and the hon Member seems intent, presumably because he is being paid a fee by those people who have a claim, to pretend that Gibraltar's financial regulatory system………

**HON F R PICARDO:**

On a point of order Mr Speaker, that is outside the rules of the House. The Chief Minister cannot stand up in this House and suggest that I have taken a fee for something that I am saying in this House or that I am saying something in this House in order to take a fee. Mr Speaker I would ask you to require him to take it back because otherwise Mr Speaker, we would have to start talking about all the times he was sitting in this House as a partner of another law firm in Gibraltar, which was pursuing a case against the Government of Gibraltar and in respect of which he was making statements in this House Mr Speaker. So I would ask him Mr Speaker to take back any insinuation or allegation that I have made a statement in this House for which I have taken a fee because that Mr Speaker is an insult and I will not have it.

**HON CHIEF MINISTER:**

Mr Speaker what I ought to say to the hon Member is that the things that he is threatening me with is exactly what the Leader of the Opposition, when he was Chief Minister used to do to me. Or does the hon Member not remember the extent to which the Hon Mr Bossano, his new found leader, used to hold me personally and politically responsible for the fact that my law firm was daring to act for the Spanish pensioners. So it is not a threat. He need not worry about raising the issue. The issue has long since been used by the party of which he is now a member in exactly the same way as he is now complaining. For goodness sake, the hon Member has got to take responsibility for the things that he says and does in this House.

**HON J J BOSSANO:**

Point of order Mr Speaker. The hon Member is not telling the truth. I have never accused him of taking a fee from Spanish lawyers and raising matters in this House on behalf of those Spanish pensioners. What I told him was that he was part of the firm that took the decision and he acknowledged that by resigning from the firm to distance himself politically from the decision.

**HON CHIEF MINISTER:**

Mr Speaker let us get the chronology of facts right. The hon Member on a debate on a Bill that has nothing whatsoever to do with TEPS, nothing whatsoever to do with the case in which local investors may have lost money in an investment with a local financial services company. On the debate in Parliament, on a Bill that has nothing whatsoever to do with that issue, stands up, gives a speech on that issue and says that he represents in civil actions and in his capacity as a lawyer the people whose fate he is lamenting. Now, unless the hon Member is not charging a professional fee for that, for representing those people, then it is an inescapable fact that he is raising in this House issues on an occasion in which they do not normally arise, on behalf of people whom he is representing professionally, for a fee. Now the hon Member may wish to convert that into his thinking

**HON F R PICARDO:**

On a point of order Mr Speaker. He has got it wrong because I am not representing anybody who has a TEP plan. I have spoken about TEP plans in this House during Question Time what I have said is another related matter which has been reported in the press already, which I said has an impact on this which relates also to the issue of investor protection in the legislation and the Ordinance that he has brought deals with that

and I have said it is very good that he should do that but there is the question of policing. Mr Speaker he is wrong to say that I have taken a professional fee in relation to the issue of TEPS. I have not, I do not represent anyone in that legally.

**HON CHIEF MINISTER:**

Well the hon Member finds that if it is not in relation to TEPS it is in relation to the other matter. Look, I do not know who the hon Member acts for. I am just going on what he has said in this House this morning. He has said in this House that he declares an interest because these issues that he is raising, arise in a case in which he is professionally involved on behalf of the investors. But he has said that. Why he now finds himself so threatened simply because I comment on the very things that he himself has not been worried about raising and commenting, is extraordinarily suspicious. Now the fact of the matter is that that is the position. That here we are debating an amendment to the Insurance Companies Ordinance and the hon Member has gone off on a tangent about other things. Now the hon Member is right in saying that regulation is a good thing and that regulation is not just legislation, it has also got to be implemented but why does he proceed on the assumption, which is of course what his clients might need to prove in due course, why does he proceed on the assumption that his clients' loss has been the result of regulatory failure because this is what the hon Member is signalling to everybody, in Gibraltar and outside Gibraltar. No the hon Member must sit down, I will not give way.

**MR SPEAKER:**

Order, order. If he does not give way, he does not give way.

**HON CHIEF MINISTER:**

The hon Member surely cannot just stand up and blurt out what he likes. The hon Member must understand that what he has done in this House today, that what he has done in this House today is nothing short of scandalous. He has rightly said, without needing to say it because it is such a banal, obvious thing to do, that it is hardly worth uttering the words, that legislation by itself is not enough. The legislation then has to be implemented. By the way, that is what Spain is always complaining about, that Gibraltar implements legislation but then pays lip service to its actual enforcement. The hon Member has got to understand that he cannot just shout down his opponents in Parliament in a nervous attempt to prevent them from getting their say and if he carries on interrupting me in this childish fashion it is going to be much more than five minutes because I only have two or three points to make. The sooner he lets me make them, the sooner we can move on to other business. But if he keeps on interrupting me then he just adds the amount of time that he has to sit there suffering the discomfort in which he obviously presently is. I realise it does not make good listening for the hon Member but the hon Member should have thought of that before unnecessarily, and having declared his conflict of interest, making the insinuations that he has made. The insinuations that the hon Member has made as the inescapable meaning, purport and intention of the words that he has used, is that he has prejudged the very fact that his clients are interested in establishing. Namely, that their regrettable and unfortunate failure, loss of money, is the result of insufficient application or insufficient rigour in the implementation of regulatory legislation. That is the inescapable purport of what the hon Member has said and it is certainly very far from being established. In fact, the hon Member if he is acting in the case that he says he is acting must know that the position of the Financial Services Commission is that there has been no failure of the regulatory mechanism.

One has not got to be a lawyer to know that there are things that can result in people losing money, like for example theft on the

part of the directors, fraud on the part of the directors, embezzlement of any form or other, there are things which the regulatory system is not intended to be able to detect in time, and cannot detect in time and that these are not necessarily, in fact would not be regulatory failures. Regulatory failures is when, as there are many cases in the United Kingdom, when despite regulatory supervision a noticeable financial deterioration is not detected and is allowed, that is regulatory failure. The hon Member can say that implementation is as important as legislation and I would agree with him. Where I have to take, and I am duty-bound, I do not see this as a political issue, I do not see this as a matter of political, I am duty-bound as he would be duty-bound if he were able to find himself sitting on the Government side, to uphold the right of publicly funded institutions in Gibraltar not to have their legal interest prejudged and prejudiced in Parliament by people making unsubstantiated assertions that the loss that his clients have suffered are due to the regulatory failure. The hon Member says that the regulations need to be enforced with political vigour and then when he realises the nonsense that he has just said he says, oh well no, no, no, but it is not the responsibility of the Government. So why does he say that regulations need to be enforced with political vigour when he knows, because it is the very next thing that he says, that the Government simply have no role in the enforcement of the regulatory mechanism. No role whatsoever. Which he then hastens to immediately recognise himself. Or is he suggesting, let us just leave out the word political, let us just assume that it was a slip of the tongue which he immediately corrected. It is still left with the statement that the regulations need to be enforced with vigour, ergo they are not being enforced with vigour which is why the clients that he represents find themselves in the unfortunate predicament that they do. That is the speech that he has made in this House today and I have to tell him that it is a regrettable, unfortunate and wholly unjust prejudgement of issues in a matter in which he himself has thought it proper to declare a professional interest.

If the hon Member thinks that the financial regulatory authority, who incidentally are about to be audited, and I have to say that they have passed all previous audits with flying colours and since they last passed an audit with flying colours, their resources have increased enormously, so I would expect them to pass their current audit with flying colours, but certainly in this moment in time when our Financial Services Commission is about to be audited, when the hon Member knows that there is a politically motivated campaign in Brussels to undermine our finance centre which he must know lies at the root of much of the difficulties to provide that sort of home-grown ammunition seems to me to be extraordinary. I am not suggesting for one moment that when there are things in Gibraltar which are demonstrably wrong and deserving of being criticised that we should all gag ourselves and not criticise them for fear of arming anybody else. I think that that would be wholly wrong. That is not what I am suggesting to the hon Member. What I am suggesting to the hon Member is that to do it without it being justified, to do it without it being established on the facts, to do it on an entirely speculative basis, which is the basis upon which he has chosen to do it, is wrong. It is speculative because these issues have not been established. These issues are going before the courts in due course, or does the hon Member think that from his pew in the House of Assembly he is entitled to pre-empt and prejudge the proper judicial determination of the rights and responsibilities of the various parties involved here.

**HON F R PICARDO:**

No Mr Speaker, I will clarify. I certainly do not for one moment think that I am able to do that nor would I allege that I am able to do that. Of course I understand that, I have not tried to do that nor should it be suggested that I have. I respect the independence of the judiciary a hell of a lot more than most Mr Speaker.

**HON CHIEF MINISTER:**

The hon Member obviously thinks that he is, I know he has only been in this House for two or three months, but as he is already lecturing us all about how we should conduct the business of the House, one assumes that he is willing to comply with the rules of the House himself. He knows that he is not at liberty just to stand up whenever he likes and just say whatever he wants but this is what he is doing. Does he not understand that what you are demonstrating is an inability to respect the rules of the House and to just sit there whilst I have my say, just as I sat here without interrupting him when he was exercising his right to have his say. There appears to be no way of just calming him down and realising that this is not a barrack room court, that he cannot insist on having the last word by hook or by crook. There are times when procedures of the House give us the last word, there are times when the procedures of the House give them the last word, it depends. If he thinks that the regulatory system in Gibraltar is deficient he can bring a motion in this House so that we can debate the adequacy or inadequacy of Gibraltar's financial services regulatory mechanism. If he does that, he will find that he has the first word, we have the second word, but he will have the last word, so that is the way that he can do this by having the last word. The statement because I think it is more than just an insinuation, the statement by the hon Member that this Bill provides the House with an opportunity to note that implementation of the regulations needs to be enforced vigorously to protect investors and then go on to mention a couple of cases is, as I have said to pre-judge the issues and to pre-judge the issues in a most unhelpful way. Time, although we do not believe that it will, time, due process, which is fair and timely may prove him right. But certainly the fact that time and due process may or may not prove him right does not displace any of the remarks that I have made, which is that to simply assert from this House, as he has done, that there is lack of vigorous enforcement by the Financial Services Commission of Gibraltar's regulatory legislation, is incorrect, undemonstrated, prejudicial to the outcome of the two cases that he involves, and severely prejudicial to the interests of Gibraltar and its Finance Centre of which he professes to be an advocate, and he is wrong also flowing from the fact that he spent much of the time chatting to his colleague, he is wrong also in saying that I did not focus this on the basis that this was a life and a non-life directive. I specifically said that one of the directives was life and the other directive and was non-life and I said it in exactly the same terms as him, so if I did not focus it he did not focus it either. I used almost the exact words that the hon Member used and prefixed them by saying that the hon Chief Minister had not said this but of course as he was busy chatting and giggling with the hon Member sitting next to him, I suppose it is understandable that he may not have heard them. Therefore I will move those two amendments at the Committee State and say that the Government have every confidence in the vigour, the professionalism and the effectiveness with which the Financial Services Commission implements Gibraltar's regulatory regime, which is not to say that there cannot be regulatory failures, there are regulatory failures in all European countries, that is not evidence of dilatoriness or lack of vigour or worse still careless attitude on the part of the regulator. I believe that this House does the Financial Services Commission a disservice if without proper cause, it casts insinuations to the contrary.

Question put. Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

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

Question put. Agreed to.

**THE TOWN PLANNING (AMENDMENT) ORDINANCE 2003.**

**HON J J HOLLIDAY:**

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

Question put. Agreed to.

**SECOND READING**

**HON J J HOLLIDAY:**

I have the honour to move that the Bill be now read a second time. Mr Speaker this Bill extends the provision of the Town Planning Ordinance to cover the sea and seabed of Gibraltar in addition to the land. Up until now the Ordinance has only applied up to and not beyond the lower watermark. It therefore follows that it would be arguable that certain types of projects, such as the siting of a fish farm, would fall outside the ambit of this Ordinance. It is desirable that any plans that include development on the sea or seabed around Gibraltar should come under the ambit of the Town Planning Ordinance. This matter acquires even greater significance in that the environmental impact assessment legislation in Gibraltar is made under the Town Planning Ordinance. Projects which are intended to be sited on the seabed or in the sea in Gibraltar waters could have an environmental impact and it is desirable that there should be powers to require an environmental impact assessment in respect of such projects. This amendment to the Ordinance will allow for this. I commend the Bill to the House.

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

**HON DR J J GARCIA:**

Mr Speaker when we raised this issue during Question Time I believe the Minister said that it was an EU requirement and that was why this amendment to the Ordinance was being introduced. I remember raising it in the context of the development at Sheppard's Marina where the dredging of the sea was one of the things that they had been advertising and I asked at the time whether that was in relation to that particular project. The Minister has mentioned that it is in relation to projects but I was wondering firstly whether it was that one in particular or if he can mention which projects they are. Secondly, whether he can say whether this is in fact an EU requirement or not? It was the indication that we had at Question Time in January.

The Opposition will obviously be supporting the Bill but we have a comment to make in relation to the way in which it has been drafted. That is to say, our view is that there is no need to include the scope laws which is what is being done by the first amendment and that that may actually have the effect of limiting the scope rather than extending it and that changing the definition of the term "land" to include the term "sea and seabed" where the context so admits, is probably enough to achieve what the Government are setting out to achieve. In fact it may even be unnecessary and counterproductive to have this done in this kind of double way which he has set out to do it. In brief, the second amendment which includes the sea and seabed in the definition of land is what we support and how we would like to see the Bill go forward, however, it is not enough to justify voting against the Bill the fact that they are also doing it in the first amendment as well. But if the MInister can clarify the points which I have raised we would be very grateful.

**HON J J BOSSANO:**

In relation to the point that has been made about this being EU-driven, if it is not EU-driven then we would like to know why the

Government have taken a policy decision on the need to do this given that we have had lots of seafront developments before and we have had the requirement to do environmental impact studies before and it was thought to be sufficiently adequate as drafted. I think we were told that somehow they thought that we had failed to transpose correctly everything that we were required to do and that this amendment was sort of filling a gap, that is the impression I have from my recollection of the explanation the last time.

**HON CHIEF MINISTER:**

The hon Members will recall that it was I who said I think it was at Question Time or at some other stage that it was EU-driven, and it is EU-driven in the sense that when we transposed the European Union directive relating to environmental impact assessment requirements, that was done under the Town Planning (Environmental Impact Assessment) Regulations Gibraltar 2000. Of course as with all other implementations that was notified to the Commission who look at it and then form a view as to whether we have properly transposed the EU requirement. The EU then issued an Article 226 letter against the UK dealing generally with their, the UK's transposition of various environmental things. Included in that letter as an item was the view that the Commission believed that the directive requiring environmental impact assessment studies was not limited to land, to dry land if I can call it that, and the fact that our Town Planning Ordinance did not purport to regulate building permissions on the sea, did not mean that we were exempted from complying with the environmental assessment requirements which extended to the seabed. Therefore they formed the view that our transposition was deficient in that we had limited the requirement of environmental impact assessments to things that needed planning permission which did not include the seabed. So the way we have chosen to do it, which is in a sense there is an element of policy in it although extending the requirement for an environmental impact assessment study to the seabed and the sea, that is a requirement. But of course it might have been possible with a degree of drafting ingenuity to have limited the extension to the sea in Gibraltar only to the environmental impact assessment and not to planning requirement, but we thought it rather odd that to do a development in the sea or on the seabed one should need an environmental impact study but that the Gibraltar planning authorities then did not have the ability to express a planning view on the matter. So we decided to deal with it by simply extending the Town Planning Ordinance in all its respects to the seabed. Now if somebody wants to do a development for example this island development that is I do not know at what stage of fruition, that is a development on the seabed so that is now subject to full planning permission. That is how it arises.

Question put. Agreed to.

The Bill was read a second time.

**HON J J HOLLIDAY:**

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

Question put. Agreed to.

## COMMITTEE STAGE

**HON ATTORNEY GENERAL:**

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

1. The Insurance Companies (Amendment) Bill 2004; and
2. The Town Planning (Amendment) Bill 2003.

**THE INSURANCE COMPANIES (AMENDMENT) BILL 2004**

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

**Clause 5**

**HON CHIEF MINISTER:**

In clause 5 I have given notice of amendment that in clause (b) the reference to paragraph 4 should be a reference to paragraph 5 so that it should read "paragraph 5(7)" rather than "4(7)" as it presently reads.

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

**The Long Title**

**HON CHIEF MINISTER:**

I have given notice that the Long Title should be amended as appears in the letter of notice by adding the words "to partly implement Council Directives 2002/12/EC and 2002/13/EC on solvency margins for life assurance undertakings and non-life insurance undertakings."

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

**THE TOWN PLANNING (AMENDMENT) BILL**

**Clause 1**

**HON J J BOSSANO:**

Mr Chairman in clause 1 I think the point that was made by my Colleague which we have not had a reply is that looking at this it seemed to us that if the amendment that is being proposed says "this Ordinance applies to land, sea and seabed of Gibraltar" and then in the second part it says "land includes sea and seabed", then we appear to be saying this Ordinance applies to land, which includes sea and seabed, plus sea and seabed. That is where the point that was being made that we thought the second amendment was sufficient to achieve the objective and the first one did not seem to make a lot of sense, given that we are including sea and seabed in the definition of land already why do we need to add it as well behind it?

**HON CHIEF MINISTER:**

Only to avoid a position where one has a definition of land that includes the sea and the seabed in an Ordinance which somewhere else has a statement that says this Ordinance applies only to land. Now I accept that we could use any word there so long as we define it. We could put there this Ordinance applies to a, b, c, d, e, f. If we then define a, b, c, d, e, f, as meaning land, sea and seabed it does the trick but it is really only almost a semantic thing so that on a reading of the Bill there is not just a reference to land, but I accept that it is unnecessary. It is unnecessary, in other words, it does not add anything, it is not required for the effectiveness of the Bill, it is just so that there is not a statement at the beginning where it says this Ordinance applies to, and then only when one gets to the definitions does one discover that actually it also applies to the sea and the seabed. But it could be, I do not think we ought

to, but it could be struck out with no effect which is I think the point that the hon Members are making.

**HON J J BOSSANO:**

It does not say only. If it said this Ordinance applies only to land, which is what the Chief Minister has quoted, it does not say only to land.

**HON CHIEF MINISTER:**

I agree.

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

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

**THIRD READING**

**HON ATTORNEY GENERAL:**

I have the honour to report that (1) the Insurance Companies (Amendment) Bill 2004 and (2) the Town Planning (Amendment) Bill 2003 have been considered in Committee and agreed to with amendments and I now move that they be read a third time and passed.

Question put.

The Insurance Companies (Amendment) Bill 2004 and the Town Planning (Amendment) Bill 2003, were agreed to and read a third time and passed.

## MOTIONS

**HON CHIEF MINISTER:**

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

"This House-

1. Recalls the unanimous Report dated 23rd January 2002 of the Select Committee on Constitutional Reform ("the Report") and the Motion adopted unanimously in the House on the 27th February 2002, noting, approving and adopting the Report;

2. Reaffirms the motion of 27th February 2002 noting, approving and adopting this Report following the General Elections held in Gibraltar on 27th November 2003".

Mr Speaker unless the Opposition Members wish to introduce some other dimension to the debate I need only say that the purpose of moving this Report is so that it should be known internationally and amongst whatever institutions we may lobby, and indeed we may have to negotiate with on this issue, that the Constitutional reform proposals continue to enjoy the unanimous support of the current Parliament, and not allow anyone even to mischievously argue that the approval somehow is now less valid because it was by a differently constituted parliament. That is the principal reason to move this debate. I think when we start our discussions and our negotiations with the UK on this and as we go to the United Nations and elsewhere, I think it is useful to be able to say that the proposals enjoy the unanimous support of the House of Assembly. In a sense all I am seeking to do here is to refresh so to speak, the currency of the original motion in words which replicate the original ones. The hon Members will recall that the motion of 27th February noted, approved and adopted the Report and that is where we left it.

Now, I have invited the hon Member to the cup of tea that I promised him at Question Time and he has written to me and I will not refer to the content of the letter, because really I do not need to in the sense that the content of the letter is more or less replicated in the press release that they, or at least the sentiment of the letter is more or less replicated in a press release. I would hope to persuade the hon Member in due course that the position that he has taken both publicly and privately in relation to the cup of tea, is based on a misunderstanding by him of the position. It is precisely because the Gibraltar Government have to tee up with the British Government at least what the negotiating process is going to be and how it is going to be structured, and whether it is going to be here or in London and set up the logistics of how this is going to take place, but I had hoped before meeting the Foreign Secretary to have made decisions on that so that I could go to London and say this is how Gibraltar wants to do it. I had hoped to have been able to consult with the Leader of the Opposition and others about how they thought Gibraltar should want to do it, and the Leader of the Opposition has taken a different view, so I am hoping either during the course of today's debate or if not when I respond to his letter, to persuade him that actually the chronology that I have set up is really the only one that works, in the sense that it is not possible to do it in any other way. The Government is the Government and the Government have got to at least (a) make the decision about how the proposal is to be taken forward, and in talks between Government to Government, establish the agreement that that is how they are going to be done. Now what the Government can do, said it would do and has tried to do, is to consult locally with opposition parties before forming its own governmental view about how that should be done, so that we could then have input from other people before we went to the United Kingdom. That is the chronology, that is the reason, and I think it is frankly still important that we should meet and if I need to improve the offer from a cup of tea to something more enticing, I am happy to do so. But I am hoping that the hon Member will reconsider his rushed judgement that this was somehow an attempt to exclude him from the process although we are always, in whatever process is eventually established, of course there is always going to be a Government and there is always going to be an Opposition, and whilst I suppose it is natural for oppositions to want to sort of maximise their influence, the Government will always wish to establish or for it to be reflected that even in joint initiatives, even in joint initiatives there are aspects of the role which are inevitably governmental and that delegations might be constituted in a particular way, indeed one of the things that I was hoping I would have consulted the Leader of the Opposition about if we had met so far, indeed I still hope to have the opportunity to consult him about it, is indeed whether the circle should or should not be thrown open more widely than just politicians represented in this House. So, that is the spirit as far as we were concerned. The invitation to the hon Member to visit me so that we could have a discussion on all of these things responded to not only my commitment but also my view that that is the correct way to do it, that we should try to do this together and that I would consult the Opposition before making a decision about how Gibraltar was, given that presumably we do not want it to happen the way it happened last time. Namely that there was a local constitutional conference in effect orchestrated by London and that times have moved on and presumably both sides of the House would like to do it in a different way, or not. But that would have been the opportunity. So I am still hoping that we shall be able to have that conversation at the earliest possible opportunity. If the hon Member maintains the position that he would rather that were after I have met with the Foreign Secretary rather than before I meet with the Foreign Secretary, then so be it but I have to tell him that if he sticks by that position it will make the meeting with the Foreign Secretary less able to be based on a Government position which has been taken with the benefit of the Opposition's views, and therefore trying to the greatest possible degree, compatible with the Government's own position, to accommodate the Opposition's view. I commend the Motion to the House.

Question proposed.

**HON L A RANDALL:**

Mr Speaker, as a recently elected Member of this prestigious House I welcome the opportunity to make my first contribution on the subject of the reform of the Constitution of our country. Allow me to start by stating that the negotiation of a new constitution for our country must be exclusively a matter for Gibraltar and the United Kingdom without any reference to or input from Spain. This position has in fact been endorsed by Mr Cook, the previous Foreign Minister, who reportedly told the Government of Gibraltar that Spain has no say on changes in our constitution and they do not require to be consulted and that they do not require giving their consent. Also His Excellency the Governor in his address this year at the dinner of the GFSB said dialogue on Gibraltar's proposal for constitutional reform was a matter for two parties – Gibraltar and Britain. Additionally, Mr Hain told the British Parliament that short of independence we are entitled to self-determination and that the British Government accepts this. If the aforesaid was not sufficient, as recently as the 11th of this month the Secretary-General of the United Nations, Kofi Annan, in opening the 2004 session of the Special Committee on Decolonisation described colonialism as an anachronism in the 21st century. He went on to add that he hoped that in the year ahead all administering powers, and for the avoidance of doubt as far as I am concerned, the administering power for our country is the United Kingdom and the United Kingdom alone, would work with the Special Committee and with the people in the territories under their administration to seek ways to further the decolonisation process. Furthermore, in his opening statement, the newly elected chairman of the Special Committee, Robert Assisi, called colonialism a relic of the past. He also said that in order to meet the deadline of 2010 the Special Committee must make its work more proactive and seek to constructively engage the administering powers and the people of the territories. Finally, the Government of the United Kingdom recently took a policy decision to participate fully in the activities of the Committees and endorse the pronouncement made by Kofi Annan and Robert Assisi. As the proposed constitution does not aim to achieve independence, the British Government should have no qualms in agreeing to all of our proposals. Therefore the negotiations which I trust will commence in the immediate future between representatives of Gibraltar and the Government of the United Kingdom, should result in the parties agreeing that the new version of the Constitution achieves the decolonisation of our country. The agreement should be used as a precursor to our country's exclusion from the United Nations list of non self-governing territories. This year we celebrate our 300th anniversary as a people. After 300 years we deserve, and indeed are entitled to, be emancipated from the shackles and vestiges of colonialism by the British Government once and for all. A modern constitution that does not achieve the decolonisation of our country is just not good enough. Over the last 300 years we have developed into a really mature society and it is right and proper that we should aspire and achieve being decolonised. I fervently believe that the majority of the people of Gibraltar want this House to present a united front at each and every stage of the negotiation process, including the meeting that the hon the Chief Minister asked the British Foreign Minister for on the 22nd December. I would remind the hon Chief Minister that united we stand and divided we fall. More so as the British Foreign Office are consecrated masters at successfully employing the policy of divide and conquer when dealing with their colonies. Mr Speaker, in concluding I would call on the hon Chief Minister as a fellow devout believer in Jesus Christ of whom there is only one, to employ humility to ensure that this House delivers to the people of Gibraltar the united front that they want and indeed are entitled to. Thank you.

**HON C A BRUZON:**

Mr Speaker, I warmly welcome this motion. Having belonged to a pressure group since 1996 advocating the right of Gibraltarians, the process of decolonisation is something very dear to my heart. So let me say that I warmly welcome this motion now as an elected Member, having occasionally been

accused in the past when I belonged to a pressure group of not having a mandate, that was a wrong accusation because anybody can express views in a democracy, write to the Chronicle and organise demonstrations, within the law. However, because I am an elected Member this is particularly important to me and I warmly welcome the motion and I hope as my hon Colleague said that this will lead to a process of full decolonisation and that modernisation will not be sufficiently modern if it does not include decolonisation for Gibraltar. Thank you very much.

**HON F R PICARDO:**

Mr Speaker, I take the view that for many if not all Gibraltarians our political views are really quite conditioned by the international status of our people and of our territory, and I think that the international dimension is the issue that interests all Gibraltarians in politics, the new answers of our international, legal and political status and of the language used by the United Kingdom and others in that respect. In fact I think that it is fair to say that from the classrooms of the Comprehensive School in Gibraltar to the benches in front of this House, Gibraltar's international status and our joint endeavour to achieve decolonisation is the issue that vexes most of our minds most of the time when we are dealing with the issue of politics and decolonisation on our chosen fourth option is the route that I think almost to a man, all of us would hope to see we pursue. It is in that context that now I join the Hon Mr Bruzon in saying that it is a proud moment to rise to speak on this motion and to support the Select Committee's recommendations as a Member of this House. But I must highlight that although I will be agreeing and wholeheartedly supporting the report of the Select Committee I have to advertise that I will be marking differences between the way that the Opposition would like to see this matter handled and the way that the Government are presently proceeding on that basis. None of that should in any way be seen as affecting my unhesitatingly categorical support for the report of the Select Committee and I think Mr Speaker it is important to go to what the Committee has proposed, and it has proposed that the language of the United Nations Covenant on Civil and Political Rights should be part of the preamble of our Constitution and that will say the following, "All peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, and may for their own ends freely dispose of their national wealth and resources without prejudice to any obligations arising out of international economic cooperation based upon the principle of mutual benefit in international law, and the realisation of the right to self-determination must be promoted and respected in conformity with the provisions with the Charter of the United Nations." Mr Speaker that language and its application to Gibraltar is surely jurisprudentially internationally unimpeachable, and to challenge that language Mr Speaker, or its application to our territory amounts in fact Mr Speaker to a challenge to the United Nations Convention and to the Charter. Mr Speaker the relevance of that language of course is that it is the achievement of the maximum possible level of self-government that will mark in an exercise of self-determination when chosen by the people, full compliance with the fourth option of the United Nations and the removal of Gibraltar from the UN list of colonies which Mr Randall has already referred us to. Mr Speaker that is overwhelmingly the best reason to seek an amendment to our existing constitutional arrangements Mr Speaker. In fact Mr Speaker I think it is fair to say, and it is important to remark at this stage, that our existing constitution has served us well in all the years that we have relied on it, especially the preamble and especially the chapter on fundamental rights and freedoms. Let us look at those chapters Mr Speaker, the non-political chapters. We have been able to enjoy a chapter of fundamental rights and freedom for many decades before citizens of the United Kingdom were able to do so and that in itself must be a source of pride. The United Kingdom now has its Human Rights Act but many of its colonies still do not have a chapter on fundamental rights and freedoms in their constitutions and that must be a source for common pride across the floor of this House. It is in the context of placing Gibraltar's international

status on a much more solid footing in terms of progress to decolonisation in keeping with the UN fourth option, that we see that the real benefits in constitutional reform is to be had, and that is where the real importance of our next constitutional step lies. That is why there may be those who might be satisfied with modernising our existing constitution and there are those of us, certainly all Opposition Members, who see real political value only in a constitution that effectively decolonises Gibraltar – a decolonising constitution. We can modernise our constitution all we want but to what use if the relationship of the United Kingdom is going to continue to be colonial in nature and that is simply unacceptable in the globalised world in which we live today and in the EU of today which we have not left despite rumours that there might be consideration of that in the long term. We clearly hold our own as citizens of the European Union, we have nothing to envy our fellow European citizens in the organisation of our social and political affairs, nothing at all Mr Speaker. We are a mature people self-sufficient and very, very healthily autocritical. In fact I dare say that despite the fact that we criticise ourselves internally so much, there are lots of things that we could teach other nations. In that context, in the world in which we live today, and in the world in which Britain operates today, she rightly derives pride from delivering her Overseas Territories to the maximum level of self-government achievable in each of them. The same must be true of her treatment of Gibraltar and of the pride that we in Gibraltar take in celebrating now 300 years of our association with Britain. In this 300th year marking our constitutional evolution would be a crowning achievement of those celebrations and of this Parliament and in that respect I think all of us agree that our sights must be held high. At the end of the day there is no use in modernising and in changing protocols, it does not matter who arrives first at the reception, whether it is the Governor or the Chief Minister, it does not matter who leaves first whether it is the Governor or the Chief Minister. I think across the floor of this House there must be agreement that those are not the issues that matter in taking our next constitutional step which must not be a faltering one. In analysing the Chief Minister's address on the motion of 27th February 2002, which was the original motion that welcomed the report of the Select Committee, I must say that I add my voice to support this motion now before the House but accentuate that my instinct, as I have said, is fully engaged in favour of pursuing a decolonising constitutional step and nothing else. I agree with the Chief Minister that we must not for one moment pretend to any party external to this House, or pretend to allow any party external to this House, and when I say party I mean not a political party I mean body, person or individual, that there is anything between us in terms of support for the proposals made by the Constitutional Select Committee, because we are entirely united across the floor of this House on the substance of the report and the draft proposed new Constitution that we must ensure we progress and advance together. The fact that we are dealing with this motion today on the very face of it serves to highlight that it has taken over two years since the previous Parliament welcomed the report of the Select Committee for us to take in Gibraltar any steps or for the Government to take any steps forward with that Constitution and I am pleased to see that the Chief Minister and his Government now appear to have plucked up the courage to submit the proposals to the Foreign Secretary. We must press on with the negotiations and with pursuing constitutional reform united and together and the Chief Minister and his Government must pursue together with the Opposition this course so that undeniably together we remain stronger on this course. The Chief Minister represents the people of Gibraltar, of course that is true, that is the protocol, but it is undeniably true that its acting together with the Leader of the Opposition that the Chief Minister can then boast that all of Gibraltar is united as this Government has been re-elected by a whisker over half the popular vote. So in pledging my categorical and unqualified support for the new Constitution I must emphasize Mr Speaker that we must end up at the end of the day with a truly decolonising document if we are to get anywhere. It is unfortunate that it appears that the Chief Minister has decided, at least to take the first faltering step that his Government takes in presenting the new Constitution on his own, by having sought to meet the Foreign Secretary on his own. At least initially, despite his now famous invitation to the

Leader of the Opposition to tea, I believe that the Chief Minister will fail us all if he tries to go it alone. His decision I believe ,to go it alone, even if only to this first meeting, may weaken our hand. So I urge the Chief Minister to reconsider that because I believe if he goes it alone for partisan greed, his selfishness will become his historical stigmata for ever. So I would ask that the Chief Minister reconsider and pursue all aspects of the negotiation, including the issue of the first meeting, and that he should attend all of those with the Leader of the Opposition and that apart from the delay, is my deepest dispute with the Chief Minister on this issue. On constitutional issues in particular in relation to this the Opposition brings a lot more to the table than just tea and biscuits, and Joe Bossano in my view, brings a lot which the Chief Minister would do well to harm us in pursuing negotiations with the United Kingdom but I uncategorically support the report of the Select Committee.

**HON MISS M I MONTEGRIFFO:**

Mr Speaker, I have always considered the future status of my country to be one of the most important issues since I became a Member of this House in 1984. It is therefore a privilege and an honour for me to be able to make a contribution to this debate. The Opposition Mr Speaker, has always been consistent throughout in putting forward their policy and that is that Gibraltar must be decolonised. The Select Committee was constituted on 7th July 1999 by this House, its report was dated 23rd January 2002 and therefore what we now ought to be doing is to agree with the United Kingdom a timetable and let the negotiations start once and for all. We do not accept a more modern colonial status for Gibraltar as opposed to an old-fashioned one. This is not what Gibraltar needs in order to be able to counteract Spain's claim internationally that Gibraltar is still a colony, which cannot be tolerated in today's day and age. Whenever Spain uses this argument she wins support. Gibraltar therefore must necessarily be decolonised in accordance with the principle of the maximum possible attainable level of self-government, taking into account our circumstances and with the majority of our people accepting it, in a self-determination referendum. The UK requires to accept it and it has an obligation to decolonise us with our freely and democratically expressed wishes. The responsibility for reforming the United Nations also rests with the United Kingdom as the administering power. As long as we and the UK agree that our relationship is no longer a colonial one, we can then conduct our external relations on that basis. Anything less than this means that Gibraltar will be stuck forever in a colonial status with Spain having the upper hand internationally over us.

We are talking about our future, a future that can only mean that we the Gibraltarians will be masters in our own homeland, a human right that cannot be denied only to us. We also strongly consider that the negotiation of a new Constitution for Gibraltar is exclusively a matter for this House and the United Kingdom. Spain is not entitled to have an input. We and only we are entitled to have a say when we are talking about our future, that is what democracy is all about. The UN is aiming to eradicate colonialism by the year 2010 and we are committed to the same timetable. Therefore what we are telling the Government of Gibraltar is clearly and simply the following. Let us get on with it and let us learn from the past, let us learn from what we have already been able to achieve as a people when we are united in one single cause. If we are united on this issue I am convinced that Gibraltar will at last win its battle against any form of feud by our neighbours. Gibraltar is our homeland and we have every right to be given the same treatment as other colonies that have achieved decolonisation, and others that are looking also to attain it. We are no different to them, democracy applies to all. Thank you.

**HON DR J J GARCIA:**

Mr Speaker, as a Member of the original Select Committee that produced the reports, and as a Member of the House that ratified them on 27th February 2002, it is a pleasure to be able to reaffirm the original motion adopted at that time, once more in

this new House. Having said that what is a matter for regret is the extraordinary length of time that it has taken Gibraltar to get to where we are today. There has to be a renewed sense of urgency to find a permanent, secure and decolonised status for Gibraltar. We have waited long enough. Colonial constitutional developments should be an on-going process, with increasing levels of self-government being bestowed on the territory until it is ready to be decolonised. Gibraltar has long been ready. Time is of the essence for not only is this an important matter as regards the future of our people, there is also another agenda of which we are all aware, that proceeds parallel to that of this House and which aims to take us in a completely different direction. There can be no doubts that the best way to forestall those unacceptable agendas is to aggressively pursue our own.

The House will recall that recent debates on our political and constitutional future date back to 1997. It was in that year that the Self Determination for Gibraltar Group organised a seminar in the John Mackintosh Hall that was addressed by the Chief Minister, by the Leader of the Opposition and by myself as Liberal Party leader, on the subject of the Channel Islands option. There was a broad consensus at the time on the general political framework based on a status similar to that of the Channel Islands which are British but not colonies, as a way forward for Gibraltar. it was not until 1999 the Select Committee was set up, and even then it did not meet for nearly six months until December of that year. The deliberations dragged on against a background of the Anglo-Spanish plan to share the sovereignty of Gibraltar. The report was finally completed in January 2002 and approved by the House the following month. Even then it was not until December of 2003 that the report was formally submitted by the Gibraltar Government to the United Kingdom Government. This presented an additional delay of 21 months. The Government have explained the reasons for the delay. We do not share the thinking behind the explanation given. It remains our view that the report should have been submitted formally earlier. The present constitutional process has therefore spanned three parliaments. It was born in the 1996/2000 Session when the Committee was set up, it reported in the 2000/2003 Session when the whole House adopted its recommendations, it now moves on to the negotiating phase in a third new parliamentary session. This is the first time in the modern political history of Gibraltar that a constitutional process of this kind has taken so long.

Moving on now to another point, I have to say that I do not agree with recent public comments made regarding the nature and the timescale of such reform. First it needs to be understood by all concerned that we will not be satisfied with some minor tinkering to the Constitution of Gibraltar which some choose to call modernisation, that ends up with Gibraltar remaining as a colony. Secondly a timetable for the decolonisation of Gibraltar, as my colleagues have already indicated, has to be agreed with the United Kingdom. From the moment that we joined the Select Committee it was made abundantly clear that as far as the Opposition was concerned, the decolonisation of Gibraltar was the central objective of this process. This objective is as important to us now in 2004 as it was then in 1999. It is an objective that is presumably shared by both sides of the House given that it is the centrepiece of the document that this House is reaffirming today. The point is that it should not be diluted in any shape or form. Mr Speaker in my view it would be a serious error to agree to some minor tinkering with the Constitution now which does not address the central issue of our status. Minor changes now would only be used to deny us further reform and decolonisation for another 35 years. That would be unforgivable. The United Kingdom has faced the decolonisation of Gibraltar in the same way as this House faced the issue when it adopted a report against the backdrop of the Anglo-Spanish negotiations in 2002. We did not shirk away from the responsibilities to the people of Gibraltar and the United Kingdom cannot be allowed to shirk away from theirs either. Mr Speaker there are 16 colonies left in the world, ten of which are British. We ask only to be treated in the same way as those colonial territories that remain and as those that have gone before us. That is to say, that the guiding principle must be that the future of Gibraltar must be freely and democratically decided by the people of Gibraltar in exercise of our right to self-

determination and decolonisation. The only timescale that is important to us is the timescale of the United Nations. The UN has set a deadline of the end of this decade for the eradication of colonialism from the planet. We agree with that deadline and we want to see Gibraltar decolonised well before that deadline expires. That is why our central objective is to get the UN involved in our decolonisation as an active participant in the same way as is happening elsewhere. We want a visiting mission from the Committee of 24 to come here and to see for themselves. As this House knows well there are four options available for the decolonisation of Gibraltar. The first three are independence, free association and integration. The fourth option allows for a tailor-made solution for the colonial territories that remain on the list, and because of this, has the benefit of taking on board the best parts of the other three. Mr Speaker the 1969 Constitution followed the 1967 Referendum. It was supposed to decolonise Gibraltar and it did not. The term City of Gibraltar replaced the term Colony of Gibraltar but only the label changed and our international status as a colony remained the same. We missed a historical opportunity to settle our future status while General Franco was still alive. The next time round we put forward proposals, after Franco's death, it was already too late. The proposals of the House of Assembly that were tabled with the British Government in the summer of 1976 led to the Hattersley memorandum as the official British Government response. This document ruled out constitutional changes except a committee system of government and pointed Gibraltar in the direction of Spain. The decolonisation of Gibraltar is a matter for Gibraltar and London alone. We reject all notions of the Spanish dimension and the Spanish key that have been floated in recent years. We reject the notion of sharing our sovereignty with Spain in any shape or form and we reject the very discussion of our sovereignty with a foreign country. There are therefore two routes open for our decolonisation. The first is the route marked out by the Select Committee Report which sets out the basis for a bilateral process between this House, Government and Opposition, and the British Government alone. The second route is the route of the Anglo-Spanish negotiations under the Brussels Agreement of 1984. It remains the view of the Opposition that these two routes are incompatible.

As hon Members know well there was a second referendum in 2002. The onus is now on this House to ensure that this time a referendum in Gibraltar is followed by a decolonisation constitution along the lines already agreed, which can then be put to the people for approval at the end of the negotiating process with London. This would be the first time in the political and constitutional development of Gibraltar that a new constitution is put to the people in a referendum before being implemented. In a long and turbulent constitutional history nothing has ever been easy. Every step in the road to constitutional reform in the past was first met by a loud no from the colonial power. We won through in the end by standing up for what we believe and by not taking no for an answer. We must follow in the footsteps of previous generations of Gibraltarians and learn well the lesson that history has taught us. We too must send out the message that we in this House will never take no for an answer either. I support the motion Mr Speaker.

**HON J J BOSSANO:**

Mr Speaker, we welcome the decision of the Government to bring this motion to the House so that we can reaffirm in the House that has new Members, the unanimity that there is in the recommendations of the Select Committee Report. In his opening remarks the Chief Minister said he hoped to persuade me either in the course of this debate or subsequently about the desirability of my attending a meeting in which he would offer me a cup of tea. I can tell him that changing the content of the liquid in the cup is not going to make a major difference to my decision on whether I attend or not so he should not waste time and energy in giving thought to that particular route. In fact having cups of tea in relation to constitutional issues has not got a very good history because in fact, when the entire process from which we are still suffering was launched by Dr David

Owen with the talks with Sr Oreja at Strassbourg, it was as a result we were informed in this House at the time, of Sir Joshua Hassan having a cup of tea with him. So cups of tea do not have a good record. I suggested to Sir Joshua Hassan at the time that he might have done better to have drunk whisky rather than tea and we might not have finished with the Strassbourg process.

When the hon Member answered the question that I put to him on whether the Government had taken a decision and my question which was No. 499 of 2004, which was answered very recently, was whether the Government had now taken a policy decision on how they intended to proceed and the question was in fact tabled two years after we had been told by the Government in this House, when previously approving the Select Committee's recommendation, that they had not made up their mind what to do. So we were not actually harassing the Government for a decision given that it was two years between being told in this House by the Chief MInister that they had not made up their mind as to what the next step might be, because as the House will recall, when the motion was last brought to the House to support the recommendations it initially read, "This House notes, approves and adopts the Report of the Select Committee and calls on the Government to initiate the appropriate discussion with Her Majesty's Government", and we said we could not support that because we were not in favour of calling upon the Government to initiate the discussions. Well, the Government removed the words with which we could not agree and we were able to carry the motion unanimously. But of course they told us that the removal of the words did not mean that they might not decide to do that, which was to initiate the discussion with Her Majesty's Government. Now my question obviously was asking them whether they had taken a decision precisely to do that, to initiate the discussions with the British Government, because that was the thing we were told in 2002. That they were removing the words, that they had not made up their mind but they might well decide to initiate discussion with the British Government or they might decide to suggest a joint approach from Government and Opposition, or they might decide to set up a constitutional conference, but that they had not made up their mind on any of them. Therefore when I asked in Question No. 499 of 2004 whether a decision had now been taken, given that it was on the basis of the last piece of information recorded in this House, the answer that I was given was no and I think that was a wrong answer and the answer should have been yes. The answer to Question No. 499 of 2004 by the Chief Minister should have been yes, the Government has taken a decision and the decision that has been taken has been to initiate discussion with Her Majesty's Government and I have written to the Foreign Secretary on 22nd December suggesting this to him, but I have not had an answer. Then he could have gone on and said to me there and then, and what I suggest is that if he accepts my proposal and invites me to go and see him that before that happens I should discuss with the Chief Minister any ideas he may have. But in fact the impression given by the answer that they gave me was that there had been no initiative at all taken by the Government, because precisely what we want to discuss is ahead of the Government making a decision. Well it was not ahead, the decision had been made before 22nd December and that is why I declined his invitation because had he asked me what I thought before he had written to the Foreign Secretary, I would have said to him that I was against the idea of him putting to the Foreign Secretary that they should have a meeting, a meeting by the way which had been made public by him after he got the reply, on the basis that the meeting is to discuss both the proposals and the procedure. That is what the Government press release says. Well look, if he is going to go to discuss the proposals and the procedure, I think it is far more useful for us to know after he comes back whether the answer he gets from Jack Straw was the answer that he got in 1998 from Robin Cook, which was that to make any move on constitutional decolonisation would make Spain go ballistic. Then maybe we need to decide on the basis of a possible ballistic Spain, what do we do next.

I would have thought it would have been more useful to know whether the scenario is that that is the reaction in London today

as it was in 1998, because in fact the Chief Minister will remember no doubt, that he put his constitutional proposals to London, as he is entitled to do, and as he said he intended to do, in the Mackintosh Hall when the three of us addressed a meeting of the Self Determination Group, initially as a government and then following the initial reaction from the British Government, there will be a wider consultation and the possibility of a select committee. That is precisely what he said he was going to do and that is what happened. As he knows, it was the wish of the Government that we should follow a procedure which was lengthy and very detailed, of going through the Constitution word by word and clause by clause. That is why it took as long as it did. Now having done all that, we have now reached the stage where it seems to me we are now going back to where we were in 1997/1998. Of course in 1997 Sr Matutes made absolutely clear in the Brussels process that what the Chief Minister was attempting to do with Robin Cook was in the eyes of Spain something that would involve, if United Kingdom agreed to go down that route with us or with the Government alone as it was at the time, would involve in Spain's eyes the United Kingdom being in breach of the position that they jointly adopt in the Fourth Committee in the UN. When we debated this motion two years ago the Chief Minister reminded the House that the objectives which were reflected in the draft Constitution and which we shared was that it should represent, the new Constitution that we achieve, should represent the maximum level of self-government to Gibraltar, which he told us, he reminded us was the language of the United Nations decolonisation proposals that would enable the United Nations to take the view that Gibraltar had been decolonised in accordance with its own criteria to that effect. That it is to the effect of achieving maximum possible self-government. But he said the Government's publicly stated position is that that is one of the objectives of the proposals but not exclusively the only objective.

The Government also attached, which was not to suggest that the Opposition did not, that there should also be modernisation of our domestic institutions. In my reply then I confirmed that we attach importance to the two objectives but it appeared to me that the difference between us was that we were not interested in pursuing the second objective if the British Government were not willing to move on the first. Now if indeed the objective is to get us delisted and decolonised and in the process a decolonised Gibraltar should have its institutions changed so that we remove elements that have been symptomatic and associated with the colonial constitution, then it means that in the process and as a result of decolonisation, modernisation follows. But we do not agree that modernisation per se equates to decolonisation or necessarily brings us any closer to it, because in fact, in 1968 when we were having our constitutional conference here, Bermuda was having one and in the Bermuda Constitution of 1968 the leader of the government is called a premier and there is no financial secretary and there is a minister for finance. When Kofi Anan told the Committee of 24 that colonialism and the existence of colonies was an anachronism in this century, he was including in the label of an anachronism the modernised constitution of Bermuda of 1968. So if we were to finish in the year 2005 with a minister for finance and a premier, which they have had since 1968, we would be still an anachronism albeit as modern an anachronism as they were in 1968, and we are just a more old-fashioned anachronism than they are at the moment. Well we are not prepared to have gone through the process of debating the future of our country since 1997 as we have been doing, simply to be more modern an anachronism than we were when we started on the process.

In 1964 when the United Kingdom agreed the constitution of 1964 which created the Legislative Council and created Government ministers for the first time, which was introduced on 10th September 1964, the Legislative Council that took office after the elections of 10th September clearly understood from the British Government that that was the final step before decolonisation which was expected by the then elected members to happen within the five year life of the legislative council elected in 1964. It is obvious that the reason why that did not materialise was because the United Kingdom misjudged

the support that Spain would get in the United Nations and the referendum which they were expecting would be taken, as was natural to expect, as the colonial power, the administering power doing the correct thing and establishing the wishes of the people of the colony was in fact rejected by the United Nations. That is when things changed against us and that is when British Government policy changed against us and that is when suddenly the British Government started talking for the first time about some constraint on our right to self-determination, which until then they had argued, as we continue to argue today, and as the elected members of those days argued, was absolutely clear-cut and in fact we had no doubts at all as to our right to proceed down the decolonisation route, which led in the 1960s to the creation of the Commonwealth and the independence of so many other British colonies and their emergence as sovereign nation states.

So, given that in the answer to the question the Chief MInister said that the result of our meeting would be that at the very least I would come out of it richer by a cup of tea or coffee, but for the rest it depended on whether my expectations were realistic, in his judgement, well it does not suggest to me that the way he has explained today the intention of the meeting was the way he was explaining it in answer to my Question No. 499 of 2004, because I can only assume that if my expectations are deemed by him not to be realistic, it is only because my expectation is that what we are trying to do is to decolonise Gibraltar. Now if that is not the expectation he is referring to, I do not know what other expectation he was referring to. That is the only expectation that we have. We feel that the Government would have a better chance if we went together to fight that corner than if they went on their own. But it is their prerogative. If they prefer to do it on their own it is their right to do it. Certainly the last time Gibraltar went with constitutional proposals to the United Kingdom, as the House will recall and as has been mentioned by my Colleague, was when Sir Joshua Hassan and Maurice Xiberras went with proposals to Roy Hattersley. Those proposals did not have the unanimous support of this House because I did not support them, and I did not support them precisely because they were proposals that did not seek to achieve decolonisation. The position of the GSLP then was that to go to the United Kingdom with proposals to change elements of the Constitution and leave us as a colony would leave the Spanish argument in tact in terms of what they constantly parade every time they talk, which is to say that the doctrine that we can only be decolonised by being integrated with Spain is not the doctrine of Spain but the doctrine of the UN. Now we all know that if we are able to get the United Kingdom's agreement to a constitution that decolonises Gibraltar and we were then able to get the United Kingdom with us to argue the case in the UN and get the UN's agreement that we are successfully decolonised and de-listed, then that would not make Spain's claim to Gibraltar disappear. But they will certainly not be able to say that it is not Spanish doctrine, that it is the doctrine of the United Nations. It would then be Spain's doctrine and only Spain's doctrine and it would then be no different to any other territorial claim in any other non-colonial situation. As the hon Member himself has said in the United Nations on innumerable occasions, the question of having a territorial claim is not a matter that should have ever been permitted to have entered the debate at the level of the Committee of 24 or the Fourth Committee or the decolonisation process, because those Committees are not the institutions that exist to consider territorial claims between sovereign states. This is why Spain argues that Ceuta and Melilla are not and should not be and were never put on the list of territories that require decolonisation notwithstanding the fact that there are territorial claims from Morocco. That indeed was the position that the ambassador for Papua New Guinea took in the United Nations in support of Gibraltar, arguing that as far as the Committee of 24 was concerned, they only had to look at the right of the people of the colony to exercise self-determination and the question of the territorial dispute was a separate issue which was for a different forum, not for the Decolonisation Forum.

So, it is not that we are saying the end of our problems with our neighbour are in sight because we resolve our relationship with the United Kingdom in a manner that is consistent with the

aspirations that every elected Member in every House of Assembly has expressed in exactly the same terms, but what we are saying is it would undoubtedly weaken Spain's case enormously, and they know it. That is why they go to the lengths that they do to try and persuade us or intimidate us not to pursue that route and why they do the same thing with the UK, and they seem to be more successful in intimidating the UK than they do us. Therefore I think that I am willing to listen to any arguments that the Chief Minister may put to me which are new, but I have to tell him that on the basis of the answer that he gave me, certainly maybe I misread the answer, but I read it as meaning, "well look, if what you want is to try and get the Government committed that it is either decolonisation or we do not support changes to the Constitution", that will be trying to get the Government to adopt the policy of the Opposition. Because he has often on other issues, on Brussels on other issues, said and we have tried to bounce him into the position that we have as policy. Well look it is not that we are trying to bounce him there, it is that that is our policy and he may not have the same policy and he has got to respect ours the same as we respect his. At the end of the day if we cannot persuade him, he has a majority, there is nothing we can do about it. But that does not mean we should stop trying to persuade him. We have got an obligation to keep on trying to persuade him and therefore, if we are able to go down a particular route together, to the degree that we can we will and then when the point comes that when we feel we cannot go together any more, then I am afraid we will have to part ways. But certainly we are convinced, and my own experience in eight years was, that there were innumerable meetings with the United Kingdom where the constitutional changes were on the agenda, and there were other items, and they kept on dangling the constitutional changes in order to persuade me to attend to the meetings but we never got to that item on the agenda. We never got there. There were always other things that they wanted to sort out first before we got to the Constitution, whether it was the Financial Services Commission, or it was the money laundering, there was always something that end that made sure the agenda item constitutional changes was never reached. Now, they are quite capable of doing that with the Government and with the Government and with the Opposition, but I think if we actually get the United Kingdom to formally accept that it is entering into a bilateral scenario, a bilateral Gibraltar/UK forum, whether that forum is British Government/Gibraltar Government, whether that forum is British Government/joint representation from both sides of House or whether that forum is a wider one, at the end of the day the most important thing in our judgement is to get the forum going. [Interruption] Well Mr Speaker I wish he had said it two years ago. I wish he had said it in 2002 because in fact let me remind the Chief Minister that the last time we had a cup of tea in his office was on the eve of the referendum, when he said "do not get me wrong Joe, it is not that I am reluctant to go ahead with this, as soon as the referendum is over we will approach the British Government", and that did not happen in November 2002 and then it did not happen because, before it was because he did not want it to be hijacked by Jack Straw and included in the bilateral negotiating process with Spain, and then it was because Jack Straw was so upset by the rejection of the referendum that he wanted Jack Straw to cool down. Well fine, I am not saying that they were just excuses, those are the things he believes were important which kept on delaying the process but I am afraid that for us the most significant the most difficult step will be to get the United Kingdom actually to sit down in a formal session irrespective of who is on the other side, we would prefer that it should be both sides of the House, and as we have already said if it is widened to a bigger forum, which we think is a good idea and which the Government at one stage was suggesting, we think there should be representatives there as well from the Integration with Britain Movement so that they can put their arguments and they can listen to the counter-arguments without saying you know, we are not accurately reflecting what is possible or what the British Government is prepared to accept. But in any case, given that the decision has already been taken to have a preliminary discussion on the proposals themselves, and on the procedure that the British Government might want, then unless we hear some very compelling arguments to the contrary, our view is that we would rather get a feedback from the Government as to what has been

the reaction, I almost said the rejection, the reaction of Jack Straw and then we will have to see what options really exist, where we go next and how we go next and if we can agree to do it together all the better, and if we cannot well so be it. But certainly given that the House has got an opportunity I think it is important to have on the record precisely what our position is and has been said by other speakers, that indeed not only does this in no way undermine our commitment, in fact our commitment is that we wish we had started on this as soon as the Committee reported its findings and indeed we believe it would have been even better to have had a shorter period of the Select Committee and gone with a less detailed proposal to the UK. Because the real litmus test of the genuineness of the British Government's willingness to do the correct thing by Gibraltar, will only be really tested when they cannot wriggle out of having to say yes or no to us on the basis that they know that the objective that we have set ourselves, and the objective we have got a mandate to pursue from our electorate, is the one that the United Nations has already told them is going to be the one for the rest of the colonies. It is interesting Mr Chairman that in the last report of the Foreign Office to the House of Commons it says that during the course of this year, within the next couple of months, two of the other British colonies are going to have proposals that will modernise their constitutions given to them and nobody suggests that those modernised constitutions will lead to their de-listing, and that another six are going to have it in 2005. There is no indication there that those six will be de-listed, and that the only two that are not mentioned for modernisation in either 2004 or 2005, are ourselves and Pitcairn Islands. Now we know that the indications from the Committee of 24 is that they were the first British colony they were setting their sights on was Pitcairn Islands and what they were planning to do. American Samoa and Pitcairn Islands as the first two territories would have specific action taken and a work study group set up to look at their decolonisation and their new constitution. So it is against that background that we wholeheartedly welcome and support the motion and certainly we hope that in this forthcoming meeting between the Chief Minister and Jack Straw, he will come back with not a decolonised Gibraltar in his pocket but a commitment that the British Government will enter into a genuine, serious and open debate on our constitutional proposals on the basis that whatever else they may want to change, the one thing they will not seek to change is the end result which should be a decolonised Gibraltar.

**MR SPEAKER:**

If no other Member wishes to speak I will call on the mover to reply.

**HON CHIEF MINISTER:**

Mr Speaker, first of all can I congratulate as is not only the parliamentary tradition but indeed something which I do with personal pleasure, the Hon Mr Randall for what he declared to be his maiden speech in this House. Congratulations to him. I do not extend the congratulations to the other new Member the Hon Mr Bruzon (a) because he did not declare his speech to be maiden but also because I think he has made interventions before, but that is not to say that I am not wishing to indicate to him that I do not agree with what he said, in fact there are less areas of disagreement between us in what he said than there actually is in what the Hon Mr Randall said even though I agree with much of what he said too. So anyway, congratulations. I have to say that I do not understand all that we have heard about substance. No, no, and certainly I could not have congratulated the Hon Mr Picardo for his maiden speech, because in his case it is almost certainly incapable of being described as maiden, nor could I find myself agreeing with much of what he said. But anyway, as I was saying, I am somewhat surprised that all that we have heard today about the substance of the Constitutional reform proposal and all the sort of questions that have been rhetorically asked, and all the doubts that have been rhetorically sown as far as we are concerned we have agreement between ourselves. The hon Members can, I

suspect it is because they think that the Government's heart is not really in it, that they are constantly on the edge of their chairs wondering whether the Government really believes what they have signed up to or not. Well look, the hon Members should not do that because the constitutional reform proposals were the Government's policy not the Opposition's policy. We were delighted that we were able through the mechanism of the Select Committee to come to a common position on the proposals. The policy of seeking our decolonisation through the mechanism of alterations to our Constitution was a GSD manifesto commitment at two general elections, not a GSLP policy to which the Government were reluctantly dragged. This is our policy which we put up in our 1996 and 2000 manifesto at a time when other political parties were proposing free association and things of all other kinds.

The Hon Mr Randall said that there ought to be no problem for the UK Government accepting all our proposals and then the Hon Dr Garcia said that it would be "unforgivable if there was any dilution in any shape or form of our constitutional proposals". Well I am not quite sure what they mean by that but if they mean that only acceptance by the British Government of each and every one of our proposals in the form that we have asked for that only that is acceptable and that nothing else is acceptable and that any departure from the text that we have proposed either in quantity or in quality is unforgivable, then look if we are going to be honest we should not invite the British Government to join us in the negotiating process. In a negotiating process it is understood that what may emerge is not what either party proposed. So if the hon Member's view is that only the whole of what we have asked for will do and any dilution of it would be unforgivable and that if any part of it, to quote the Hon Mr Randall is not acceptable to the British Government, that therefore this is an unforgivable disgrace, then we are not inviting the British Government to join us in the negotiation. There is no need for either of us to go to London. We can just send it to him in the post and say look this is what we want take it or leave it. The suggestion that unless we get everything that we have asked for there is somehow a failure of the process and that it is a disgrace or unforgivable, depending on the colourful adjective that the various Opposition Members have used, I think is a wholly unrealistic expectation and I think it is a wholly unrealistic description of the process which is involved.

The Hon Dr Garcia quite realistically, in my opinion, said in another part of his address that decolonisation and constitutional advancement should come in stages. It may be that he thinks we are now at the penultimate stage, that is a different point but that is much more sensible. Now this does not mean that we will settle only for decolonisation and that there is somehow some Government view that modernisation by itself, meaning who arrives at a cocktail party first, is the point of the exercise, of course it is not the point of the exercise. The Government's policy, as it has been from the moment that it was our policy and nobody else's to go down this route, is that the mechanism of constitutional form was for the purposes of resulting in a modernised constitutional relationship with the United Kingdom, which was not colonial in nature, and by stint of it not being colonial in nature, we would have been decolonised, and we could then go to the United Nations and say, we are still British sovereignty, we still have a constitutional relationship with the United Kingdom but because our relationship is no longer colonial in nature, we are no longer a colony and therefore take us off the list of colonies, put us on some other list but take us off the list of colonies. This is the whole essence of the Government's policy but we cannot be sure at the outset that we are going to succeed, as I have said publicly on many occasions, we cannot know whether we are going to succeed at all, in other words whether the British Government may simply not be willing to even seriously address those aspects of the matter, or whether if they are we are going to achieve enough to get us through the threshold, the gateway, of what would enable us to say that the relationship on the other side at the end of the negotiation is or is not colonial in nature and therefore whether or not it serves that purpose. That has to be seen in the negotiation. Time will tell. We may succeed sufficiently for those purposes or we may succeed insufficiently

for that purpose or not at all in the sense that we, if there are ten litmus tests for that, we might not succeed in any of them, let alone in five or six. This requires to be established but that does not invalidate the process. That does not entitle anybody to say it is not worth entering into the process unless that that is what one is going to get. What sort of negotiating process is that? One has got to accept the possibility that we might fail in the negotiating process and that we might fail therefore to achieve the purpose for which the process is intended. It seems to me that that is simply the laws of life and that time will tell, there are many people in Gibraltar who think that we are on a hiding to nothing. There are many people in Gibraltar who think that this is wishful thinking by politicians that have lost touch with reality. Those views are perfectly tenable views, they are not views that can be disqualified in a democracy but certainly they are not views which lead one not even to suck the bloody gobstopper to see if one can succeed.

I mean that is the reality of the matter. Those prophets of doom and gloom may be right. Time may prove them correct but that is not a reason for (a) asserting the right, and (b) attempting to achieve what one tries to achieve. We have got to accept the possibility that we do not achieve what we want to accept because others that have to play the game to give it to us may not give it.

The Hon Mr Randall also spoke, he spoke of the shackles and vestiges of colonialism. I agree with the reference to vestiges of colonialism. I have to say that I have never felt shackles, I have felt that because of what they call the Spanish dimension, Britain has been party to a denial to the people of Gibraltar of our democratic political rights as a colonial people to self-determination. That is true. But I do not think that whilst we have been a colony, well in recent decades whilst we have been a colony, I do not think we can speak of the United Kingdom's position in Gibraltar as amounting to colonial shackles. There have been colonies in the past in other eras who have laboured under genuine colonial shackles, ours is a colonial status coupled with, in my opinion, an inexplicable and a self-serving unwillingness on Britain's part to allow us to enjoy the same political rights to exercise as we please. To exercise as we please perhaps to exercise by saying no, we think it is in our interests not to go down the self-determination road because we do not want to face the Spanish dimension. But that would be a choice for the people of Gibraltar and that is very different to being told that because of the Spanish claim one cannot have the right even to make that judgement for oneself. That is the difference between those people who think that we are wasting our time and those of us who think that we are not wasting our time even if we do not succeed in the objective. The Hon Mr Randall asked me to employ humility by not going to see the Foreign Secretary alone and he also invoked references to God and religion which is a matter for him. I have to say that I have been as humble as a government can be expected to be. We have formulated Gibraltar's constitutional proposals in a process, which even though we were in a majority, but I hope Opposition Members who were in the minority will accept that except on one or two issues, very few of them came to a vote, and therefore the Government sought consensus rather than that the document should reflect our view on the basis that it had three votes against two in the Committee. Now I am not sure that I can remember any vote although there may have been one or two. So we formulate the position in relation to a consensus approach with the Opposition, including inviting submissions from the public at large, and then we do not say, "well thank you for your help in formulating it, now I am going to go off and do all this by myself". We said "no, we have not yet decided how we are going to do it, but our view is that this is not something that a government of the day should do by itself". We have not yet decided the formula for inclusion, the formula but we are convinced that this is something the Government should not do by themselves. I believe therefore that the Opposition party and ours, and we have not decided and actually still have not decided, that issue. That is what the cup of tea meeting would have been designed to take forward, so that the Government could have crystallised that decision. But humility, which is what the hon Member tried to pretend I would be lacking if I did not collapse to the position that they were

demanding, humility, [*Interruption*] it is a strange way to seek unity with the Government to make remarks of that sort. I know very well what humility is. I do not know actually if the hon Member knows what it means because humility is not what he is seeking from me, because humility cannot extend to pretending that in a democracy there is not a government with a role as a government and a duty to lead as the government and something separate and different called an Opposition, with its own different roles and duties. One thing is for the Government to say I am going to do something in consensus or jointly or together with the Opposition and a wholly different thing is for the Opposition to expect that that means that the Government ceases to be a government, and that somehow the Opposition becomes half the Government and the Government becomes half the Opposition. That does not call for humility, that calls for an abrogation by the Government of their rights, powers and responsibility to steer issues and to demonstrate leadership and to undertake the role of government. That is not humility. If the Government ceased to do those things they would be abrogating the responsibility that the electorate, in their majority, have deposited in the Government. The suggestion that it requires an absence of humility or in the words of the Hon Mr Picardo, political greed, or in the words of one of the other Opposition Members a sabotage, although the word was not used but the sentiment meaning that if the Chief Minister went to see the Foreign Secretary, he would be undermining unity and that this would be his long lasting epitaph in policy, the suggestion that the Chief Minister of Gibraltar is not at liberty, never mind that he has the responsibility to do so, the suggestion that the Chief Minister of Gibraltar is not at liberty, according to the hon Members, unless it is by an act of gross lack of humility, that he is not at liberty to raise the issue of constitutional reform with the Foreign Secretary of the Government of the United Kingdom, is in my view a wholly unsustainable proposition. The suggestion that it should be improper somehow or unhelpful that I should raise with the Foreign Secretary in what I had described publicly as an informal discussion to agree the way forward, how can I take a Gibraltar delegation to the British Government unless I have discussed with the British Government how these negotiations are physically going to take place. I would not have to take just the hon Member, I would have to take the hon Member and the whole of the rest of the delegation, all the other people that I am thinking of inviting to form part of the delegation and why have we all got to go together just so that we knock on the door and say here we are for our constitutional negotiation. *"Well, I am sorry Chief Minister we have just not provided a table big enough for all of you people, and here we thought there were only three of you coming so you know there are not enough sandwiches on the table."* The suggestion that the Gibraltar Government discussing these issues with the British Government is somehow an act of political greed, or somehow an act of lack of humility, is actually extraordinary as a proposition and certainly one that the Government rejects and one with which we think the Opposition is not entitled, because the Opposition should not assume that it is they and us who are going to go together. So when the hon Member said that I should not speak to the Foreign Secretary by myself, what he was actually saying is that when I next speak, when I next mention the word constitutional reform to the Foreign Secretary, I have to be surrounded by all the people that we might conclude should be there. Well I have to say it is a completely unrealistic and self-serving, wholly self-serving analysis of the situation by the Opposition Members and the Government will pre-negotiation commencement discuss these issues with the British Government freely and frequently. How can I set up a negotiating process with the British Government if I do not discuss the negotiating process with them. It is just ridiculous, a wholly ridiculous proposition. It may very well be true that the person who does not know what humility means is the Opposition Member and not I. I should like to say also, well Mr Speaker look, the hon Member mutters that I am wrong, then let us just agree on this. If humility means that I abrogate to him my responsibilities as Chief Minister of Gibraltar then by that definition of humility I hope that no Chief Minister of Gibraltar is ever that humble.

I ought also to say that in reference to this business about whether the British Government, whether we can expect to achieve everything that we ask for or not in the context of a realistic negotiation, of course we are going to end up, even if we succeed, we are going to end up with a situation where we remain having British sovereignty and in a constitutional relationship with the United Kingdom. It is unrealistic in the extreme to think that the United Kingdom is going to give us a de facto independent constitution whilst they retain international responsibility for Gibraltar in terms of our sovereignty and in terms of our constitutional status. Therefore, as indeed the constitutional proposals themselves accommodate and recognise, there have to be mechanisms in those proposals which reflect the United Kingdom's continuing role but they have to be non-colonial in nature. I think we are all agreed across the floor of the House on this but I just want to take this opportunity to make a point, which I have made recently in public, and which responds to sort of typical UK ministerial comments on the scope and parameters of constitutional reform proposals. The United Kingdom's perhaps legitimate rights to ensure that constitutions do not allow them with contingent, leave them saddled with contingent financial liabilities which they cannot influence, or which may give them a legitimate right to ensure good governance, that those cannot be used as pretexts, covers or excuses to continue to prevail over a colonial situation. In other words, in my view the good governance of the Government of Gibraltar is something which in a democratic Gibraltar is a judgement for the people of Gibraltar at the polls, politically, and then for the courts of Gibraltar in between elections if the Government of Gibraltar is doing something which is contrary to the law. The idea that we need a colonial constitution in order to ensure that the Government of Gibraltar practises good governance is a denial of basic democratic principles to the people of Gibraltar. We are no more or less in need of that mechanism to ensure good governance than the British Government itself is. What makes them think that we need a mechanism to deliver, to ensure good governance by the democratically elected Government of Gibraltar that they do not think they need to ensure good governance by them in the United Kingdom. It is wholly patronising and a completely unnecessary mechanism which would, in my opinion, fall into the categories of some of the things that the hon Members said that they would not approve of. Genuine understandable proper mechanisms to give the United Kingdom the powers that it will continue to need to look after its genuine and continuing role and responsibilities yes. But a pretext of good governance to continue to enjoy colonial rights and powers which are not actually needed for proper reasons but just used as a pretext, that would be wholly unacceptable to the Government.

The hon Members have lamented in various forms of language and in various degrees of aggression that it has taken us two years to come here, and I suppose if we emerge from this debate with unanimity and unity, it will be I think despite the Hon Mr Picardo and not because of the Hon Mr Picardo. Because frankly to say that the Government have now plucked up the courage to proceed with this. Look, first of all the Government does not need to pluck up courage to do things that it puts in their manifesto and stands for election for. The Government on the other hand do not put their brain before brawn. In other words the fact that the Government proceed cautiously and in accordance with their assessment of what is in the wider interests of Gibraltar does not mean that we do not have courage, it means that in addition to having courage we also have brains. Because courage without brains may be a virtue in a street fighter but it is not a virtue in a good Chief Minister of Gibraltar. Right, and therefore the Government will continue to proceed on the basis of paced timing. I know that the hon Members think that the most sensible thing to do from their point of view or even from the point of view of Gibraltar as they see it, would have been to have rushed. The Government whose policy it was took a different view. We took a different view as the hon Members know. We think that these things are important. Very important. I said this in my last television interview on this matter. We think that this policy is important, very important. We do not think that it is urgent. We think actually that there are more important things for Gibraltar also to say at the same time. Like achieving this in a way which

maximises rather than minimises our economic stability. Doing this in a way which maximises rather than minimises the prospects of success of the initiative. These things require judgements and they require judgements as to timing and pacing, and those are judgements that the Government are elected to exercise and the Government exercises them, even in respect of something which is our policy. That does not mean that we have not previously plucked up the courage. It means that we had not previously judged that it was in Gibraltar's interest to proceed, and it is not true that I said to the Leader of the Opposition at our last meeting that we would get on with it as soon as the referendum was over. What I told the hon Member was that we would proceed with it when the time was right following the effect of the referendum and the political campaign on joint sovereignty, because we did not want it to fall on grounds that would be necessarily infertile by virtue of the animus that the Foreign Secretary was then in, because that is what I said to him. [*Interruption*] Well fine, then we have to agree to differ. That is what I said to him. Now, the hon Member may think there is a difference between those two points. I do not think there is a difference.

**HON J J BOSSANO:**

We have different recollections of what took place.

**HON CHIEF MINISTER:**

Fine, we will have to leave it at that. The idea that I might have said to the hon Member that as soon as the referendum was over we would do it, when what I was saying actually was, if anybody in Gibraltar thinks that the day after we have thrown sand into the eyes of Spain and Britain, with the Foreign Secretary barely willing to speak to the Chief Minister of Gibraltar let alone negotiate with him, that that is the apposite moment to pull this document out and say, *"well it is not enough that we have quipped your pit with Spain on joint sovereignty, now here you are, now take this before you have had time to recover. Now take this as well, see if we can actually get you to declare war with Spain all in one week"*, We have to leave it on the basis that we have different recollections but it sounds something completely incompatible with what I was saying both privately and publicly about how Gibraltar needed to behave in the immediate aftermath of the referendum. It is a matter for judgement for the Opposition Members, one or two of them have said it has got to be a decolonising constitution or nothing else. Well that is a matter for judgement by them. Certainly our joint objective is a decolonising constitution which let us be specific, means a constitution which allows us honestly to say to the people of Gibraltar – we remain of British sovereignty, we remain in a constitutional relationship of political dependency of the United Kingdom but it is not colonial in nature and therefore it is decolonisation and therefore we can ask the United Nations to take us off the list. That is the objective, whether if we do not achieve it, it is therefore not worth taking whatever other advancement may be available to us but which nevertheless falls short of that objective, that is a matter of judgement which in other words, if one cannot have enough whether one does not want anything at all, one cannot have three sweets and if one cannot get the three sweets and one can only get two, whether one takes the two sweets or turns ones nose up at them, that is a matter of judgement but certainly there is no difference between us on the objective of the proposal. When the hon Members complain that this has now gone three terms, can I in the most amicable and unified and unity seeking way possible, remind them that however slow, laborious and ponderous they may think our stewardship of constitutional reform has been, during the eight years that they were in office there actually was no specific constitutional initiative.

I recognise that the hon Members majored in articulating the sort of the self-determination argument of the self-determination politics, but there was no structured specific constitutional initiative to lead to decolonisation. There was the general cry for self-determination, which I recognise contributed to the advancement of Gibraltar's political articulation, there was one

election in which they stood with no particular constitutional model for carrying that forward, there was one election in which they stood arguing for free association and then another, fine, so they may want to take the view that eight years of GSD Government has not seen enough progress. It has seen certainly no less progress than the eight years of GSLP government and we think, possibly in terms of the structured pinning down of a particular route forward, I think it has shown actually more progress, though we may not succeed in obtaining the results, but in the attempt to receive a structured result we think it actually shows more progress than they made. The hon Member who then asks me not to be politically greedy and who asks me not to be politically unhumble, the Hon Mr Picardo then says that of course this Government that has been elected by *"a whisker over half the vote"*. Well I know it is part of the hon Member's frantic and frenetic political rehabilitation process to pretend that they only just lost the election by a whisper and to pretend that on another day they might have won as if they were a football team that just had a bad day. Well can I remind the hon Member hat our election victory this time round, by a margin of more than 11 per cent over them, in any self-respecting democracy is regarded as a landslide. In Spain the current government are wetting themselves with excitement because they are six points ahead in the opinion polls. In Britain one government in the last 45 years has been elected with more than 50 per cent of the vote, this whisker that he refers to. This whisker that we just squeezed through the door, this whisker and this gap that we just managed to squeeze on because they were all having a bad day, is actually 12 per cent of the electorate which in any other democracy does not have the loser trying to denigrate the democratic validity of the Government's mandate. It actually calls for a little bit of humility, electoral humility on their part and to recognise that by any sensible, conventional democratic measure their margin of loss was democratically significant. Very democratically significant. When he is categorising our third electoral victory as sort of a mathematical tight squeeze can I ask him to remember that this Government, who he thinks are only just arithmetically entitled to pretend that they are a government, because after all we have only by a whisker of more than 50 per cent won the election, can I ask him to remember that this party and this Government is firstly the first party ever in the history of Gibraltar to win three consecutive general elections with more than 50 per cent of the vote on each of the three occasions and with their eight candidates winning the first eight places in the ballot box on all three occasions, a feat never before attained by any Government of Gibraltar. Now this is the Government that he wishes to dismiss as having squeezed into government by what he called a whisker of a majority over 50 per cent. Mr Speaker I think that the hon Member's opposite attempt to re-invent themselves politically is laudable and in a democracy to be welcomed. But they should stick to doing it through credible, factual means rather than through these contorted, distorted mental somersaults that they try, not only to do themselves but actually to sell to the people of Gibraltar who are not quite as slow of mind as they would need to be for those sorts of arguments to carry any weight. The hon Member wants me to move on, I do not blame him.

Mr Speaker, but still despite all these provocative statements to which the hon Member subjects us to, we continue to agree with him that unity is the purpose. Except that when I ask somebody to unite with me I try if I am really sincere about the call for unity, I try to use language which is just a bit less provocative than the language that he chose. But never mind, never mind, he must conduct his political unity seeking in whatever language he thinks is most likely to enjoy success. What he cannot do is to say that if we do not have unity it will be my political epitaph and then ask for it in terms of language which include the phrase political greed if the Chief Minister has the audacity to go to speak to the Foreign Secretary by himself and without the Leader of the Opposition. I have to tell the hon Members that I take a considerable amount of comfort from the fact that the Leader of the Opposition in explaining his reasons for wanting to postpone his meeting with me until after I have met with the Foreign Secretary, which whilst a position that I do not agree with because I think it is based on a completely misreading by him of both the proprietary and the purpose of that meeting, but

at least it is a reasonable position, reasonably articulated. I did not hear the Leader of the Opposition declare that if I dared to see the Foreign Secretary without him I would be a politically greedy person or that I would be a person lacking in humility. What I heard him say was that if I was going to see the Foreign Secretary then we might as well wait until I can bring him the news of that meeting before we meet to discuss the matter. Well that seems to me a much more reasonable and defensible position than the more colourful points made by his Colleagues before him. So the hon Member can relax now, I am going to move on. The hon Member is constantly urging me to move on.

Mr Speaker, the Hon Dr Garcia said that decolonisation must be an on-going process with increasing levels of self-government. I agree with him and because that is precisely correct one of the things that we shall have to judge in due course is if we do not get enough for our common purpose of being able to say that this is no longer a colonial constitution, do we say well we then do not want anything or do we say we have failed in our principal mission, we shall have to live to fight another day and in the meantime we will take what is available which may amount to an on-going process with increasing levels of self-government. It is not a question that either he or I could answer now, it depends on (a) what is offered, and (b) whether we judge it is worth accepting or not. But a judgement will have to be made at that stage to the point that I was making before whether if we are offered things which are not enough for our primary purpose, whether we then reject what is available or whether we grab it on the basis that at least it is a progress of a self-government type, although not perhaps of a decolonising in the international sense. It is a matter for judgement in due course and I think it would be pointless to speculate in advance if we do not know. I agree with him and I said this in a television interview I gave on GBC several weeks ago, that the most important point of this is not the speed at which it happens but the fact that it should be happening at all, because by having our own agenda and our own process, he has used the word forestalled, I used the words on that occasion, fill the vacuum, as to the way forward for our future which others might otherwise seek to fill with proposals that will not be to our liking. So I have to say to the Leader of the Opposition that I reject all that he has said implying or suggesting or insinuating that somehow I have departed from what I have said in the past. What I have always told him in the past is that the Government were committed not to doing this alone but had not yet decided how they would not do it alone. That actually is still the position today and my invitation to him, which he has declined until I return from my meeting with Mr Straw, but my invitation to him to come and see me so that we can have a discussion was precisely a discussion about his views and my views about how the matter should be taken forward. Discussions let me hasten to add to him I would not be having only with him, but that I would be having with leaders of other political parties and other organisations who maybe organisations that the Government might wish to bring along as well. It is only when the Government have spoken to all these organisations and all these political parties, that the Government can then take into account to the greatest possible extent the views that they have heard, then make their decision as Government, not whether the Government are going to go it alone or not, the Government have already said they are not going to go it alone, but rather on the particular model for more inclusive participation of Gibraltar. That was the purpose of the meeting and whilst I from a position of disagreement with him, respect the assessment and the view that he has made, I do believe that it is a wrong assessment, I do believe that it is based on a complete misreading (a) of the purpose of my meeting with him, and (b) of the purpose of my meeting with the Foreign Secretary, which is an inevitable and inescapable necessity in advance of, not as part of, in advance of whatever negotiating mechanism is eventually set up for this to be done through a mechanism more widely than just the Government. Now, I believe that far from being an unhumble position, that is a wholly proper, measured, well thought out and reasonable position by the Government. What the Government are not going to do is in the name of unity abrogate their functions as Government, just as the Government do not in the name of unity ever expect or ask the Opposition to stop being an opposition. It is very easy for the Government in many areas

to say well join us in, there is a role for Government and there is a role for the Opposition. We can do things together in the interests of Gibraltar on many issues but that does not detract from the fact that together we are still one a Government and the other an Opposition. That is not an obstacle to unity, it is a realisation that even in unity the parties still each have their different political constitutional and indeed legal roles. In fact if the Government's position will be my enduring political epitaph it is one of which I shall be proud because it is one which is of a Government seeking to include on proper terms as many people as it is appropriate to include in this important issue for Gibraltar.

**HON J J BOSSANO:**

Can I just ask the Chief Minister to look at page 14 of the Hansard of the debate on this motion two years ago and there he will find that indeed my recollection of the position is accurate and his is not. Because there he said in answer to the point that we were making that the text of the motion was that the Government would be going it alone. He said it is a matter whether it is done by the Government or done by the Government with the Opposition, or done by the Government and the Opposition and others, it is a matter on which the Government have to take a decision. Right. Well therefore, that is the position as he left it, that the Government had not yet made up their minds which of the three it was. He has just told me that the first of the three was never under consideration, no?

**HON CHIEF MINISTER:**

What I have said is that the Government are committed, we have made public statements, I have made statements inside this House and publicly to the media in Gibraltar outside of this House, that the Government do not consider that any constitutional reform proposals should be done only by the Government of the day, and that the position that the Government might do this entirely by themselves, look we might have to do it by ourselves if nobody else wants to do it with us, but it is not the Government's choice to do it by themselves and what is outstanding is the mechanism by which others would participate. But of course, whatever mechanism is chosen for others to participate will not detract from the fact that we will still be the Government, and that the Government will have a role to play in that effort which will reflect the fact that it is the Government. Look, as an example, if the Gibraltar Government invite as well as the Opposition and others the Integration with Britain Movement, I mean surely the hon Member is not suggesting that the Gibraltar Government and the Integration with Britain Movement should have the same status, and that I should have the same status in the constitutional negotiations as my namesake Joe Caruana. So however the delegation is constituted there is still going to be a Government and a Chief Minister and other Ministers, and there is going to be an elected Opposition with a Leader of the elected Opposition and there may be other political parties without parliamentary representation, there may be NGOs. But they will not all have the same status, that is just unrealistic. But these are the things that I was going to discuss with the hon Member and I hope still to discuss with him when in due course we meet. To suggest that the purpose of the meeting was just to offer him a cup of tea, I mean I thought he was just using telegraphic language in order to avoid having to explain much more things. But he knows from the letter that I sent to him what the purpose of the meeting was for. I would like him to meet with me before I meet with the Foreign Secretary but if he decides to meet after it does not matter, except that my meeting with the Foreign Secretary then necessarily cannot go as far in my articulating the way that Gibraltar wants to play this, unless I do it on the basis of the Government's own judgement and on the basis of the Government's judgement based on other people that might be willing to consult with me before I go to see the Foreign Secretary. But if the Leader of the Opposition declines to meet with me until after I have met the Foreign Secretary then as a matter of inescapable logic I only have two choices. Either I do not raise the question of structure of the negotiation with the Foreign Secretary, or I raise it without the benefit of the Leader

of the Opposition's views, but with the benefit of the views of such other parties and individuals as may have been able to meet with me before, and the choice really is entirely his. I would urge him to meet with me before I meet with the Foreign Secretary on the grounds and on the basis that the decision that he has made being based on the belief that this represented a resilement by the Government from their position of not going it alone, is an incorrect assessment on his part and in no way reflects either the position of the Government generally on that question, or specifically given that these are things that necessarily have to be done between Government and Government until the process is launched. These are pre-launch of process housekeeping work that necessarily has to be done. What I cannot say to the hon Member is that in addition to that I will decline to mention constitutional reform proposals to the Foreign Secretary. I am afraid I cannot agree to the hon Member that I will not, except in his company, before the launch of the process have any contact, conversation, even it he raises it, with the Foreign Secretary. I think it is an unreasonable request but it does not detract from the jointness of the process once the process begins. I cannot offer the hon Member any more help than that if indeed he wants help. I cannot offer him any more help than that in coming to have a cup of tea with me before I meet the Foreign Secretary. I commend the motion to the House but I recognise that nothing either of us have said in any case addresses the fact of the motion because the hon Members have indicated that they would be supporting the motion from the very outset of it.

Question put. The motion was carried unanimously.

**HON CHIEF MINISTER:**

I beg to move the motion standing in my name and which reads that:

"This House-

resolves that the following Members should be nominated to the Permanent Select Committee on Members' Interests:-

The Hon Lt Col E M Britto OBE, ED;
The Hon J Netto;
The Hon S E Linares; and
The Hon L Randall."

Mr Speaker, Standing Orders requires that the House should have a Select Committee on Members' Interests. I do not think there is any need for me to say anything in support of this motion. These are the Members that each side of the House has nominated and therefore I assume that the motion will be supported by all sides.

Question proposed.

**HON J J BOSSANO:**

Mr Speaker, this is standard procedure after a general election and we support the motion.

Question put. The motion was carried unanimously.

**HON CHIEF MINISTER:**

I beg to move the motion standing in my name and which reads that:

"This House-

resolves that the Honorary Freedom of the City of Gibraltar be conferred upon the Royal Navy in recognition of its close association with Gibraltar over the past 300 years, as an expression of the regard, esteem and friendship in which the

Royal Navy is held by the people of Gibraltar and in commemoration of the role that the Royal Navy has played in the social and economic development of Gibraltar and its people."

Mr Speaker, as the hon Members know the Freedom of the City of Gibraltar is the highest civic award or recognition that this House or for that matter anybody else in Gibraltar can bestow. Perhaps no other institution has a relationship in and with Gibraltar that goes back the entirety of the 300 years, right to the very first day. Given that it was the Royal Navy with a considerable loss of life in the process, who captured Gibraltar in 1704 at the head of a force which was joint as between the United Kingdom and Holland, and that since then Gibraltar has been at the heart of the Navy's operation and the Navy has been central to almost every aspect of life in Gibraltar. The Navy were instrumental not just in initiating British sovereignty over Gibraltar through its capture in 1704, but indeed also instrumental in ensuring that Gibraltar was able subsequently to survive and sustain many of the great sieges to which it was subjected, not just by relieving Gibraltar and its defenders more than once just in the nick of time but also in ensuring that the seas nearby and around Gibraltar were kept free of enemy shipping and therefore minimise the military force that could be brought to bear upon the defenders of Gibraltar.

Gibraltar owes, I think, a debt which deserves to be commemorated to the Royal Navy, not only in war, not only in the military sphere but also in peace, since I think it is true to say that the two great historical impetuses, economic impetuses to Gibraltar, have had links with the Royal Navy. The first period of great economic prosperity for Gibraltar came during the French Revolution and the Napoleonic Wars, when Gibraltar became an important base and the efforts and the commercial activity by many local businessmen to keep the Royal Navy supplied and fighting fit led to a number of them making large fortunes. Indeed it was his business as supplier of fresh beef in those days essential to keeping the fighting ships free of scurvy that made Aaron Cardoso's fortune with which he built the imposing house across the square which is now our City Hall. The Royal Navy's complete command of the sea after the memorable victory at Trafalgar, with which Gibraltar can also claim some historical connection, allowed Gibraltar to become a centre for supplying Southern Europe with British goods through the blockade of trade in British goods that Napoleon had imposed in respect of any French possession or territories. These allowed Britain to finance a costly war and provided her with much of the wealth it required to campaign to finance Wellington's campaign during the Peninsular War. This and the number of captured ships and their cargoes, which as some hon Members might know, all the prizes seized by the Navy in the Mediterranean were brought to Gibraltar and auctioned in what was the origin of our present Admiralty Court jurisdiction, in the open in the public square that subsequently became the John Mackintosh Square. Right underneath where we are standing now. That indeed this activity itself contributed enormously to the prosperity of Gibraltar at that time, and indeed it was the wealth created by that activity particularly which resulted in the construction by Gibraltar merchants of the sumptuous library which is now which is the very building in which we are now meeting as this House of Assembly today.

There was an even greater impetus that the Royal Navy gave to the economic prosperity of Gibraltar and indeed something upon which the entire economic viability and therefore social viability and therefore political viability of Gibraltar is based and that is the decision to build the Royal Navy Dockyards in Gibraltar at the end of the nineteenth century. This has been perhaps the most vital event for the economic prosperity of our City. It provided business for our local merchants and by local standards, well remunerated and reliable work for the working people in Gibraltar. This led in turn not just to economic prosperity but to the proper organisation of trade unions and to the beginning of political organisations in Gibraltar which were to bring about the beginning of self-government in Gibraltar, our present Constitution and in the wake of it all our present identity and political aspirations as a people. I think it is true to say that without the Royal Navy and its activity in Gibraltar and the

employment that it created in Gibraltar, the civilian population in Gibraltar would never have been able to get off the ground so to speak in terms of their economic sustainability, and although we no longer rely on it, it is still an important part of our economy. The Navy's presence in Gibraltar still accounts for over 1,000 directly employed jobs and numerous more indirect jobs in our economy. So not only was it an impetus to the social and economic development of Gibraltar at the turn of the century and since, but it continues to this day albeit in diminishing proportions, it remains to this day still the second largest employer in Gibraltar after the Government of Gibraltar and if somebody came to Gibraltar tomorrow offering to set up a business that would employ 1,000 people, that is what the Royal Navy does today. And of course Gibraltar has reciprocated. Gibraltar has been a willing and home from home host country to the Royal Navy and I know that the Royal Navy much value that. Particularly during the Second World War but really in almost every military endeavour since the Second World War Gibraltar has provided the Royal Navy with a logistical and naval base without which all of its military campaigns would have been difficult, and some of them would simply not have been possible at all, like the saving of Malta during the war and perhaps even the launching of Operation Torch, the relief from North Africa during the Second World War.

Therefore, Mr Speaker, it is on the basis of such principles which I am obviously just alluding to and not pretending to go into in any great detail, that the Government forms the view that few institutions have had a greater impact on Gibraltar and our development as a people and as a community than the Royal Navy. I believe that it is right, fitting and appropriate that we should mark those links, given what I have said including that no British organisation can trace back its arrival, role, importance to Gibraltar and its enduring British sovereignty during the whole of the 300 years than the Royal Navy, and I hope that the House will support the motion which I commend to it.

Question proposed.

**HON J J BOSSANO:**

Mr Speaker, we are as happy to support this motion as we did the one before and the one before that. The three that we have done today. This House has already granted the Royal Marines who were the people who landed in Gibraltar in 1704 the Freedom of the City, and on this occasion of course I think it has been widened because it was I think after Gibraltar was captured and liberated from Spanish rule, and the Spanish flag removed from our country, and I think just for having lowered the Spanish flag it is worth giving them the Freedom of the City. They need not have done anything else. So we would have been quite happy if that was the only thing they had done to give them the Freedom of the City for that. But of course I think what they discovered was just how useful Gibraltar was to the Royal Navy. Incidentally, it was of course at the time not the Navy of the United Kingdom but of England because that was before the Union. So in fact our relationship with the Navy is older than Scotland's relationship with the Navy. If one looks at the command of the oceans of the Royal Navy and the enormous value that that predominance gave England in creating the Empire, then it is clear that the relationship was more than just reciprocal, it was really a symbiotic relationship where both benefited from the development. The Navy invested in Gibraltar because it was an investment that paid back handsomely in terms of the protection of the trade routes to the Empire that was supported by having an advance base here. From our point of view it made England and subsequently the United Kingdom, post the Act of Union, particularly determined not to give this place up and not to give it back to the Kingdom of Spain. As we know the Kingdom of Spain having signed a Treaty giving it away in perpetuity, started attempting to take it back by force when the ink was hardly dry, and failed. That failure undoubtedly was due to the importance, the military importance that Gibraltar had to the United Kingdom and the degree to which the United Kingdom was prepared to invest human lives, British lives in defending the Rock of Gibraltar making sure it did not fall back under Spanish domination. So this year when we are celebrating the liberation of our territory

from the domination of the neighbouring country, what better way to do it than to start it off by giving the Freedom of the Territory to the liberators, the people who pushed the invaders out of our homeland. It is of course not just the Naval Base, the services to the Army and the Royal Air Force make up the 1,000 jobs, but the biggest component or perhaps of the three services the Navy may still be providing a bigger share of the 1,000 jobs, and it was interesting to hear the hon Member say how by supplying the Navy certain families made large fortunes. I am afraid that this is a lesson that after 300 years the MOD and the Navy should learn. That this business of outsourcing only creates opportunities for people to make large fortunes and that they should employ direct labour. So perhaps if they are listening to the debate today there are a few lessons for current events taking place in the MOD that the MOD might well take on board. Clearly we want the Navy to stay here, we want the Ministry of Defence to stay here, we want it to maintain its presence, we think it is good for them and good for us, and therefore if quite apart from celebrating in one particular aspect our Tercentenary outside Spanish sovereignty in addition to that we have sent a very clear message of how much we welcome their presence in Gibraltar, then all the more reason for giving them the Freedom of the City.

**HON CHIEF MINISTER:**

I am grateful to the hon Members for supporting this motion. Indeed in participating in all the rest of Gibraltar's tercentenary events the hon Members can choose to celebrate whatever it is that they think they are celebrating, whether it is factually, historically, politically, legally or under any other category of categorisation realistic or sensible, that is entirely a matter for them. In organising the vast majority of tercentenary events, I say the vast majority because some are not organised by the Government, the Gibraltar Government are celebrating 300 years of British sovereignty. We are celebrating the fruits as seen today of that 300 years of history and we are most certainly not celebrating 300 years of the liberation of our territory from Spain, because simply 300 years ago, when the territory was allegedly liberated, it was not ours.

I have explained to the hon Member before, and I regret that he has not seen it in the same way as me that I do not think that it is politically helpful to present this as a liberation of territory from Spain. Frankly it suggests that the rights of the people of Gibraltar do not derive from our status today in this territory regardless of what happened 300 years ago, which is the only basis upon which our right to self-determination is entitled to proceed, and if our rights were based on the fact that Britain liberated the territory from Spain 300 years ago, I fear that he would find it even more difficult than he finds it today to persuade the international community that our rights to self-determination are well-founded. I think that this in any event inaccurate, leaving it to one side whether they are politically helpful or not, in any event inaccurate political slogans I can see appeal to his politically, what is the word I am looking for, to his politically moustache twitching and mischievous sense of lets stir the pot because from a stirred pot some benefit will flow, I can see that it appeals to that very typical characteristic of him. But as often as he says it the Government will say that we believe that he is wrong, that that is not what we are celebrating and it is certainly not the reason why we are offering the Navy the Freedom of the City. Although we recognise that if the Royal Navy had not taken the territory from Spain in 1704, or from Spain's predecessors one should say more accurately, in 1704, then we would never have had the opportunity to establish our rights to self-determination subsequently and therefore we would not now have what he and I agree are an undefeatable claim to exercise that self-determination today. I think that that is the more accurate way of making the point. But in any case I think we all agree that the Royal Navy is an organisation worthy of being commemorated in this our tercentenary year.

I ought to say to the hon Members as I have done before privately to the Leader of the Opposition, that the Government intends to propose other Freedoms of the City in celebration of

our tercentenary year, that this deals with the military chapter but that for example, I think that there are two people who are no longer in the political front line in the United Kingdom and I think it is important to limit it to people who are not in the political front line, of course there are many people who would be equally deserving but are still in the political front line, but I think there are two people who have done more than most historically for Gibraltar in our political travails and who have now withdrawn from the political front line, and whom I think it is now opportune to recognise, and I will at some future date be bringing a motion, which I know the hon Members will support because they have given me that indication, to propose the Freedom of the City of Gibraltar to Lord Nicholas Bethell and to Lord Doug Hoyle, both of whom have distinguished themselves for upholding, defending and promoting the political rights of the people of Gibraltar, not for the 300 years but at least certainly for the last 30 years I think they have been at the forefront of that and I think it is right that we also have a political chapter to our Freedoms of the City, and that indeed we may want to have a local chapter of people who have contributed beyond the normal to the development of Gibraltar domestically, Gibraltarians and we might even consider whether the Rules of the House permit the Freedom of the City to be granted posthumously to people who have contributed, and then we will have a crop of tercentenary freemen so to speak, some perhaps posthumously, and that will be I think a fit way to contribute to the tercentenary celebration.

Question put. The motion was carried unanimously.

**ADJOURNMENT:**

The Hon the Chief Minister moved the adjournment of the House to Wednesday 24th March 2004 at 10.30 am.

Question put. Agreed to.

## WEDNESDAY 24TH MARCH 2004

The House resumed at 10.30 am.

**PRESENT:**

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

**GOVERNMENT:**

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

**OPPOSITION:**

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

**ABSENT:**

The Hon T J Bristow – Financial and Development Secretary

**IN ATTENDANCE:**

P E Martinez – Clerk of the House of Assembly (Ag)

**DOCUMENTS LAID:**

The Hon the Minister for Trade, Industry and Communications laid on the Table the following documents:

(1) The Tourist Survey Report 2003;
(2) The Air Traffic Survey Report 2003;
(3) The Hotel Occupancy Survey Report 2003.

Ordered to lie.

**HON CHIEF MINISTER:**

Mr Speaker, on a point of order, just to notify the House, we had a discussion about it in our last meeting, that the Government are not proceeding at this meeting of the House with the Employment (Amendment) Bill 2004 for the following reasons. Firstly, there is a new employment sex harassment in relation to employment directive that we wish to take the opportunity rather than have to keep on changing this legislation. It is actually not due until October 2005 but since there are so many changes going on now in this area we are going to advance that and incorporate it in the one transposition and we are also going to bring forward the discrimination provisions in relation to age and disability, which we carried forward and which hon Members will recall. Then we will bring the House a consolidated piece of legislation that will include all the harassment provisions including the ones that we brought last time, which we had to bring quickly in order to comply with certain directive deadlines.

**HON J J BOSSANO:**

Can I ask the Government would they take on board the suggestion that we put in a proposed amendment on constructive dismissal and possibly incorporating it in their own proposal. Secondly what happens in between with people who have got cases, I mean what is the situation with people who may have a complaint before we legislate it?

**HON CHIEF MINISTER:**

Well on the point of their proposed amendment of which they have given notice to the House on the debate on this Bill, namely that constructive dismissal be introduced into the legislation as a complainable ground so to speak, the first thing that I would like to take the opportunity that the hon Members now give me to comment on that, the first thing that I would like to say is that of course, although the hon Members carefully word their public statements to point the finger at Government actually on this occasion it is not the Government, it has never been the law of Gibraltar. That is what the Court of Appeal decided, that is what the courts decided. It has never been the law of Gibraltar that constructive dismissal should be a ground upon which to complain to the Industrial Tribunal. In fact there have been no such cases, there have never been any such cases. So this is not a change in the law it is the Court clarifying what the law has always been. Now of course this House is entitled to say well now that the Court has clarified this, that we either knew or did not know, or appreciated or did not appreciate in the past, it is open to the House to consider whether it should be a ground. I am aware because both the Opposition and Government had the same briefing from the Trade Unions ahead of the General Election.

We are aware that the Transport and General Workers Union feel quite strongly that constructive dismissal should be a ground but the Government do not have a strong view for or against. In other words our mind is open and what we are going to do is that we are going to undertake a consultation process with both sides of industry so to speak, employers and employees, just to make sure that there are no arguments. It must have been excluded from the Ordinance originally for some reason and we just need to understand, we just need to understand what that thinking might have been. So the answer to the hon Members is this. If by the time we bring this new Bill to the House we have concluded that consultation process and the Government have taken the view to go ahead with it, then we will include it in our own Bill. If we should come to the view that we do not want to do it, then the hon Members are free to move their amendment. If we say to the hon Members well look it is not that we have decided not to do it, it is just that we are not ready just yet, then it would be up to the hon Members to judge whether to wait or to press with their amendment. So that is the way I see it panning out. As to his second point about what happens to people in the meantime, I am advised that, remember that the only employment issue which in fact is a hangover from the original transposition of the discrimination directives, the only employment related one that we have not done is this one relating to the transfer of the burden of proof. Now, I am told that we are not yet under any sort of infraction, oh yes it is overdue but we are not yet under any infraction. To do that now ahead of everything else would actually require quite a substantial amendment to the Bill which would rather defeat the purpose of doing it all together and create certainty once and for all, and I am told that in fact the existing legislation, and I have not checked this for myself so I do not adopt this as my own statement in the House, I am told that the existing formula of words in the existing law, is capable of being interpreted to already place that burden of proof. So a Court, to answer the hon Member's specific question, if there was a case between now and then the Tribunal chairman looking at the existing wording of the law and looking at the wording of the extant directive, could say the burden of proof lies with the employer.

**HON F R PICARDO:**

Just to make two very short points. The first is that that must be the case because obviously the employer has to prove that the dismissal is fair in any such case and in any event so there is that shift in the burden. Second, just in relation to the point on constructive dismissal and that section which we propose to move, it is not that the Gibraltar legislation omitted those parts of the United Kingdom legislation which dealt with constructive dismissal. At the time of our first Employment Ordinance we copied exactly what the provisions in the United Kingdom were, it is just that we never took on board the amendment made I think in 1974 which brought in those provisions, and that is what we would do now.

**THE LANDLORD AND TENANT (AMENDMENT) ORDINANCE 2004**

**HON J J NETTO:**

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

Question put. Agreed to.

**SECOND READING**

**HON J J NETTO:**

I have the honour to move that the Bill be now read a second time. This Bill represents the first phase of the Government's

intended reform of the Landlord and Tenants Ordinance. It deals only with two aspects of the Ordinance. The so-called section 15 tenancy and the so-called 45 year rule. Clause 2 of the Bill deals with the 45 year rule. Part 3 of the Landlord and Tenants Ordinance creates a regime of control of premises providing for both control of rent levels and security of tenure. Section 10 of the Ordinance describes the dwelling houses to which Part 3 applies. Under section 10(1)(a) Part 3 applies to every dwelling house that has been erected on or before the 1st day of January of the year preceding by 45 years the first day of January of the current year. In ordinary language the effect of that section is that properties enter the ambit of Part 3 when they reach 45 years of age. By virtue of this provision properties enter the ambit of Part 3 each year and in due course every property will become subject to Part 3. This provision was introduced into the Ordinance by the GSLP Government in 1991 by Ordinance 37/91. Prior to that date the law had been that Part 3 only applied to dwelling houses erected on or before 1st January 1945, a fixed date. The properties affected by the Ordinance were therefore an established, fixed and identified set of properties. No property became controlled by passage of time. The Government consider it appropriate to return to the pre-1991 principle of a fixed cut-off date. The present rule whereby properties become caught with the passage of time, has two undesirable effects. Firstly relatively recent properties such as Trafalgar House or Marina Court will otherwise soon be caught, and secondly, the rule adds as a disincentive to investors to build flats to let because eventually, after 45 years, their property will become controlled under Part 3.

However in reverting to the old system the Government have wished to avoid dispossessing tenants of rights which the existing law has already bestowed on them. Accordingly clause 2 of the Bill returns to the fixed date system but by reference to 1st March 1959. That is properties that were 45 years old or more on 1st March 2004. Clause 3 of the Bill widens the scope of section 15 of the Ordinance. Under section 15, as it stands presently, even though a property is rent controlled if it becomes vacant a landlord and a Gibraltarian tenant can negotiate and agree a tenancy at a particular rent agreed between themselves. Subject to the Rent Assessor's approval that agreed rent then becomes the statutory rent of that dwelling house. However this is only available if the proposed letting is to a Gibraltarian for his own benefit or for the benefit of another Gibraltarian. Accordingly it is not available to non Gibraltarians including Moroccans. Both the landlords and Action for Housing have pressed the Government to extend section 15 as proposed. The existing provision has various drawbacks. Firstly it places Gibraltarians at a disadvantage over non Gibraltarians because when landlords agree with non Gibraltarians rents higher than the statutory rent in breach of the Ordinance the non Gibraltarian can apply to the Rent Tribunal to have the rent reduced to the statutory rent. In the case of Gibraltarians however, they invariably agree the higher rent under section 15 and then this becomes the lawful rent. By the same token the stock of flats amenable to non Gibraltarians is reduced, because landlords prefer to leave them empty than to rent them to non Gibraltarians at the existing statutory rent. The proposed amendment extends section 15 to any other natural person who has been resident in Gibraltar for at least 10 years. This formula preserves the current rights of Gibraltarians who do not need to comply with the 10 year resident rule. This protects the application to section 15 to Gibraltarians returning to Gibraltar after years of residence abroad. The extension of section 15 will not apply to company lets. The 10 year resident requirement for non Gibraltarians is to ensure that the supply is not soaked up by transient expatriates working in businesses who could drive up rents to the detriment of residents. I give notice of an amendment in the Committee Stage to make this clearer. In the proposed amendment to clause 3 the word "who" should be deleted and replaced with the words "which person". This is to make clearer that the 10 year residence requirement applies only to any other person and not to Gibraltarians. I will also be moving an amendment for the deletion of clause 2 and a new clause to be inserted to read as follows:

"2. The Landlord and Tenant Ordinance is amended in section 10(1)(a) by substituting the words "the 1st day of January of the

year preceding by 45 years the 1st day of January of the current year", with the words "the 1st March 1959". I commend the Bill to the House.

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

**HON C A BRUZON:**

Mr Speaker, we have to look at the merits and the general principles of the Bill as you have rightly hinted and frankly we do not see any merit in the amendment and we shall be voting against the amendment to clause 10 and to clause 15. Many years ago when landlords argued that it was not in their interests to rent properties that were rent controlled because the statutory rent was too low for them to be able to pay for the upkeep and maintenance of their properties, as the Minister has rightly said a provision was made in the law to enable landlords to negotiate a higher rent with Gibraltarians. This was obviously meant to improve the chances of Gibraltarians in obtaining private rental accommodation. It must be remembered that an illegal practice crept in whereby there was a charge called key money to get round the problem of the low statutory rent. In order to discourage that practice this provision was introduced to enable landlords to negotiate with Gibraltarians the higher rent. This higher rent, if and when approved by the Rent Assessor, would become the statutory rent. Only when the flat became vacant would the rent be negotiated anew if required. The amendment seeks to apply the provision to anyone who has lived in Gibraltar for over 10 years. It must follow inevitably that this is intended to increase the number of persons that can potentially avail themselves of this provision in the law to offer higher rents in respect of pre-War accommodation currently on the market. Now since the number of such properties is limited, it can only result in greater demand, pushing up the average rent that is negotiated to the detriment of Gibraltarians, when compared with the position they enjoy as the law stands at present. We will therefore be voting against the amendments.

**HON J J BOSSANO:**

Mr Speaker, when I was hearing the Minister putting the arguments for this, it was almost like taking a ship and travelling back in time to 1983 when the Hon Mr Featherstone was using the same arguments. In 1983 I think the Minister would have agreed with me not with the Hon Mr Featherstone. He probably did as I remember it. I think he was still here then. In 1983 I think he was still here and he would have agreed with me. The House set up a Select Committee to produce the Ordinance that came into effect and in fact it is I think one of the most peculiar performances of this House that we had a situation in which having produced a report and a recommendation, the people in the Select Committee who recommended to the House the changes, subsequently argued against their own recommendations in this House as a result of the pressure from the landlords. I do not think I have experienced anything else like it in 32 years. In fact what the Select Committee recommended was control in 1983 of 1953 properties, which would have meant controlling 30 year old properties not 45 year old as we are doing at the moment. The pressure produced by the landlords actually got the Bill amended by the proposers. I was against the whole thing but the people who defended it actually amended it to bring the date back to 1945, which is what is there now. I remember asking the Hon Mr Featherstone, well look if his argument is that we are extending the pool of rent controlled properties by shifting the date from 1939 to 1945, can he tell the House how many properties have been built between 1939 and 1945 and the answer was none. It was the War years, a few might have been knocked down but none were actually put up. So in fact when we amended it in 1983 the purpose of the Select Committee and the purpose of the House was to increase the number of rent controlled properties and all that they did was to change it from 1939 to 1945 on which date the number of properties were both the same for both dates. We decided in government in 1990 effectively to rent control 45 year old properties on the basis that in 1990 the ones that were rent controlled were the theoretical ones of 1945 and were then 45 years old. I can tell the House

that we were strongly lobbied by landlords in Gibraltar who said that if we brought that Bill in, in 1990 and controlled properties after 45 years, it would mean the end of property investment. This was followed by the biggest property investment boom in our history in 1992. So the logic of it is that 45 years of unregulated returns on ones investment ought to be a reasonable period in which to recover the money by renting property, and then after that we do something to ensure that there is a pool of rent controlled properties on the basis that properties do not last forever, then we are adding to the pool as other properties disappear at the other end of the age spectrum. So we have seen no evidence that suggests that controlling property after 45 years discourages investment in Gibraltar because this was done in 1990 and we can look at the statistics of the property investment pre-1990 and post-1990.

I think as regards the removal of the special provisions regarding Gibraltarians in the law, the hon Member used if I understood him rightly two arguments one of which contradicted the other. He argued that by giving the opportunity to a Gibraltarian to negotiate a higher rate with a landlord, the Gibraltarian was discriminated against, if I understood him rightly I think he said those words, because that became the official rent. Whereas a non Gibraltarian could not do that and that therefore the present position discriminates against the Gibraltarians. Then he went on to argue that the present position gives the Gibraltarian a privileged position because it means that the landlord will prefer to rent to the Gibraltarian rather than the non Gibraltarian. Well look, it has got to be either bad for the Gibraltarians or good for the Gibraltarians but I am afraid he cannot use both arguments to try and say getting rid of it is going to eliminate two things, one of which conflicts with the other. The intention of the House was definitely to give an advantage in the market to a Gibraltarian. There is no question about it, that it why it was put there. It was put there so that the Gibraltarians would be able to offer a higher statutory rent than a non Gibraltarian and the landlord would prefer to have a Gibraltarian tenant. The reality of it is, I can tell the Minister, is that there are cases today of Gibraltarians, maybe returning Gibraltarians obviously, because the ones who are here are living somewhere, but occasionally some that for domestic reasons as the Minister may know sometimes have to leave parental homes and have to get into somewhere pending the opportunity of getting Government housing. In those cases this section is being used and there are people who are paying today for a one bedroom pre-War dwelling, flat, £100 a week. Now I can tell the House that we are aware because people have come to us with cases and we have told them, *"no, this is the law and you have to pay the £100 because that is the statutory rent, but you are protected because it is a statutory rent, you have got a measure of protection which you would not have if it was completely free and then you could be paying £100 this week and £150 a week later."* But we know that in those same buildings there are non Gibraltarians paying £200 a week rent, which is illegal and what this would do is make it legal, and when they make it legal the non Gibraltarian may well be in a better position to offer a higher rent than the Gibraltarian is offering as the new statutory rent. The non Gibraltarian who has been here for 10 years will be able to compete with the Gibraltarians to offer more than the minimum statutory rent laid in the law. Of course this does not address the complaint of most of the landlords which have got tenants already because this only applies to vacant property. But it certainly makes a nonsense of the argument that is being paraded, which is the same as was being paraded in 1983, I can tell the Minister that all he has got to do is get the press of 1983 when the Landlord and Tenants Ordinance was before this House and remove the date and he would not know if it was 1983 or 2004, because it is the same argument used by the same people. There are a number of things that certainly an exercise has got to be done in reviewing this, needs to be reviewed, including that many of these properties are in fact properties that are rented at very low rents from the Government and then subsequently re-let. Many of these dwellings in the old part of the town are not freeholds at all, they are Government leases which pay very little money to the Government and the landlords seem to be quite happy that what they pay the Government should be fixed but not what they charge the tenants. But of course if the argument is that

because the rents are so low they are not interested in renting and therefore the property remains empty and becomes derelict, and that is a bad thing for the landlord, the tenant and the infrastructure of Gibraltar. If that is the argument, then is the argument that there are not enough Gibraltarians willing to rent these places and negotiate a higher rent. I do not think that is the case. I think what is happening is that in fact it may be that they can rent to non Gibraltarians for even more than they can rent to Gibraltarians, because in fact because they do not have to rent, they can say well look if I have to rent at 60p a square foot, I will not but if you give me £2 a square foot I will. But it may be that they know that if it is a non Gibraltarian they can extract more than £2 a square foot, and therefore the only possible consequence that this can have is that there will be an increased demand for this kind of property from people willing to pay more than the minimum rent, which today can only do it by being in breach of the law and are doing it in breach of the law. It is there, it is happening, it is known to be happening and consequently this does not address any of the issues and we are not in favour of this.

**HON CHIEF MINISTER:**

I do not see why the Leader of the Opposition feels free to get up to contribute to a debate on a Bill which has been led on behalf of the Opposition by his Colleague the Hon Mr Bruzon, but when I get up to speak on it I am allegedly coming to the rescue of the Minister. Is this another case of the hon Member saying do as I say and not as I do. It sounds remarkably like it to me. I appreciate that he would much prefer it if I did not participate in debates in this House so that he can more easily get away with what he used to get away in this House for far too long.

Mr Speaker I do not know who lobbied which Members of the House in the run up to the 1983 discussions, nor do I know who lobbied the hon Members in 1991 when they were in Government and introduced the changes that they introduced including eliminating the Labour from Abroad Accommodation Ordinance and extending in effect the provisions of Part 3 to labour from abroad. I do not know who lobbied who, what I can tell him now is that the Government have not been lobbied only by the landlords. The Government are being pressed harder by Action for Housing on this section 15 point than by the landlords. The landlords actually think it is a rather meaningless little, by itself they think it is a rather meaningless, little amendment. Action for Housing as the hon Member knows is not stuffed full of right-wing reactionaries nor of capitalist landlords but indeed full of people who have made it their business to give freely of their time in support of tenants' rights, are pressing the Government to introduce this amendment. They have studied the way that section 15 as it currently stands operates and they have concluded that it actually does more injustice to more people than it might assist. Therefore it would be a mistake for the hon Member to leave the impression in this House that this is in response to pressure from the landlords. It is primarily in response to pressure from the tenants. Since the Government did a consultation on this with both groups, which was quite a long time ago, the landlords have never once written hey, why is an amendment to section 15 taking so long. Action for Housing on the other hand has written on several occasions saying hey, when is the Government going to get on with this amendment to section 15. That is the reality. He may disagree with Action for Housing and he is free to disagree with Action for Housing, and I you know, his view is his view and he is entitled to hold it, I just wanted to correct the impression that this was a landlord driven amendment. The other one is a landlord driven amendment, the 45 year rule.

Mr Speaker, as to whether it is to the detriment of Gibraltarians or not, we do not believe that it is and neither does Action for Housing. The reality of it is that there is about 35 section 15 lettings a year at the moment, it varies, it varies, on average, some times it is a bit higher some times a bit lower. Public housing is as he knows limited in scope as to who is eligible to access it. If on top of that we disadvantage non Gibraltarians in private housing as well, what we are doing is creating an

intolerable social problem for the people who have access neither to public housing and have a disadvantage, I will define my definition of disadvantage in a moment, and they disadvantaged housing access to private housing as well. Of course the Government are being careful to ensure that the stock of this private housing, private housing, is not available to people who get off the aeroplane. I think the hon Member in his days used to call them sort of people with a haversack or backpackers I think was his favourite phrase. Well whether it is backpackers, whether it is employees of Finance Centre or Gaming companies, or whether it is just people arriving by whatever means, these people would not have access to this regime because one has got to be resident in Gibraltar for 10 years if one is a non Gibraltarian. Now I believe that there are very few Gibraltarians who would dispute the proposition that after a non Gibraltarian has been here for ten years, it is not that long ago that we gave non Gibraltarians who have been here for ten years the right to vote in our referendum if at least they were British, but that non Gibraltarians that have been here resident for ten years should have at least the same right of access to the private housing market, not to the public housing market to the private housing market as Gibraltarians. Certainly the hon Member since I am not a socialist party it is not for me to define principles of socialism, but it seems to me a peculiar view of socialism to narrowly define the category of citizens that should be entitled even to access to the private housing market, and the idea that unless one is a Gibraltarian one should somehow have a restricted access to the housing market, look it is not one that appeals to me, I do not think it appeals very broadly across the Gibraltarian society but if it is the hon Member's view then we will just have to agree to disagree and the Government believes, as does Action for Housing, that this should be changed. There are many flats lying empty, the hon Member knows that, in the private sector and the ability to let empty flats to non Gibraltarians who have been resident here for 15 years mainly, in effect, Moroccans and Indians and a few others, will not only increase the number of flats that they can aspire to live in, have access to, but would also increase the market of tenants available to landlords as potential tenants for these flats. So to the extent that it is the hon Member's view that section 15 should not be expanded in this way, well look there is simply a disagreement on policy and that is Okay. The hon Member said that in fact the arguments were contradictory. Well the reality of the matter is this Mr Speaker, that the element of disadvantage is most manifest in the following way. Landlords believe it or not are either unaware or ignore the contents of some of the provisions of the Landlord and Tenant Ordinance. When a landlord lets a property to a non Gibraltarian the non Gibraltarian the tenant is often more closely informed about rights under the Ordinance than the landlord. The tenant signs up the tenancy and then goes running straight round to the Rent Tribunal to have the rent reduced to the statutory rent. That is what happens. So in effect the non Gibraltarian accesses these empty flats and then a few months later ends up paying £19 a month rent, whereas the Gibraltarian accessing those flats ends up paying the negotiated rent because it is lawful in his case. That is how to stint on the way these things happen in practice, not through any provision of the law but through stint of how these things happen in practice this is how the disadvantage arises. The Government also feel strongly that the return to the pre-1991, 45 year rule is sensible. For example, it was the position before 1991 for many years and it is not something that the hon Members themselves rushed to change. All right 1988, 1989, 1991, it took them a couple of years to decide that this was a massive injustice. I think it is an important part of the overall package of landlord and tenant measures of which admittedly this is only in the advance instalment and therefore the hon Members cannot see it in the full context of the reformed Ordinance, that the regime goes back to what it used to be and that is to a fixed date, and of course that fixed date is not 1945 so there has been in effect an extension by this amendment, there is in a sense a, what is the word, the clock is stopped today so in effect the difference between this amendment or the situation that this amendment creates and the pre-1991 situation, is that 15 years worth of properties stay in the net. So what we are doing is stopping the clock so that for example, a property that is due to become 45 years old next year will now as a result of this amendment not fall into the net,

whereas but for this amendment it would have fallen into the net on its 45th birthday. When this legislation was conceived I am certain it was conceived in the context of an existing stock of old housing. It was not really foremost in anybody's contemplation that houses that we still regard in Gibraltar as quite modern, I mean nobody walks past Marina Court or even Trafalgar House and buildings like this, and there is one building Matilde Francis Building in South Barrack Road which has already fallen in, and that is stuck in now. But nobody walks past Trafalgar House or Marina Court and says, *"oh well it is about time these blocks were rent controlled because you know look at them, they are still regarded as modern housing".* Well they are coming pretty close to their 45th birthday some of these blocks and the idea that rents in Trafalgar House or in Marina Court should be rent controlled is not something that anybody has foremost on their lists of necessary social engineering in Gibraltar. So the Government believe that both these amendments, one of which in effect makes the principle underlying the eligibility rules puts it back the principle to what it used to be before the hon Member's own amendment in 1991, and the other responds to quite heavy lobbying from, I am not talking about the odd casual conversation, I am talking about meetings Action for Housing is fully and in detail and intellectually engaged and committed to the section 15 amendment, and I have to say that the Government agree with them.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon T J Bristow

The Bill was read a second time.

## COMMITTEE STAGE

**HON ATTORNEY GENERAL:**

I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause: The Landlord and Tenant (Amendment) Bill 2004.

**THE LANDLORD AND TENANT (AMENDMENT) BILL 2004**

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

**Clause 2**

**HON J J NETTO:**

Clause 2 to be deleted in full and replaced with:-

"2. The Landlord and Tenant Ordinance is amended in section 10(1)(a) by substituting the words "the 1st day of January of the year preceding by 45 years the 1st day of January of the current year." with the words "the 1st day of March 1959".

**HON CHIEF MINISTER:**

Could I just add for the benefit of the House that the effect of that amendment is just to delete an additional three words. It is not that the whole of the clause in its entirety is new, it is that we had failed to delete the words the 1st day.

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

**Clause 3**

**HON J J NETTO:**

Here once again I have given notice in clause 3 to delete the word "who" after the words "natural person" and insert "which person".

**HON CHIEF MINISTER:**

Perhaps I could just explain the need for that amendment too. As it presently reads it would read if one adds the new words to the existing words, it would say 'provided it is a bona fide letting to a Gibraltarian or any other natural person who has been resident in Gibraltar for at least 10 years'. It is arguable that the requirement for the 10 years would then apply both to Gibraltarians and any other person. In other words if the sentence is 'applies to a Gibraltarian or any other person that has been resident in Gibraltar for 10 years' it is arguable that the resident in Gibraltar for 10 years applies not just to the any other person but also to the Gibraltarian, semantically, linguistically. Now by changing the word "who" to "which person" it is clear that it would read 'or Gibraltarian or any other natural person which person has been resident in Gibraltar for 10 years' making it clear that the words which follow only apply to the person and not to the Gibraltarian.

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

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

**HON CHIEF MINISTER:**

Mr Chairman with respect I think it is a point that the hon Members often correctly make themselves. The fact that the hon Members are proposing to vote against the legislation and have voted at second and propose to do so at third, is not a reason why they necessarily oppose amendments at Committee Stage in order to improve the legislation.

**HON J J BOSSANO:**

We are not voting against the amendments we are voting against the Bill.

**THIRD READING**

**HON ATTORNEY GENERAL:**

I have the honour to report that the Landlord and Tenant (Amendment) Bill 2004 has been considered in Committee and agreed to with amendments, and I now move that it be read a third time and passed.

Question put. The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon F Vinet

The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon R R Rhoda

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

Absent from the Chamber: The Hon T J Bristow

The Bill was read a third time and passed.

**ADJOURNMENT**

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

Question put. Agreed to.

The adjournment of the House was taken at 11.35am on Wednesday 24th March 2004.