REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Fifth Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Monday 20th December, 2004 at 3.00 pm.

PRESENT:

Mr Speaker…….(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

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

OPPOSITION:

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

ABSENT:

The Hon A Trinidad - Attorney General (Ag)

IN ATTENDANCE:

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

PRAYER:

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 11th October 2004, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for the Environment, Roads and Utilities laid on the Table the Annual Report and Audited Accounts of the Gibraltar Electricity Authority for the year ended 31st March 2004.

Ordered to lie.

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

1. Consolidated Fund Pay Settlements – Statement No. 1 of 2004/2005;

2. Consolidated Fund Supplementary Funding – Statement No. 2 of 2004/2005.

Ordered to lie.

MINISTERIAL STATEMENT

HON CHIEF MINISTER:

Mr Speaker, with your leave and that of the House I should like to make a statement. On the 1st November 2004 I made a statement in this House following the joint press release by the British and Spanish Foreign Secretaries, following their meeting in Madrid on 27th October 2004. Further and in addition to my statement in this House on 1st November, I now make this short statement to put subsequent developments on the record of this House.

On 8th and 9th December I met with the Directors for Europe of the British and Spanish Foreign Ministries at Chevening House. There was further telephone contacts during the days after that meeting. The result was agreement on the modalities for a new process of three-sided dialogue. The agreement was made public on 16th December 2004 in the form of a joint press release between the Governments of the United Kingdom, Spain and Gibraltar. The agreement on 16th December 2004 reads as follows, it was issued simultaneously in London by the British Government, in Madrid by the Spanish Government, and in Gibraltar by the Gibraltar Government, in the same texts although obviously the Spanish version in Spanish.

It is headed, and I quote from it now "Joint Press Release by the British Foreign and Commonwealth Office, the Spanish Ministry of Foreign Affairs and the Government of Gibraltar". On 27th October 2004 the British and Spanish Foreign Ministers, Jack Straw and Miguel Angel Moratinos, made a joint statement in Madrid on which the Chief Minister of Gibraltar, Peter Caruana, had been consulted and has separately expressed his agreement. Accordingly and without prejudice to their respective positions, the Governments of the United Kingdom, the Kingdom of Spain and Gibraltar now confirm the establishment of a new three-sided forum for dialogue on Gibraltar separate from the Brussels Process. The modality of this forum will be as follows:

Dialogue will be on an open agenda basis and therefore any of the participants may raise any issue relating to or affecting Gibraltar, without prejudice to their constitutional status including the fact that Gibraltar is not a sovereign independent state, each of the three parties will have its own separate voice and each will participate on the same basis. Any decisions or agreements reached within the forum must be agreed by all three participants. If the three parties wish to take a decision on an issue in the forum where formal agreement would properly be between the United Kingdom and Spain, it is understood that the United Kingdom will not agree thereto without the Government of Gibraltar's consent. The forum shall be convened with the three parties at Ministerial level at least once every twelve months. Other meetings of the forum shall take place at a time and level agreed by the three parties. The forum may create working groups as necessary to address specific issues. The forum will, in their deliberations, take account of the activity of the Comision Mixta de Coperacion y Colaboracion established on 18th November 2004 between the Mancomunidad de Municipios de la Comarca del Campo de Gibraltar and the Government of Gibraltar, to ensure coordination between the work of the forum and the Comision Mixta. Accordingly, through this forum of dialogue and by these modalities, the parties shall endeavour to create a constructive atmosphere of mutual confidence and cooperation for the benefit and prosperity of

Gibraltar and the whole region, in particular the Campo de Gibraltar.

Finally, and in order to preserve the viability of this process for all the parties, they will refrain from making public statements which distort or misrepresent the basis, purpose or modalities of this forum as set out in this statement.

Mr Speaker, that is the end of the joint press release and I will now, with your leave, like to formally lay a copy of that joint press release declaration on the Table of this House for the record.

Mr Speaker, for the Government this agreement represents success for our policy of reasonable, safe and dignified dialogue on the terms which we have long advocated and required. It is a dialogue and not a negotiation. It is open agenda and thus not pre-determined on any issue including sovereignty. It is not a sovereignty negotiation. The three parties take part "on the same basis" and Gibraltar has its own separate voice. Any decisions or agreements reached within the forum must be agreed by all three sides.

Mr Speaker, and it is a new forum outside of the Brussels process. I should like formally to inform this House that in a letter that he has written to me, the Foreign Secretary has assured me that there is no question of the British Government taking part in any separate, bilateral negotiation over sovereignty between the United Kingdom and Spain.

The Brussels Declaration was bilateral between the United Kingdom and Spain and therefore we cannot formally renounce it as a party, but it has become clearly irrelevant as well as ineffective. It has been ineffective for some time, in our view it has now also become irrelevant. The UK and Spain should therefore abandon it as soon as possible, certainly, as far as the Government of Gibraltar are concerned it is confined to the history books and we would not contemplate participating in it on any circumstances, given the agreement that has been reached on 16th December.

ANSWERS TO QUESTIONS

The House recessed at 5.45 pm.

The House resumed at 6.10 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 21st December, 2004, at 9.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 9.40 pm on Monday 20th December 2004.

TUESDAY 21ST DECEMBER 2004

The House resumed at 9.35 am.

PRESENT:

Mr Speaker…….(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

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

OPPOSITION:

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

ABSENT:

The Hon A Trinidad - Attorney General (Ag)

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS (CONTINUED)

SUSPENSION OF STANDING ORDERS

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

Question put. Agreed to.

MOTIONS:

HON MRS Y DEL AGUA:

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

"This House resolves in accordance with section 46 of the Social Security (Open Long Term Benefits Scheme) Ordinance 1997 that the Minister for Social and Civic Affairs proceed with the making of the Social Security (Open Long Term Benefits Scheme) (Amendment of Contributions) Order, 2004".

Mr Speaker, the Government proposes to increase the Social Security (Open Long Term Benefits Scheme) element of the Social Insurance contribution as follows: employee from £1.00 to £1.65p; employer from £11.00 to £11.35p. An overall

increase between employee and employer of £1.00. There are other alterations to the allocation of the various elements which will result in an overall increase of 10 per cent in the weekly Social Insurance contributions. As the House will know, there has been no increase since 1998 and it is necessary to increase the revenue of this Fund in order to protect its capital from further erosion in the face of continuing low interest rates. The Government are taking other measures, to which I will refer when we debate the other motion on the Order Paper, to increase the capital reserves of this Fund. I commend the motion to the House.

Question proposed.

HON C A BRUZON:

Mr Speaker, I would just like to state briefly that the Opposition are not in favour of the increases and we shall be voting against the motion.

Question put. The House divided.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

The motion was accordingly passed.

HON MRS Y DEL AGUA:

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

"This House resolves in accordance with section 52 of the Social Security (Insurance) Ordinance that the Minister for Social and Civic Affairs proceed with the making of the Social Security (Insurance) (Amendment of Contributions) Order, 2004".

Mr Speaker, the Government propose to increase the contributions payable under the Social Security (Insurance) Ordinance in respect of the Short Term Benefit Fund as follows. Employee from 17p to 50p; employer from 17p to 50p, an overall increase of 66p. Honourable Members may be wondering why the Government propose to increase the revenue of the Short Term Benefit Fund which already has a huge capital surplus. The reason is this. Government propose to increase the income of the Fund to a level where its revenue substantially covers its outgoings. In addition, Government propose to leave in the Fund the capital sum of £1 million. This has enabled the Financial Secretary to certify that the remainder of capital, beyond £1 million in the Short Term Benefit Fund, is surplus to its requirements. The Government intend to transfer that surplus to the Open Long-Term Benefit Fund. I commend the Motion to the House.

Question proposed.

HON C A BRUZON:

Mr Speaker, the Opposition is not in favour of the increases and I would like to state, as I did in the previous motion, that we shall be voting against the increase.

Question put. The House divided.

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

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

Absent from the Chamber: The Hon Lt-Col E M Britto

The motion was accordingly passed.

HON MRS Y DEL AGUA:

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

"This House approves by Resolution the making of the Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance (Amendment of Schedule 3) Order 2004."

Mr Speaker, the rates of unemployment benefit were increased in July 2003 by approximately 35 per cent. The object of this Order is to bring into effect another 3 per cent increase in the current rates of unemployment benefits as announced by the Chief Minister in his last Budget speech. This Order will uprate the weekly rates payable with retrospective effect from 12th July 2004. As a result the standard weekly rate will now increase from £50.25p to £51.75p. I commend the motion to the House.

Question proposed.

Question put. The motion was carried unanimously.

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 11.30 am.

The House resumed at 11.50 am.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Health moved the adjournment of the House to Wednesday 22nd December 2004, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 1.35 pm on Tuesday 21st December 2004.

WEDNESDAY 22ND DECEMBER 2004

The House resumed at 2.30 pm.

PRESENT:

Mr Speaker…….(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

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

OPPOSITION:

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

ABSENT:

The Hon A Trinidad - Attorney General (Ag)
The Hon T J Bristow - Financial and Development Secretary

IN ATTENDANCE:

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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 5.20 pm.

The House resumed at 5.35 pm.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a short and simple Bill which has only one effect, that is that under the present Public Health Ordinance the water tariffs in respect of both potable and brackish water are set out in a schedule to the Ordinance itself, and therefore amendments of the tariff requires primary legislation. This reflects the fact that it is an old Bill that used to be the case in respect of import duty rates and income tax rates and everything else too. The effect of the amendment would be to do that by subsidiary legislation, so instead of setting out the water tariffs in a schedule of the Ordinance in a manner that it can only be changed by amendments to the primary legislation, the effect of the amendment proposed is that the water tariffs should be such as may be prescribed by regulations by the Government. That is the sole effect of the Bill. I think the hon Members of the House will be aware that the Government have given notice of intention to increase the water tariffs and would propose to do it by this means if the amendment is passed. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition do not agree that the water rates should be increased or changed by regulation, the Opposition will therefore not be supporting the Bill.

HON CHIEF MINISTER:

I see that the hon Members are not happy to see the present Government carry on the philosophy of the previous Government. Given that they gave themselves the power to change income tax rates by regulations, it seems much, much less aggressive to give ourselves the right to change the water rates by regulation, but still we take note of the fact that they are not happy to see us do what they were quite willing to do themselves. Anyway the amendment will be passed by Government majority.

Question put.	The House voted.
For the Ayes:	The Hon C Beltran The Hon Lt-Col E M Britto The Hon P R Caruana The Hon Mrs Y Del Agua The Hon J J Holliday The Hon Dr B A Linares The Hon J J Netto The Hon F Vinet
For the Noes:	The Hon J J Bossano The Hon C A Bruzon The Hon Dr J J Garcia The Hon S E Linares The Hon Miss M I Montegriffo The Hon F R Picardo The Hon L A Randall

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE FINANCIAL SERVICES (INSURANCE MEDIATION) (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Financial Services Ordinance 1989 in order to implement into the law of Gibraltar Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill amends the Financial Services Ordinance in order to regulate insurance and reinsurance mediation activities. Namely, introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance, concluding contracts of insurance or reinsurance, assisting in the administration and performance of such contracts, in particular in the event of a claim. Clause 1 of the Bill provides for citation and commencement. Clause 2 inserts Part V(A), that is to say new sections 38A to 38G, into the Financial Services Ordinance 1989. New section 38A transposes the definitions contained in Article 2 of the Insurance Mediation Directive. New section 38B designates the authority as the competent authority for the purposes of Article 7 of the Insurance Mediation Directive. Since this is by way of insertion into the Financial Services Ordinance, hon Members will be aware that the word "authority" is a defined term in the Financial Services Ordinance. It provides that the authority must maintain an up to date electronic record of licensed insurance and reinsurance intermediaries, the details of the designated competent authority in each Member State and each Member State in which a Gibraltar firm has established a branch or is providing a service. The authority must ensure that members of the public are able to access quickly and easily information on the register. If an insurance or reinsurance intermediary ceases to meet the requirements of the Bill, the licence will be cancelled and it should be removed from the register. New section 38C details the professional requirements that an insurance or reinsurance intermediary operating in or from within Gibraltar must satisfy. An insurance intermediary must, amongst other things, be of good repute, hold professional indemnity insurance, have a specified minimum financial capacity and ensure that customers' money is transferred by strictly segregated accounts. The Minister with responsibility for Financial Services may by regulation add to these requirements. New section 38D implements the passporting provisions of the directive and the duties of the authority in this respect. Insurance and reinsurance intermediaries in a Member State who have obtained registration in their home Member State, will have a right to passport into Gibraltar to establish a branch or provide services. New section 38E deals with the exchange of information between Member States and provides that the authority is under a duty to cooperate with other competent authorities designated under Article 7 of the Insurance Mediation Directive. New section 38F provides that customers and interested parties may complain to the complaints authority, that is to say the Consumer Protection Office or some other body designated by the Minister. Such complaints must be registered and the complainant must receive a reply. The Minister may by regulation make further provision in respect of complaints procedures. New section 38G details the information that an insurance intermediary must provide to a customer and the manner in which he must provide that information. Prior to the conclusion of an initial insurance contract, and if necessary upon amendment or renewal thereof, the intermediary must provide the customer with his identity and address, details of the register in which he has been included, whether he has a holding direct or indirect representing more than 10 per cent of the voting rights or of the capital in a given insurance undertaking, whether a given insurance undertaking or parent undertaking of a given

insurance undertaking has a holding direct or indirect representing more than 10 per cent of the voting rights or of the capital in the insurance intermediary, and customer complaints procedures. An insurance intermediary must also inform the customer whether he gives his advice on the basis of a fair analysis, that is on the basis of an analysis of a sufficiently large number of insurance contracts. Clause 3 of the Bill amends Schedule 3, paragraph 3 of the Financial Services Ordinance 1989 to provide that insurance and reinsurance mediation activities are controlled activities for the purposes of section 3 of the Ordinance. This means that persons carrying on these activities must be licensed under section 8 of the Ordinance. The description of insurance and reinsurance mediation activities flows from the definition of these activities in the Insurance Mediation Directive, and it makes full use of the exclusions in that directive. New paragraph 3.2 and 3.3 contain the exclusions detailed in Article 1(2) and Article 1(3) and Article 2 of the directive. Clause 4 of the Bill amends section 44 of the Financial Services Ordinance. The amendment means that decisions made by the authority under new Part V(A) are subject to the provisions of section 44. That is to say, the authority must provide reasons for any decision taken and consider any representations made by a licensee. In addition, this also means that the decisions under new Part V(A) may be appealed to the Supreme Court under section 45. Clauses 5 and 6 make some consequential amendments to the Financial Services (Licensing) Regulations 1991 and the Financial Services (Fees) Regulations 1991 in respect of the classes and descriptions of business. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, the spirit of the Directive 2002/92/EC is one which is designed to be good for the consumer and good for fair and legitimate business, and the directive is fairly transposed by the Ordinance that we are looking at. There are a number of issues nonetheless I think it is fair to draw attention to. The first is that the Consumer Protection Office has recently been established and complaints under this Ordinance to that Office may be of a very technical financial services nature. I think it would be fair to say that that office must be properly resourced in order to deal with those complaints. The other point I would raise, is that I have not been able to find in an earlier directive, which is Directive 73/239/EEC, a definition of “large risks” which is a defined term by cross-reference to that directive in the new section 38A. Without that all the parts of this Ordinance that relate to large risks appear to be at large. Now, we have had situations in this House before where Opposition Members have simply not been able to find European legislation sufficiently up to date which may be available to Government Members, that we are able to make sense of what is happening. The version that I am relying on is on CELEX, is the enforced part of CELEX, it may be that there was a definition in Directive 73/239/EEC of large risks. At the moment all I can find in Article 5 of Directive 73/239/EEC are an (a) defining units of account; a (b) defining matching assets; and a (c) defining localisation of assets, and I would be grateful if perhaps during the course of his reply the Chief Minister could assist me with that.

HON CHIEF MINISTER:

Let me try and address those two points. Mr Speaker, I am sorry that the hon Member should have difficulty getting up to date current versions of directives. There is a consolidated version of these directives, I do not know if he has had an opportunity to find that.

HON F R PICARDO:

That is the one that I have got.

HON CHIEF MINISTER:

All I can say to the hon Member is that as far as we are concerned, the directive as extant is accurately transposed. I do not know whether he wants to check it or not, the point that he was making was that he could not find the provision not that he was challenging.

HON F R PICARDO:

It is just that the definition of large risks cross-refers to a part of another directive, an earlier non-life directive I think, which I cannot find in the European website that is supposed to say exactly what is or is not in force and is supposed to give the latest version of directives in force, which I imagine would be the source most people would go for.

HON CHIEF MINISTER:

Yes, we are just trying to get the text of it for the hon Member, it may take some time, we may have it during the Committee Stage. Even if we do not have it for the Committee Stage I will pass it on to him. I am pretty sure that this language is taken directly from the I&D itself but it does not matter, it is just that we do not have the text of the directive here, I will get the information to him.

In terms of the Consumer Protection Officer, Mr Speaker that is why we have the language "or such other party which the Minister may designate", because at the moment the Consumer Protection Officer is the only public administration related body. If the Government should proceed with the proposal of the idea for a Financial Services Ombudsman, then that would be the logical place. It does not exist at the moment so we have this here. I am sure it would be of a highly technical nature, I do not think this complaints process is for that, I think it is for ordinary retail customers of insurance intermediaries. If the Consumer Protection Officer gets a query that is beyond his or her competence, she will have to take advice from others in the Government administration.

HON F R PICARDO:

Not by way of reply but just to confirm, the Chief Minister is right that the definition of "large risks" is actually the same in the directive that we are transposing. In other words, Directive 2002/92/EC refers to the 1973 Directive. It is just that when I go back to the 1973 Directive it seems to have disappeared from there so I cannot find for myself the definition of a large risk.

Question put. Agreed to.

HON CHIEF MINISTER:

I have the honour to move that the Committee Stage and Third Reading of the Bill be taken later today. This Bill is due to be transposed by 15th January, failing which passporting rights would not be available as from 15th January as they otherwise would be.

Question put. Agreed to.

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) ORDINANCE 2004

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Insurance) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, in July 1999 the Government introduced maternity allowance as a new social security benefit. At present a payment of £75.60p per week is made to entitled women who are on maternity leave. This allowance is currently paid for a maximum period of 14 weeks. The purpose of this Bill is to extend the financial support currently provided for a further period of four weeks, making maternity allowance payable for a total of 18 weeks. As a result of this amendment, a woman on maternity leave will now also be entitled to a maximum of 18 weeks social insurance credits. I commend the Bill to the House.

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

HON C A BRUZON:

Just to say Mr Speaker, that we shall be voting in favour of the amendment.

Question put. Agreed to.

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Public Health (Amendment) Bill 2004,

2. The Financial Services (Insurance Mediation) (Amendment) Bill 2004,

3. The Social Security (Insurance) (Amendment) Bill 2004.

THE PUBLIC HEALTH (AMENDMENT) BILL 2004

Clauses 1 and 2 and the Long Title – were agreed to and stood part of the Bill.

THE FINANCIAL SERVICES (INSURANCE MEDIATION) (AMENDMENT) BILL 2004

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

Clause 2

HON F R PICARDO:

Just that caveat that we do not yet know whether there is easily accessible that definition of “large risks”, I am happy to come back to it.

HON CHIEF MINISTER:

Somebody has gone to try and get it but I do not think they are going to have it here in the next few minutes. I honestly do not think it alters the hon Member's voting intentions on the Bill. It is going to be checked, we are 100 per cent certain it is right, we will send him the text anyway for his perusal and obviously if we are wrong, which I do not think it is, it will have to be corrected.

HON F R PICARDO:

The only issue here is what is a large risk. If I am right that they cannot find it and therefore it is not there, then the easy answer would be that we simply insert the definition that was in Article 5D there. If Article 5D exists that is fine, otherwise we just insert the definition there.

HON CHIEF MINISTER:

Yes, if we find that Article 5D of the Directive 73/329/EEC is not extant, then we shall have to amend this to set out the definition there verbatim, but I am assured by the draftsman that it is. Well whatever the text I am assured that it is there, it is extant, I will provide him with a copy of it.

Clause 2 – stood part of the Bill.

Clauses 3 and 4 – were agreed to and stood part of the Bill.

Clause 5

HON CHIEF MINISTER:

There is a small typographical error in the Bill as printed. In clause 5 first line it says, "in Schedule 1 of the Financial Services (Licensing) Regulations 199 blank, that should be 1991 but it is a typo.

HON F R PICARDO:

I just note that there is actually also in the Bill as printed an error in the numbering of clause 5. We go from 5(a) to 5(c) without going through 5(b) but it is of no consequence to the amendment that will be made to the Financial Services Ordinance.

HON CHIEF MINISTER:

I do not think so Mr Chairman, I think the hon Member may not have noticed that in fact it is quite unusual to amend Regulations by principal legislation, but that is what we are doing. So those are amendments to Schedule 1 of the Financial Services, it may be that there is no amendment to (b).

HON F R PICARDO:

Well, if that is the case, then it is necessary to show that what we are doing is inserting a new (a) and inserting a new (c), which it does not at present appear that we are doing because we are not saying open inverted comma (a) the paragraph close inverted comma. We are actually saying "5. In Schedule 1 of the Financial Services Ordinance 1991, (a)".

HON CHIEF MINISTER:

Yes I think it should be (b) because it is a list of amendments being made, not a reference to the sub-clause number being amended. Yes, (b).

Clause 5 – as amended stood part of the Bill.

Clause 6 and the Long Title – were agreed to and stood part of the Bill.

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) BILL 2004

Clauses 1 and 2 and the Long Title – were agreed to and stood part of the Bill.

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Public Health (Amendment) Bill 2004; the Financial Services (Insurance Mediation) (Amendment) Bill 2004, with amendments; and the Social Security (Insurance) (Amendment) Bill 2004, have been considered in Committee and agreed, and I now move that they be read a third time and passed.

Question put.

The Public Health (Amendment) Bill 2004.

The House voted.

For the Ayes:	The Hon C Beltran
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto
	The Hon F Vinet
For the Noes:	The Hon J J Bossano
	The Hon C A Bruzon
	The Hon Dr J J Garcia
	The Hon S E Linares
	The Hon Miss M I Montegriffo
	The Hon F R Picardo
	The Hon L A Randall

The Bill was read a third time and passed.

The Financial Services (Insurance Mediation) (Amendment) Bill 2004 and Social Security (Insurance) (Amendment) Bill 2004, were agreed to and read a third time and passed.

HON MISS M I MONTEGRIFFO:

Before the Chief Minister starts to adjourn the House, I wish to make a statement on a point of clarification. Mr Speaker will recall that on Monday the Minister for Sport said that I was mistaken in saying that he had said in this House in his Budget speech, that the facilities of the Sports City and the changing rooms of the new hockey pitch would be fully operational by this autumn. He said that he was referring to the works being completed. He said that he had not said that these facilities would be fully in use, that he was referring to the works being completed and not to the facilities being fully operational. I told him that I had taken down some notes in shorthand and therefore, in order to be 100 per cent sure because I said I was 99 per cent sure, I have just checked on the draft text of the Budget speech and I would like to read what the Minister said. "The new Sports Hall and ancillary building, which will include lecture rooms and another squash court, a cafeteria and new offices are expected to be in full use by autumn, by which time the changing facilities and spectator stands for the hockey pitches, will also be ready for use." Therefore, Mr Speaker, I wish to say that I think that I have a better memory than he has.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 24th January 2005 at 2.30 pm and in so doing wished Mr Speaker, Members and the staff of the House a Happy Christmas and the compliments of the season.

Mr Speaker and the Hon Miss M I Montegriffo on behalf of the Opposition Members thanked the Hon the Chief Minister and associated themselves with the sentiments expressed by the Hon the Chief Minister.

Mr Speaker then put the question which was agreed to.

The adjournment of the House was taken at 6.15 pm on Wednesday 22nd December 2004.

MONDAY 24TH JANUARY 2005

The House resumed at 2.30 pm.

PRESENT:

Mr Speaker…….(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

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

OPPOSITION:

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

ABSENT

The Hon R R Rhoda QC - Attorney General

IN ATTENDANCE:

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

DOCUMENTS LAID

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

1. Consolidated Fund Pay Settlements – Statement No. 3 of 2004/2005;

2. Consolidated Fund Supplementary Funding – Statement No. 4 of 2004/2005;

3. Consolidated Fund Reallocations – Statement No. 5 of 2004/2005.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Maintenance Orders (Reciprocal Enforcement) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the amendment of this very short and simple Bill is to make clear that the procedure in respect of foreign maintenance orders set out by the Maintenance Orders (Reciprocal Enforcement) Ordinance, applies only to matters to which the Civil Jurisdictions and Judgments Ordinance 1993 does not apply, and thus to prevent any possible overlap or conflict between the two. In other words, both pieces of legislation deal with similar subject matter and material and the purpose of this Bill is to make it clear that the Maintenance Orders (Reciprocal Enforcement) Ordinance has effect subject to the Civil Jurisdictions and Judgments Ordinance 1993, as subsequently amended from time to time to apply various Conventions. That is the sole purpose of the Bill to the extent that both pieces of legislation that this House has already passed, to the extent that there may be overlap, the Civil Jurisdictions and Judgments Ordinance prevails in manner that the Maintenance Orders (Reciprocal Enforcement) Ordinance has effect subject to the Civil Jurisdiction and Judgments Ordinance. I commend the Bill to the House.

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

HON J J BOSSANO:

All that the mover has done is really say more or less the same thing as the explanatory memorandum. I think what is difficult to understand is if there is some doubt as to whether the Maintenance Orders (Reciprocal Enforcement) Ordinance is subject or not subject to a law passed in 1993, what has been happening in the last eleven years? How has the doubt been resolved in the eleven years since we legislated the 1993 Ordinance? Is it that there has been a recent case which has put in doubt something that was assumed not to be in doubt before? I would imagine in 1993 when this House approved the Civil Jurisdiction, I do not remember it but I can only suppose that is what happened at the time, but when the Civil Jurisdiction and Judgments Ordinance was passed by this House it must have been passed on the premise that it would affect the operation of the Enforcement Ordinance which preceded it. Every time we pass a Bill presumably what went on before is subject to what we subsequently decide should happen, as I understand it as a layman and as a legislator. Now the fact that there is a need to do this now and spell it out raises a number of questions. Is it something we ought to be doing as a regular feature in legislation, or is it that somebody has questioned this one because of something that has happened recently which

had not happened previously? I think that is the principle that concerns us.

HON CHIEF MINISTER:

The Bill is two lines long and the hon Member reproaches me for saying little more than what the explanatory memorandum says. It is really not easy to go much further. There are two pieces of legislation which the Government have been advised, let me say first of all that the answer to the hon Member's questions 'has there been a recent case?', that is not the case. In other words, the Government's legislation administrators, the Legislation Support Unit, has pointed out that the scope exists for confusion because two different Ordinances purporting to deal with the same subject matter in terms of procedure, have different provisions. One transposes the requirements of an international obligation, the other is domestic, and all this piece says for the sake of clarity and in case the matter arises the court does not have to be delayed, there is not a case in which this has arisen or anything, it is just legislation managers having spotted this and said it would be better to pass a legislative provision making it clear that where there is overlap it is the Reciprocal Enforcements Ordinance that prevails because that responds to an international obligation, as opposed to the other which is entirely domestic in nature. So the Civil Jurisdiction and Judgments Ordinance 1993 prevails. That is all, there is not a historical problem that the Government are aware of, there is not a case, no one has fallen foul of this supposed possible conflict. It is just housekeeping in advance in case the issue is ever taken, it will have been resolved before it has arisen rather than deal with it after the event. From that point of view the hon Members may take the view that legislation is unnecessary, it is just that we were advised to do it so we bring the legislation to the House. No more than that.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE JUDGMENTS (RECIPROCAL ENFORCEMENT) (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Judgments (Reciprocal Enforcement) Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the background to the presentation of this Bill is the same as in the previous Bill. The purpose of it is to make clear that the procedure in respect of foreign judgments set out by the Judgments (Reciprocal Enforcement) Ordinance, applies only to matters to which the Civil Jurisdictions and Judgments Ordinance 1993 does not apply, and thus to prevent any possibility of overlap or confusion. The amendment introduced by the Bill is as follows. Clause 2 introduces a new section into the Judgments (Reciprocal Enforcement) Ordinance, which provides that the Ordinance has effect subject to the Civil Jurisdictions and Judgments Ordinance 1993. In other words, in exactly the same vein as the debate on the previous Bill, the Civil Jurisdictions and Judgments Ordinance 1993 prevails over the Judgments (Reciprocal Enforcement) Ordinance where

there is any conflict between them as a result of overlap in subject matter, and again there is no specific case. The Government are advised that it would be wise just to have the legislation clarify this without the point having arisen, and it is for the same reason, one implements international obligations, it is the Brussels and Lugano Conventions basically in their various manifestations, and of course that has to have priority if there is a conflict in our legislation. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE IMMIGRATION CONTROL (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance to further transpose into the law of Gibraltar Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and to transpose the Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill transposes Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, and further transposes Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence into the law of Gibraltar. In other words, it does two things. It transposes Council Framework Decision 2002/946/JHA and it also completes some of the transposition of Council Directive 2002/90/EC. It does these things by amending the Immigration Control Ordinance as follows. (1) To clarify that the offences will be committed where a non-EU citizen is assisted to unlawfully enter, transit or reside in a schedule free State, being the EU States plus Norway and Iceland. That is the extent of the correction of the previous transposition of that. Previously, this House had legislated only for EU Member States, the directive actually applies to the EU Member States plus Norway and Iceland, so the element of correction is in adding Norway and Iceland. In other words, by reference to Schedule 3 rather than Member State. Secondly, to provide for a new aggravated offence, and now this is transposing the framework of 2002/946 where the Member States decide to toughen up against these things, to provide for a new aggravated offence of assisting a non-EU citizen to enter or transit a Schedule 3 State, where the action is taken as part of the activities of a criminal organisation or the action endangers the lives of the persons who are being unlawfully assisted. In other words, hon Members will remember that at a given point the EU gets exercised about organised crime and trafficking in illegal labour, and they decide to create this specific offence which is more serious when it is committed by a Member of an organised crime ring than it is when it is committed by

somebody who is not, a rather novel concept. Thirdly, it increases the penalties, again required by the Council Framework, the penalties for offences committed under section 63A in line with the requirements of the Council Framework Decision 2002/946/JHA, including allowing the court to make a forfeiture order in respect of certain vehicles, boats and aircraft used in the commission of offences under section 63 and 63A. It also amends section 63 to provide the section 63 offences harbouring persons in Gibraltar, may be committed by Gibraltarians outside of Gibraltar and in an amendment of which I have given notice, I do not know if hon Members have had it circulated to them but which I will be moving at the Committee Stage, I intend to replicate the United Kingdom's equivalent legislation in this regard by adding a power to prosecute in Gibraltar any British person, which will be defined in the amendment, who is ordinarily resident in Gibraltar. I will give the hon Members specific notice of that amendment at the Committee Stage.

So, in details clause 2(3) of the Bill inserts a new section 63A into the Immigration Control Ordinance. The new section is as follows. Section 63A(1) preserves the existing offence of assisting a non-EU citizen to enter or transit an EU Member State. The wording of the existing section in the existing Ordinance is amended to refer to a Schedule 2 State rather than a Member State, as was always required by the directive and we simply got that transposition wrong by limiting it to Member States. The penalty has been increased to one year and/or a fine in line with the obligation to impose, and this is a requirement of the Framework Directive, requires to impose effective proportionate and dissuasive criminal penalties which allow for extradition under the arrest warrant. Further, section 63A(2)(a) introduces the new aggravated version of section 63A(1) offence previously referred to. The penalty for this offence will be up to eight years imprisonment and a fine, and those are sentences referred to in the Framework Decision, these are not figures that the Government of Gibraltar have chosen as a matter of policy. Section 63A(2)(b) preserves the existing offence of intentionally, for financial gain, assisting a non-EU citizen to reside in an EU Member State but amends it to cover Schedule 2 States. The penalty has been increased to eight years imprisonment and a fine. Section 63A(3) defines a criminal organisation, of course, which is necessary given that when committed by a member of the criminal organisation, the aggravated version of it. Section 63A(4) and section 63A(5) preserve the existing definition of immigration law and means of proof of foreign law. Section 63A(6) provides that a section 63 offence may be committed by persons of any nationality in Gibraltar, as the Bill now stands before the hon Members, by Gibraltarians outside Gibraltar and by virtue of the amendment that I propose to move, also by any other British person ordinarily resident in Gibraltar when committed outside Gibraltar. So assuming the House approves the amendment that I will move, Gibraltar will have jurisdiction over people of any nationality who commit the offence in Gibraltar, and also Gibraltarians and any other British person ordinarily resident in Gibraltar, in respect of events occurring outside Gibraltar. The existing section 63A(2) dealing with conspiracy has been omitted as it is no longer necessary. Clause 2(4) inserts a new section 63B which allows the court to make forfeiture orders in respect of certain vehicles, boats and aircraft used in connection with offences in section 63 and section 63A, and the hon Members will see that in the case of boats and aeroplanes there are particular cumulative conditions that need to be satisfied to protect the innocent owners of perhaps commercially sized aircraft and ships from being subject to forfeiture unfairly. Clause 2(5) renumbers the existing Schedule 3 as Schedule 2, in fact there never was a Schedule 2 so the new Schedule 3 is in fact Schedule 2 and there is just that renumbering exercise done.

The Bill transposes Gibraltar's EU obligations in relation to trafficking and strengthens Gibraltar's ability to play a role in counteracting trafficking in persons in the European Union, in implementation of the European Union wide policy to clamp down on the movement of illegal people into and through the Community by organised crime rings. I commend the Bill to the House.

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

HON J J BOSSANO:

I think the only point that has not been explained is that in fact when Bill No. 29/04 was passed, which became Ordinance No. 33/04, we introduced section 63A(1) with penalties which were lower than the ones that we are now transposing. Is it that for example, it was level 4 as opposed to level 5 which there is now in section 63A? Even though what we are doing now is transposing a Decision of November 2002, I am surprised that late last year we were introducing a lower level of penalty which we are now pushing up, given that we have known since November 2002 what it should be. Is there an explanation for that? That is the only part that I do not think has been explained by the mover.

HON CHIEF MINISTER:

Well just to provide the hon Member with an answer to his query, when we did the first Bill we were only transposing, the drafting of the Bill was only to transpose Directive 2002/90/EC. By the time we did that late, we had already incurred in a subsequent commitment, the Council Framework, which tightened up the penalties. When we did the original Bill the drafting was only to do the directive and it did not have in mind the subsequent obligation, even though the hon Member is quite right in saying it was then already known, but the drafting only addressed the original directive. These amendments, in terms of the ratcheting up of the penalties, responds to the subsequent Framework Decision, albeit that that was already known at the time that we did the original Bill in the House.

HON F R PICARDO:

Can I just in addressing that point, point out that in fact the Council Directive is of 28 November 2002 also. It is not a subsequent Framework Decision, they both appear at least on the explanatory memorandum to be of the same date.

HON CHIEF MINISTER:

Yes, they are of the same date, it was just overlooked in the original draft. If the hon Member looks at the Framework Decision he will see the commitment to have what is referred to as proportionate, effective, dissuasive penalties. I can only assume, I am completely guessing here, but I can only assume that the directive was in the making long before the Framework and then having approved the directive, they then decide to sort of amend it and they amend it by reference to a Framework Decision so as not to have to start again with the very laborious procedure that there is in Europe for promoting a directive. A framework decision is a Member State issue, a directive is a Community institution mechanism, and there are wholly different procedures for getting to the stage where one can publish them as binding obligations. So I can only assume that the directive was already in the pipeline and then the Member States decide they want to ratchet up the penalties, and so they put them all out together but as wholly different measures. One in the hands of the Member States, the other having to go through a Community process.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) (NO. 2) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision in respect of EC Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000, to make further provision in respect of EC Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and to amend the Civil Jurisdiction and Judgments Ordinance 1993, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the amendments contained in the Bill are of a procedural rather than a substantive nature. In general terms, firstly they make provision for Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters, and the matters of parental responsibility, repealing Regulation 1347/2000, a regulation which is normally known as Brussels II bis. Hon Members know that being regulations they have direct application to Gibraltar without further legislative requirement, which is why it says making provision for rather than transposing into the laws of Gibraltar. Secondly, this Bill alters the procedure whereby foreign judgments may be enforced in Gibraltar. It changes the procedure from a registration procedure to a procedure by which a court in Gibraltar may declare the foreign judgment enforceable. In other words, in the jargon of the Brussels Convention, it is a declaration process as opposed to a registration process.

Article 28 of the Brussels II *bis* Regulation provides, I do not know if the hon Members have got the text in front of them, provides for either of the two models. When the legislation was originally passed in 1993 to transpose the Brussels I, the House back in 1993 chose the model set out in sub-section (2) of Article 28. The Government are not able fully and publicly to explain the reasons for this amendment because it involves matters which are currently being litigated in international tribunals. However, they are able to say the following, of course I am happy to give the hon Members if they want more details a fuller explanation. Article 28 of the Brussels II *bis* Regulation deals with enforcement of foreign judgments in relation to certain matrimonial matters and parental responsibility. It provides for two different methods of enforcement. As I have said, a declaration of enforcement procedure or a registration procedure. I hope the hon Members from what I have said have been able to work out what the difference between the two procedures is. One is, one gets a judgment in a foreign court, it is simply registered in Gibraltar and then it is enforced without further intervention from any Gibraltar court. That is the registration procedure. The declaration procedure is that one has to get a Gibraltar court order declaring it enforceable before it can actually be enforced. On consideration of the provision it was clear, and this is the signal that I can send the hon Members publicly at least, on consideration of the provision it was clear that Gibraltar fell under the declaration of enforcement procedure in Article 28(1) rather than the registration procedure under Article 28(2). Similar provisions exist in Article 38 of

Brussels I Regulation, and Article 31 of Brussels and Lugano Conventions. In relation to all of these Gibraltar falls under the declaration procedure rather than the registration procedure. The specific amendments introduced by the Bill and therefore what this Bill does, is in respect of the 1993 Ordinance it switches from the registration procedure to the declaration by local court order procedure. That is the effect of that part of the Bill.

Therefore the Bill introduces, I will take the hon Members through it very briefly, introduces certain language into the 1993 Ordinance consequential and for the administration of the new procedure. For example, clauses 2A and 2B introduces into section 2 the definitions, which is the definition section, a definition of "Regulation 2201/2003", it includes a definition of "declared enforceable" because of course it was not relevant before because the previous model was not the declaration model and therefore there was not a need for a declaration of declared enforceable. Similarly, definitions are introduced of "enforcement order" being a court order under a foreign judgment may be enforced in Gibraltar. Clause 2C concerns the enforcements of foreign judgments other than in respect of maintenance orders. Under the Brussels and Lugano Conventions, under which the Bill substitutes the existing section 6 with a new section 6, that is to say we have now moved on from maintenance orders and we are now to all other aspects under Brussels and Lugano other than maintenance orders. Under the new section 6 the Supreme Court may make enforcement orders in respect of foreign judgments. Where an enforcement order has been made the Supreme Court shall have the same powers to enforce the foreign judgment as if that judgment had originally been given by the Supreme Court, and the foreign judgment may be enforced in the same way as a Gibraltar judgment. Clause 2D concerns enforcement of maintenance orders under the Brussels and Lugano Conventions, and the basic difference is that for maintenance orders the local court that has jurisdiction is the Magistrates' Court, whereas for issues other than maintenance orders as I have just said, it is the Supreme Court. That is basically the only difference between clauses 2C and 2D. Clauses 2E, 2F and 2G, amend the wording of respectively sections 9, 10 and 32 of the 1993 Ordinance to reflect the new procedure for enforcing foreign judgments, subsequent to an enforcement order rather than subsequent to registration, and also enables rules of court to be made in respect of Regulation 2201/2003. Clause 2H introduces Schedule 11 giving effect to Brussels II *bis* Regulation, that is Regulation 2201/2003. This clause will come into operation on the 1st March 2005, the date on which Regulation 2201/2003 applies. The hon Members will no doubt be pleased that we are now ahead of the game and transposing legislation before the due dates. Clause 2(1) extends section 39(1) to cover Regulation 2201/2003. Clause 2J amends paragraphs 1 to 6 of Schedule 10. Schedule 10 deals with enforcement of European Union judgments under Regulation 44/2001, that is the Brussels I Regulation. The amendments alter the wording of the paragraphs referring to registration of foreign judgments to referring their enforcement subsequent to an enforcement order. These amendments reflect the fact that Article 38(1) and not Article 38(2) of the Brussels I Regulations applies to Gibraltar. In other words, it is amending the language in paragraphs 1 to 6 of section 10, consequential upon the switch from registration process to court enforcement, a court order, declaration of enforceability process. Clause 2K inserts Schedule 11 which makes provision in respect of Brussels II *bis* Regulation. This clause will come into operation on 1st March 2005, the date on which Brussels II *bis* applies.

This Bill therefore makes provision for Brussels II *bis* Regulation, Regulation 2201/2003 and amends the existing procedure for enforcing foreign judgments in Gibraltar and the previous regulations under previous Conventions and under previous Bills to bring it all into line. I commend the Bill to the House.

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

HON F R PICARDO:

The change from registration to declaration will make the process of enforcement of judgments in some instances where, for example maintenance orders, the finances of the person needing to rely on the judgment may not be the best, slightly more onerous as it will require a process of judicial decision. On that basis I think we will take the Chief Minister up on his offer that he should explain to us exactly what it is, but perhaps if we could stand down before we vote for a few moments.

HON CHIEF MINISTER:

Yes, either that or I am perfectly happy to delay the conclusion of the Second Reading until after we have had that opportunity perhaps when we break for tea.

On the basis of what I have just proposed, we would sort of interrupt the debate at that point where they are still free to speak, after they have heard my explanation in private, so I would suggest that we just adjourn the debate of this Bill where it now is, in other words, before Mr Speaker says "does any other Member wish to speak on the Bill?", and we move on to the next.

The House recessed at 3.30 pm.

The House resumed at 3.40 pm.

HON F R PICARDO:

Mr Speaker, on the basis of the discussion we have had in the course of the adjournment, I think there is nothing to add in relation to this Bill.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE MATRIMONIAL CAUSES (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Matrimonial Causes Ordinance to make provision for Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 and for Council Regulation (EC) No. 22/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill is to make clear that in relation to matters covered by Regulation 2201/2003, that is Brussels II bis, which we will have legislated when we pass the previous Bill that we debated, and Regulation 22/2001 Brussels I, the appropriate Regulation and the Civil Jurisdiction and

Judgments Ordinance 1993 will apply rather than the Matrimonial Causes Ordinance. The Bill introduces a new Part X containing section 60A into the Matrimonial Causes Ordinance to make clear that the Ordinance has effect subject to the Regulations above, and to the Civil Jurisdictions and Judgment Ordinance 1993. it renumbers existing Part IX as Part X following the insertion of the new Part X. Therefore the new section in A simply says that the Ordinance has effect subject to two pieces of regulation which are regulation by direct application in any case, and to sections 38A of the Civil Jurisdiction and Judgment Ordinance and also section 38 and 39. I think there is a typographical error there, in that in (b) it says Civil Jurisdiction and Judgments Ordinance, which is correct but in (a) it says Civil Judgments and Jurisdiction, little (a) just inverted the words jurisdiction and judgement. I commend the Bill to the House.

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

HON F R PICARDO:

We do not believe that these amendments are strictly necessary, although in advertising the fact that they are subject to these other Regulations et cetera, within the Ordinance all they do is alert those who might not be aware of that to this. We have no difficulty with that. Can I just simply say that in the Ordinances that we have just passed, in Bill 42 and Bill 41 we are referring repeatedly to the Civil Jurisdiction and Judgments Ordinance 1993, which I think is the correct citation because of the post-1984 criteria and I think we should do that here as well in Third Reading. Also I think that there is a second amendment which is section 2(b) of this Bill which will renumber Part X as Part XI. At the moment that seems to be hanging on the end of the amendment of section 60A as if section 60A had an (a), (b) and (c). In fact I think section 60A will only have an (a) and a (b) and what appears in (c) at the end of it, is actually sub-section (b) of section 2 of this Bill. I think that is right.

HON CHIEF MINISTER:

I would not be able to agree with the hon Member that the legislation is unnecessary for the reason that it refers to a regulation that is of direct application. For example, section 39 of the Civil Jurisdiction and Judgments Ordinance, which is being invoked by this amendment which is overriding the Matrimonial Causes Ordinance, for example applies the regime as between the UK and Gibraltar for example, and the previous section applies the Matrimonial Matters and Parental Responsibility for Children to all Member States of the Union except Denmark, which for some reason or other has opted out of these arrangements. Let me just get confirmation as to whether the hon Member's observation is indeed correct.

Yes, as a matter of presentation I think the hon Member's point must be right. Renumbering the existing part as Part XI is non sequitur (a) and (b). It would not be (a) and (b) of a new section 60A of the Ordinance, it would simply be a separate clause of the Bill, that is the point. I think that must be right. I will move the necessary amendment at Committee Stage to reflect the secretarial aspects of the presentation. I think the hon Member's point is right.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE MAGISTRATES' COURT (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision in respect of Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and to amend the Magistrates' Court Ordinance, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purposes of the Bill is to add to the jurisdiction of the Magistrates' Court, the court responsibility that arises from Council Regulation No. 2201/2003 in relation to guardianship of minors and parental responsibility under those Regulations. That is to say, that the jurisdiction and the power to recognise and enforce judgments in matrimonial matters and the matters of parental responsibility, and the definition of domestic proceedings in the Magistrates' Court are amended to give those powers and jurisdictions to the Magistrates' Court and to include all applications for the recognition and enforcement of maintenance orders under the Civil Jurisdiction and Judgments Ordinance 1993, rather than as present only those under Part 1 of the Civil Jurisdiction and Judgments Ordinance 1993. So that is all rather than just Part 1 proceedings. This Bill ensures that the Magistrates' Court Ordinance reads consistently with the Civil Jurisdiction and Judgments Ordinance 1993 as amended. I commend the Bill to the House.

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

HON F R PICARDO:

Just a very minor point but the version of the Magistrates' Court Ordinance that I have in the House, and I think the one I checked earlier, has a proviso at the end of the list of matters in section 45. That proviso, after it lists those issues, it says, "in this Ordinance the expression "domestic proceedings" means proceedings". At the moment (a) says "under any law relating to the guardianship of minors" then there are other definitions of domestic proceedings and then the law says "other than proceedings as a general proviso for the enforcement of an Order made under any of the laws mentioned in paragraphs (a) and (b) or for the variation of any provision et cetera". My concern is that maybe we are legislating here to create a conflict because the new (a) that we are inserting actually refers to a regulation which deals with recognition and enforcement of judgments in matrimonial matters, which seems to be ousted by the proviso to the section 45 into which we are inserting it. I just flag that for the Government to consider, it may be something that we can tidy up at Third Reading but we are now providing for domestic proceedings to include this enforcement issue whereas that appears to be specifically excluded by the proviso to section 45.

HON CHIEF MINISTER:

Not on the general principles but I will consider the hon Member's point when we debate it at Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 2004

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short housekeeping amendment to remove from the Income Tax Ordinance references to the qualifying company following the repeal of the Qualifying Company Regulations. The qualifying company regime has been ended by the repeal of the Rules and this is just to prevent there being a reference to a concept which then does not exist because there are no Rules. It has no other effect than that. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS OR POLLUTING GOODS) (REPEAL) ORDINANCE 2004

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to repeal the Merchant Shipping (Carriage of Dangerous or Polluting Goods) Ordinance 2000, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill before the House repeals the Merchant Shipping (Carriage of Dangerous or Polluting Goods) Ordinance 2000. EU Council Directive 93/75/EEC was transposed into the laws of Gibraltar by way of this Ordinance. However the 1993 EU Directive has now been repealed by a more recent EU Directive which was published in 2002, Directive 2002/59/EC. It is therefore necessary to repeal the Gibraltar legislation that gave effect to an EU Directive which is now spent. The new 2002 Directive of the European Parliament and of the Council goes beyond the original directive, it further establishes an EU vessel traffic monitoring and information system. The provisions of the 2002 Directives have already been transposed into Gibraltar law by way of the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and

Information System) Regulations 2004 which was published in the Gibraltar Gazette on 23rd December 2004 as Legal Notice No. 120 of 2004.

Part 3 of this new regulation sets out the provisions for the notification that needs to be given by ships carrying dangerous or polluting items. Regulation 1(2) of the new regulation provides that the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulation 2004 shall come into operation on a date to be appointed by me in my capacity as Minister with responsibility for the Port and Shipping. The Government wish to bring the regulation into effect at the first opportunity in order to complete the transposition of the 2002 directive. In order to do so the Merchant Shipping (Carriage of Dangerous or Polluting Goods) Ordinance 2002 needs to be repealed. It is intended to bring the repeal into effect at the same time that the regulations come into operation. I wish to give notice that at Committee Stage I wish the title of the Ordinance to be amended to replace "2004" with "2005". I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE PORT OPERATIONS (REGISTRATION AND LICENSING) ORDINANCE 2005

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to make provisions for regulating port operations and employment within the Port; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, up until now there has only been regulations in respect of two classes of port activity. The Dock Work Regulation Ordinance has provided a regime in respect of stevedoring and the Ship Agents Registration Ordinance has set out the licensing regime for ship agents. However, there are many other kinds of activities within the port which historically have been unregulated. Government were faced with two options. One, doing away with all the regulation of port activities, or in the alternative providing a licensing regime for all the different categories of port activity. There are dangers of abolishing all control and there is a need to ensure that port operators work safely, that people who wish to operate within the port meet certain minimum standards and the Port of Gibraltar can continue to offer a number of port services, and that all port operators have a real presence in Gibraltar. The Government also consider it desirable to register persons who are employed by private sector companies as port workers. In order to provide a licensing regime there is a need for there to be an appropriate body which shall be the licensing authority. This authority will be the Gibraltar Port Authority which is set up under the Gibraltar Port Authority Ordinance, the Bill of which is before the House today. It is envisaged that there will be seven

categories of port operators. Bunker supplies, stevedores, ship repairers, ships agents, ship chandlers, dock operations and a miscellaneous category which will cover all other industrial or commercial operations carried out within the port. Before bringing this Bill to the House the Government carried out a wide-ranging consultation with existing port operators. They were invited to comment on the draft Bill and many representations were received which were closely studied. Many of the suggestions which were made by the industry were incorporated into the draft. The Port Advisory Council also examined the Bill in detail and provided me with valuable feedback. In general, Gibraltar port operators were strongly supportive of the initiative to introduce a wide-ranging licensing and registration regime.

I will now turn to the details of the Bill. Up until now there has been an unofficial understanding known popularly as the "3 ton rule" that goods or merchandise under three tons in weight shall be classified as cargo. The new definition of cargo gives legal effect to this so-called "3 ton rule". This in effect has been a highly contentious issue within the industry. I have had strong representations from the industry to raise the limit to five tons or indeed to do away with it altogether. I have also had strong representations seeking to lower the limit to below three tons. The Government have considered the matter and decided to retain the limit of three tons as at present. Clause 3 empowers the Gibraltar Port Authority to issue a licence for any class of port operator to any person or entity who applies to the Authority in writing in the prescribed form, pays the prescribed fee for the registration and satisfies the Authority of compliance with the requirements of the Ordinance. The Authority may also register any person as a port worker for one or more specific activities, if his employer registers as a port operator and his employer requests the Port Workers Registration basic prescribed fees and satisfies the Port Authority that the port worker is a fit and proper person. In accordance with clause 4, the Gibraltar Port Authority shall have the absolute discretion to decide whether to grant or refuse a licence. In particular, the Authority may refuse to issue a licence if it considers that the operational circumstances, the viability of a particular sector, the need to maintain levels of investment, the safety of a particular port sector or the wide economic interests of Gibraltar could be adversely affected should the licence be issued. Clause 5 provides for the renewal of Port Operator Licences for the re-registration of port workers. Clause 7 aims to ensure that the Port Authority is aware, through the registration process, of all persons employed within the port sector and who will need to work within the port.

It is appreciated that there may be an urgent short-term need, for someone who is not registered as a port operator, going to the port and carrying out work and that there may not be sufficient time for this operator to go through the standard application process. In such circumstances clause 9 provides that the Authority may exceptionally grant an operator exemption from registration on the recommendations of the Captain of the Port, for a defined short period of time and for a specific purpose. Clause 10 sets out the regime for the removal of an operator from the register of port operators or for the cancellation of the registration of a port worker. It also provides a mechanism for the short-term resolution of disputes between operators and the remedying of any breach of port operator licence. In such cases the Dock Controller shall make an immediate adjudication in respect of the dispute or shall require that a particular breach of the licensing conditions be remedied. A person who is dissatisfied with the adjudication of the Dock Controller can appeal to the Minister. Clause 11 provides that anyone may inspect the register on payment of the prescribed fee. Clause 12 is fundamental to Government strategy, only registered port workers can carry out work within the port. This will ensure that unregistered labour cannot work within the port and that the port operator cannot try to introduce a worker into the port who does not meet the minimum standard of training or competence required to ensure that operations are carried out safely. This clause needs to be seen side by side with the requirement of clause 3(5), that an operator can only carry out within the port those activities for which he has been registered. The Government wish to encourage the development of the port

and operators who wish to diversify even further the range of services offered by the port. However, it is of equal importance to the Government that an operator shall have a real presence in Gibraltar and this legislation puts in place a framework which will allow the Port Authority to insist on this. Clause 13 provides for offences and penalties. Clause 14 provides an appeal and establishes a Port Tribunal. Clause 15 provides for a referral to the Supreme Court on a point of law if a person is dissatisfied with the decision of the Port Tribunal. Clause 16 allows the Minister to make regulations for the purpose of carrying out the Ordinance into effect. Clause 17 repeals the Dock Work Regulations Ordinance and the Ship Agents Registration Ordinance 1987. Clause 18 provides for the transitional provision to ensure that there is continuity in respect of port operators, who until now have come under the provisions of the two Ordinances which are to be repealed. The Bill will introduce a wide-ranging system of licensing port operators and registering port workers. I commend the Bill to the House.

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

HON DR J J GARCIA:

Let me make clear from the start that the Opposition do not support the creation of a Port Authority, but it is not an issue which I propose to address at this stage, given that this is the subject matter of another Bill further down the Order Paper. We know the explanatory memorandum to this Bill says that it reproduces many of the existing provisions of the Dock Work Regulations Ordinance which it also replaces. It is the view of the Opposition that these functions should continue to be carried out as they have been until now by the Port Department. We also note, having heard the Minister's contribution this afternoon, and we also support the licensing and registration scheme which the Minister has mentioned, but we also believe that that should be carried out by the Port Department. However, on the assumption that the Government will create the Port Authority without Opposition support in the Bill that follows, we have little choice but to accept that in those circumstances it is logical that the functions in this Bill should be carried out by the Authority rather than be left in limbo. The Opposition will therefore be supporting the Bill on this basis.

Question put. Agreed to.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE PORT (AMENDMENT) ORDINANCE 2005

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill introduces a new regime for yacht reporting and follows a consultation exercise with the industry and with the relevant authorities. The Government have wanted to introduce the new regime for some time and have only been constrained by doing so because of the delicate negotiations that were in hand for the restructure of the Port Department into

the Gibraltar Port Authority. In order to introduce the new regime it is necessary to re-deploy three boarding officers within the old Port Department structure from yacht reporting duties elsewhere to introduce new job description for all port boarding officers. I am happy to report to the House that all the discussions with the relevant Trade Union in respect of the restructure of the Port Department have now been completed in principle, and this paves the way for a change in practice for yacht reporting at Gibraltar.

I would now like to give a brief overview on the way in which yacht reporting has developed. The Government have been aware for some time of certain shortcomings in the system. In the first place, a yacht entering Marina Bay and Sheppards Marina have been obliged to attend at the yacht reporting berth adjacent to the ferry terminal before proceeding to the marina of their choice. However, yachts intending to berth at Queensway Quay Marina have proceeded there directly without calling at the yacht reporting berth. Therefore, there has historically been a sharp discrepancy in the handling the arrivals at one marina when compared with the other two. Visiting yachts that do not intend to enter a marina, for example, a yacht that intends to anchor off Western Beach similarly does not report anywhere. This system has applied ever since Queensway Quay Marina came into operation a good number of years ago. It throws into question the need for the yacht reporting regime that has applied to the yacht reporting berth up until now. There are further considerations that the Government have taken into account. Yacht visitors are an important source of visitor arrivals to Gibraltar and the present system is generally user-unfriendly. Furthermore, a yacht master is required to complete forms at the yacht reporting berth which are almost identical to the further set of forms that need to be completed in on arrival at the marina. This has often been the subject of adverse comment. The Government are aware that the regime that currently applies in Gibraltar is far more stringent than that which applies in neighbouring marinas in the region. Purely from a port perspective there is little to be gained from having Port Department boarding officers visiting arriving yachts, when there is no role for them other than for gathering yacht statistics and the occasional grant of clearance if there is a sickness on board. The port does not have a real part to play in respect of visiting yachts and old traditional practices, which are past their best sell-by date, are being re-examined. There are and will continue to be an important role for Immigration and Customs Authorities. The new Government policy that is reflected in the Bill aims to address these issues while ensuring that security considerations are in no way compromised. The responsibility for ensuring that a visiting yacht is properly documented and for reporting its arrival up until now, the Immigration and Customs Authorities, will be passed to the marina in the ordinary course. The person who has the day to day management and control of the marina will have the responsibility in law to ensure that the identity card, passport and visas, where necessary, of all persons arriving on yachts are checked. That the manifest or report of a cargo in a vessel is produced, that the manufacturer's certificate in the case of yachts is produced, that the crew/passenger and stores declaration are correctly completed and that copies of all documentation are sent to the Principal Immigration Officer, the Collector of Customs and the Captain of the Port. This will produce an upgrading of the regime that currently applies at Queensway Quay. It will provide the same information that is presently being obtained from the other marinas.

There is further provision at section 15(6)(a) in respect of yachts that enter Gibraltar waters and choose not to enter a marina. Such yachts up until now have been almost uncontrolled. The new provision empowers the Captain of the Port to direct a yacht of this type attends at a berth designated by him for the purposes of carrying out all arrival formalities. The Government are aware that as a result of security considerations there may be times when there is a heightening state of alert, when it would be desirable or necessary to ensure that all arriving yachts attend at a particular berth, in order to complete Immigration and Customs formalities. There may also be occasions when intelligence received by the Gibraltar Authorities will require that an arriving yacht be searched. Provision is made for this under section 15A(7). The Captain of the Port

may designate the berth at which yachts can be obliged by him to call for examination or for reporting. Indeed, this provision allows for more discreet examination of suspect yachts rather than in the full glare of the public at the present yacht reporting berth or at the marina. The Government believe that the new regime now being introduced by this Bill, will strengthen existing procedures and at the same time make Gibraltar a more welcoming jurisdiction for yachts visiting. I commend the Bill to the House.

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

HON DR J J GARCIA:

The procedure for the reporting by yachts arriving at Gibraltar is something that the Opposition have raised in this House at Question Time on several occasions over the years. Having analysed what the Bill proposes to do, the Opposition do not think that the person running a marina, or the director of a private commercial dock, as the Bill defines the post, should be responsible for enforcing immigration control requirements in Gibraltar. The system which has been proposed to create is one where the director of a private commercial dock inspects the passports, visas or identity cards of persons coming into Gibraltar and ensures, to quote from the Bill, "that the entry into Gibraltar of the occupants of the vessel is in compliance with the provisions of the Immigration Control Ordinance". It is a requirement that copies of the immigration and other documents be forwarded within prescribed limits to the Immigration and Customs Authorities.

This system is not the same as one where the Immigration Authorities go and do this function themselves through a contracted company. The Government have a company contracted for these purposes, which has been carrying out these functions for many years. Presumably the Government must be satisfied with the quality of those controls. To take that responsibility away from a contracted entity and hand it to a third party, in the view of the Opposition would appear to give the Government less control over the exercise of immigration checks. The Opposition are unhappy with this aspect and with what the Bill sets out to do. There are also serious concerns as to the timing, given that it comes at a time when there is greater sensitivity worldwide about matters like illegal immigration and terrorism. Therefore, the Opposition will be voting against the Bill.

HON J J HOLLIDAY:

I wish to clarify a couple of the points that have been made by the Hon Dr Garcia. Let me say that even though the responsibility will fall on the director, which basically is the management of the different marinas, in order to comply with the completion of various forms that will be handed out for circulation later on for Immigration and Customs control, the Immigration and Customs control will actually have the ability to be able to attend to these yachts at the different marinas. The idea is not for the system to be totally abandoned and put in the hands of the pier master without no control whatsoever, so the Immigration and Customs will definitely have a role in attending to visiting yachts at the marina as they enter the marina. In the case of the port, as I have said in my presentation earlier on, it is a different ball game because really they have a very little role to play apart from the maintenance of statistics, which is what they do at the moment, unless there is a sickness on board and clearance has to be made but otherwise it is a very uncommon occurrence. So therefore, the Port Department will actually not have a role as far as the control at the different marinas.

Question put.	The House voted.
For the Ayes:	The Hon C Beltran The Hon Lt-Col E M Britto The Hon P R Caruana The Hon Mrs Y Del Agua

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

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE GIBRALTAR PORT AUTHORITY ORDINANCE 2005

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to establish the Gibraltar Port Authority and to make provision for the transfer of certain of the functions and activities of the Port Department from the Government to the Authority, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill before the House establishes the Gibraltar Port Authority in law. Up until now the crest of the Port Department have carried the main Port Authority and some items of uniform, the technical staff carried the badge which read "Gibraltar Port Authority". There has therefore been recognition for a long time that what we term the Port Department has in fact carried out the traditional role associated with a port authority. The Government now wish to proceed from the old Port Department to a fully fledged Port Authority. The establishment of a Port Authority in law is possible now that that there is agreement in principle, after long drawn out negotiations and discussions which have taken place over some years with the Trade Union representatives and staff of the Port Department. What is most important for the Government is that new job descriptions of work practices in particular, a dispute procedure, should be agreed and implemented. Shipping has developed greatly in recent times, and indeed a large body of merchant shipping legislation has been enacted in the last few years and continues to be enacted. The Port of Gibraltar needs to be able to face the challenges that lie ahead in a most convenient manner.

The Bill before the House provides for the transfer of certain functions and activities of the Port Department from the Government to the Gibraltar Port Authority. Setting up the Authority is also essential in order to introduce, monitor and police a new licensing regime for all port operators. This Bill therefore needs to be seen as part of a package of measures designed to deliver the Government's strategy in improving the Port of Gibraltar. It has been the strategy of the Government since 1996 to improve, enhance and invest in the port and shipping. There have been significant improvements in the infrastructure, unsightly buildings have been demolished. The approach to the port around North Mole has been improved for

both commercial port users and for visitors on cruise ships. The Cruise Terminal and the work in improving the Western Arm reflect the much improved appearance in recent years. The Government continue to invest in new technology to improve the safe handling of ships in the port and in the western anchorage. The business of the port continues to develop and grow. The delivery of bunkers, the development of off port limit calls, the consolidation of Gibraltar as a port that offers a wide range of services to ships and the marketing of the port, all require that a modern structure be in place, in order to allow this important sector to grow further, develop and consolidate.

I will now turn to the details of the Bill. Clause 3 provides that the Authority shall consist of seven members. The Chairman shall be the Minister with responsibility for the Port. Clause 4 provides that the Authority shall be a body corporate with perpetual succession under the name of "the Gibraltar Port Authority", and shall have a common seal and may be sued and be sued in its corporate name. Clause 5 provides that the quorum of all meetings of the Authority shall be three members in addition to the Chairman or other person presiding. Any matters arising at the meeting shall be decided by the majority of members present by voting. In the case of an equality of votes, the Chairman shall have a second casting vote. This clause also provides for all orders and directions of the Authority shall be given under the hand of the Chief Executive. The duties of the Authority are listed in clause 6(12). Clause 7 sets out the power of the authority to do all that is necessary for carrying out of its duties under the Ordinance. In exercise of its powers, duties and functions under the Ordinance, the Authority shall be required to act in accordance with the policy of the Government and any decision of the Government communicated to the Authority by the Chairman, in his capacity as Minister for the Port and Shipping. I established a Port Advisory Council a number of years ago, and this Council advised me in relation to port matters and they have been most helpful. I wish to formally record my appreciation for the work done by members of the Council, who freely give up of their time to advise me on port related issues. Clause 11 of the Bill recognises the value of the Port Advisory Council and provides that the Authority may establish an advisory council to advise not just myself but those of the Authority. Clause 13 of the Bill provides for the establishment and operation of a general fund with the Accountant-General. Clause 14 provides for the manner in which accounts shall be kept by the Authority and for the auditing of the accounts. Clause 18 provides for the exemption of the Authority from all taxes on income and property rates. Clause 19 provides that the exemption of freehold and leasehold land, all property which immediately before the commencement of the Ordinance was held by the Government wholly or mainly for one or more of its marine functions, will be transferred to and vested in the Gibraltar Port Authority.

In summary, the Bill will ensure the proper functioning of the Gibraltar Port Authority and will ensure that the port continues to develop and prosper for the good of the economy and of Gibraltar. I commend the Bill to the House.

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

HON DR J J GARCIA:

The creation of the Port Authority by this Bill raises matters of policy. This is a policy that the Opposition do not agree with and therefore cannot support. We acknowledge that it is the policy of the Government to go down this route, but equally they must acknowledge that it is not the Opposition policy. Indeed, the House will recall that in March 2003 the Opposition abstained on the Bill which created the Electricity Authority a year before that in March 2002. We also abstained on the Bill which created the Sports Authority. The view of the Opposition on this issue has been made clear in the past and I will not be repeating it. The Opposition will therefore be abstaining on the Bill creating the Gibraltar Port Authority. We abstain on the basis that this is not something that we ourselves would do in Government. In our judgement what this Bill does is not in the public interest or in

the interests of the employees. As I have said before, we will abstain on this Bill.

HON J J HOLLIDAY:

Only to say that when we came into office in 1996, the Gibraltar Port Authority was already referred to under that name, in fact the uniform and everything reflected that.

Question put. The House voted.

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

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

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS (EU ACCESSION COUNTRIES) (AMENDMENT) ORDINANCE 2005

HON DR B A LINARES:

I have the honour to move that a Bill for an Ordinance to amend the Recognition of Professional Qualifications Ordinance in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. Mr Speaker, I will speak on the principle of the Bill before us but I intend to introduce an amendment during the Committee Stage to this Bill as it stands before us. The principle is very simple. The Bill is necessary because of the enlargement of the European Union to include 10 new States, which have been listed. Those countries became part of the European Union, as hon Members will know, on 1st May 2004 and the Bill thus amends the principal Ordinance, the Professional Qualifications Ordinance, in order to make provision for professional qualifications issued by these States. This is done by amending Schedule 3 of the existing Ordinance to insert there the qualifications of those States which are listed in the European Act concerning the conditions of accession of the 10 new EU

States. The effect of the amendments will be that persons with these qualifications listed in the Bill, will have the right to practice that profession in Gibraltar by virtue of section 11 of the existing Ordinance, subject of course to our Immigration and Work Permit legislation. This Bill ensures that Gibraltar meets its European obligations as regards the recognition of professional qualifications issued by the new EU Member States. I commend this Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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

Question put. Agreed to.

THE TRAFFIC (AMENDMENT) ORDINANCE 2004

HON F VINET:

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

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill reorganises the powers to regulate traffic movement, and in particular parking and waiting. The present section 94 of the Ordinance grants the Commissioner of Police the power to provide for designated bus stops, taxi stands, parking areas and so on. However, it is clearly appropriate that the general power to provide for parking et cetera should be vested in the Minister. The Commissioner should retain his powers to make orders in respect of any temporary necessity. This short Bill achieves that. The new section 94 provides a general power to the Minister in sub-section (1), sub-section (2) grants the Commissioner of Police power to make temporary orders, and sub-section (3) provides that it is an offence to contravene any regulation or order. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition are of the opinion that the administrative system has worked satisfactorily up to now. We therefore do not see a valid reason to amend it. We will therefore abstain in voting.

Question put. The House voted.

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

The Hon F Vinet
The Hon T J Bristow

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

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

THE PET ANIMALS (SALES) ORDINANCE 2004

HON F VINET:

I have the honour to move that a Bill for an Ordinance to regulate the sale of pet animals, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this short Bill, as has been said, regulates the sale of pet animals. Any person keeping a shop selling pet animals must be licensed by the Chief Environmental Health Officer. In considering whether to grant a licence the officer will ensure that the animals concerned are kept in proper conditions, they will not be sold when they are too young and that they are healthy. The conditions are set out in section 3(3), licences are valid for one year and an appeal lies against the refusal of a licence or the conditions imposed thereon. No other method of selling pets is permitted, and a person who sells pets without a licence is guilty of an offence under sections 3, 4 and 5. In addition, anyone who sells a pet animal to a child under 12 (whether a licence holder or not) is guilty of an offence. Pet shops may be inspected under section 7 to ensure the licence is being properly observed, and the licence must be displayed in the shop under section 8. Section 9 provides power to inspect premises where there is a reasonable suspicion that pets are being sold without a licence. Finally, sections 10, 11 and 12 provide for the levels of punishment for offences, a regulation-making power and a saving provision for existing pet shops pending their obtaining of a licence. I commend the Bill to the House.

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

HON F R PICARDO:

This Bill introduces legislation which is to be welcome, to protect animals in pet shops et cetera and the sale of them. The Opposition will be supporting this Bill but on the basis that an Ordinance is for life and not just for Christmas, we will be proposing some minor amendments to ensure that it is in the right order.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Maintenance Orders (Reciprocal Enforcement) (Amendment) Bill 2004;

2. The Judgments (Reciprocal Enforcement) (Amendment) Bill 2004;

3. The Immigration Control (Amendment) Bill 2005;

4. The Civil Jurisdiction and Judgments (Amendment) (No. 2) Bill 2004;

5. The Matrimonial Causes (Amendment) Bill 2004;

6. The Magistrates' Court (Amendment) Bill 2004;

7. The Income Tax (Amendment) Bill 2004;

8. The Merchant Shipping (Carriage of Dangerous or Polluting Goods) (Repeal) Bill 2004;

9. The Port Operations (Registration and Licensing) Bill 2005;

10. The Port (Amendment) Bill 2005;

11. The Gibraltar Port Authority Bill 2005;

12. The Recognition of Professional Qualifications (EU Accession Countries) (Amendment) Bill 2005;

13. The Traffic (Amendment) Bill 2004;

14. The Pet Animals (Sales) Bill 2004.

THE MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) (AMENDMENT) BILL 2004

Clause 1

HON CHIEF MINISTER:

Just a very small point which I think we can deal with as a matter of typography almost. All of these Bills were published in 2004, or most of them, so they are all called the something or something Ordinance 2004, that should read 2005 in clause 1, the title.

Clause 1 – as amended stood part of the Bill.

Clause 2 and the Long Title – were agreed to and stood part of the Bill.

THE JUDGMENTS (RECIPROCAL ENFORCEMENT) (AMENDMENT) ORDINANCE 2004

Clause 1

HON CHIEF MINISTER:

Same point, 2005.

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

Clause 2 and the Long Title – were agreed to and stood part of the Bill.

THE IMMIGRATION CONTROL (AMENDMENT) BILL 2005

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

Clause 2

HON CHIEF MINISTER:

I have given the hon Members notice of amendment. I will talk hon Members through it. The effect of the amendment will be that the "or" after (b) would be deleted, (c) would remain as it is. The "or" then comes after (c) because we would add a new (d), and (d) would read "(d) outside Gibraltar by an individual who is a British person ordinarily residing in Gibraltar." The definition of British person which is then added by an amendment to a subsequent clause, is the definition used in the British legislation. Unless we introduce this amendment we have got the rather peculiar situation where if there is a Gibraltarian and another British person living in Gibraltar, and they commit acts which are breaches of this legislation outside of Gibraltar, only the Gibraltarian is exposed and not the other British person, who may also be a Gibraltar belonger and it seems to us illogical. So that is also replicated at section 63A(3) which has exactly the same effect and then the rest of the amendment is to add at the very end of the Bill, as a new section 63C, we would insert that definition of British person. So there would be a heading "Definition of British person. 63C. For the purposes of section 63(6) and 63A(6), a "British person" means a –

(a) British citizen;
(b) British Overseas territory citizen;
(c) British National (Overseas);
(d) British Overseas citizen;
(e) a person who is a British subject under the British Nationality Act 1981; and
(f) a British protected person within the meaning of that Act."

Which are the UK equivalent of section 25 of the UK Act. Exactly the same shopping list.

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

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

THE CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) (NO. 2) BILL 2004

Clause 1

HON CHIEF MINISTER:

In clause 1, title, the figure "2004" should be deleted and the figure "2005" inserted.

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

Clause 2 and the Long Title – were agreed to and stood part of the Bill.

THE MATRIMONIAL CAUSES (AMENDMENT) BILL 2004

Clause 1

HON CHIEF MINISTER:

In clause 1, title, the figure "2004" should be deleted and the figure "2005" inserted.

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

Clause 2

HON CHIEF MINISTER:

In clause 2, just so that the Bill is secretarially properly presented, the (c) should be (b) and taken back to the margin. In other words, the words renumbering the existing Part X as Part XI is (b) in the Bill and not (c) in section 60A, which is the observation that the hon Member made.

HON F R PICARDO:

Yes, and the observation which the Chief Minister himself made earlier which he has not moved, which is that the words "Judgments and Jurisdictions" must be inverted in (a). Are we going to say "1993" there as we have everywhere else when describing that?

HON CHIEF MINISTER:

Yes we can do that too. After each reference to Civil Jurisdiction and Judgments Ordinance, the date "1993" to be inserted. In (a) the words "Judgment and Jurisdiction" are in the wrong order.

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

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

THE MAGISTRATES' COURT (AMENDMENT) BILL 2004

HON CHIEF MINISTER:

Clause 1

In clause 1, title, the figure "2004" should be deleted and the figure "2005" inserted.

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

Clause 2

HON CHIEF MINISTER:

In clause 2 I am grateful to the hon Member for pointing out that the word "any" is missing after "under". So whereas it presently reads "under law relating" it should read "under any law relating". Insert the word "any" after the word "under". As to other matters raised at Second Reading, I think following a discussion we are not going to pursue it at this stage and the Government will look into the question of whether the reference in the Preamble, or rather whether there is any need to restructure the whole of section 45, given that the preamble suggests that enforcement proceedings are not domestic proceedings, whereas the (a) that we are inserting specifically says that enforcement proceedings would be. The reason why is that if there is a defect in the structure it already exists, because in the Ordinance as already existing, (e) already imports enforcement only for it to be excluded two lines later in

the proviso. So I think we have agreed that we will legislate for the purposes of this Bill as it is, but the Government will see whether there is a need to restructure the whole for historical reasons as well as for current reasons.

HON F R PICARDO:

Can I just come back to that? There is a minor typographical error in (a) enforcement or judgments, I think it is enforcement of judgments.

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

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

THE INCOME TAX (AMENDMENT) BILL 2004

Clause 1

HON CHIEF MINISTER:

In clause 1, title, the figure "2004" should be deleted and the figure "2005" inserted.

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

Clause 2

HON CHIEF MINISTER:

In respect of clause 2(3) I have given notice of amendment because in fact we should not be deleting the word "company" just the words "or qualifying". The word "company" needs to remain there, so whereas the Bill proposes to delete the words in section 6A(2)(c) "or qualifying company", the word "company" should be removed from the Bill so to speak so that the deletion only affects the words "or qualifying".

MR CHAIRMAN:

Would the Chief Minister please clarify, in section 2(2) there is reference to qualifying company as well as in sub-section (3). Is the retention of the word "company" being sought in both?

HON CHIEF MINISTER:

No, in section 2, in other words the first reference to it in the Bill, I am not moving any amendment to the Bill. So the amendment applies only to sub-clause 2(3) of the Bill.

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

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

THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS OR POLLUTING GOODS) (REPEAL) BILL 2004

Clause 1

HON J J HOLLIDAY:

In clause 1, title, the figure "2004" should be deleted and the figure "2005" inserted.

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

Clause 2 and the Long Title – were agreed to and stood part of the Bill.

THE PORT OPERATIONS (REGISTRATION AND LICENSING) BILL 2005

Clauses 1 to 18, the Schedule and the Long Title – were agreed to and stood part of the Bill.

THE PORT (AMENDMENT) BILL 2005

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

THE GIBRALTAR PORT AUTHORITY BILL 2005

Clauses 1 to 20, the Schedule and the Long Title – stood part of the Bill.

THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS (EU ACCESSION COUNTRIES) (AMENDMENT) BILL 2005

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

Clause 2

HON DR B A LINARES:

Clause 2 as it stands in the Bill before us is amended by substituting for the existing clause the following –
"Section 30(1) of the Recognition of Professional Qualifications Ordinance is amended by inserting, after the definition of "the directive" the following –

"Member State" means a state which is a member of the European Union."

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

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

THE TRAFFIC (AMENDMENT) BILL 2004

Clause 1

HON F VINET:

In clause 1, title, the figure "2004" should be deleted and the figure "2005" inserted.

Clause 1 – as amended, stood part of the Bill.

Clause 2 and the Long Title – stood part of the Bill.

THE PET ANIMALS (SALES) BILL 2004

Clause 1

HON F VINET:

In clause 1, title, the figure "2004" should be deleted and the figure "2005" inserted.

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

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

Clause 3

HON F R PICARDO:

At sub-section (5) of section 3, "fore" should be "for" without the "e".

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

Clauses 4 to 11 – were agreed to and stood part of the Bill.

Clause 12

HON F R PICARDO:

I have an amendment in respect of clause 12(c), if I can direct the House's attention to it. That section I think does not make any sense as drafted. I think what the drafter intended to say was where the person has appealed against a decision not to grant a licence under section 3(4) above until the dissemination of the appeal. Otherwise, the appeal is against nothing or at least against a decision under section 3(4) but one needs an objective there that is being appealed. I think if we just add the words "a decision" after "against" then that is quite enough.

HON CHIEF MINISTER:

I think that should read: "where a person has appealed against a refusal to grant a licence or any conditions subject to which a licence has been granted under section 3(4) above until the determination of the appeal". I think the simplest way is just to delete the word "against". "Where the person has appealed under section 3(4) above".

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Maintenance Orders (Reciprocal Enforcement) (Amendment) Bill 2005;

2. The Judgments (Reciprocal Enforcement) (Amendment) Bill 2005;

3. The Immigration Control (Amendment) Bill 2005;

4. The Civil Jurisdiction and Judgments (Amendment) (No. 2) Bill 2005;

5. The Matrimonial Causes (Amendment) Bill 2005;

6. The Magistrates' Court (Amendment) Bill 2005;

7. The Income Tax (Amendment) Bill 2005;

8. The Merchant Shipping (Carriage of Dangerous or Polluting Goods) (Repeal) Bill 2005;

9. The Port Operations (Registration and Licensing) Bill 2005;

10. The Port (Amendment) Bill 2005;

11. The Gibraltar Port Authority Bill 2005;

12. The Recognition of Professional Qualifications (EU Accession Countries) (Amendment) Bill 2005;

13. The Traffic (Amendment) Bill 2005; and

14. The Pet Animals (Sales) Bill 2005,

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

Question put.

The Maintenance Orders (Reciprocal Enforcement) (Amendment) Bill 2005;
The Judgments (Reciprocal Enforcement) (Amendment) Bill 2005;
The Immigration Control (Amendment) Bill 2005;
The Civil Jurisdiction and Judgments (Amendment) (No. 2) Bill 2005;
The Matrimonial Causes (Amendment) Bill 2005;
The Magistrates' Court (Amendment) Bill 2005;
The Income Tax (Amendment) Bill 2005;
The Merchant Shipping (Carriage of Dangerous or Polluting Goods) (Repeal) Bill 2005;
The Port Operations (Registration and Licensing) Bill 2005;
The Recognition of Professional Qualifications (EU Accession Countries) (Amendment) Bill 2005;
The Pet Animals (Sales) Bill 2005,

were agreed to and read a third time and passed.

The Port (Amendment) Bill 2005;
The Gibraltar Port Authority Bill 2005;
The Traffic (Amendment) Bill 2005;

The House voted:

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

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

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 31st January 2005, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 5.20 pm on Monday 24th January 2005.

MONDAY 31ST JANUARY 2005

The House resumed at 2.35 pm.

PRESENT:

Mr Speaker…….(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

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

OPPOSITION:

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

ABSENT

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

IN ATTENDANCE:

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

BILLS

FIRST AND SECOND READINGS

THE INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) ORDINANCE 2004

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for copyright and other related rights; and to transpose into the law of Gibraltar Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs; Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights relating to copyright in the field of intellectual property; Council Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable re-transmission; Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights; Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases; and Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright

and related rights in the information society; and for connected purposes, be read a first time.

Question put. Agreed to

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as the very long Long Title suggests, this Bill is for an Ordinance to make provision for copyright and related rights in Gibraltar. There are two objects to the Bill, one is to re-state the existing copyright law of Gibraltar and I will explain that in just a moment. Secondly, to implement in Gibraltar not just the provisions of all of those Directives, the main purpose of which is very briefly described in the Long Title that hon Members will have seen printed on the Bill, and also read out several times already today in the House, but also in accordance with two applicable international Conventions dealing with copyright. I just want to explain to the hon Members what I meant by in addition to all of that re-stating the copyright law of Gibraltar.

Hon Members may be aware that until now, or unless and until this House passes this Bill, the copyright law of Gibraltar is set out in the Copyright Act of 1956. The Copyright Act of 1956 in the United Kingdom was extended to Gibraltar by the Copyright (Gibraltar) Order 1960. In other words, until now Gibraltar's body of copyright law has been an English Act extended to Gibraltar by an Order in Council of 1960. The UK repealed that Act in so far as it applied to itself, so the UK has modernised its copyright legislation to the 1988 Copyright Act. So not only do we have our copyright legislation extended to us by UK legislation but it is not even current UK legislation, it is legislation that the UK has moved on from nearly 20 years ago, or 15 years ago or whatever. So this Bill, quite apart from the substantive content of it, I mean regardless of the content will have the effect of for the first time ever really repatriating to Gibraltar and to a legislative Act of this House the body of Gibraltar copyright and related legislation. So really the Bill does two things. On the one hand it brings back to Gibraltar, Gibraltar legislation, it modernises that legislation by bringing it forward from 1956 to the more modern version, and then it also transposes all those EU Directives relating to the subject matter.

Hon Members will have seen that the general scheme of the Bill is divided into four parts. Part I deals with copyright. Part II deals with database rights. These are new rights established by these directives in favour of people who create databases. They are not actually copyright at all, it is a new form of intellectual property rights known as database rights. Part III deals with performers' rights, which also are not copyright in the strict sense of the word, they are a separate category of property, intellectual property called performers' rights. Part IV deals with miscellaneous related matters. So starting with Part I, Copyright. Clause 1 makes provision for citation and commencement. Clause 2 for copyright, it provides that copyright is a property right which subsists in (1) original literary musical or artistic works; (2) sound recordings, films or broadcasts; and (3) typographical arrangements of published editions. So those are the three sorts of things in which one can have copyright as such. Clause 3 provides that the owner of the copyright in a work has the exclusive right to do the act specified in Chapter II. Clauses 4 to 11 describe the works in which copyright subsists. For copyright to subsist in a work certain requirements with respect to qualification for copyright protection must be met. These requirements are as follows. (1) Clause 4(2) provides that copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded in writing or otherwise. Clauses 7(2) and 8(4) provide that copyright does not subsist in a sound recording or film which is, or to the extent that it is a copy taken from a previous sound recording or film. Thirdly, clause 9(9) provides that copyright does not subsist in a broadcast which infringes or to the extent that it infringes the copyright in another broadcast. Clause 12 provides that the author of the work is the person who creates it. In the case of

films the principal director and the film producer are joint authors. The author of a sound recording, broadcast and published edition is the producer, broadcaster or publisher respectively. Clause 13 makes provision for works of joint authorship. Clause 14 provides that in general the author is the first owner of a copyright in a work. The main exception to this general rule is where a work or film is made in the course of employment, in which case the employer owns the copyright. Clause 15 makes provision for the duration of copyright in literary, dramatic, musical or artistic works. The general rule is that copyright expires at the end of a period of 70 years from the end of the calendar year in which the author dies. However, in the case of computer-generated works, copyright expires after 50 years from the end of the calendar year in which the work was made. Clause 16 provides for the duration of copyright in a sound recording. The period is 50 years from the end of the calendar year in which it is made or released, that is published or played in public or broadcast. Clause 17 makes provision for the duration of copyright in films. The period is 70 years from the end of the calendar year in which the death occurs of the last to die of (1) the director; (2) the author of the screenplay; (3) the author of dialogue; and (4) the composer of the music. Clause 18 makes provision for the duration of copyright in broadcasts. The period is 50 years from the end of the calendar year in which the broadcast was made. Clause 19 makes provision for the duration of copyright in typographical arrangements of published editions. That is to say, in the typeset. The period is 25 years from the end of the calendar year in which the edition was first published.

Chapter II, which takes us to clause 21 of the Bill, sets out the rights which subsist in copyright work. The owner of copyright has the exclusive right to do the following acts in Gibraltar. (1) Copy the work and issue copies to the public; (2) lend or rent the work; (3) perform, show or play the work in public; (4) communicate the work to the public; (5) adapt the work. The right to do those acts is exclusive to the copyright owner or a person authorised by him, and would be infringed if anything is done by any other person. Clauses 22 to 33 make provision for infringement of copyright. Clause 34 establishes publication right. This is a right separate from copyright. It is a right given to a person who publishes a work with authority for the first time after its term of copyright has expired. Publication must be in the EEA or by an EEA national. The right is given to non nationals only on the basis of strict reciprocity. Literary, dramatic, musical and artistic works are covered for 25 years. This provision aims to secure expenditure on producing, rediscovered manuscripts and long-lost art works. That takes us to Chapter III of the Bill and clause 35.

Chapter III of Part I of the Bill, introduces various exceptions to rights of the copyright owner. These have been drafted in line with the constraints imposed by Directive 2001/29/EC. In addition to this, the exceptions have been drafted in accordance with the provisions of the Berne Convention. The Berne Convention requires that any exceptions and limitations must comply with the so-called three step test. Under this test the exception or limitation (1) must be confined to special cases; (2) must not conflict with a normal exploitation of a work; and (3) must not unreasonably prejudice the legitimate interests of the right holder. Clause 36 makes provision for the making of temporary copies of the work. Clauses 37 to 39, which are important, make provision for fair dealing in copyright work for the purposes of research, private study, criticism, review and news reporting. The fair dealing concept will call for a qualitative assessment. Clause 38 provides that all works other than photographs may be used for reporting current events. Clauses 40 to 45 make provision for copying for the purposes of education and educational use. Clauses 46 to 54 make provision for copying by librarians and archivists. Clauses 55 to 60 make provision for copying for the purposes of public administration, that is to say, for parliamentary and judicial proceedings, for statutory enquiries and for public business. Clauses 61 to 64 make provision for the copying of computer programs for the purposes of their back-up, for the purposes of decompiling them or for personal use. Decompilation is concerned with clear line by line copying. It is significant given the importance of open computer systems in which programs

supplied from different sources need to be inter-operable. For an outsider to secure knowledge of the interface information it is in some cases necessary to "decompile the program". An objective of Directive 91/250/EEC is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together and to achieve this often requires each of the programs to be decompiled so that they can be made compatible with one another by the proposed operator. Clause 65 makes provision for permitted acts in relation to databases, such as accessing and using the context of the database. Clause 66 removes copyright protection in design documents and models. Clause 69 makes provision for permitted acts in relation to the use of typefaces in the ordinary course of printing. Clause 70 makes provision for permitted acts in relation to artistic work, consisting of the design of a typeface. That is to say, not only what is said with a typeface is copyright but indeed the design of the typeface itself is capable of being a form of copyright and that is for 25 years from the end of the year in which the work was first marketed. The typeface, as a form of artistic work, is subject to very strictly limited rights and they are not actually copyright in the typeface itself, but peculiarly, the limited rights amount to restrictions on the importation and dealing with machines and other articles specifically designed or adapted for producing material in the typeface. So it is a form of right but not the same right as normal copyright. Therefore the rights protected does not extend to the typeface itself. Clause 71 makes provision for the copying and adaptation of works in electronic form, where the purchaser of a legitimate copy of for example a computer program, is entitled himself to make further copies, he transfers this additional power when he transfers the copy to another unless there are express conditions to the contrary. Clauses 72 to 80 set out certain miscellaneous exceptions to copyright for literary, dramatic, musical and artistic works purposes. Clause 72 provides an exception where it is reasonable to suppose a copyright has expired. Clause 73 provides an exception to the use of notes or recordings of spoken words in certain circumstances. Then there are further exceptions set out in the remainder of those clauses and also certain other types of qualification. For example, clause 74 provides that a solo reading or recitation of a reasonable extract from a literary or dramatic work may be made in public so long as sufficient acknowledgement is made, there are a series of qualifications of copyright to allow for ordinary day to day activities of a non-commercial nature, in which otherwise somebody's copyright in works may be technically invoked. Clauses 81 to 92 for example make provision for miscellaneous exceptions to copyright with respect to the lending of works and the playing of sound recordings, films and computer programs. In particular, clause 86 provides that a broadcast may be recorded in domestic premises for private and domestic use, in order to view it or listen to it at a more convenient time. Clause 88, for example, allows the broadcast to be shown or played to a non-paying audience without infringing copyright in the broadcast nor in any sound, film or recording to inmates or residents of a place. For example, inmates of a prison, residents of a home, guests in a hotel and things of that sort.

This takes us to Chapter IV in relation to copyright and we are now at clause 94 of the Bill. Chapter IV deals with the rather curious but I suppose logical concept of so-called moral rights. The moral rights are certain rights in addition to protection of copyright, given to the author of the work. These so-called moral rights seek to protect the integrity of a work and the author's connection with it. They are the right to be identified as the author or director of a work, that is the so-called right of paternity; the right to object to derogatory treatment of the work, that is the right of integrity; the right against false attribution of a work, and the right to privacy in private photographs and films. In other words, in addition to the proprietorial rights of an owner of copyright, he has certain rights under the Berne Convention and these Directives, actually it is the Berne Convention rather than the Directives, for the owner of the copyright, the author of the copyright of the work to have in addition to the economic rights protected, his so-called moral rights. In other words, that no one should distort it in a way that brings his own reputation into disrepute and things of that sort. This is pre-conditional on the right, some of these rights have to be asserted, other rights

do not have to be asserted and the ones that do and do not are set out in these clauses. Clause 96 sets out a substantial list of exceptions to these so-called moral rights.

Chapter V, we are now at clause 107, deals with dealings with rights in copyright works in such things as how they can be assigned, left by will, the extent and the manner in which one can enter into an agreement to own or transfer copyright in works which have not yet come into existence, and other things that relate to the dealing in or transferring of the rights in copyright. That will take us to Chapter VI, which starts at clause 116 of the Bill and Chapter VI deals with remedies for infringement. Clauses 116 to 120 make provision with respect to the right of a copyright owner and the remedies for infringement of those rights. The Bill gives rise to a range of remedies, including the right to damages, injunctions, accounts or otherwise. Provision is made for the court to award additional damages, having regard to the frequency of the infringement and any benefit accruing to the defendant by reason of his infringement. Clause 124 makes provision for remedies for infringement of moral rights, infringements of moral rights are equated with breaches of the statutory duty owed to the person entitled to the right and are actionable on that basis. So that Chapter generally sets out the regime for remedy and enforcement, and clause 128 deals with those remedies that are criminal in nature. Up to Clause 128 all the remedies were civil in nature, injunctions, damages and orders of that sort. Clause 128 makes provision for criminal liability by a person who does one of two things. (a) Undertakes certain acts in relation to an article, which is or which a person knows or has reason to believe is an infringing copy of a copyright work. In other words, all the things set out there, if one knows one has something which is an illegal copy of a disk or of a film or something like that and one sort of sells it, hires it, exhibits it in public, distributes it et cetera, that is a criminal offence. It is a criminal offence to do it with a copy of the work that one knows to be illegal; and (b) makes or has in his possession an article designed or adapted for making copies of a particular copyright work. In other words, the machinery and paraphernalia for producing unauthorised, illegal copies.

Chapter VII takes us to clause 137 of the Bill, and this is a chapter of the Bill that deals with licensing schemes and licensing bodies, because most of the licensing arrangements are done subject to established schemes and with particular licensing bodies and not individually with each owner of copyright. This is the statutory framework and requirements in which that scheme has got to take place and it establishes jurisdiction to the Supreme Court to intervene on motion of an affected party. In the United Kingdom there is a copyright tribunal rather than the High Court itself. We as a matter of policy have decided it would be unduly cumbersome to set up for Gibraltar, as there is not enough of it, a copyright tribunal so we have in the Bill given this jurisdiction to the Supreme Court itself.

Chapter VIII at clause 165, deals with qualification for copyright protection. In other words, who is entitled to seek protection, who is qualified to seek protection for their copyright in Gibraltar. There are several criteria established for that, the most important ones are is one a person connected with Gibraltar; is the author a person connected with Gibraltar; was Gibraltar the jurisdiction in which it was first broadcast?; that also anchors the entitlement in Gibraltar. Hon Members will see that under the Bill, as is the case in the UK, copyright in ordinances once assented to belong to the Crown, but interestingly copyright in legislation before it is assented, in other words whilst it is still in the hands of this House, the copyright is vested in this House and it is the House acting by the Speaker, who for this purpose is given special legal personality, is the party that would protect and enforce the copyright of this House, not just in bills but also in other edited material, literary material generated by this House, Hansard, Reports of Committees and things of that sort. Bills, once they become law, cease to be the copyright of this House and become the copyright of the Crown.

Part II of the Bill, so now we are moving away from the area of copyright into this new area of, the hon Members will see at section 187 which is at the end of Part I, the general definitions clause for Part I, and they will also see a useful index of defined expressions at section 88, which is a novel drafting technique which sets out the sections of the Bill in which those expressions are actually used. In other words, so that one can refer back on that and that is a pretty useful aid to the interpretation and reading of this statute. Part II of the Bill deals with these new rights in respect of databases. Clause 189 defines the expressions used in this Part II. Clause 190 makes provision for database rights. It provides that database rights is a property right which subsists in a database, if there has been a substantial investment in obtaining, verifying, or presenting the contents of a database. Database rights protects the investment of money, time and effort that goes into compiling databases. The right applies to databases whether or not their arrangements justifies copyright and whatever the position may be regarding copyright in individual items in its content. So really it is something completely new. If we were to go to the effort to compile a database, the exploitation of that database, for whatever it might be worth, quite separately to the ownership of the copyright in the material in the database, the exploitation of the effort that has gone into putting the database together is itself now an intellectual property right which is protected for 15 years. Of course every time the nature of the database changes materially or is materially brought up to date, the 15 year period is to run again.

I will be moving an amendment at the Committee Stage in respect of clause 195 to remove the reference to the Isle of Man. This Bill generally applies to Gibraltar, the United Kingdom or any other EEA State. The Directive establishing these database rights does have a provision allowing the Community to enter into global agreements with other territories not in the EEA, and when the Community enters into such an agreement, then Member States are required on a reciprocal basis to extend the ambit to that territory, but rather than doing it here on the face of the legislation so that we would have to amend the primary legislation every time the Community enters into such an agreement, what we are going to do is delete the reference to Isle of Man there, create a schedule with the power to add to the schedule by subsidiary legislation whenever the Community enters into an agreement with a non EEA territory, and I think that will make the situation easier to administer and easier for practitioners to follow in the law.

Part III of the Bill which takes us to section 201 deals with the new rights protecting performances and persons having recording rights in relation to performance. These are people other than the owner of the copyright, so for example, if the orchestra that did the New Year concert in St Michael's Cave, they do not own the copyright but they did a performance, and they have not got copyright, they do not own the copyright and I suspect the copyright in that music has now expired, but if we could think of an example of a performance of music in which copyright had not expired the owner of the copyright would be the owner of the copyright but if with permission and lawfully it is performed in a concert that music, one does not have copyright but one has something called performers' rights in respect of that performance. So that if somebody wants to record and distribute a record of that performance, not just the copyright owner but also the performer, has this separate category of things called performers' rights. Clause 201 for example, makes provision for the definition of the various terms, the rights are given in dramatic performances including dance and mime, musical performance, reading or recitation of a literary work and performance of a variety act or similar presentation. The performance must be a live one although performers' rights relate to an authorised and unauthorised recordings of the performance. The use of a recorded performance in the course of another live performance is not protected. A performance qualifies for protection if it is either given by a qualifying individual, that is a citizen or subject of a qualifying country, or takes place in a qualifying country, that is Gibraltar, an EEA State or any other country designated by specific order. Chapter II, which starts at Clause 202, creates the regime for infringement and enforcement of a performers' rights as

established under this part and the hon Members will see that they are not dissimilar to the rights of the copyright owner. It is the same sort of thing that can be enforced in the same sort of way. Performers have four basic property rights. The performers' reproduction rights, clause 203, the performers' distribution rights, clause 204, the performers' rental and lending right, that is clause 205 and the performers making available rights, that is clause 206. These rights apply to a performance which is legitimately recorded but then improperly copied, and equally to copies of a recording which an interloper such as a bootlegger has made without authority. Clauses 207 and 208 contain certain secondary infringement of performers' rights. These are showing or playing in public or communicating to the public the performance without consent, an important possession in dealing with certain recordings. Hon Members will see that the remaining clauses in that Part deal with such things as the duration of these performers' rights and also with the manner in which the performers' rights can be assigned, transmitted or otherwise dealt with, and the role of the Supreme Court in the adjudication of any issues and licensing relating to them. Chapter III of this Part of the Bill makes provision for a performers' moral rights. I will not take the hon Members through that again, they are rights equivalent to the copyright owners, moral rights which the hon Members will recall I said something about.

Now Part IV of the Bill is noteworthy too, so we are moving out now from the areas of the Bill that deal with performers' rights. We have dealt with copyright, databases and performers' rights, now we go to Part IV of the Bill at Clause 254 under the heading "miscellaneous provisions", and there are some interesting well hon Members may wish to have their attention drawn to them because these are the provisions to protect such things as computer programs and other forms of electronic data from being tampered with. Particularly from having interfered with any mechanism written into the program to prevent them from being tampered, things unlawfully used. So for example, if one interferes with a program to decode it so that it can be used in circumstances other than that intended by the owner of the copyright in that computer program, then one has infringed this part of the Bill. It provides for civil remedies for the act of putting into circulation or the possession for commercial purposes of any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical device, which may have been applied to protect a computer program. That is clause 254. Clauses 255 to 259 flow from the comprehensive legal protection for technological protection systems set out in Article 6 of Directive 2001/29/EC. So Clause 255 for example, applies where effective technological measures have been applied to a copyright work other than a computer program. Effective technological measures are broadly defined in clause 259 and cover both access, control and copy control, so there is one regime when one tampers to unlock so to speak a computer program, and a parallel regime for devices installed other than in computer programs to gain access or copying when those devices are specifically put in to prevent access or copying. So liability is imposed on any person who does anything which circumvents the measures, knowing or having reason to believe that that is the effect of what he is doing. This provision covers anyone who infiltrates a web source and anyone who breaks instructions placed within the transmitted material in order to limit the use of the copy. It can apply to a consumer user as well as to a trader. Against all such persons there will be a right of action equivalent to that of copyright infringement, but it is not given only to the copyright owner concerned but to any other person who is distributing the copyright material with authority. The same persons are given rights as those who generally became engaged in supplying anti-circumvention devices or services commercially. Clause 260 provides copyright owners and distributors with civil rights of action against those who remove or alter electronic rights of management information. Clause 261 provides for the avoidance of terms in an agreement providing for the use of a computer program.

The Schedule to the Bill is important because it contains all the transitional provisions and savings, because since we are transferring our existing copyright law from the English Act as

extended to Gibraltar by an Order in Council, to a separate piece of legislation namely a Gibraltar Ordinance, it is necessary to protect and carry forward and preserve all rights that are existing in copyright under the established laws. Also, some of the directives give right to some transitional requirements because of the nature of the rights given by those requirements. It is a complex piece of legislation, I hope the House will agree with the Government that it is useful to have Gibraltar's copyright law in our own legislative framework, there are directives here which the hon Members will see really go back to 1991, 1992, 1993, 1996, 2001, so this is an area of law in which Gibraltar has fallen behind, not just in terms of its European Union obligations but indeed also we had fallen behind even in respect of our domestic legislation, because whereas the United Kingdom has moved on to a much more modern regime, Gibraltar's legislation is still cemented in the 1950s. So we have achieved all of that, well we will achieve all of that if we agree to pass this piece of legislation. I commend the Bill to the House.

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

HON DR J J GARCIA:

The Bill before the House today, as the Chief Minister has said, restates existing law and then amends it through the transposition into Gibraltar law of six EU Directives. These are Directives 91/250/EEC, 92/100/EEC, 93/83/EEC, 93/98/EEC, 96/9/EC and 2001/29/EC. The Directives all deal with copyright and protection in different fields. The general aim of the directives is to standardise the position on these issues in the different Member States of the European Union and to update that protection in line with technological advances. The explanatory memorandum to the Bill says that the law of copyright in Gibraltar was set out in the Copyright Act of 1956, as the Chief Minister has restated this afternoon, of the United Kingdom which was extended to Gibraltar by the Copyright (Gibraltar) Order of 1960. The Opposition welcome the fact that we are taking a UK-made law as extended to Gibraltar and are enshrining it in an Ordinance approved by this House. The view of the Opposition is that the United Kingdom should not legislate for Gibraltar. Gibraltar is after all a separate jurisdiction to the United Kingdom and the separate legislative powers of this House should always be upheld and respected. The restating as amended of the existing law means this can also now be changed by this House at a future date should there be a need to do so. The view of the Opposition remains that Gibraltar, as a separate jurisdiction, is and should be free to implement these or other European Union directives differently to the United Kingdom for as long as the requirements of the directive are achieved. The Bill before this House today is therefore the combination of six EU directives with existing law, and as such it is a complicated and a lengthy piece of legislation running to well over 200 pages. It is extremely complex to do a detailed analytical, line by line examination of every single clause, nor of the ensuing consequences of every single detail of every single clause in the Bill. However, the general principles of the Bill, which is what we are discussing at this stage, seem clear enough. The explanatory memorandum to the Bill makes those general principles clear. It says that the main purpose of the Bill is to restate the existing law of copyright in Gibraltar and to amend it in accordance with six EU directives. This is the main purpose of the Bill. On that basis, and on the basis that this is what we are doing, the Opposition will be supporting the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to move that the Committee Stage and Third Reading of the Bill be taken on another day, and I will be giving notice of various amendments to the Bill in good time for hon Members to consider it.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 17th February 2005, at 2.30 pm.

Question put. Agreed to.

The adjournment of the House was taken at 3.30 pm on Monday 31st January 2005.

THURSDAY 17TH FEBRUARY 2005

The House resumed at 2.40 pm.

PRESENT:

Mr Speaker…….(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

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

OPPOSITION:

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

ABSENT

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

IN ATTENDANCE:

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

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to 4.15 pm.

Question put. Agreed to.

The adjournment of the House was taken at 2.45 pm on Thursday 17th February 2005.

The House resumed at 4.25 pm.

BILLS

FIRST AND SECOND READINGS

THE TEMPORARY PROTECTION ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the main object of the Bill is to provide the means to act in the event of a mass influx of displaced persons by means of a mechanism for immediate protection establishing minimum standards for giving this protection, and for ensuring a balance of efforts between Member States in receiving refugees and displaced persons. The Bill transposes Council Directive 2001/55/EC of 2001 into our laws.

Clause 1 deals with citation and commencement. Clause 2 contains the definitions, most of which flow from the definitions contained in Article 2 of the directive. Clause 3 deals with the effect and implementation of a mass influx decision. I should just pause there to explain that we are not talking about mass influxes into Gibraltar, we are talking about mass influxes anywhere into the European Community and then this regime is applied to share out the burden between all the various Member States as to who takes them in during the duration of the mass influx. The Government of Gibraltar is required under the Bill to make an assessment of Gibraltar's capacity to receive displaced persons. In other words, how many displaced persons does Gibraltar have resources to accept from the mass influx. A mass influx decision has the effect of introducing temporary protection in Gibraltar for the displaced persons that Gibraltar has assessed it has the capacity to receive. A mass influx is established by a Council Decision adopted by qualified majority on a proposal from the Commission. So if there is some turmoil in some country and there is mass displacement of people, the Commission meets to decide whether that constitutes a mass influx into the EU for the purpose. If the Commission decides that there is such a mass influx into the Commission, then each Member State is required to accept a proportion of those people based on the assessment of their capacity to do so, that they themselves have done. Clause 4 deals with the duration of temporary protection. The duration in accordance with the terms of the directive is one year. This may be extended by the Council, acting on a qualified majority, on a proposal by the Commission for a maximum period of one year. Temporary protection is ended either automatically when the maximum period expires or when the situation in the country of origin is such as to permit the long-term, safe and dignified return of the displaced person. Clause 5 lists the person who may be excluded from temporary protection. These are persons representing a danger to national security, suspected of having committed a war crime or a crime against humanity and who have acted against the aims and principles of the United Nations. Clauses 6 and 7 provide that persons enjoying temporary protection shall be issued with residence permits and facilities for visas to be obtained free of charge or at a minimum cost. Clause 8 provides that persons enjoying temporary protection shall have access to accommodation. Clause 9 that they shall have access to medical care. Clause 10 that they

shall have access to social assistance. Clause 11 that they must enjoy access to the Gibraltar education system under the same conditions as Gibraltarian minors. Clause 12 provides that they shall have access to employment, whether it is as employed or self-employed, that they shall have access to vocational training courses and in-services training on the same basis as everybody else. Clause 13 provides that persons who enjoy temporary protection under this directive who wish to submit an asylum application may do so at any time. Clause 14 makes provision for family reunification. It authorises the entry and residence of the spouse, the children, and subject to certain conditions, other family members where a family had been established in the country of origin before the events which led to the mass influx. Statements of reasons must accompany any decision rejecting an application for reunification. Clause 15 details obligations in respect of an unaccompanied minor with particular reference to representation, placement, that is care and accommodation and where it has not been possible to locate their family, their right to be placed with the person who looked after them when fleeing. Clause 16 makes provision for humanitarian extensions. When temporary protection ends, the Government must consider any compelling reason which makes return impossible. Even where temporary protection has ended there is a duty to extend the residence of persons who have special needs, such as medical or psychological treatment, if their return would entail interrupting such treatment. Clause 17 provides for the transfer of persons enjoying temporary protection. It places a duty on the Government to cooperate with Member States where a person is to be transferred from one to another. Clause 18 provides that the Head of the Civil Status and Registration Office will facilitate the voluntary return in the full knowledge of the facts of persons enjoying temporary protection. Clause 19 deals with the provision of information to persons enjoying temporary protection. Clause 20 deals with the recording of information, that is personal data relating to persons enjoying temporary protection, and ensures that it shall not be disclosed except in some narrowly defined situation. Clause 21 provides that the Civil Status and Registration Office shall be the contact point for the purposes of the legislation when there is a need to discuss things with other Member States. Clause 22 provides a right of appeal for any person who is excluded from the benefit of temporary protection or family reunification or who is otherwise affected by a decision made under this Ordinance. Clause 23 provides a general regulation-making power. Schedule 1 details the information referred to in clauses 14, 17 and 20. Schedule 2 contains the model pass which is to be used where responsibility for a person enjoying temporary protection is transferred from Gibraltar to a Member State, as referred to in clause 17. I commend the Bill to the House.

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

HON J J BOSSANO:

We will be voting against this Bill. The Bill comes about as a result of a directive and it is to give rights to people in Gibraltar in the event that there is a mass influx of people into the territory of the European Union, that is the 25 Member States. Of course, in all other cases in the 25 Member States, this is national legislation where the resources of the nations concerned that have decided to be included are provided and not of a town of 30,000 people. In fact, what the directive makes clear is that the option to be included in the scope of this directive has been exercised by the United Kingdom, and our view is that when the United Kingdom has such an option, which I think derives from the Protocol in the Amsterdam Treaty, our view unlike the Governments, is that we should be entitled to exercise that option independent of UK. Whether the UK goes in or the UK goes out is something that has to be taken by the Government of the United Kingdom in the context of what is best for the UK and it does not follow that because it is best for UK it is best for us. The directive shows that in accordance with Article 3 of the Protocol, the United Kingdom gave notice by letter of 27th September 2000, of its wish to take part in the adoption and application of this directive. As far as we are

concerned the Gibraltar Government should have been asked whether they wanted to go in or not, and should have had the opportunity of either going in with the UK or not going in with the UK. In fact, the directive makes clear that in accordance with Article 1 of the same Protocol, Ireland decided not to participate in the directive and in accordance with Articles 1 and 2 of the Protocol, Denmark decided not to participate either. So in fact neither Ireland nor Denmark are being required to do this, and I think that this creates a series of questions of principle which are not being addressed politically. The United Kingdom itself has not introduced primary legislation apparently to do this. They have altered the instructions to Immigration Officers in the Immigration and Nationality Directorate, by amending a number of the regulations as the mechanism that needs to be applied when faced with entry into the United Kingdom by people who are covered by these temporary protection provisions.

We are providing here in our laws for people who would be, or the Government of the day in their wisdom in such element of care that we all hope they never do, would be the numbers of people that we could take in Gibraltar. I do not know whether that means that we would apply a pro-rata judgment and say, if the United Kingdom with 60 million takes x, we divide pro-rata to 30,000 and we might come up with one. But there are a number of important issues here in relation to the division of responsibilities between ourselves and the United Kingdom. That is to say, this House, the Parliament of Gibraltar and the Government of Gibraltar and the United Kingdom under the Constitution, and in particular I would draw the attention of the House to this business of access to the asylum procedure. In the regulations in the United Kingdom the Secretary of State may decide that a person who is covered by a permit under the temporary protection provisions may have to wait until the expiry of that permit before he can submit an application for asylum. In my experience, before 1996 and I think this happened on some occasions after 1996, we have had people wandering about here in Gibraltar without it being clear whether we have the responsibility for taking a policy decision on what happens to them, or the United Kingdom does, with the United Kingdom not wanting to know anything about the people who have landed on our shores, mainly from East Europe, in some cases I remember they got here thinking they were arriving in Canada and then they were seeking asylum on the basis that if they were sent back to Ukraine they would not survive. Therefore they were arguing that they were political refugees. Now, do we have the power under the Constitution to grant political asylum, and is the political asylum then defined to Gibraltar? I mean, are we saying then that somebody who is given political asylum, which seems to be what section 55 of the Immigration Control Ordinance says, that anybody that under section 55 claims to be a political refugee may be allowed by the Governor, I do not know whether that means the Governor on the advice of the Government, or the Governor as the Governor, may be allowed to remain in Gibraltar, and then presumably he is stuck in Gibraltar for life because that is what has happened in the past. They have been granted temporary residence permits, there has been the problem of whether they should be granted work permits or not granted work permits, and here we are talking about actually doing things which we do not do for people that have been immigrants in Gibraltar and have lived here for 30 years. If tomorrow there is a problem in North Africa and we are faced with an influx of people, maybe the influx in the whole of the EEC but it may be that the first place they hit in the EEC is us. We are now creating statutory rights to welfare benefits, to housing and to employment, which we do not grant to people who have been here as economic refugees rather than political refugees, and have lived amongst us for 30 years. I think this is breaking new ground, I think we should have exercised the option that Ireland and Denmark did, I think we have got a very strong case for saying that nobody else in the whole of the European Union is required to accept this kind of responsibility. The United Kingdom, or France, or Germany, or Italy, accepting the responsibility as a national obligation but not for a town of 30,000. Since this is one of the rare occasions when there is an option that may be exercised or not exercised, what we would have wanted to see would have been using that option so that the United Kingdom, if it wants to go in would go in, but without us. I think it also creates some rather odd situations which are

not necessarily objectionable but where it would appear that Gibraltar is very clearly being treated as a Member State, and it may well be that this makes us the 26th Member State, given that there is now a national authority for the United Kingdom and a national authority for Gibraltar, and in the directive it says there must be a national authority per Member State. Apart from the matter of detail, I think the very principles that we find objectionable are that (a) we believe we should have been out rather than in; and (b) that we are doing it in a way where we are creating for the first time in our legislation a statutory right to things where they have not existed previously.

HON CHIEF MINISTER:

I regret to the inform the Leader of the Opposition that not a single point that he has made is either factually correct, legally correct or a proper analysis of the legal, political or any other position. He may vote against the Bill if he likes but if he does so he will be voting against it for reasons which are completely spurious and which do not justify any of the points that he has made. I have no doubt that that will not stop him from voting against but he should understand that none of the choices that he claims that we have, we actually have, and that none of the consequences that he fears can actually materialise and I intend to take him through his points one by one. I am not sure that I will persuade him however persuasive the arguments are because I think he prefers not be persuaded, but I think I have got a duty at least to put on Hansard the response to that analysis which is not a correct analysis in the Government's view.

There are no serious questions of principle which are not being addressed politically. None, not one. It is true, and this is about the only accurate thing that he said, that the directive gives rights to persons affected by mass influx of persons and that this is done by national legislation of countries that have resources and that we are only little, we are only 28,000 and why should we be subjected to the strains and stresses of behaving like a big boy when we are only a little boy. Well I only wish he would remember that more often when he likes to pretend that we are bigger boys than we are, he might just like to remember his own words here and then we might avoid some contentious issues. But that fear that he has that we might be incurring responsibilities above our resource capacity to meet them, cannot be incurred because it is the Government of Gibraltar that decides what our capacity is to accept any number of people. We could theoretically assess ourselves and say that we have not got capacity to accept any people, zero and then we cannot be made to take any. Or we might say, well look we could taken one, or two or three, because we have the resources for one or two and then that is the maximum that we could be invited to take. So there is no question of Gibraltar having to deploy resources beyond that which the Government of Gibraltar themselves consider that we are able to deploy to contribute like good humanitarian Europeans to the plight of temporarily displaced mass influx affected people.

I think that it is right that Gibraltar should be willing to play its part with the rest of Europe in relation to response to humanitarian situations, within the limits of our resources and that important caveat is fully accommodated in the Bill which says precisely that. I do not know by virtue of what legal analysis the Leader of the Opposition thinks that we have an option here. He seems to think that like Denmark, the United Kingdom or Ireland, that we had an option that we failed to exercise. Well, I regret to inform the hon Member that Gibraltar does not have, and has never had any such option. In respect of directives, no. In respect of what used to be Third Pillar measures, that is to say inter-governmental treaties, because the territorial scope of the European Union under which inter-governmental treaties were adopted did not apply to Gibraltar, Gibraltar was free to decide on a case by case basis whether we had it extended to us or not. In the case of Community business, that is to say business done under the Treaty establishing the Community as opposed to business done under the Treaty establishing the Union, the Treaty establishing the Community does have a territorial application clause, the

famous 2994 and directives automatically extend to Gibraltar, unless it is in one of the areas that do not apply to Gibraltar, common customs, common agricultural policy and coal and steel. In consequence other single market in goods directives. The United Kingdom negotiated for itself as a Member State, as did Denmark and Ireland, the option, hon Members will be aware of this, the opt out right from certain types of business that would otherwise have applied to it, of this sort. That is completely different to the inter-governmental business in which Gibraltar has the legal right to opt separately from the United Kingdom because it is an inter-governmental treaty, agreement, and the British Government are free to decide what part of its territory it applies to and which it does not. In a directive affected by the opt out clause, in Maastricht as he says, this is to be exercised by the UK for itself and the entirety of the European territories for whose external affairs it is responsible, Gibraltar has never been able to and is not able to make a separate opt out choice from the UK under the Maastricht politically negotiated opt out rights which Ireland, Denmark and the United Kingdom negotiated. Denmark and Ireland can of course exercise that opt out because they had it. The United Kingdom could exercise that option and if it had exercised the option to stay out, then we would have been obliged to stay out even if we would have wanted to be in. For example, as they have done with the single currency, with the European single currency, similar opt out rights negotiated, they exercise it and it affects them and us. This is another example of that. So if the hon Member believes that this is a case in which legally Gibraltar has an opt out right, I have to tell him that there is no legal possibility of Gibraltar exercising an opt out right in the context of the UK exercising its right to opt in. Or rather not exercising its right to itself opt out.

The Leader of the Opposition said almost as if, I do not know what the purpose of making the point was, in any case it is inaccurate, almost as if to give the impression that we were complying with this but the UK was somehow ducking or diving and not complying with it, made the point why should we have legislation when the UK does not or is not applying the legislation. The UK is not introducing specific legislation for doing this because its asylum legislation already covers, under subsidiary making powers, already covers this in large measure administratively, and therefore the United Kingdom does not lack, as we do, a statutory framework that enables it to comply with its obligations under this directive. We do. We have laws that say the opposite of this and therefore we need to amend our primary law book in order to make it possible for the Government to comply with this particular European Union obligation. He asked whether it was a question of pro-rata allocation, it is not a question of pro-rata allocation as I said earlier. The Gibraltar Government do their own assessment of the number of people, if any, that they can take in and that is the maximum number of people that we can be asked to take in. The hon Member also listed in his list of alleged or apparent objections that this business of asylum and who exercises the power, it is perfectly clear. One must know, after having been in office for eight years, that Gibraltar has no specific asylum legislation, and indeed we are shortly to bring Gibraltar-specific asylum legislation to this House in compliance of other requirements. The only provision of Gibraltar law that allows asylum to be dealt with in Gibraltar is the Immigration Control Ordinance, which gives to the Governor the power in effect to exempt people from immigration control, and if it were a case of genuine asylum, that power to exempt from immigration control can be used and it is what is used in the case like the four stowaways that arrived in Gibraltar and thought they were landing in Canada that he referred to. He asked whether that power is exercised by the Governor in his own right or whether it is exercised by the Governor on advice. Well, it is exercised by the Governor on advice because the Governor acknowledges that he does not have the resources, the financial wherewithal to support these people should he make a decision to grant asylum contrary to the wishes of the Gibraltar Government.

The hon Member says, and he is right but he is wrong in thinking that we have a choice, that we are in this Bill doing things that we do not do for people that have been in Gibraltar for many more years, and that is right but we have no choice.

The question is whether we should continue to deny it to all those other people. That is a matter of domestic policy. So he is right in saying that for example Moroccans do not have access to public housing, amongst many others. But this is a requirement and indeed there are other Member States of the EU that are having to do this and thereby giving rights to people, temporary protected persons, that others within their country may not be entitled to under their existing laws. I doubt there are any other cases as stark as ours because I doubt that there is anybody in Europe that denies quite as many rights to legal citizens as we do, but that is something that the Government are gradually looking at with a view to gradual redressing. So we are certainly more affected by that syndrome than others but that is only because we are more backward than any other place in Europe in how we deal with our immigrants and their rights.

So we do not have the right to opt out of this directive. The hon Member is wrong if he thinks that for political reasons or for any other reason there was a way forward that we chose not to exercise. There is not. When we established the fact that this was completely mandatory on us and that there was no such possibility, we set about protecting Gibraltar and our small size and our resources by the next best effective way, which is this formula of Gibraltar Government doing their own assessment of resources, and that is in our Bill and that provides Gibraltar with the protection of not having to take people that we cannot accommodate. As to Gibraltar being very clearly treated as a Member State, he can make that judgement of it if he likes. The hon Member knows the importance that this Government of Gibraltar, I do not know whether he attached the same, I suppose he did, but speaking only for myself anyway the importance that we attach to the competent authority issue, and for competence for public administration in Gibraltar not being exercised by United Kingdom domestic competent authorities. If he thinks that that makes us now the 26th, he has uprated his mathematics, now the 26th as opposed to the 13th Member State which is the figure he used to quote when he last expressed an interest in such issues, I do not think it has that effect but certainly we do jealously defend our right to exercise our own constitutional and jurisdictional autonomy in the administration of European Union obligations. There is always a huge issue bilaterally with the UK when they agree to language in a directive that speaks of each Member State having one national authority. We say "well look, you have not made provision for us, you go and explain that to Brussels, we do not thereby feel compelled to submit to the jurisdiction of yours. If you had bothered to negotiate texts which accommodates the fact that you are responsible for the external affairs of a European territory whose administration of this cannot be done constitutionally, that is your problem – we go ahead and we transpose in a way compatible with our view of life constitutionally". So, to the extent that the hon Member was going to vote against this Bill on the basis that he believed, wrongly, that we had a choice, he cannot justifiably vote against the Bill on that ground. He can if he likes vote against it on the grounds that even if it is a legal obligation on us, in terms of the EC Treaty, to do it he nevertheless wants us not to do it because he does not like the content, or he does not think that the content is in Gibraltar's interests, but that is a position of rebellion rather than the exercise of a choice as if we could or could not comply with this. There is no choice about the legal obligation. He, because he does not have the responsibility of Government, can say "even if it is my obligation I am not doing it because I do not want to, or because I do not like it" but that is the basis on which he would be voting against it given that we do not have a choice.

I have to tell the hon Member that even if we did have a choice, I think the Government would have still brought this Bill to the House. Given that we are able to decide for ourselves how many resources we deploy for these purposes, I believe that Gibraltar should be seen to be doing what it can, not what others decide it can but what it decides it can do, by way of a collective European Union effort to assist citizens of politically challenged, or human rights challenged countries outside the borders of the European Union. So in fact we have not had the choice in this case so I do not take any sort of brownie points for doing it, but if I had had a choice then I might be in a position to stand here

claiming brownie points because I think the Government would in any event have brought it in exercise of a choice, had we had it which we did not.

Question put. The House voted.

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

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

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, as the hon Members are voting against I do not think they will mind.

Question put. Agreed to.

THE IMMIGRATION CONTROL (TEMPORARY PROTECTION) (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance further to the implementation into the law of Gibraltar Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Opposition Members will be no more in favour of this Bill than the previous one, given that this is consequential and indeed as the Temporary Protection Ordinance was first drafted. These provisions would have been contained in the Temporary Protection Bill, but as they are specifically amending existing Gibraltar primary legislation the Government prefer to do it by separate Bills, otherwise practitioners are going to have difficulty if amendments for example to the Education Ordinance are buried in something called the Temporary Protection Ordinance, it becomes very difficult for people to find it.

The purpose of the Bill is simply to amend the Immigration Control Ordinance to disapply from protected persons under the Protected Persons Bill/Ordinance, those provisions of the Immigration Control Bill which are incompatible with and contradict what will be the law if and when the Temporary

Protection Ordinance is enacted. So that for example, under Clause 2 of this Bill now under discussion, sections 6, 18(2) and 18(3), 20, 21, 23, 52, 53 and 54 of the Immigration Control Ordinance are disapplied to persons enjoying temporary protection in Gibraltar. The sections in question deal with the following sorts of things. Section 6 of the Immigration Control Ordinance provides that the Principal Immigration Officer may require any person seeking any permit to deposit sums, a sort of bond for repatriation. Obviously that is not compatible with the temporary protected person regime. Section 18(2) provides that the holding of a residence permit shall not itself entitle the holder thereof to undertake employment in Gibraltar. That is incompatible because under the Temporary Protection Bill/Ordinance these people have got to have the right of employment and so on and so forth. Section 20 of the Immigration Control Ordinance provides the power for the Principal Immigration Officer to cancel permits at any time. Well, there is no right to cancel the permit of a temporarily protected person under that other regime. Section 23 provides that there shall be no appeal to the courts in relation of certain decisions of the Principal Immigration Officer. That is incompatible because the directive specifically requires there to be a right of appeal in respect of certain things under the Temporary Protection Directive et cetera, et cetera. So that is really a consequential amendment to the Immigration Control Ordinance to make it compatible and consistent with the Temporary Protection Bill when it is adopted by this House. So really these three Bills in effect form part of a package, taken separately only so that we do not end up with one hybrid ordinance amending several other principal Ordinances. I commend the Bill to the House.

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

HON J J BOSSANO:

Just to say that we shall be voting against this one and the next one, because they are consequential on the one that we have already voted against.

Question put.	The House voted.
For the Ayes:	The Hon C Beltran The Hon Lt-Col E M Britto The Hon P R Caruana The Hon Mrs Y Del Agua The Hon J J Holliday The Hon Dr B A Linares The Hon J J Netto The Hon F Vinet The Hon A Trinidad
For the Noes:	The Hon J J Bossano The Hon C A Bruzon The Hon Dr J J Garcia The Hon S E Linares The Hon Miss M I Montegriffo The Hon F R Picardo The Hon L A Randall

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE EDUCATION AND TRAINING (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Education and Training Ordinance further to the implementation into the law of Gibraltar of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, again this Bill is consequential and only achieves that no school fees shall be charged for educating in Government schools in respect of any child of compulsory school age involved in temporary protection.

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

Question put. The House voted.

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

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the parts of Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) which permit or oblige the Member States to make certain provisions in their national law including provision for the effective application of the Regulation; and to transpose into the law of Gibraltar Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is quite a complex piece of legislation to place in our laws as much as is necessary to have in our laws for the European Regulation to be operable in Gibraltar relating to the establishment of a so-called European company, which are called Societas Europaea. In Part I, clause 1 deals with citation and commencement. Clauses 2 and 3 provide for the interpretation of certain terms.

Part 2 of the Bill deals with the registration of European companies for the purposes of the EC Regulation. So for example, clause 4 provides that the Registrar has the functions conferred by the Bill in relation to these European companies. Clauses 5 to 14 provide for the registration and transfer of European companies formed under Articles 2, 3 or 8 of the Regulation. Clause 15 provides that any person who makes a false statement in any document sent to the Registrar or the Minister under the Bill is guilty of an offence.

Part 3 of the Bill implements the Directive. So part of the Bill is to facilitate the regulation and part of the Bill is to transpose the directive. Clause 16 provides for certain definitions which flow directly from the directive. Clause 17 deals with the circumstances in which the provisions of this Part 3 apply. Clause 18 obliges the participating companies that intend to set up a European company, to provide certain information to the employees representatives or the employees themselves, in order to calculate the number of representatives to which the special negotiating body is entitled and their allocation across the Member States. This information should be drawn up as soon as possible after the participating companies have drawn up plans with the establishment of a European company. So the European company is a model of a company created, I suppose the nearest thing is a joint venture vehicle in the old Anglo-Saxon terms, by companies together. It is a joint vehicle formed by other companies established also. Clause 19 provides that an employee's representative or an employee may present a complaint to the Industrial Tribunal in relation to the failure to provide information or the provision of false or incomplete information under clause 18. Clause 20 provides for the special negotiating body and the competent organs of the companies participating in the establishment of the European company must reach an employee involvement agreement. The directive creates important rights of employee consultation and participation in these European companies, and when a European company has got employees across large numbers or more than one European Member State, there is a very complicated formula for allocating the representatives to the employees in the different Member States. In effect, the entitlement is to one member of the special negotiating body for each 10 per cent or fraction thereof of the employees in that Member State in relation to the whole. So if a Member State had 10 employees out of 100 total all across the grid, they would be entitled. Where a European company is to be established by merger and one or more relevant company is not represented by an ordinary member of the special negotiating body, the employees of those companies may be entitled to elect or appoint an additional member of the special negotiating body. The competent organs of the participating companies must inform their employees and the employees of any concerned subsidiaries or establishments about the identity of the members of the special negotiating body, as soon as it is reasonably practicable and at least within one month of the special negotiating body being established. Clause 22 provides that a complaint may be made to the Tribunal that a special negotiating body has not been established, or has not been established properly under Clause 21. Clause 23 provides details of the ballot arrangements for Gibraltar employees in relation to the election of members to the special negotiating body. Clause 24 provides for the conduct of a ballot. Clause 25 for the appointment of Gibraltar members of the special negotiating body by a consultative committee. Clause 26 prevents the composition of the special negotiating body from entailing a double representation of employees. Clause 27

provides that the competent organs of the companies participating in the European Company and the special negotiating body are under a duty to negotiate in a spirit of cooperation, with a view to reaching an employee involvement agreement. Clause 28 specifies what should be included in the employee involvement agreement without prejudice to the autonomy of the parties. The written agreement should specify the scope of the agreement. Clause 29 provides for decisions made by the special negotiating body. Each member of the special negotiating body has one vote regardless of the number of employees represented. The participating company or companies must pay all reasonable expenses of the functioning of the special negotiating body. For the purposes of negotiations, the special negotiating body may be assisted by experts of its choice. Clause 30 provides that except where the European company is to be set up by transformation, and the employees of the company to be transformed have participation rights, the SNB may decide by a two thirds majority vote not to open negotiations with the competent organ of the participating company. The special negotiating body can only be reconvened in terms set out in the agreement, basically 10 per cent of the employees. So the House will be aware from its reading of the Bill that there are in the bits that transpose the directive, encrusted on the European company, a very sophisticated regime of very extensive worker participation through this special negotiating body which is created for the whole European company and its workforce, even if they are spread out across cross-border Member States and each Member State then has its right to representation on the special negotiating body depending on how many workers it has in relation to the totality of that company's workers.

Part 4 of the Bill deals with the exercise of Member State options under the EC Regulation. Clause 50 provides that a company with a head office outside the Community may participate in the formation of a European company. Clause 51 provides for additional forms of publicity of a proposal by a European company to transfer to another Member State. That is notification of shareholders, creditors et cetera. Clause 52 provides for the extension of protection of creditors in respect of liabilities incurred before the transfer to another Member State. Clause 53 provides that competent authorities may oppose the transfer of a European company to another Member State on public interest grounds. Clause 54 provides that the management or administrative organ of a European company may amend the company statutes, where in conflict with employee involvement agreements. Clause 56 provides that the minimum number of members of the management organ of a European company shall be two, and the minimum number of members of the supervisory organ shall also be two. Each member of the supervisory organ is entitled to require information from the management organ and that is in Clause 58. Under Clause 59 the minimum number of members of the administrative organ itself shall also be two.

Part 5 of the Bill deals with provisions required by the EC Regulation as opposed to the directive being transposed. Clauses 63 to 66 deal with publication requirements in relation to the transformation, conversion and completion of a European company. Clause 67 requires the European company to make a statement of solvency before the competent authority issues a certificate allowing the European company to transfer to another Member State. These things are mobile and can transfer their domicile from one European Member State to another. Clause 68 provides that the Minister may issue a direction to the European company requiring it to comply with Article 7 of the EC Regulation. The direction is enforceable in the court. The Minister may also petition the court for the European company to be wound up. Clause 69 provides for the review of decisions of the competent authority. In Part 6, clause 70 specifies who the competent authorities are. The Minister is to be the competent authority in respect of Articles 8, 54, 55 and 64 of the EC Regulation. The Registrar is to be the competent authority in respect of Articles 25 and 26. Clause 71 provides that the Minister may issue a direction to the European company requiring it to amend its statutes. That direction also is enforceable in the courts. Clause 76 provides for the treatment of a European company as a body corporate where an

enactment is applied in respect of bodies corporate. Clause 77 provides for the notification of amendments to statutes and insolvency events. Clause 79 provides for penalties for breaches of Article 11.

Part 7 of the Bill deals with provisions relating to the conversion of a European company to a public company in accordance with Article 66 of the EC Regulation, namely registration, publication of draft terms of the conversion, effect of registration and the records of converting a European company.

Schedule 1 details the provisions of the Companies Ordinance which apply in respect of the registration or the deletion of registration of a European company, and the functions of the Registrar in respect of such registrations or deletions. Schedule 2 contains the standard rules on employee involvement. Schedule 3 makes consequential amendments in relation to the application of the Companies Ordinance for the purposes of this Bill. I commend the Bill to the House.

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

HON F R PICARDO:

This piece of legislation, as the Chief Minister has already indicated, principally brings into our law again, I imagine for the usefulness of practitioners, a regulation which is already to be deemed part of our law since last October. There is little to be said in that respect. The important issue, although we are creating a new juridical body or bringing into Gibraltar a new juridical or corporate body, is that we are imposing obligations for putting matters again before the Industrial Tribunal as we did with the Equal Opportunities Ordinance. My call then was, as it is now, that we should ensure that the Industrial Tribunal, not that I think it is going to have many applications from employees at a fairly early stage for determinations of their rights under this Ordinance, but that that Tribunal should have the resources available it needs to discharge its functions. I am not saying that it does not at the moment but it is starting, I think, to become a body that moves more slowly than it used to because both the judges there are counsel who have to make their diaries fit with two other lawyers, there is only one room for it and it is starting to move fairly slowly. That would be the only issue I think that is important to us to highlight before going forward with this piece of legislation.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

THE INSURANCE COMPANIES (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Insurance Companies Ordinance 1987 to provide for the licensing and regulating of insurance companies who carry on business from within Gibraltar, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short Bill and in a sense it is odd that no one has spotted this lacuna before and not filled it before, but it has only just been recommended to us by the Finance Centre people. That is that although our Insurance Companies Ordinance regulates the provision of insurance services in Gibraltar, it does not regulate the provision of insurance services from Gibraltar. So that the reputational risk issue attaches to Gibraltar, we cannot have people from Gibraltar carrying on insurance business elsewhere in a non-regulated fashion. So what this Bill does is to ensure that insurers carrying on business from within Gibraltar must apply for a licence to carry out their activities in Gibraltar. This should deter companies from merely incorporating in Gibraltar but carrying out their insurance activities elsewhere. In other words, no brass plate jobs for insurance. In all likelihood such companies would simply find the regulatory regime too onerous for their purposes and move elsewhere. This is not business that we regard as insurance business in Gibraltar anyway, because there are no insurance people here, it is just a Gibraltar company. The Ordinance will come into operation on 1st July and this will allow those companies which choose to remain in Gibraltar a reasonable period to apply for a licence. I commend the Bill to the House.

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

HON F R PICARDO:

Simply to ask the Chief Minister if he can clarify whether in the process of having this matter brought to the attention, which frankly the spirit of the amendment is acceptable I think to both sides of the House, has it been brought to his attention that there are in fact one or a number of operators carrying out such business from Gibraltar, or is it something that we are simply legislating to prevent without regulation catchment?

HON CHIEF MINISTER:

I have not been specifically informed that there are, but I believe that there are and that is why they propose that we delay the introduction until July, which I am told is to allow those companies which choose to remain in Gibraltar a reasonable period to apply for a licence, which pre-supposes or at least suggests that there are such companies. I believe that there are but I have no specific information to that effect.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Intellectual Property (Copyright and Related Rights) Bill 2004;

2. The Temporary Protection Bill 2005;

3. The Immigration Control (Temporary Protection) (Amendment) Bill 2005;

4. The Education and Training (Amendment) Bill 2005;

5. The Insurance Companies (Amendment) Bill 2005.

THE INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) BILL 2004

Clause 1

HON CHIEF MINISTER:

A minor point. It should be the Intellectual Property (Copyright and Related Rights) Ordinance 2005.

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

Clauses 2 to 188 – were agreed to and stood part of the Bill.

Clause 189

HON CHIEF MINISTER:

I have given notice in writing of amendments to this part. I think I gave an explanation for this at the time that we debated the Second Reading. There are circumstances where the EU has an agreement with other territories to be included, and as originally drafted the Bill refers to it, the Isle of Man for example in section 189 at sub-clause (5). I want to change that for a procedure whereby there is a schedule which will now have the Isle of Man in it, and if there is any future such territories then the Government will add to the schedule. This is not an area where we have a choice. Unfortunately, and much as I am sure the Leader of the Opposition would like it to be different, the European Commission does not require our agreement. This is not like the trilateral forum where nothing is agreed unless we agree. So here the Commission just does the agreements with the territories and then our legislation then extends to it. The amendments are self-explanatory and it is just to create that regime.

In sub-clause 189(5), for ", the EEA or the Isle of Man" where it occurs substitute "or the EEA".

Clause 189 – as amended, was agreed to and stood part of the Bill.

Clauses 190 to 194 – were agreed to and stood part of the Bill.

Clause 195

HON CHIEF MINISTER:

Yes, that is where the main amendment goes in, which is to delete the existing sub-paragraphs (d), (e) and (f) and replace it with a new 195(3) in terms that are self-explanatory, which explains what territories are qualified to be added to the schedule, in which circumstances and the fact that the Minister can add to the schedule by notice in the Gazette.

In clause 195(1), delete sub-paragraphs (d), (e) and (f); and after sub-clause (3) insert –

"(4) The provisions of this Part shall also apply to a database made in the countries or territories listed in Schedule 3 where at the material time, its maker, or if it was made jointly, one or more of its makers, was –

(a) an individual who was habitually resident in that country or territory;

(b) a body which was incorporated under the law of that country or territory and which, at that time, had its central administration or principal place of business within that country or territory or had its registered office within that country or territory and its operations are linked on an on-going basis with the economy of that country or territory; or

(c) a partnership or other unincorporated body which was formed under that country or territory and which, at that time, had its central administration or principal place of business within that country or territory.

(5) The Minister may by notice in the Gazette amend the list of countries contained in Schedule 3."

Clause 195 – as amended, was agreed to and stood part of the Bill.

Clauses 196 to 263 and Schedules 1 and 2 –were agreed to and stood part of the Bill.

New Schedule 3

HON CHIEF MINISTER:

After Schedule 2 to insert a new Schedule 3 with just one item on it, "1. The Isle of Man." So it would say "Schedule 3" the usual reference to the section which introduces the Schedule, which is "(Section 195)" at the right hand margin and then the substance of the Schedule is "1. The Isle of Man." So that is the first item on the list which will comprise the schedule.

Schedule 3 – was agreed to and stood part of the Bill.

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

THE TEMPORARY PROTECTION BILL 2005

Clauses 1 to 23, Schedules 1 and 2 and the Long Title – stood part of the Bill.

THE IMMIGRATION CONTROL (TEMPORARY PROTECTION) (AMENDMENT) BILL 2005

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

THE EDUCATION AND TRAINING (AMENDMENT) BILL 2005

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

THE INSURANCE COMPANIES (AMENDMENT) BILL 2005

Clauses 1 and 2 and the Long Title – were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that:

1. The Intellectual Property (Copyright and Related Rights) Bill 2005;

2. The Temporary Protection Bill 2005;

3. The Immigration Control (Temporary Protection) (Amendment) Bill 2005;

4. The Education and Training (Amendment) Bill 2005;

5. The Insurance Companies (Amendment) Bill 2005,

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

Question put.

The Intellectual Property (Copyright and Related Rights) Bill 2005 and the Insurance Companies (Amendment) Bill 2005, were agreed to and read a third time and passed.

The Temporary Protection Bill 2005, the Immigration Control (Temporary Protection) (Amendment) Bill 2005; and the Education and Training (Amendment) Bill 2005:-

The House voted.

For the Ayes:	The Hon C Beltran
	The Hon Lt-Col E M Britto
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon J J Holliday
	The Hon Dr B A Linares
	The Hon J J Netto
	The Hon F Vinet
	The Hon A Trinidad
For the Noes:	The Hon J J Bossano
	The Hon C A Bruzon
	The Hon Dr J J Garcia
	The Hon S E Linares
	The Hon Miss M I Montegriffo
	The Hon F R Picardo
	The Hon L A Randall

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 11th March 2005 at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 5.50 pm on Thursday 16th February 2005.

FRIDAY 11TH MARCH 2005

The House resumed at 10.05 am.

PRESENT:

Mr Speaker…….(In the Chair)
(The Hon Haresh K Budhrani QC)

GOVERNMENT:

The Hon P R Caruana QC - Chief Minister
The Hon J J Holliday - Minister for Trade, Industry and Communications
The Hon Dr B A Linares - Minister for Education, Employment and Training
The Hon Lt-Col E M Britto OBE , ED - Minister for Health
The Hon J J Netto - Minister for Housing
The Hon Mrs Y Del Agua - Minister for Social and Civic Affairs

The Hon C Beltran - Minister for Heritage, Culture, Youth and Sport
The Hon F Vinet - Minister for the Environment, Roads and Utilities
The Hon R R Rhoda QC - Attorney General

OPPOSITION:

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

ABSENT

The Hon T J Bristow - Financial and Development Secretary
The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

MOTIONS

HON CHIEF MINISTER:

I would like to withdraw the two motions standing in my name at this stage in relation to the Yugoslavia and Burma Orders. I will be presenting them at a later date but in respect of a different set of regulations.

BILLS

FIRST AND SECOND READINGS

THE FAIR VALUE ACCOUNTING ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Companies (Accounts) Ordinance, 1999, the Companies (Consolidated Accounts) Ordinance, 1999 and the Banking (Accounts Directive) Regulations 1997 in order to implement into the law of Gibraltar Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Fair Value Directive is part of the EU's objective of enabling companies to use modern accounting practices that are consistent with international accounting standards, known as IAS's, and international financial reporting standards, known as IFRS's. All these are issued by the International Accounting Standards Board. The amendments will allow fair value accounting, essentially meaning in the most simplistic of terms that companies have to give a current market value to their assets and liabilities in their accounts, to be used for certain financial instruments by all companies in their

balance sheets. The Fair Value Accounting Directive requires Member States to (a) permit or require the valuation of financial instruments at fair values; (b) extend the permission or requirement to all companies or restrict it to any class of companies; (c) restrict it to consolidated accounts; and (d) permit the valuation of assets and liabilities which qualify as hedged items under a fair value hedge accounting system, at the specific amount required by that system.

Taking then the provisions of the Bill in turn, clause 1 provides for citation and commencement. It states that the Bill applies to financial years which begin on or after 1st January 2005 but which have not ended before the date of publication. Clause 2 inserts a new section 8A into the Companies (Accounts) Ordinance 1999. This requires the disclosure of certain information in the director's report, namely, the company's financial risk management objectives and policies and its exposure to risks in relation to its use of financial instruments. Small companies will be exempted from this requirement. Clause 3 amends Schedule 6 to the Companies (Accounts) Ordinance 1999. This clause introduces new section C into Schedule 6 of that Ordinance after existing paragraph 21. Paragraph 22 of new section C permits all companies to use fair value accounting for their financial instruments subject to certain restrictions. I just pause to emphasize and ensure that the House has noted that it is permissive and not mandatory in its scope. In other words, this allows companies to use a harmonised fair valuation regime but does not require them to do so. For example, liabilities may only be included at fair value if they are held as part of a trading portfolio or are derivative financial instruments. Paragraph 22(4) excludes from paragraph 22(1) financial instruments which cannot be valued reliably by any of the methods in paragraph 23. Paragraph 23 of new section C sets out how the fair value of a financial instrument is to be measured and determined. This is consistent with IAS 39 which defines fair value as "the amount for which an asset could be exchanged or a liability settled between knowledgeable, willing parties in an arm's length transaction". Paragraph 24 of new section C relies on the Member States' option under which companies may be permitted to include any asset and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities at the amount required under the system. It is intended to allow the use of fair value hedging in accordance with IAS 39. The use of hedge accounting under IAS 39 is permitted only if strict criteria are met and is in any case optional. These criteria include a requirement to establish formal documentation of the hedging relationship. For practical purposes therefore, a company will not be obliged to apply hedge accounting as it can choose not to undertake this designation exercise. Paragraph 25 of new section C provides that where financial instruments are valued, in accordance with paragraphs 22 or 24, any change in value is to be included in the profit and loss account even though the change in value may not have been realised. This is subject to certain exceptions set out in paragraphs 25(3) and 25(4). Paragraph 26 of new section C provides that amounts may be transferred from fair value reserve, only when they are no longer necessary for the purposes of paragraph 25(3) or 25(4) or otherwise necessary for the purposes of the valuation method used. Clause 4 amends Schedule 7 of the Companies (Accounts) Ordinance, Notes on Accounts Minimum Requirements Rules. It inserts new paragraphs 6 to 9 after existing paragraph 5 of Schedule 7. So for example, paragraph 6 requires that where financial instruments have been valued in accordance with fair values, certain specified information has to be disclosed in the notes to the annual accounts. Paragraph 7 requires the disclosure of certain specified information about any derivative financial instruments that have not been valued at fair values. Paragraph 8 requires the disclosure of certain specified information about financial fixed assets that have been included in the company's annual amounts at an amount in excess of fair value, in circumstances where the company has not made a provision for diminution in the value in accordance with paragraphs 3(1) of the previous Schedule 6. Paragraph 9 provides for definitions. Clause 5 makes consequential amendments to the Companies (Consolidated Accounts) Ordinance 1999. This is necessary to implement the Fair Value Directive in relation to group accounts. Clauses 6 and 7 amend

the Banking Accounts Directive Regulations 1997 in the same way as clauses 2, 3 and 4 amend the Companies Accounts. So because there is particular accounting legislation relating to banks and insurance companies, other than the general one applying to companies, we need to change the companies general one but also the legislation that relates to insurance accounting and the legislation that relates to banking accounting. So clauses 6 and 7 deal with banking.

Small companies may also use fair value accounting for their financial instruments if they so wish. The application of the directive has been extended to individual as well as consolidated accounts. Being unable to use fair value accounting for individual accounts could hinder the official preparation of consolidated accounts and introducing consistency. It is highly technical piece of legislation. In a sense many Gibraltar companies will already be applying principles very similar to this, because of course in Gibraltar there is very little legislation other than the Companies (Accounts) Ordinance, and in Gibraltar historically international accounting standards have always been used by the accountancy profession to prepare audited accounts in Gibraltar. So there are changes but they would not be as far reaching as the application of these regulations and jurisdictions which have not historically based their accounting and reporting systems on international accounting standards. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE MARITIME (SEARCH AND RESCUE) ORDINANCE 2005

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to give effect in Gibraltar to the International Convention on Maritime Search and Rescue, 1979 as amended, and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill before the House will give effect in Gibraltar to the International Convention on Maritime Search and Rescue 1979, as amended, which I will refer to as the SAR Convention 1979. Most of the provisions of the SAR Convention 1979 are technical in nature. This Bill sets out the framework for maritime search and rescue within Gibraltar waters which is a role that has only been adopted by the Gibraltar Port Authority in recent times. The Government were looking ahead to this new role when they invested several years ago in a new launch for the Gibraltar Port Authority, the Samarang II, which is specifically designed for search and rescue work in addition to other roles. Indeed, it was as recently as 28th February this year that the Gibraltar Port Authority launch successfully rescued a yacht that was in trouble when its mast broke and all its

electrical installations failed in the storm we experienced that day. There is no need to introduce legislation in this House in order to diversify the traditional role of the Gibraltar Port Authority, this can be done administratively. It is nevertheless necessary to formally establish a maritime search and rescue unit in Gibraltar, so that should it be necessary for our neighbours to seek our assistance and cooperation under the SAR Convention 1979, it is clear who has the statutory responsibility in this field. The legislation also serves to clarify that in matters of maritime search and rescue it is the Captain of the Port who shall coordinate Gibraltar's response and not any other authority within Gibraltar. This Bill also provides for coordination, cooperation and collaboration in search and rescue matters. The Bill, once it is placed on the Statute Book, will act as an umbrella legislation for the purpose of maritime search and rescue and the Government will be able to put in place any practical measures that may be necessary by way of subsidiary legislation.

I will now turn to the detail of the Bill. Section 2 provides for definitions. One of the key definitions is that of Gibraltar's search and rescue region, which shall compromise all Gibraltar waters. Section 3 provides for establishment of a search and rescue unit within the Gibraltar Port Authority that shall be headed by the Captain of the Port. The maritime search and rescue unit will be responsible for maritime search and rescue services within Gibraltar waters and for providing assistance to any person in distress within Gibraltar waters, regardless of the nationality or status of the person or the circumstances in which that person is found. Section 4 provides that the Captain of the Port, as the coordinator for all maritime search and rescue operations, should implement search and rescue services under the Ordinance and other regulations made under it. Section 5 provides that the Government should endeavour to reach agreement with neighbouring countries for establishing boundaries of search and rescue regions and for cooperation and coordination with the Gibraltar Maritime Search and Rescue Unit and other rescue coordinating centres or sub-centres of another Convention country. This section also puts responsibility on the Government to ensure that adequate shore-based communication infrastructure, efficient distress alert routing and proper operational coordination are provided to effectively support search and rescue services within Gibraltar's search and rescue region. Section 6 authorises the Gibraltar Port Authority during search and rescue operations to call for the collaboration and support of other Government services or departments, the Ministry of Defence, private companies or persons in enabling search and rescue regions. This section also places a duty on all Government services and departments concerned to take measures to facilitate, as far as possible, the immediate and temporary entry of personnel and their equipment from other states to an agreement with the Authority are participating in search and rescue operations. Section 7 provides that the maritime search and rescue unit shall act as the rescue coordinating centre for Gibraltar for receipt of distress alerts originating from any person, craft or vessel within Gibraltar waters and for communications with persons in distress with search and rescue facilities and other rescue coordination centres or rescue sub-centres in other Convention countries. Section 8 provides for cooperation with other countries for searching for maritime casualties and rescuing survivors. Section 9 sets up operational measures for the maritime search and rescue unit. Pursuant to this section, the maritime search and rescue unit shall provide on request up to date information concerning search and rescue facilities, and available communications relevant to search and rescue within Gibraltar waters. The Maritime Search and Rescue Unit shall have ready access to information regarding the position, course and speed of vessel within Gibraltar waters which may be able to provide assistance to persons, vehicles or other craft in distress in Gibraltar waters and regarding how to contact them. It also provides that the Maritime Search and Rescue Unit shall have detailed plans of operation approved by the Government for the conduct of search and rescue operations within Gibraltar waters. Section 10 empowers the Minister to make regulations.

This Bill, together with other important pieces of maritime legislation that have been enacted in recent years, brings our

legislation in the maritime field up to date. Shipping and the Port provide an important contribution to our economy, something which the Government have greatly developed and enhanced for the last nine years. It is essential that at a time that the shipping and maritime industry in Gibraltar is growing in importance, our legislation in this field should be kept up to date. It was not possible before to make provision for maritime search and rescue and so this important element has been omitted from our maritime legislation. This Bill before the House will set this right. The Bill will further enhance Gibraltar's reputation as a leading maritime centre and will cement our good international reputation in this field in addition to ensuring that Gibraltar fulfils its international obligations under the SAR Convention 1979. I commend the Bill to the House.

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

HON DR J J GARCIA:

As the Minister has said and as the explanatory memorandum itself makes clear, the Bill gives effect in Gibraltar to an international Convention. The Convention on Maritime Search and Rescue 1979 as amended in 1998 by Resolution MSC 70(69). The amended Convention itself came into force on 1st January 2000. The Minister has already explained that the Convention deals with the mechanism for search and rescue of persons at sea. It lays the foundation of the establishment of search and rescue regions and seeks to regulate cooperation between them. Therefore, in general terms there are two points which I would like to make on behalf of the Opposition. The first is that in section 10 of the Bill, under the power to make regulations, sub-section (i) according to our reading of the Bill includes that there should be a regulation-making power and this power shall include the power to provide for the provision to come into force although the law, agreement or Convention, as the case may be, has not yet come into force anywhere else. So we will have the power to allow additional elements to be passed by regulation which may come into force in Gibraltar before they come into force elsewhere. Given this Convention is to do with saving lives it is something which the Opposition actually welcomes.

The second point I would like to make is in relation to the timing. The Minister has said that the Bill brings legislation up to date in relation to the maritime industry. The information available to the Opposition shows that the UK actually signed the Convention in May 1980. When the UK signed the Convention it was extended at the same time to various overseas territories and also to various Crown dependencies including Gibraltar, and it came into force in the UK and in those territories, including here, on 22nd June 1985. From 1985, and this is the point of clarification which we would like the Minister to provide the House, from 1985 until now this international Convention has applied to Gibraltar without any such Bill being brought before the House to give it effect. However, since the Government have chosen to do this in this way, the Opposition certainly have no objection and we will be supporting the Bill in any case, but we would welcome clarification from the Minister as to the timing.

HON J J HOLLIDAY:

On the second point raised by the hon Member, the Convention did not extend to Gibraltar and in 1997 Gibraltar was offered the opportunity by the UK to extend the Convention to Gibraltar. Once this legislation has been enacted in the House the Convention will then be extended to Gibraltar but up until now that had not been the case.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE TRAFFIC ORDINANCE 2005

HON F VINET:

I have the honour to move that a Bill for an Ordinance to consolidate and amend the law relating to traffic, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House is the product of a consolidation process that has produced a Bill that should cure most of the imperfections which the Traffic Ordinance has traditionally suffered from. Legal practitioners and others who consult the Ordinance as it presently stands will know that the number of amendments it has succumbed to over the years has made it untidy and not particularly easy to navigate. The consolidation exercise has resulted in the renumbering of sections, typographical errors have been addressed and some sections that have become obsolete have been deleted altogether. The Bill is, I suggest, a more reader-friendly and straightforward piece of legislation. The House may wish to note that advantage has been taken of the opportunity to make some amendments that are outside the remit of the consolidation but which are nevertheless properly made at this point in time. The first amendment relates to the issue of Gibraltar licences to EEA nationals who have taken up residence in Gibraltar and are by that fact unable to have their licences renewed by their respective issuing authority. These EEA nationals will be entitled to a Gibraltar licence. The second amendment relates to the exchange of non-EEA licences. The Bill provides a regulation-making power for the Government to introduce a regime whereby driving licences issued in certain countries and territories other than EEA States may be exchanged for a Gibraltar licence. A further change relates to the Traffic Commission. Wherever the Governor exercised powers of appointment this is to be exercised by the Government. A further clause 77(1)(d) at the present section 53, takes into account the demise of the Public Services Vehicles Operators Association and makes alternative provisions for representations of the sector. The functions of the Commission have been somewhat streamlined in the role as an advisory body, advising Government and not the Governor. Other changes which are too numerous to single out individually relate to the powers and duties, namely under Part 7 Streets and Highways. In this Bill Government and not the Governor, or a Commissioner of Police, is responsible for such things as traffic signs and traffic wardens. Where appropriate, however, the Commissioner of Police retains certain powers to be exercised either temporarily or in case of emergency. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition agree with the consolidation of the Traffic Ordinance in line with the amendments described in the explanatory memorandum, and will therefore be supporting the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

THE ENVIRONMENT ORDINANCE 2005

HON F VINET:

I have the honour to move that a Bill for an Ordinance for the purpose of transposing into the law of Gibraltar Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and to provide for regulations to be made for compliance with European Union obligations, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Environment Ordinance, as the Long Title suggests, aims to fulfil two functions. In the first instance it effects the transposition into the law of Gibraltar of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment. Secondly, the Bill makes provision for the making of subsidiary legislation in connection with EU obligations. The Ordinance applies to certain plans and programmes, including those co-financed by the European Community, which are required by legislative, regulatory or administrative provisions and are either (a) subject to preparation or adoption by an authority; or (b) prepared by an authority for adoption through a legislative procedure. In general terms a plan that falls within the ambit of the foregoing needs to be subjected to an environmental assessment prior to its adoption.

The key to understanding the directive is that it is aimed at plans or programmes which set the framework for future development in a sense of projects. The idea is that if the plan has been in effect screened, permits or consents emanating from that process will be environmentally sound. This has the cumulative effect of delineating the areas which are no-go areas from an environmental perspective. This creates an element of certainty and avoids applications being rejected only after a lengthy process and after expenditure, which could have been avoided if it was clear from the outset that that particular application would fail. The requirements for an environmental assessment also applies to other plans and programmes which set the framework for future development consents of projects if they are the subject of a determination that the plan or programme is likely to have significant environmental effects. Determinations as to whether a plan or programme is likely to have significant environmental effects are made by the responsible authority according to the criteria in Schedule 1. Determinations cannot be made unless the responsible authority has consulted designated bodies, and in accordance with procedures set out in the Bill. Where the case arises, the Bill provides for a trans-boundary consultation to take place. It includes procedures for consultations relating to those draft plans and programmes prepared in Gibraltar that are likely to have significant effects on the environment in other Member States and vice versa. Once a plan or programme is actioned, monitoring with a view to

identifying at an early stage unforeseen adverse effects is required. I commend the Bill to the House.

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

HON F R PICARDO:

This Bill is almost entirely EU-driven but it is a positive EU development, I think both sides of the House will agree, in the sense that it will create rights in the Government of Gibraltar in the Minister to be consulted if something is going to be done, and I am focussing it principally from that point of view, in the environment of Gibraltar which could have a negative or other effect on the environment of Gibraltar and those who reside here. Indeed looking at the proposed section 14, one wonders whether if only the community had moved more quickly in relation to this type of directive we might have been consulted before the refinery was put up in the centre of our bay. It is positive to see that Europe is moving in the direction where a neighbour is not going to be able to do that without at least taking the views of the neighbouring State. But I want to say this in relation to the Bill. I note that it follows quite faithfully the provisions of the directive so this is not a criticism of the way the whole thing has been framed, but it is about a lot of administrative action, about moving paper around in bodies which are statutory and although not internal to Government close to Government before a determination is made. It is not, although the title Environment Ordinance sounds positive, it is not entirely the environment ordinance that the Opposition would like to see come into this House and for which we will be pressing dealing with all environmental issues. It is a Bill that allows for an element of public consultation after a determination has been made but the public are not the leaders of the debate as to whether or not a determination should be made. I note also that this is a developing area of law, much like perhaps compliance was 10 years ago, and that the planning process is becoming more and more complex and is requiring a greater input in relation to the environmental effects, not just locally but also in the environment surrounding Gibraltar or if it is being done in our neighbouring Campo then certainly on Gibraltar. That can only be a positive development but I think we also now have to start considering whether we want to think about consolidating all the environmental imperatives that drive now a planning criteria. When somebody makes an application for planning there are now a number of requirements to deal with the environment, all of which is positive should we want to somehow prepare a code so that those who are involved in planning know exactly what it is that they have to comply with. Other than that, certainly the Opposition will be in favour of this Ordinance.

Question put. Agreed to.

The Bill was read a second time.

HON F VINET:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The European Public Limited-Liability Company Bill 2005;

2. The Fair Value Accounting Bill 2005;

3. The Maritime (Search and Rescue) Bill 2005;

4. The Traffic Bill 2005;

5. The Environment Bill 2005.

THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY BILL 2005

Clauses 1 and 2 – were agreed to and stood part of the Bill.

Clause 3

HON CHIEF MINISTER:

In clause 3 I would like to move a small amendment. In clause 3(2) it says "in Parts 2, 5 and 6 of this Ordinance Minister shall mean the Minister with responsibility for Trade and Industry". I would like that to read "in Parts 2, 5, 6 and 7". In other words, adding "7" and then the consequential grammatical changes. So it would read "in Parts 2, 5, 6 and 7" instead of as it reads at present "in Parts 2, 5 and 6".

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

Clauses 4 to 81 – were agreed to and stood part of the Bill.

Clause 82

HON CHIEF MINISTER:

There is a typographical error here in respect of the number of the form. In clause 82(1) there is a reference to "Form SE82" and that should read "SE80", just the number of the form.

Clause 82 – as amended, was agreed to and stood part of the Bill.

Clauses 83 and 84, Schedules 1 to 4 and the Long Title – were agreed to and stood part of the Bill.

THE FAIR VALUE ACCOUNTING BILL 2005

Clauses 1 and 2 – were agreed to and stood part of the Bill.

Clause 3

HON F R PICARDO:

In section 3(3) the last set of inverted commas and full stop should be deleted.

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

Clauses 4 to 6

HON F R PICARDO:

If I can just on that issue, I did not think this was a point to take at the Second Reading stage. Just to ask the Chief Minister who is moving the Bill that we are actually amending a regulation by Ordinance here which is usually not necessary, is there a particular reason for that or not? We even have sometimes amended Ordinances by regulation which is perhaps more controversial. This is obviously not controversial, there is power to do it but I just wondered whether there was a particular reason for not amending by regulation.

HON CHIEF MINISTER:

The hon Member may be interested to know that I asked the same question when I saw the draft first. It is just for the sake of implementing all the changes in one piece of legislation so that everyone can see all the implications of the transposition of this directive. But he is right, we could have excluded clause 6 from the Bill and then passed an amendment to the regulation by notice in the Gazette amending the regulation. There is no particular reason other than that.

Clauses 4 to 6 – were agreed to and stood part of the Bill.

Clause 7

HON F R PICARDO:

As part of clause 7 where we are making the amendment to Schedule 1, I noted and it is in section 35(4) where the list of expressions appears three times in the text, just a minor typographical at the end of the paragraph there is a double inverted comma, full stop, just to get rid of it.

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

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

THE MARITIME (SEARCH AND RESCUE) BILL 2005

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

THE TRAFFIC BILL 2005

Clauses 1 to 77 – were agreed to and stood part of the Bill.

Clause 78

HON F VINET:

There is a small amendment at clause 78(a), namely the deletion of the word "all" so that the line reads "advise the Government on matters affecting traffic on roads."

Clause 78 - as amended, was agreed to and stood part of the Bill.

Clauses 79 to 90 – were agreed to and stood part of the Bill.

Clause 91

HON F VINET:

At section 91(2) I am moving the amendment for the deletion of the word "any" and substituting for it the word "the", so it reads "the Government, or in the case of emergency the Commissioner of Police."

Clause 91 – as amended, was agreed to and stood part of the Bill.

Clauses 92 to 103, the Schedule and the Long Title – were agreed to and stood part of the Bill.

THE ENVIRONMENT BILL 2005

Clauses 1 to 19, Schedules 1 to 3 and the Long Title – were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that:

1. The European Public Limited-Liability Company Bill 2005;

2. The Fair Value Accounting Bill 2005;

3. The Maritime (Search and Rescue) Bill 2005;

4. The Traffic Bill 2005;

5. The Environment Bill 2005,

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

Question put. Agreed to.

The Bills were read a third time and passed.

PRIVATE MEMBERS' MOTIONS

HON J J BOSSANO:

I beg to move the motion of which I gave notice some time ago that:

> "This House notes the Report and the Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2003".

The reason for bringing the motion to the House is in order to draw attention to the reference that there is in the Gibraltar Broadcasting Corporation Accounts to the position of the pension funds of the Corporation. Compared to the preceding year's Accounts where it said that the valuation carried out by actuary showed that the fund was in fact sufficiently well funded to meet its eventual liabilities, what the last Accounts point out is that if the valuation that was completed in January 2004 and was prepared as at 1st April 2003, the scheme has moved to a significant deficit from the valuation carried in the year 2000. I believe that this in fact inevitably creates a contingent liability on the Government and I wish to highlight this position, because in fact I am probably the only one that was involved, that is in the House today at the time that this was negotiated and when the Broadcasting Corporation entered into this agreement with I think originally the scheme was sold to the Corporation by Australian Mutual Provident, and the agreement made with ACTSS in respect of this pension scheme, which was more generous than many competitors at the time, was subject to the Government of the day approving it on the basis that GBC could not guarantee that they would be able to keep the scheme going if it ever got into trouble without the Government coming to their rescue. I think it is important to draw the attention of the House and the Government to the fact that there is in fact an implicit understanding that if the Corporation is not able within its resources to make the necessary contribution, then this House would need to supplement the annual grant by voting additional funds, as has happened for other types of expenditure like equipment and so on which are not part of the annual recurrent contribution that the House makes to the running of GBC. Given that this is the first time, to my knowledge, in all the time that the scheme has been in place that this situation has materialised, one which is obviously not peculiar to GBC because in the Accounts it mentions that it arises primarily from two factors. One is the performance of the equity markets and the other is the lengthening of life spans which actuarially are then translated into a liability for more years than originally predicated and originally funded. Therefore, I felt that it was important to flag this on the first occasion that we had, but of course it was

not an urgent matter, it could have been done at any time but I have raised it when the Accounts were Tabled for that reason.

Question proposed.

HON CHIEF MINISTER:

The first thing that I would like to say of course is that GBC is not a Government Department and therefore the Government are not either statutorily or as an employer responsible for any aspect of GBC, including the solvency of its pension scheme. That said, the hon Member knows that as a result basically of the fall of interest rates, the decline in financial markets and stock exchanges over the last four or five years, almost every corporate final salary pension scheme in the United Kingdom is insufficiently funded, and these of course are variable feasts in that there is practically no pension scheme in the world that would today anyway, be solvent in the sense of having assets to pay all of its liabilities if it were ended today. What happens is that the asset value of pension funds rise and fall usually with the markets for the assets in which they are invested, be it stock markets or property markets or whatever they are. Certainly, if the pension scheme of GBC were wound up today, if GBC were being liquidated today, there would be insufficient assets in GBC's pension fund to meet all its obligations, but that is true of almost every company quoted on the UK Stock Exchange. It is indeed true of almost every funded Governmental pension scheme. In Gibraltar the Government's Occupational Pension Scheme for the Civil Service is not a funded scheme, so this issue never arises because in effect we vote each year whatever it costs to pay that year's pension liability, but if we did have a funded pension scheme it would be under-funded in the same way as the GBC scheme is under-funded, because that is true of all schemes. So the Government certainly are not going to allow the situation where employees of GBC who retire are unable to collect the pension that they had expectations to retire, that is not the Government's position. Having first said that it is not the Government's statutory liability, the Government do not treat and should not treat GBC as if it were a Government Department or as if the Government were the employer of the staff of GBC. So the Minister will now report to the House on what is happening in this respect, but certainly things will be done but it will not be the Government writing a cheque to keep the GBC pension fund at whatever capital value the actuary from time to time says it should be, because what does that mean if markets rise and the pension scheme becomes over-valued, does that mean that they will return money to the taxpayer? So it is not quite as simple as just saying every time there is an actuarial valuation the taxpayer should just write a cheque for £750,000 to top up the asset value.

HON C BELTRAN:

I just wanted to add to what the Chief Minister has just said that GBC is indeed currently engaged in discussions with Government in order to find a way forward, in as was previously mentioned is a very common position for Plc's in Europe generally to be in nowadays, in respect of schemes based on employees' final salary. I also just wanted to point out one more fact, which is in fact included in the report and which I think the Opposition Member has not mentioned but I think is of interest. That is that for the first time the actuary has used a different approach to the valuation of the scheme, I am not an accountant but what is known as the market approach, but what is interesting in this is that according to the actuary this approach whilst providing a realistic assessment of the funding position of the scheme at the valuation date, nevertheless it is acknowledged by the actuary that there is a greater risk of volatility in results at subsequent valuations. Indeed I can say that we have noted that over the last 18 months since the report came out, the shortfall has indeed decreased by 25 per cent, it is better by 25 per cent. So this new approach also has signalled something which is of course important that we can easily change in a matter of months.

HON J J BOSSANO:

I think one of the things in looking at the accounts is, if we look at the 2002 set of accounts, we find then that the contribution charged to the annual expenditure, the recurrent expenditure of GBC went up in 2002 from £86,000 to £94,210. That was the year before the fund was found to be running into a deficit and heading for a deficit, because in fact what the 2002 Accounts says is that at the last valuation the actuaries concluded that the scheme's assets were £2,392,000 and that this was estimated to represent 100 per cent of the benefits accrued to the members. So therefore, at the time that they increased the contribution from £86,000 to £94,000 it was against the background where the assets in the scheme were deemed to be sufficient to cover 100 per cent of the benefits, there was no surplus and no deficit. The following year we find that the actuary now tells there is a significant deficit, although this is not quantified, and yet the contribution going the second year into the scheme, when there is a deficit as opposed to the previous year but there was 100 per cent cover, is £92,671. That is to say, they put in £400 more the year they ran into a deficit as opposed to the preceding year when they put in £8,000 more when it was running well. So it seems to me that if we look at those figures then the amount of money that we have voted in this House, for example in year 2002 compared to year 2001, included an additional £8,000 for the contribution to the pension fund because that was included in the recurrent expenditure of the Corporation. So effectively, in the bid that the Corporation makes as to the assistance it requires from the House, which of course the Government bring to the House in the Budget but it is the House that is providing the money, there is already a reflection of the level of contribution that the fund requires. Therefore, I am glad to learn that there is discussion going on between the Government and the Corporation but I would venture to suggest that it is probably a good idea not either to try and wipe out the deficit by making a big lump sum payment because part of that may be recovered from an improvement in the market, but to perhaps review what is a more realistic amount to be putting in, in the light of the latest accounts and the fact that in the year when things got worse the contribution actually went up by less than in the previous year is most peculiar. Given that it is a contribution linked to salaries, a £400 increase in £96,000 is a miniscule percentage increase which would not even reflect the annual salaries review. I commend the motion to the House and I am grateful for the indication from the Government that they are conscious of the need to address this issue.

HON CHIEF MINISTER:

Just on a point of order, are we voting? The motion simply actually notes the Report so I mean the House certainly can note the report but I am not quite sure what it is, I am happy to vote in favour of noting the Report.

HON J J BOSSANO:

I believe in the past when there have been motions noting something, it has been considered by the Chair that a vote was not required because by talking to the motion we are in fact taking note, which the motion requires.

The Report and Audited Accounts were noted by the House.

HON J J BOSSANO:

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

> "This House notes the Gibraltar Health Authority Audited Accounts for the year ended 31st March 2003".

Mr Speaker, the point in the accounts that I want to bring to the attention of the House and hopefully get some kind of explanation is the item that has appeared this year, which has

not been there in preceding years, which has an investment account for the new hospital which shows that there was a capital account for the new hospital which had receipts from the Royal Bank of Scotland of £30.5 million and payments of just under £13 million in respect of work conducted on the building, and that left a balance of £17.5 million which is where the new investment account comes in. That balance of unspent money was, from what I read in the Audited Accounts of the Government as opposed to the ones of the Authority, was then reinvested by being placed on deposit with the Royal Bank of Scotland. Given that the understanding that we had of the nature of the transaction was that this was not the Health Authority borrowing money from the bank but in fact the Government selling the building to the bank and then the bank owning the building, financing its conversion and then renting it to the Health Authority, I have difficulty in reconciling how it is that a building owned by a bank on which the Health Authority is paying rent is being refurbished by the Health Authority, we see here as making the payments, out of funding provided to the Health Authority by the bank, well what are these receipts? Is this in the form of a loan, an advance or what? In fact it is not that the Health Authority cannot borrow money of course, because there are borrowing powers in the Gibraltar Health Authority Ordinance which we introduced, which allow the Health Authority to borrow whatever money it needs to borrow long-term or short-term in order to carry out its functions. So the capacity on the Health Authority to borrow money is not in question and in fact, in my judgement there was nothing to stop the Health Authority doing it this way if they had wanted to do it. In fact when I asked for more information as to the details of the arrangements, I remember that what the hon Member said was that given that this was not debt that we were incurring, he did not want to Table it in the House as is normal when there is a loan agreement that the Government Table it in the House and the Members of the House and indeed members of the public are then able to look at it, but that it was a very voluminous document and that he would see if he could make some sort of summary and let us have a copy. In fact, it must be very voluminous because he still has not managed to do a summary, he is probably wading through all these volumes. But it seems peculiar because given that the rent is for the building and therefore it is not related, it is not like a loan on which there is a drawdown and then one pays all the amounts that one is using, indeed there is a reference in the Audited Government Accounts showing that the deposit back of the unspent balance of the £30 million with the Royal Bank of Scotland generated an interest payment to the Health Authority, which presumably appears as recurrent revenue somewhere else, of £100,429.50p. So we also have something that is an unusual treatment which has not materialised before and I do not know whether this is something that is going to be peculiar to the hospital since the capital account simply talks about the new hospital, and that is that capital works which were funded by the Government and have already been charged previously and voted by the House in the Improvement and Development Fund, now appear in this capital account as Health Authority revenue and expenditure. Well, the money was spent before this financial year, it is very peculiar that we vote the money in the House, it appears in one year's annual accounts and then in the following year we have an item which says effectively on paper what this indicates is that the Improvement and Development Fund made a grant of cash to the Health Authority, that is the only possible way to read it because it is shown as receipts. Then it has expenditure which was the payment of capital works on the new hospital funded by the Gibraltar Government as if the Improvement and Development Fund had given the cash to the Health Authority prior to the money being spent, when in fact what happened is that the money was spent directly by the Government in the first instance in a previous financial year. So it is not an accounting treatment that I have seen before in the accounts of the Health Authority and I would welcome an explanation.

HON CHIEF MINISTER:

The Leader of the Opposition is right to this extent, and that is that the Accounts of the Gibraltar Health Authority as such should have been limited to the audit certificate and the first two

pages of it, the third page headed "Gibraltar Health Authority Receipts and Payments for the year ended 31st March 2003 Capital Account Investment Account New Hospital", should really not be there at all. It is a statement that somebody has obviously put together, it is really a cash flow statement of monies that have been spent in relation to the new hospital but actually do not form part of the accounts of the Gibraltar Health Authority at all. The Gibraltar Health Authority, as he correctly speculates in his address just now, and indeed as I have told him before as he himself has noted, the Gibraltar Health Authority has not borrowed money from Royal Bank of Scotland or anybody else. The Health Authority is paying rent for the occupation of a hospital upon which somebody else has spent several tens of millions of pounds smartening it up and putting new equipment in it and developing it. So that page 3, obviously was put there by somebody in an attempt to give as much information as possible, but actually does not meaningfully form part of the handling of GHA monies. In other words, it forms no part of the GHA's own account which should be limited to the GHA's revenue and the GHA's expenditure. These things are neither GHA revenue nor GHA expenditure and I think a more proper presentation of the accounts would simply have excluded page 3 altogether. I am sorry that we have overlooked giving the hon Member a summary of the PFI structure which would have enabled him to understand exactly how it is structured. I do not remember promising to do what he says I promised and I do not know whether he was using the word casually promise or I just said I would, but certainly I will now have him written to, if not myself I will get somebody else to write to him, setting out the structure of the PFI system so that he can see how the PFI deal is structured and how it does not include a loan by the RBS to the GHA in the context of this account. The structure of the PFI is a lessor funded improvement to the hospital, capital investment in the hospital, repaid through rental payments for the subsequent use and occupation of the hospital by its tenant the Gibraltar Health Authority. I will have the hon Member written to, so that in future either he does not need to ask questions or he can formulate them in the context of the structure as it is, because there is no reason why the facts should not be in front of him for him to know and to formulate, and I regret if indeed there has been a previous undertaking to provide that summary, I regret that it has not been provided and I will see that it does get provided now.

HON J J BOSSANO:

I have to say I am not convinced by the explanation that he has given us as to why that is there on the basis that somebody wants to put more information than is required. It is quite true that the page from which I was quoting is headed "Receipts and Payments Account" but so is every other page. That is to say, every single page in the Accounts is headed "Receipts and Payments Account", and the Principal Auditor makes a reference to the figures that I have quoted in Note 6 of the Accounts and says "Capital Account New Hospital". The receipts exclude accrued interest in March 2003 amounting to £100,429.50p received in the following financial year. Now how can we be told that this is just a sort of cash flow explanation in order to give us more information than is required by the Statutory Accounts, when in fact the Principal Auditor that has audited these accounts actually tells us that there was a receipt of interest on money that the Health Authority had invested in the bank, which will actually appear in the 2004 Accounts. That is to say, after 1st April 2003 and in the financial year 2003/2004 we are going to see as part of the income of the Health Authority £100,000, which is the return on the money that it has lent to the Royal Bank of Scotland, which it should not have had to rent because it should not have borrowed it in the first place. I am afraid that point has not been addressed and I am afraid that the explanation that this is not necessary does not fit in with the fact that the auditor actually claims to have audited these accounts as well.

HON CHIEF MINISTER:

They are two things which in fact are not incompatible as he will see when he gets the outline. He has got to bear in mind that when he moves a motion saying that this House notes the accounts of the GHA, we have no notice of the particular issue that he wants to describe, which he wants to debate and therefore I cannot come armed with chapter and verse to respond to a detailed accounting enquiry. From my recollection of the PFI scheme it was envisaged without it being a loan, this is why I said before there was no lending, it was envisaged that there would be this commitment by the PFI finance provider, the Royal Bank of Scotland, to make funds available for…. In other words, in effect the Royal Bank of Scotland has paid for the refurbishment of the hospital, and this has got to be paid back by way of increased rent in exchange for a 21 years or whatever it is lease of the hospital. Of course the Royal Bank of Scotland did not want to stand in Gibraltar actually fixing the hospital, so what it said to the Government and the GHA is "look, here is the money, it is not a loan to you because this is my obligation (Royal Bank of Scotland's) to do the hospital because I am going to be the landlord and you are going to be my tenant. Here is the money, go and do the hospital but you can only use the money for the hospital obviously". That is the arrangement so it may well be that subject to the drawdown of that money, there was a time when there were monies in the hands of the GHA without it constituting a loan to or a borrowing by the GHA, upon which the GHA might, I am not aware that it had earned interest but it appears from what the hon Member has said that that money was earning interest for the account of the GHA, because eventually the GHA was going to have to pay rental at a level that reflected that expenditure by the Bank of Scotland. I have not seen or studied personally the exact language that he has quoted from the auditors report but from my distant recollection of the legalistic structure and the cash flow arrangements of the PFI, it would not surprise me that monies had been placed in the hands of the GHA with the GHA being able to raise interest on it, that is what the hon Member can see from the papers in front of him has happened, without that meaning that there has been a loan or that there has been no debt, there has been no borrowing. The whole purpose of the PFI structure is that it avoids public debt borrowing, that is the whole reason for doing it that way. It would not work, it would not do the trick if it was in effect borrowing. It was carefully structured to avoid it being a debt. One makes no secret of that. Gordon Brown, when he borrows billions and billions of pounds of PFI, it is just a way of raising capital without increasing the public sector borrowing requirement. There is no secret to the fact that that is what Private Finance Initiatives are partly intended to do, although there has also got to be a sufficient amount of risk transfer to qualify under Treasury guidelines for that purpose, but the principal reason is that it enables governments to fund capital projects without itself having to go to the bank, borrow the money and add it to the public debt figures. That is clear is it not?

HON J J BOSSANO:

In the light of that further clarification, I will wait until I have the documentation that he has promised.

The Audited Accounts were noted by the House.

HON F R PICARDO:

I have the honour to move the motion that stands in my name that:

> "This House grants leave for the introduction of the Rehabilitation of Offenders Bill 2005, a draft copy of which is attached to the motion itself".

Mr Speaker, that is the procedure provided for in the Standing Orders of this House for the introduction of legislation other than by the Government. Rule 25 of the Standing Rules of this House actually provides that any Member may move for leave to

introduce a Bill subject to two sets of criteria. It is the leave that is required in that rule to introduce a Bill for the Rehabilitation of Offenders Ordinance that I beg this House for today. The Ordinance proposed is designed to enable individuals who have committed offences and who have not reoffended to have a conviction considered spent. In other words, that the relevant conviction can not subsequently be referred to. That is the basic thinking behind the Ordinance, namely that punishment and conviction should serve a rehabilitative purpose principally and that I submit cannot be controversial. In any civilised society it is the rehabilitative aspects of punishment that matter. That has been the position in the United Kingdom where the Rehabilitation of Offenders Act has been in place since 1974 and has been substantially amended since it was passed. That is the source of this Bill, the Act in the United Kingdom as amended up to now. Indeed, statistics in the United Kingdom monitoring the Act, suggest that over a quarter of the working age population of the United Kingdom has a previous conviction and that employment can reduce re-offending by between a third and a half. I cannot vouch for those statistics but it makes sense to me that that should be the case. Having said that, a criminal record can obviously seriously diminish employment opportunities. The same is certainly true in Gibraltar in respect of the curtailment of employment opportunities of those who have previous convictions. It is for that reason that the Bill is introduced, to help restore the reputation of a person who has been convicted of an offence but has since stayed on the right side of the law.

The Bill for the Ordinance will specify the periods of time during which an offender is required to disclose previous convictions, including when applying for a job. For example, if someone is sentenced to up to 30 months or less in prison they will be required to disclose their conviction for a period of up to 10 years from the date of their sentence. After those 10 years the conviction will become spent and would no longer need to be disclosed. The details of those specific sentence periods are set out in Table A of the Bill at section 4. There is, however, provision for an exceptions order to be made by the Minister for Employment setting out that these limits of disclosure should not apply. In the UK such an order has been made to cover posts that include a particular risk. For example, where an individual is making an application for a job that includes work with children or with vulnerable adults, or which involves consideration of national security, the administration of justice or financial services. When making applications for posts such as those, the Ordinance will not enable the applicant to rely on its provisions so as not to disclose a previous conviction. I think that in drafting the Bill it was proper to put in the Gibraltar context that power in the hands of the Government because this is not a prerogative matter, and the right Minister of the Government to have that power in his hands is certainly I think, because of the purpose behind the Bill, the Minister for Employment. The reason why I mention the prerogative will become clear later on.

The legislation is designed to ensure that the period of rehabilitation, that is the period before a person can consider his conviction spent, should fluctuate not based around the offence that has been committed but the period of sentence that is imposed in respect of any particular offence. For that reason there is no reference in the Bill to specific periods applicable to particular offences, except for the reference that hon Members may see in section 1(6) to sexual offences with minors or the offences under sections 103 and 104 of the Criminal Offences Ordinance. I will come to those later on. For example, looking at the table in section 4, a person convicted of an offence and sentenced to imprisonment for more than six months but for less than 30 months cannot consider their sentence spent until 10 years after the relevant conviction, and then only if he has not re-offended in that period. If he does re-offend then his slate is simply not wiped clean until the next period has expired. The periods provided for in the table are halved in relation to offenders who are under the age of 18. In any event, serious offences where the sentence exceeds 30 months or is a sentence of life imprisonment, however long it is recommended that an offender should serve that sentence of life imprisonment

even if it is less than 30 months, are outside the scope of the Bill. Those offences would never become spent.

Provision is also necessarily made for provisions in respect of Services disciplinary proceedings which the UK Act covers and it is right that our Bill should also cover given that we have a lot of members of the Services in Gibraltar, especially in the Gibraltar Regiment. In the UK all of those Service convictions or Service proceedings would arise under the Army Act. In Gibraltar they arise under the Gibraltar Regiment Ordinance although there is in that Ordinance cross-reference to the Army Act of 1955, and that is very specific, our Ordinance still refers to the Army Act of 1955. For that reason the second paragraph of the Schedule to the Bill pursuant to section 5(6)(b) refers to those sections in the UK Army Act.

The effect of rehabilitation is dealt with in section 3 of the Bill which provides that a spent conviction shall not be referred to a court, and a person shall not be compelled to answer questions about spent convictions. So in an application for employment in an application form, if an employer says "please fill in all your previous convictions, or please tick if you have previous convictions and provide the details of those convictions", if the rehabilitation period has passed since the sentence was imposed or since the conviction occurred, then the offender is able to tick the No box or simply not give any details and not have his application for employment prejudiced by that which may have happened 10 years before.

Section 4 provides for the period of rehabilitation of offences in its Table A, as I have said being dependent on the sentences of imprisonment imposed and then the following sub-sections of section 4 and in the Table deal with other types of offences. So going through them, if there is an absolute discharge, that becomes spent six months from the date of the conviction. If there is a conditional discharge, a voluntary binding-over or a disqualification, those are active only for the period of discharge and are spent thereafter. If there is a probation order, if the offender is over 18, it will become spent five years later. If the offender is under 18 it will become spent half the time later, two and a half years later. If an attendance centre order is made the conviction is spent one year after the date on which the order ceases to have effect. Offences punishable by confinement are spent five years after the dates of conviction or two years after the date when confinement ceases, whichever is the longer. The Minister, again it would be the Minister for Employment, has power by order to amend these periods if he should consider that appropriate without having to come back to the House.

Section 5 of the Ordinance deals with what happens if different sentences are imposed on an offender in respect of different convictions. Then obviously the longer sentence, which shall be the relevant one in determining the rehabilitation period. Section 6 provides limits on the effects of the Ordinance. There does in this section need to be a reference to the powers of the Governor, given that he retains the power to pardon in our Constitution and that section goes on to make some more sensible exceptions to the ambit of the Bill in respect of legal proceedings, where it may still be necessary or appropriate for references to be made to convictions in respect of a witness which have happened earlier. Section 7 deals with the effect of this Bill upon actions for libel or slander, in which the plaintiff complains of a reference to a conviction of his which is spent by virtue of the Bill. There, if the publication complained of took place before the conviction became spent, then sub-section (2) excludes both sections 4(1) and sub-sections (3) to (7) from application to the case and the result would be that the defendant to such a libel action will be able to leave evidence of the conviction, and the law governing the case would be unaffected by the Bill. In any other case sub-section (3) permits the conviction to be proved for the purposes of a defence of justification, fair comment or privilege, but the law governing those defences is modified in two particularly important respects. First, a defence of justification can be rebutted by proof of malice, and secondly, if any evidence is ruled inadmissible under section 4(1) which has been referred to in a report for judicial proceedings, then the privilege attaching to such reports is not available except for law reports and other

educational, scientific or professional publications. That is dealt with in sub-sections (6) and (7). Section 9 is putting on a statutory footing what is already to a very great extent the practice of the Royal Gibraltar Police's Records Department and Her Majesty's Attorney General's Chambers when dealing with these issues. Section 10 allows the Minister to set an earlier date for the commencement of the Ordinance than that already provided.

If the House gives leave for the Bill to be published and have its first reading, a minor numbering amendment will be necessary in respect of sections 9 and 10, but as obviously the Bill has not yet been published it has only been circulated, we are at an early stage in order to do that minor amendment. I sincerely hope that we can agree across the floor of the House that this Bill proceed through its stages in this House. I have mentioned this initiative before and I have seen it met with positive nods from Government Members, especially those who have or have had responsibility for employment, but of course I do not hold them to their nod. Finally, I would draw the House's attention to section 1(6) of the Bill. That section is entirely home-grown. It excludes from the application of the Act and from potential rehabilitation, offences which relate to sexual offences with minors or rape or the procurement of rape. I could not in conscience bring a Bill to this House that might enable convicted perpetrators of such acts the opportunity to rehabilitate themselves. Some slates can never be wiped clean. When the Government bring legislation to this House, the Opposition supports it unless we have a serious policy difference between us. I do not believe that there can be a serious policy difference between us in relation to the subject matter of this proposed legislation. Therefore, in every respect, I pray that the House support the motion and that the Bill be published with the support of the whole House so that it can be read a first time as provided for in the Rules.

Question proposed.

HON CHIEF MINISTER:

The hon Member said that in any civilised society the purpose of punishment was rehabilitation, and said that this had been the case in the United Kingdom since 1974. Well, different people have different views about what the purposes of punishment are for but in any event I do not accept, and I am sure he did not mean to imply though it is almost implicit in his remark I am sure it was an unintended implication, that the fact that we have not had this Rehabilitation of Offences legislation since 1974 does not mean that we have not been in a civilised society. Nor by the way, would I regard the United Kingdom as the benchmark of civilisation for such purpose. I think one need only look at social models and social problems in Gibraltar and in the UK to justify the conclusion that Gibraltar should not always follow practice in the United Kingdom, and simply to say that because it has been done in the United Kingdom, civilisation must require that we do it, I think is not an approach that we should fall into the trap of pursuing. I will not go into the detail of the Bill that the hon Member would like to move in this House because we are not going to vote in favour of allowing him to move it, and he should not interpret this to mean that we are necessarily opposed in principle to Gibraltar having some sort of rehabilitation of offenders legislation. However, we are voting against it for a variety of reasons which I am happy to explain to the hon Member.

We are voting against his motion to be given leave to bring the Bill himself at this stage, for a variety of reasons which I am happy to explain to him. Firstly, a Bill of this sort should not be moved without a process of consultation. The Government would not move such a Bill or publish such a Bill without having engaged in a process of consultation with the judiciary, with the Bar, with social workers, with any number of society at large. Certainly we do not think that it would be appropriate to grant leave to move such a Bill without there having been that degree, or indeed any process of consultation with any social partner or stakeholder in the community, on the provision first of all on the principles of having such a legislation but secondly, on the

detailed content of such legislation. Secondly, even if we were minded to support the introduction of such legislation, it may not be in the terms of the detail of the Bill which I recognise as mainly drawn or almost entirely drawn from the UK version, but that does not mean that it is the version that we would want to put in here. We would almost certainly want to have some differences, for reasons that would emerge if the House ever came to debate this Bill at Second Reading, if it were to be moved. Thirdly, we believe that such legislation if it ever found its way onto the Statute Books, should be as the result of a Government Bill, being as it would be if it were adopted, a pretty fundamental piece of administration of justice and social engineering provision. So it would not get onto the Statute Books with Government support in that precise form anyway, but any legislation that would get on the Statute Book because it enjoyed Government support on the subject, would be quite a radical step for Gibraltar and would therefore more logically be a Government Bill.

So for all of those reasons we do not consider it appropriate to vote in favour of allowing the hon Member to move the Bill himself or at this stage, but I am happy, if he wants, which I think is implicit from the fact that he has moved this Bill, that he would like the Government to consider whether such a Bill would be worthwhile to consider the policy implications and do the consultation, and at least for the Government to decide whether they want to move such a Bill. We have had a look at the detail of the Bill but frankly we have not had long enough to make policy decisions about it and certainly not to conduct a public consultation process, so I can agree that the Government will consider whether Gibraltar should now have a rehabilitation of offenders Bill and I will let him know what conclusion we come to on that, but we cannot vote in favour of allowing him to move this particular Bill at this particular time in this particular way.

HON J J BOSSANO:

I think that there is something that needs to be addressed whether it is addressed as appears to be partly through this Bill or that is to say, totally taken care of by this Bill but the Bill goes beyond the point that I want to make which I think is important that something should be done about. I must say I was not aware that this existed in the UK for as long as it appears to have existed, but one thing that has long been a problem in Gibraltar, throughout this period and without anybody suggesting that we could put it right this way and which I am sure some Government colleagues of the Trade Union movement will remember, has been the discriminatory treatment of Gibraltarians which continues, and is probably getting worse, which exists because employers are able to go back to the date of birth of a Gibraltarian in deciding whether they make suitable employees or not, and they cannot do the same thing for the thousands that arrive in Gibraltar from many of the 25 Member States or anywhere else, and come here and their past history is checked to the degree that it is possible and normally it is not possible to check it very much. I can tell the House that there are cases of dismissals of Gibraltarians from construction companies, which is very relevant to the situation we are facing with contracting out, where the MOD because somebody in his thirties was found guilty of having possession of one milligram of marijuana when he was 16, considers that that person is a security risk and will not give clearance to work on MOD premises. Therefore, the contractor terminates the employment on the grounds that he cannot use the employee to work on the MOD. Now, independent of this although this in fact touches upon that issue, if there was some way of addressing that point I would ask the Government to look at that specific point as something that really needs to be dealt with. I must say that that is something that I have not been able to find an answer to in all the years that I have been involved with situations, other than effectively the Union using its industrial muscle to persuade the employer to change his mind.

HON F R PICARDO:

I am grateful that the Chief Minister has taken a positive attitude in terms of the subject matter of the proposed Bill. I am grateful for that for the reasons actually that my Colleague Mr Bossano highlights, the fact that many Gibraltarians are finding that they either find themselves unemployed for one reason or another and cannot get a new job, or they cannot enter the job market in order to start the process of reintegrating themselves into society when they come out of a prison sentence or after they have been convicted. I think it is fundamentally important to have put this squarely in the political agenda and I am very grateful to the Chief Minister to say that he is prepared to start the process.

HON CHIEF MINISTER:

The Leader of the Opposition and now his Colleague mentioned this business about people having difficulty in effect in reintegrating into society because of this problem. The Government are acutely aware of that and have for some time now been operating a sheltered employment scheme and a scheme of assisting such people in finding jobs when left to themselves they would normally have the door shut by employers. Now, the hon Members are recommending a statutory approach to that as opposed to an administrative one. I can see that it has its values and I think that we can all agree that there are certain types of behaviour that used to be regarded as very serious and that now are regarded by society as less serious that should not mark somebody's prospects for ever. I think we can all agree with that, I think that that is a position that has to be completely uncontroversial. I think the graver the nature of the conduct, this is the point I was trying to make to the hon Member when I first answered him, the graver the nature of the conduct the more debate and disagreement there is between various opinions in any society about whether it should be swept under the carpet after five, or perhaps more years, and therefore it is for the legislators to decide. For example, he said "I have introduced into my desired Bill a homegrown because I do not think that certain types of behaviour should ever be forgiven", well, different people have different views about where that line should be drawn. Certainly if we ever get to such legislation there will have to be some pretty imaginative and enlightened debate about which are the offences that would, should for reasons of fairness and for reasons of making sure that people are not unfairly penalised for all their lives for something that they did perhaps, young people do things that they grow out of, and I think that that is right, but we will have to debate the detail of where the line is drawn. For example, he has already put the House on notice that he would draw it at a different place than the United Kingdom has drawn it. Well, other people will have similar views on different offences but certainly I agree with the sentiment that it is not right that any employer in Gibraltar, indeed the Government do not, we have a policy that offences should only be taken into account when they are in respect of something relevant to the nature of the job being applied for. So if somebody has a conviction for theft, let us use a real example. Hon Members should not interpret this to be wanting to raise the subject, but if somebody has a conviction for their being involved with tobacco smuggling when that activity was going on, that is not a reason why he should not be employed now as a bricklayer or as a carpenter. So the Government themselves do not apply the policy that a conviction in respect of something irrelevant to the nature of the job should be a bar to getting the job. Certainly the Government would not be happy that others are using that as a pretext for an excessively tough industrial relations attitude. So certainly whether we do a wholesale rehabilitation of offenders legislation or not, it may be possible to do something in relation to this more narrow point which relates to the extent to which employers are able to take this into consideration when selecting people for employment or not. Of course that is much narrower than saying that no one can refer to it at all for any purposes. One thing would be to say to an employer "this is not a reason for dismissing an employee", that is a much narrower point than saying it is a criminal offence for anybody to refer to

the fact that I had a conviction when I was 16 years old. It is a much narrower issue.

HON F R PICARDO:

I am grateful to the Chief Minister for that clarification. In effect what he was telling us when he was initially replying to my remarks is that the Government are running a scheme which is not legislative, which intends to assist people to reintegrate themselves into society. What is happening there is that some employers are bearing the brunt of assisting the Government in that respect and others are able to get away without forming part of that process or that project whilst if we put it on a legislative footing it will apply to everyone who is operating in Gibraltar. I entirely take the point of being subjective in determining where the line is drawn. I think that is why the UK scheme has been drafted in such a way that it is the sentence and not the type of offence that deals with where the line will be drawn in respect of a particular offender. So one of the issues I suppose the judge now takes into consideration when sentencing someone to 29 months or to 31 months, is well if I sentence him to 29 months in five years' time he is off the hook. If I sentence him to 31 months then he has got to wait 10 years before he is able to say that he has no convictions. I think that is important.

I also want to address one particular point which is not about the substance of the Bill. I think it is very important that we have dealt with this Bill in this way and that this issue is now, I am grateful to hear the Chief Minister say, on the agenda and that he will start the process at least of looking into whether it is going to go forward and become a legislative proposal of the Government. It is the second time in the past four years that this time of motion is brought. The last time was in relation to the Dangerous Dogs Ordinance and the attitude then of the then Minister for the Environment, who is still in this House although the individual that moved that Bill from my party is not in this House, was that it was the Government that were the legislators and not the Opposition. I think it is much more positive to remember that all of us in this House are legislators.

HON LT-COL E M BRITTO:

Can the hon Member give way on a correction of fact? The argument that I gave was that the Government were the legislators and that the policy that we were going to apply to dangerous dogs was different to the one that was in the proposed Bill, and that is why we wanted to carry our own legislation.

HON F R PICARDO:

I am grateful to the hon Member, he has actually confirmed that he said that the Government were the legislators. Well in fact, all of us here are the legislators, the Government as the Executive has the right to move Bills without taking the leave of the House, and if it needed the leave of the House it has got the votes to get that leave of the House when it is necessary. But we must always remember that, this is the legislature not just the Chamber for us to score party political points off each other, and when we have the opportunity of doing something positive like this I think, to use the Chief Minister's own words, social engineering that we should be helping each other with.

HON CHIEF MINISTER:

The hon Member knows that in that other country where they are so much more civilised, it is almost unknown for Private Members Bills to reach the Statute Book, so I would not wish him to give the impression that our Parliament is deficient in that it is difficult for Opposition Members to promote legislation. In the Mother of all Parliaments, as they like to think of themselves, it is almost impossible. Indeed I think they have a raffle once a term to see who has the right to move a Private Members Bill

and then it gets a five minute hearing and gets voted down at the first opportunity. I think I made it clear to the hon Member that if the hon Member makes legislative suggestions, even if we do not want it to be done by them in a particular way, for example in this case for the reasons that I have given, look we are perfectly happy to be prompted and if somebody makes a decent suggestion, gives a decent idea, the Government do not have a reason that pride forbids us from considering simply because somebody else has had the idea and not ourselves, that is not the Government's position.

HON F R PICARDO:

I would now simply add this. Far be it from me to suggest that the country that invented colonialism is the most civilised place in the world, that is far from what I was suggesting. That should not be implied into any of my remarks but I would just finally use his last remarks to remind him also that one of the other issues on which I wish to prompt his Government, is the Police and Criminal Evidence Act of 1984 and whether changes in respect of our Criminal Procedure Ordinance are going to be made to take into account of the parts of that Act which have worked well in the United Kingdom, and in respect of which I know he has told me before the ball is already rolling for the Government to consider what changes it will bring. So I look forward to seeing legislative proposals if any in that respect also.

Question put. The House divided.

For the Ayes:
The Hon J J Bossano
The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon F R Picardo
The Hon L A Randall

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

The motion was defeated.

ADJOURNMENT

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

MR SPEAKER:

I have received notice from the Hon Mr Bossano who wishes to raise a matter of public importance.

HON J J BOSSANO:

As we said in the notice this is not a substantive motion, we are moving a motion on the agenda and which is limited to 40 minutes. Really, the views of both sides of the House have been absolutely clear, they have been made clear in public and outside the House, but this is the first opportunity since the announcement was communicated to the Unions by the Commander British Forces where we can address the issue collectively. The first thing I want to say is that we think that the legislation that the Government have indicated they are willing to bring to the House, assuming it requires primary legislation and not something that is done by regulation, in our view ought to be done as quickly as possible because given that it is intended to be a deterrent and that it is intended that it should be taken into account by prospective bidders for the work, then obviously

once they bid that effect will not be there other than they may change their mind after having bid and withdraw. But I would have thought it was preferable that it should be done very quickly. In that context, since we are adjourning sine die, what I want to offer the Government is the opportunity if they should be in a position where they wish to reconvene the House specifically to deal with that issue without necessarily triggering the whole question of the agenda and Questions and Answers and so on, that we would be quite happy to cooperate in order to do that. Like we considered such an option at the time when we were meeting specifically for the motions on the 300th Anniversary, we agreed that we would not use that occasion as a working session for Opposition driven business.

That was an important element of what I wanted to bring to the notice of the Government in this adjournment motion, other than that I think it is an opportunity to send a very clear message to the workforce and their Unions, in terms of the backing they can get from their elected representatives, and a very clear message to the Ministry of Defence in Gibraltar that continues to put out the version that because the military head of the MOD in Gibraltar has his orders from the Secretary of State for Defence and has to carry them out, the rest of us must all kowtow to that military hierarchy and do likewise. Well the answer is quite simple. I dare say the poor man who has been landed in this job with even less notice of the workforce, wished he had been sent somewhere else and probably has two choices. Either he hands in his resignation or he does as he is told. Those of us who have dealt with people in the military establishment in Gibraltar over many years in terms of industrial problems, know that there on many, many occasions there have been many individuals at quite senior levels who did not agree with the view that was being promoted from London, and who privately made no secret of their disagreement but expected understanding from the Trade Union side that they had really no choice. I think although the message was put in a particularly brusque way by the Commodore when he met the Unions, “this is what is going to happen and I have my orders and I have to carry them out”. Effectively that is the way the MOD works, they give orders and people carry them out. Well our view is that they can give orders to the people that they have got in uniform but they cannot give orders to the people of Gibraltar, and they certainly cannot give orders to the Parliament of Gibraltar or to the Government of Gibraltar. Consequently we in Gibraltar, as a separate country from the United Kingdom, just like we have been saying in relation to the proposal for a Private Members Bill by my hon Colleague, may have different views of what is the right and the wrong way to do things, or what is permissible or not permissible in terms of industrial relations, or what is permissible or not permissible for employers to do with their employees. We then lay down the rules and the parameters within which the MOD has to operate in Gibraltar. Really they only have one ultimate point to which they can go, and that is if they are not prepared to work in Gibraltar as Gibraltar collectively decides through its elected Parliament, then they have to decide whether they want to be in Gibraltar at all. We have to decide whether we want them to be here badly enough to be able to give them a blank cheque to do what they like. I think this is as serious and as important as the issue of the obtaining of equality of wages with the United Kingdom for our workers in the Ministry of Defence, which was not only a matter of economics and of the standard of living of our people, but also a matter of our fight against colonialism where we had people side by side being discriminated against purely on grounds of nationality. Probably, in 1974 when this was going on, they were already in breach of European law by treating two employees differently with different pay and conditions, doing exactly the same type of work. We had a similar issue when they tried, in fact to foist on us the conclusions of the PEIDA Study in the Naval Dockyard closure which clearly were aimed at the parity standard of living of the workers of Gibraltar, has to be brought down or has to be frozen to allow the hinterland to come up because there will be a day when that frontier will open and then the competition means that it will no longer be terrible to have parity with England. Well the Government of Gibraltar continue to be committed to parity with the UK and so does the Opposition, although there are now voices questioning it in Gibraltar. Therefore, I do not think we can permit the Ministry of Defence to actually wriggle out of the

commitment that it has to maintain parity of pay and conditions by this device of substituting itself as an employer by somebody that will come and replace it paying less. Although they may not be able to pay less, to start off with under TUPE it can only be that they will pay less at a later stage or we will be in continual battles every year over pay and conditions in the Ministry of Defence, with the repercussive effects that that would have on the rest of the community. So it is on the basis of sending a very clear message, first to the Government to say that we want to cooperate to bring this proposed legislation as quickly as we can in, we want to test that it will do what it is intended to do. Then if it does not do it then clearly there are other things that we will want to be putting forward. Secondly, to the workers in the MOD and their Unions, that they have got a right to look to this House for support and they can expect to get it, and to the Ministry of Defence and to the Secretary of State for Defence and the British Government, that it seems they enjoy putting themselves in a situation where it sometimes looks as if we are the colonial power and they are the colonials because we constantly defeat them. Since they seem to have a masochistic wish to do this, they are going to have to experience it once again.

HON CHIEF MINISTER:

Yes, as the Leader of the Opposition says, both sides of the House have placed on the record in public, that is to say the Government and the Opposition have placed on the public record their positions on this matter, and the similarities and the differences in those positions are also on the record. There are two aspects to this matter. One is the MOD objective of contractorisation of labour. I call it contractorisation of labour by the way, because for a reason that will become clear in a few moments time, to me this is not a contractorisation of a function or an industry, it is a contractorisation of labour. In respect of that objective the MOD can argue that it is not an illegitimate objective in principle for them to pursue because after all they do the same in the United Kingdom. Well, I have spent many years explaining to every UK Parliamentarian military officer above a certain rank and Minister, that the fact that some policies are reasonable or may be reasonable in the UK, even if they are reasonable in the UK, are not necessarily reasonable in Gibraltar because of a number of situations that vary. For example, if the United Kingdom contractorises the function of gardening and there are 15 gardeners in the military base at Farslane or in Aldershot or somewhere, well the next 15 gardeners are still going to be residents of Aldershot or residents of Farslane. They may be on less good terms of employment in the future but at least the jobs are for the people of the area. In a frontier town economy like Gibraltar, unprotected from European Union free movement rights, sitting next to a part of Europe that has one of the highest unemployment rates at least officially, then it is clear that there is a potential for exportation of jobs which is not the case when they contractorise something in the United Kingdom, because people are not going to come across the Channel every day in order to be a gardener in Aldershot. But they will come across the border to be a gardener in the Commander British Forces house.

So, there are differences which we have constantly urged the MOD to take into account regardless of any view that they may have that the policy objective itself is legitimate because they are doing it in the United Kingdom itself. Indeed, Geoff Hoon, when he was last in Gibraltar, the Secretary of State for Defence, acknowledged this and said that he was quite happy for the necessary efficiency savings to be effected through in-house methods rather than through contractorisation, which is why the Unions were seduced into Operation Pegasus, in which they have been doing precisely that in respect of janitorial and motor transport services. Whilst the Union is negotiating in good faith as steered by the Secretary of State for Defence, a job reduction and in-house efficiency savings package in respect of 300 of its workforce, the MOD suddenly pulls out of a hat in respect of another 300 without any consultation and without any discussion or negotiations with the Union, and that leads me to the second point. Regardless of the justification, the merit or

anything of the MOD's policy objective, it is not legitimate to go about it in this unilateralist form which we have tried to baptise "the done deal" in order to draw parallels with previous done deals. Of course it is not for the MOD in Gibraltar to decide to roll back 100 years of Trade Union practice in Gibraltar. I am not a trade unionist but as a member of the community of Gibraltar I recognise that things are done through the interaction and interface of various social constituents, and that the Trade Unions are the body with which employers, particularly official employers but all employers, negotiate the achievement of whatever objective the employer might have. Look, if it is legitimate for the MOD to simply say "well we have decided that this is what is going to happen, and it is going to happen and the only discussion that I am willing to have with you is to explain to you what I have decided, how it is going to happen and to try to hold your hand through the period of grief to minimise the number of people who have a nervous breakdown", well that is not compatible with the principle that in this community people have different objectives but that there is also a tradition of an attempt to achieve it through negotiation before having resort to any other approach to try and reach it. The MOD have completely ignored that in this case. So that raises the first issue for the Government, which is that the MOD should sit down and negotiate with the Trade Unions to see, as they have been doing in Pegasus, to see how much of their objectives the Trade Unions may be willing to agree to. That is not to say that we accept the principle of contractorisation, we have given the MOD a long list of arguments why the principle of contractorisation should not be adopted by the MOD in Gibraltar, because of the particulariaties of Gibraltar and all the differences which I have not listed but which I alluded to before. So in the Government's minds there are two wholly separate issues. One is what we think about contractorisation and about the MOD pursuing it as a policy objective. Secondly, regardless of that, this unilateralist done deal approach, this is what there is take it or leave it and it is not negotiable. That is not an acceptable way for the Ministry of Defence to do business and as the hon Members may have read in the press this morning, I am to meet with Geoff Hoon, at my request, next week to remind him of his statement that he had no idealogical obsession or commitment to contractorisation and he was perfectly happy for the necessary efficiency savings to be achieved by in-house means.

So the Government, as all Members of the House will know, have already explained their analysis of what the MOD wishes to do, have already stated that they support fully the Union policy of resistance, both to privatisation and of course to job losses because we must not just think of this as privatisation. After the privatisation will come a significant loss of the jobs that have been privatised, and it should also not be forgotten that even when they have finished privatising the 600 jobs that they want to privatise, and when the contractor has finished after the TUPE 12 month period is over, reducing whatever number of those jobs he wants to reduce, of the remaining 400 or so MOD directly-employed labour the MOD wants to reduce that too through what it calls a process of rejuvenation. When I have said the Government actually does not entirely support the principle of rejuvenation, because it means 50 year olds who are put out into the street at a time when they are least able to find another job. But at least can he confirm that the policy is one of rejuvenation only, which would require to rejuvenate on a one for one basis or not. The answer of course is no, because it is logical, the policy of rejuvenation on a one for one basis costs money it does not save money. So no, this process of rejuvenation is actually euphemism, a smoke screen for redundancies amongst the remaining MOD dell. Therefore all 1100 MOD jobs are in some measure affected or in the air. Three hundred of them through the Pegasus, 300 in janitorial and motor transport through the Pegasus efficiency savings, by the way on which there is no commitment by the MOD. They might still prefer to contractorise them, 300 are affected by the new policy just announced, the infrastructure service provider, that is 600 out of 1100 and the remaining 400 are subject to this rejuvenation coupled with shrinking numbers in the remaining directly-employed labour. So we have no idea, and I explained this yesterday to the Chief of Joint Operations, Air Marshal Sir Glen Torpay, that they are asking Gibraltar to accept principles and we do not know what the implication of accepting those

principles are even now. As a Government or as a Parliament or as a Trade Union, nobody knows how many jobs there will be left in the Base, whether of a directly-employed labour or even under contractorisation. We have no idea how many jobs there will be in the Base 13 months from now, or 13 months after the contractorisation. It could be 1100 if the contractors and the MOD decide not to make anybody redundant, most unlikely, or it could be 200, 300 and the loss could be 800, we have no idea because the MOD will not commit itself to telling the contractor what the minimum number of jobs that they must have. The MOD view is the contractor is free to do the job with as few people as it thinks it can deliver the output to the MOD. In other words, the contractor will decide, no doubt driven by his profit margin which will be directly linked to the number of employees, the contractor will decide how many employees are left of those 600, the contractor will decide whether they have a pension scheme or not. As I said to the Chief of Joint Operations yesterday, the MOD must be living in cloud cuckoo land if it thinks that the Government are going to stand idly by and watch 600 pensionable jobs in Gibraltar be converted into 600 non-pensionable jobs, regardless of the question of privatisation and regardless of the question of job losses. The Government policy is to encourage occupational pensions in the private sector, and the Government obviously would not remain idle watching 600 public sector pensionable jobs, not only transferred to the private sector but transferred on a non-pensionable basis. This is the wholesale and long-term destruction of 60 years worth of social progress and social engineering in Gibraltar, and the MOD cannot think that it can get away with that in a unilateral decision in which it is not willing to negotiate and in which it simply announces what it is going to do.

Mr Speaker, I do not want to expose what the range of legislative measures is that the Government are contemplating, indeed we have not finished contemplating what the legislative measures would be, but the MOD has got to appreciate that the relationship in the past has been based on certain mutual understandings, and that if they unilaterally choose to undermine that historical mutual understanding, then Gibraltar also is free and there is all sort of manner of exemptions and privileges that the MOD enjoys in Gibraltar because it has been a quid pro quo for the other elements of the relationship, which if they undermine the whole thing is up for review. So there are a raft of areas that the Government are looking at quite apart from the question of social legislation to make sure that there is not injected into Gibraltar an unsustainable degree of destruction of social terms and conditions and social comforts as a result of this action. Indeed, the third limb, industrial action by the Unions, legislative action by the Government and by this House, are the first two limbs of the process in which the MOD will inevitably find themselves embroiled if they do not abandon the unilateralist approach in favour of a consensually negotiated agreement with the Unions, and that is legal action. It is inevitable that there has to be legal action. Personally, I do not know if I am right, but personally, the Government are going to take by the way a legal opinion on this – the Unions are too but the Government also are taking a legal opinion on this from specialist counsel in the United Kingdom. I am not entirely convinced that there is a transfer of undertakings at all in these contractorisation moves, because of course if one privatises a telephone company one is privatising the activity of providing a telephone service to consumers and the privatisation of the workforce is incidental to the fact that one has privatised an undertaking. What is the undertaking that is being privatised here? The work continues to be done, it continues to be done for the same person for the benefit of the Ministry of Defence, not for new shareholders of a privatised telephone company, the work, the gardening, the driving of lorries, continues to be done for the benefit of the Ministry of Defence. Therefore, we need to grasp and consider whether all that is happening here is not the transfer of an undertaking but just the privatisation of the labour that continues to undertake the same work for the benefit of the same ultimate beneficiary, namely the Ministry of Defence. Of course if we can establish that there is no transfer of undertaking here, then they cannot rely on the Transfer of Undertakings Directives and provisions to do any of this. Of course the MOD can continue to try and go it alone if it wants but it will find itself embroiled in a process of industrial unrest,

legislative action and legal action which in any case are going to prevent it from implementing its objectives within any timescale such as they envisage. So they might as well carry on with the operation Pegasus discussions with the Unions and see what they cannot get the Unions to agree to, Government have something to say there too, because of course it is all very well for individual employees to say well I will go on redundancy terms, but those jobs are then lost for future job seekers in this community. Certainly, my advice to the Ministry of Defence has been and will continue to be that they have a better chance of achieving part of their objectives through negotiation and agreement with the Union and its workforce, than it has by the pursuit of this unilateralist approach. Even if there are people in Gibraltar, and there may well be some, there may be people working in the private sector in Gibraltar who may be saying "good for the Ministry of Defence, I mean I have got to earn my living in the private sector, why should not everybody else? Why should not the MOD get maximum value for their money?" Some people may be lamenting the fact that we do not do that in respect of the Gibraltar Government. I do not know how many such people there are but there may be some. The point that I am making is that even those people, even people who think that, must be horrified by the method and the manner in which they have gone about trying to achieve it. Just as there are more than 187 people in Gibraltar that support the principle of joint sovereignty, more than voted yes in the Referendum and I believe that the reason why many people that might otherwise have been in favour of voting no, is because they were horrified at the unilateralist done deal nature of the approach. Therefore I think that the whole of Gibraltar, even those people who may not be opposed to the principle of privatisation, should nevertheless unite and support the Trade Unions and its members in the Ministry of Defence and the Government, and apparently the Opposition given the statements that they have made, in sending the message to the Ministry of Defence that the way that they are trying to achieve their objectives is not acceptable. It is not acceptable. The people of Gibraltar would not expect their Government to change peoples' terms and conditions of employment unilaterally without a negotiation, and are equally unwilling I believe, to allow the Ministry of Defence to do it either.

The hon Member spoke about private expressions of disagreement by senior people. Well I can tell him that that is already the case in this matter, at the very highest levels and not just in the Ministry of Defence. There are people who are horrified and who have advised against this approach, not just in the Ministry of Defence. But somebody in the Ministry of Defence, I believe in the non uniformed branch of the Ministry of Defence, has decided that this is going to happen and they are now trying to make good their wholly unjustifiable decision, and I think Gibraltar has to make it clear to them that they will not get away with implementing their decision, if there is pain to be had because there is a shortage of money in the Ministry of Defence in the United Kingdom, if there is a general round of spending reviews or spending cuts then of course Gibraltar cannot expect to be exempted from cutbacks that affect the whole of the Ministry of Defence. But there is a question of methodology and there is a question of extent. Even these proposals are much more than our fair share of any dose of spending cuts of which Gibraltar should expect to eat its fair share of the cake. Much greater, this is in effect the entirety of the labour force affected and therefore I believe that there are two ways for the Trade Union movement and the Government to proceed from where we all stand now. One is to accept it and the other is to oppose it. If one opposes it then people have to understand that opposing things have consequences and implications. The Government are always going to be a government and are always going to act like a Government. The Trade Unions will always be trade unions and will always act like trade unions. Certainly the Government are not going to start acting like a trade union, we may support the Trade Unions in their actions as a trade union but here there is a problem which faces Gibraltar as a whole and which every institution in Gibraltar has to play its proper, adequate and appropriate role in collectively trying to ensure that this agenda does not unfold and is not deployed in a way which inevitably will cause huge adverse

consequences, firstly to the individuals involved but secondly also to the economy of Gibraltar at large.

HON C A BRUZON:

As a new Member to the House, does the 40 minutes apply to the amount of time given to the mover or to everyone?

MR SPEAKER:

To everyone.

HON C A BRUZON:

I found offensive the remark made by Adam Ingram in the House of Commons a few days ago, when he stated that the process was irreversible. Now that smacks of colonialism and it reminds me of the attitude that my father used to talk to me about that the British Government had vis a vis Gibraltarians, and sometimes the workforce within the MOD, that we are the natives and they are the masters. So I would ask the Chief Minister when he visits Geoff Hoon on I believe Thursday next week, to ask him what exactly did Adam Ingram mean by saying that the process was irreversible. Are they dictating to us, to our Government, to our Parliament, to our people? I would also like to ask the Chief Minister that when he says that this is not a matter about which we can stand idly by, that he really means it. That if legislation has to be brought to this House, that it will be done promptly and obviously with due whatever the expression is, I do not know what the processes are, but with due process and I would also ask him, as far as he possibly can, is to keep the Opposition informed as to what happens at the meeting with Geoff Hoon, please.

Question put on the adjournment. Agreed to.

The adjournment of the House sine die was taken at 12.45 pm on Friday 11th March 2005.