REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Seventh Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Thursday 13th October 2005 at 10.00 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

ABSENT

The Hon P R Caruana QC – Chief Minister
The Hon Dr B A Linares – Minister for Education, Training, Civic and Consumer Affairs
The Hon Miss M I Montegriffo

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 25th April 2005, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

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

1. Consolidated Fund Reallocations – Statement No. 15 of 2004/2005;

2. The Accounts of the Government of Gibraltar for the year ended 31st March, 2004 together with the Report of the Principal Auditor thereon.

Ordered to lie.

PERSONAL EXPLANATION

The Hon Fabian R Picardo informed the House that he had resumed his partnership in Hassans International Law Firm as from Monday 25th April 2005 and therefore declared his interest as a partner in Hassans and its associated companies.

ANSWERS TO QUESTIONS

The House recessed at 1.30 pm.

The House resumed at 3.00 pm.

Answers to Questions continued.

The House recessed at 5.40 pm.

The House resumed at 6.05 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Trade, Industry, Employment and Communications moved the adjournment of the House to Friday 14th October 2005, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 8.10 pm on Thursday 13th October 2005.

FRIDAY 14th OCTOBER 2005

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

OPPOSITION:

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

ABSENT

The Hon R R Rhoda – Attorney General
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

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 1.10 pm.

The House resumed at 2.45 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE STAMP DUTIES (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

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

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 9th November 2005, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 5.05 pm on Friday 14th October 2005.

WEDNESDAY 9TH NOVEMBER 2005

The House resumed at 10.00 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

The Hon S E Linares
The Hon L A Randall

ABSENT

The Hon Miss M I Montegriffo

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 Consolidated Fund Supplementary Funding – Statement No. 1 of 2005/2006.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

SECOND READING

THE STAMP DUTIES (AMENDMENT) ORDINANCE 2005

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 which introduces one aspect of the proposed reforms of the Stamp Duties Ordinance. In my budget speech I announced wider reforms of the Stamp Duties Ordinance and a Bill will be coming to the House later for that but this particular measure, which has been advanced in the form of this short Bill because it is pressing for the finance centre sector, deals only with the abolition of ad valorem duty on share capital of companies both on creation and on increase of share capital. Hon Members may know that at present the share capital on companies is ad valorem, it is one of the items in the schedule to the Stamp Duties Ordinance and that it is payable at the rate of 50p per £100 or part thereof. In future, if this House passes this Bill, the stamp duty will be levied at a flat rate of £10 not ad valorem and this is one of the series of measures announced to facilitate the continuation of business in the finance centre that was being done through other channels before. So we do not envisage a material reduction in revenue from this. I commend the Bill to the House.

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

HON F R PICARDO:

The Opposition will be supporting this Bill. There are a number of other measures announced in respect of stamp duty which we noted had not been included in this Bill and we are grateful that clarification has now been provided that another Bill is to come soon to deal with those issues in order to continue to provide efficacy to the Finance Centre which may not be there given the provisions as to the phasing out of exempt companies. There are other things that we can and should be doing in order to lend efficacy apart from dealing with issues like the ones of stamp duty which have already been identified. For example, one that also springs to mind is the issue of whitewash procedures in respect of companies buying their own shares et cetera, all of which issues would also be of assistance and which make Gibraltar companies perhaps less agile than they could be. For all those reasons we will be supporting this Bill and continuing to

spur the Government on to take such other measures as we think are appropriate from time to time.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill to amend the Public Health 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, hon Members are about to be circulated with a letter and although the formal amendments will be moved at the Committee Stage, they are drafting amendments mainly, but I think it would be useful for hon Members since it is such a short Bill anyway, I think it is better for them to have as we debate the principles of the Bill the proposed amendments in front of them. The Bill now before the House is one of a number that the Government have published or will shortly be publishing to implement measures announced in my budget statement earlier this year. In the instant case the Bill implements the policy that, as announced in the Budget, premises occupied by clubs, associations and societies that do not operate on a commercial for profit basis will be exempt from rates and also that the existing 20 per cent discount for early payment of commercial rates is cut in half, in other words, the size of the discount is reduced from 20 per cent to 10 per cent.

The Bill which as amended, if I could just talk the hon Members through the amendments so that they can better understand the principles of the Bill, the first amendment relates to the commencement procedures so the section relating to the clubs and associations rates exemption will be deemed to have come into effect on 1st July 2005. The heart of the Bill which we will now debate to introduce the reduction in commercial rates early payment discount, that will come into effect with effect from 1st October, and I will explain in a moment why that is, and those commencement provisions are effected by the introduction of the amendment to clause 1 set out at paragraph 1 of the letter which adds sub-sections (2) and (3) to the Title and Commencement clause of the Bill. Moving to the substantive parts of the Bill, the Bill amends section 279 of the Public Health Ordinance which provides for premises that are exempt from assessment. In other words, this is not a question of applying but rather premises that fall into that category are exempt from assessment to rates as opposed to the other section, section 282, where premises which are prima facie assessable are allowed to apply to the Financial Secretary for a reduction and hon Members will have seen in the Gazette annually some people get 100 per cent reduction, other people get 50 per cent or other percentages. That is not the list that we are amending here, the list that we are amending here is the list of section 279 which is total exemption from assessment. Section (k) would as amended read, "such premises occupied by such club, association or society not established or conducted for profit as may be approved by the Chief Secretary in accordance with the criteria laid down for that purpose from time to time by the

Government of Gibraltar". So the way that it is envisaged that that would work is that the Government would lay down policy criteria about the nature of the club. So the Government for example, just speculating and by way of example might say 'members' clubs with more than a certain minimum number of membership, or leisure clubs, or art associations or this or that, setting out the criteria, this regime is not unfamiliar, and then the Chief Secretary would then decide whether a particular rate-payer falls or does not fall, in the case of doubt many of these things will be cleared beyond doubt but in the case of borderline cases it will be up to the Chief Secretary at an administrative level to decide whether it falls or does not fall within the policy criteria established by the Government. The other amendment, the reduction of the rates early payment or timely payment as opposed to early payment discount, is effected by an amendment to section 277A of the Ordinance simply by substituting the figure "20 per cent" for the figure "10 per cent".

I said to the hon Members that I would explain why the different commencement dates for the two sections of the Bill. Well, the one about clubs and associations 1st July to take the benefit of the budget measure back to the beginning of the financial year or the rates period commencing nearest to the date of budget measure announcement. In the case of the choice of 1st October as the date for commencement of the reduction of the early payment discount, the reason for that derives from the mechanics of section 277 which is that if one pays the current bill on time one becomes entitled to a discount from the next bill. Well, the bills issued in July are already out so people will get a discount from those bills depending on whether they paid the previous bill on time, so we cannot affect peoples' rights retrospectively on that. The discount against the July bill has already been earned, it is earned depending on whether one has paid the previous quarter's bill on time. The effect of putting 1st October here is that if one pays the current quarter bill on time, and people have been warned in the previous bill that this was coming, if one pays the current bill that was recently issued on time one will get from the next bill, in other words the bill issued for the quarter commencing 1st October, one would get from that bill a 10 per cent rather than a 20 per cent discount. That is the need of that in order to recognise the fact that if one would like the discount it is on a succeeding quarter basis rather than a current quarter basis, hence the need to also stagger the commencement date referred to in this section. I commend the Bill to the House.

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

HON L A RANDALL:

The Bill proposes two amendments to the Public Health Ordinance. The Opposition would have no problem in supporting amendments to section 279, although we would be interested to have details of the policy criteria which the Government intend to adopt. However, with regard to the amendment to section 277A the Opposition see no valid reason why it should change the position adopted in 1997 when the 20 per cent reduction on rates due on non-domestic or commercial properties was introduced. We will therefore be abstaining on the Bill.

HON CHIEF MINISTER:

The policy criteria are yet to be defined in precise detail but of course the hon Member should not think that the formula in accordance with policy criteria to be established by the Government is new or that even we have invented it, it is already in the Ordinance and they invented it when they were in Government. The wording is drawn directly from section 271 of the Ordinance which reads, 'the Financial and Development Secretary may, in accordance with the criteria laid down for that purpose from time to time by the Government of Gibraltar, reduce or remit the payment of any general rate et cetera'. So the hon Member was not suggesting that it was not new, I accept, but I just wanted him to know and could perhaps have

mentioned this in my first address, that the formula of words, the concept, is borrowed from an existing section of the rates provisions of the Public Health Ordinance and is not a new formula or a new concept. These criteria will have to be given a degree of publicity because obviously people need to understand whether they would fall within it or not fall within it. I cannot tell him what they are now but they will have to receive a sufficient degree of publicity, at least for people to know whether they are intended beneficiaries or not intended beneficiaries and then, as always when a line is drawn, there are unenvisaged grey, borderline cases that will have to be adjudicated upon and hence the need for the Chief Secretary to do that. I hear the political opposition from the political Opposition to the other measures contained in this Bill and I suppose there is no reason why Oppositions should express support for things that are unpopular in any sector of the community. After all, there is no need to incur anybody's displeasure so why incur it, except that I would mention that this is not a measure that enjoyed the support of the hon Members when it was introduced and indeed I recall that for many months after the measure was introduced, the Hon Albert Isola then a Member of the Opposition benches in the party, was constantly taunting the Government about how it was wrong to have given this what they called 'discount' or 'rates reduction' as they used to call it, without giving it to residential properties as well. This was not a measure that the Opposition Members supported. They may not have voted against it, I do not recall, they say they abstained, I accept that if that is what they say, their memory on it is better than mine, abstaining means did not support. Well, if they did not support the measure then they would not support it now on the basis that even 10 per cent is too high. I thought they were not supporting it on the basis that they did not think it should come down from 20 per cent to 10 per cent. I understand, the hon Members want us to reduce it to zero. I commend the Bill to the House again.

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 F R Picardo
The Hon L A Randall

Absent from the Chamber: The Hon R R Rhoda

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 INVESTOR COMPENSATION SCHEME (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill to amend the Investor Compensation Scheme Ordinance 2002, 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 and simple Bill the sole effect of which is to recognise the fact that Ministerial responsibility for the Finance Centre no longer rests with the Minister for Trade and Industry, and the new legislative technique that we are trying to introduce to avoid Bills falling out of date, so to speak, or legislation becoming inaccurate when Ministerial portfolios change hands is to describe the Ministerial responsibility rather than the title of the Ministry. So for example, here it said the Minister for Trade and Industry, assuming that the Minister for Trade and Industry would always be responsible for the Finance Centre or it would always be responsible for something else. If this were a new Ordinance it would say 'the Minister with responsibility for Financial Services' because that could be any one of the eight Ministers and it would not render the legislation in need of amendment. I think that is a better drafting technique which we are trying to apply. For now this Bill did not comply with that and therefore I commend the Bill to the House which implements that policy and substitutes references to 'Trade and Industry' with a reference to 'Financial Services'. 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 at a later date.

THE INSURANCE COMPANIES (AMENDMENT) (NO. 2) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Insurance Companies Ordinance 1987 in order to make amendments consequent on the consolidation and repeal of Council Directives 79/267/EEC, 90/619/EEC and 92/96/EEC by Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, 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 as hon Members now know, transposes Directive 2002/83 of the European Community and of the European Parliament and of the Council of November 2002. The directive actually imports no new law into the fabric of the existing directives, its purpose is merely to consolidate three directives, the so-called life assurance directives, all of which are already transposed into the law of Gibraltar. The effect of this consolidating directive and of this Bill to transpose it is to consolidate them into one and all of the amendments, except one which I will point out to the hon Members in just a moment, simply are housekeeping consequential. In other words, it changes references, it corrects cross-references and things of that nature but does not alter the substantive law relating to the regulation or any other aspect of life insurance in Gibraltar. The one exception to that is clause 12 amending section 118 which hon Members will find on page 664 of the Bill,

which amends section 181 by substituting for 'Government', 'Minister with responsibility for Financial Services' in the exercise of that power. That itself does not change the law hugely because where it says 'Government' that power normally would be exercised for the Government by the appropriate Minister but this responds to the Government's drafting decision that the references would be directly to the Minister with the appropriate responsibility. I commend the Bill to the House, which as I say makes the necessary textual amendments to the Insurance Companies Ordinance so that that Ordinance refers to the consolidated directive and correctly cross-refers to the new numbered articles of a consolidated directive, rather than as at present the Insurance Companies Ordinance does, refers to three separate directives which now have been consolidated into this new one. 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 COMPANIES (CONSOLIDATED ACCOUNTS) (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Companies (Consolidated Accounts) Ordinance, 1999 in order to ensure the effective application of, and implement Member State options in, EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards; and to implement into the law of Gibraltar Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will have seen from their perusal of these Bills that really this goes hand in hand with the next Bill on the Order Paper which is a Bill to amend the Companies (Accounts) Ordinance. Here we are talking about a Bill to amend the Companies (Consolidated Accounts) Ordinance so this deals with the consolidated accounts aspects of this European Regulation. Hon Members will be aware that this Bill is to transpose into the laws of Gibraltar to the extent that our legislation needs to reflect the mechanisms to give effect in Gibraltar to a European Union Regulation. The Regulation itself has direct application. The International Accounting Standards Regulation, as Regulation No. 1606 of 2002 is known, applies directly to the consolidated accounts of EU publicly traded companies. Under article 4 companies whose securities are admitted to trading on a regulated market in any Member State will be required to prepare their consolidated accounts on the basis of accounting standards issued by the International Accounting Standards Board, known as the IASB, that are adopted by the European Commission. This will apply to financial years commencing on or after 1st

January 2005. Under article 5 of the IAS regulation, use of adopted international accounting standards, IAS, can be extended on a permissive or mandatory basis, that is a Member State option, to consolidated accounts of companies other than those covered by article 4. In other words, drawing up ones consolidated accounts under IAS standards is compulsory for quoted companies but each Member State, and therefore in the case of Gibraltar this House, may choose whether to make it also compulsory for non-quoted companies or permissive, in other words, one may prepare it on that basis or on the existing basis for non publicly quoted companies.

The Bill before the House proposes that Gibraltar companies would be permitted, that is to say Gibraltar non-quoted companies, will be permitted to choose whether to switch to IAS or to continue to prepare their accounts in accordance with domestic law. In other words, the Government have chosen to exercise the option under the directive to make IAS standards for consolidated accounts permissive but not mandatory in the case of non-quoted companies. The Bill also transposes the so-called modernisation directive which amends the accounting directives and this modernisation directive is designed to (a) remove conflicts between the accounting directives and international accounting standards in existence at the time it was drawn up. In other words, where there is tension between the existing accounting directives and this international accounting standards implementation measure, the modernisation directive clears up that tension; (b) to ensure that optional accounting treatments currently available under International Accounting Standards in existence at 1st May 2002, are available to EU companies which continue to have the accounting directives as the basis of their accounts. That is, those companies which will not prepare their accounts in accordance with IAS regulations. In other words, it would be unfair if companies that switched to IAS have the benefit of some options which were denied to companies that did not switch to IAS and this particular measure makes sure that there is harmonisation between those top and those that do not in those particular aspects.

Turning then to the specific provisions of the Bill, clause 1 provides for citation and commencement, it states that the Bill has effect as regards companies' financial years which begin on or after 1st January 2005 but which have not ended before the date of publication of the Ordinance once passed. Clause 2 states that the Bill amends the Companies (Consolidated Accounts) Ordinance 1999. Clause 3 amends the Long Title. Clause 4 amends section 1(2) of the Ordinance so that it states on its face that the provisions of the Bill have effect as regards companies' financial years which begin on or after 1st January 2005 but which have not ended before the date of publication of the Ordinance. Clause 5 amends section 2(4) to implement article 2(1) of the Modernisation Directive which is designed to align the seventh directive with international accounting standards requirements. Under IAS 27 an undertaking is a subsidiary undertaking if it is controlled by a parent irrespective of the existence of an interest in the capital of the undertaking. The current requirement for a participating interest to exist is removed. Clause 8 inserts certain new definitions which flow from the IAS Regulation and the Modernisation Directive. Clauses 9 and 10 replace section 7 with new sections 7 and 7A, and insert new section 7B and 7C respectively. The new sections 7(2) and 7(3) reflect the fact that publicly traded companies will be required to prepare their consolidated accounts in accordance with adopted IAS standards. It also provides that non-publicly traded companies can choose to prepare their consolidated accounts in accordance with either the Ordinance or with adopted IAS standards. In the interests of consistency and comparability sections 7(4)and 7(5) provide that companies choosing to prepare their accounts under IAS must continue to do so in subsequent financial years. In other words, one cannot change between one system and another. However, this requirement will not apply if a company preparing accounts under IAS becomes a subsidiary of an EEA undertaking which prepares accounts on a non-IAS basis. To aid users of accounts, new section 7B provides that companies preparing accounts under IAS must disclose this fact in the notes to the accounts.

New section 7C provides that parent companies shall, in most circumstances, ensure that the individual accounts of the parent company and the individual accounts of subsidiary undertakings, where these are required to be prepared within the group, are prepared using the same financial reporting framework unless there are good reasons for not doing so. However, this does not apply to the individual accounts of subsidiaries where the parent company is required by the IAS Regulations to adopt IAS for its consolidated accounts and has chosen to do so for its individual accounts. Clause 12 inserts new section 8A in order to implement an option in article 11 of the seventh directive not hitherto exercised. Article 11 gives Member States an option to exempt an intermediate parent company governed by its law from the requirement to prepare consolidated accounts, if that company is a subsidiary of another undertaking not governed by the law of an EEA State, provided that certain conditions are fulfilled. Making use of this option will align the exemptions from preparation of consolidated accounts more closely with those in IAS 27. One of the more important conditions for the exemption contained in new section 8A is that the higher parent company presents consolidated financial statements in a manner equivalent to the seventh directive. In most circumstances financial statements prepared on the basis of IAS would meet this equivalence condition. The new exemption will be restricted to wholly-owned intermediate parent companies to be consistent with IAS 27. Clause 13 implements article 2.6 of the Modernisation Directive which deletes article 14 of the seventh Accounting Directive. Article 14 had provided for the exclusion of an undertaking from the consolidated accounts of the parent if its activities were so incompatible with those of the parent that inclusion would fail to meet the requirement to give a true and fair view of the undertaking included therein taken as a whole. This provision is in fact in conflict with IAS 27 which does not permit any exclusion on the grounds of incompatible activity. In other words, the previous directive allowed non-consolidation where the activity in one of the subsidiaries was so different to the activities of the rest of the group that to include the activities of that subsidiary in the consolidated accounts of the group would have distorted the fair picture presented of the group as a whole. International Accounting Standards actually do not permit that and therefore this measure eliminates the prospect of that exclusion. In addition, this clause amends section 9 to bring the Ordinance into line with the seventh directive by permitting a subsidiary undertaking to be excluded from the consolidation where the parent's interest in it is held exclusively with a view to subsequent resale, irrespective of whether or not it has previously been included in consolidated accounts. Clauses 6, 7, 11, 14, 15, 16, 17, 18 and 19 make minor consequential amendments. For example, to terminology necessitated by implementation of the Modernisation Directive and Member State options in the International Accounting Standards Regulation. I commend the Bill to the House.

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

HON F R PICARDO:

The Bill is not controversial for the reasons that the Chief Minister has outlined. I just note that certainly in my short time in the House it is the first time that we are amending a Long Title. I assume there is power to do that the Long Title is really only to be used to interpret what it is that the Bill is for and perhaps the Chief Minister can tell us a little bit more about why a decision has been made to amend the Long Title. I note that the old Long Title simply listed the directives that were being transposed by the original Consolidated Accounts Ordinance. It may be that these directives continue to come out and that the shorthand that is being adopted, in other words to provide for the requirements of EU law, is one which is more convenient and perhaps one which we should consider adopting across the board because some of the other pieces of national legislation that we are amending will have Long Titles referring to directives that will perhaps no longer be relevant, like for example the insurance one, where there is a consolidation exercise being done throughout the rest of the Insurance Companies Ordinance

but not in relation to the Long Title, and this may be a good way in future of providing for Long Titles which do not become obsolete. I would also state that we have noticed that by way of regulation a number of other pieces of secondary legislation have been amended to take into account the same changes.

HON CHIEF MINISTER:

Just to clarify the point that the hon Member has made and if I have correctly understood his point the answer is this. The EU law requires transposing national legislation to acknowledge and recite the EU directive or regulation that is being transposed or given effect to in the case of Regulations. It has to be more than identifiable there has to be on the face of the national transposing legislation a direct reference to the EU measure being dealt with. If one wants to be generous for the reason for that rule one would say it is so that citizens can follow the Bill back to a source. If one wanted to be ungenerous one would think that the reason for that rule is that the community wants to ensure that everybody clearly understands the extent to which the community is now permeating national legislative processes and this really puts the EU stamp on every piece of national legislation throughout the community, and that sort of serves an invasive perceptive purpose. I accept what the hon Member says that we should avoid, the only way to achieve the objective that underscores the hon Member's point would be to do all these things not by consolidation, or rather not by amended legislation, but by consolidated legislation so that for example, instead of bringing an amending Bill we have brought a new consolidated Bill including the amendments, then of course there would not be any amended Bills left with the wrong Title, but I think that would not improve the quality of debate. Imagine if the hon Members always had the consolidated Bill not marked up, they would never see the amendments and it would make the legislative process much more complicated.

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 COMPANIES (ACCOUNTS) (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Companies (Accounts) Ordinance, 1999 in order to ensure the effective application of, and implement Member State options in, EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards; and to implement into the law of Gibraltar Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill does not have to be read with the

previous one but hon Members will recognise that it is the equivalent Bill in relation to company accounts as opposed to company consolidated accounts. The provisions of the Bill are that clause 1 provides for citation and commencement and applies to companies' financial years which begin on or after 1st January, and as in the previous Bill, but which have not ended before the date of publication. Clause 2 amends the Companies (Accounts) Ordinance 1999 and clause 3 again amends the Long Title. Clause 4 amends section 1(2) of the Bill so that it states on its face, again the commencement provisions which are also covered in clause 1. Clause 5 inserts certain new definitions which flow from the IAS Regulation and the Modernisation Directive. Clauses 6 and 7 replace sections 3 and 4 respectively. This clause gives effect to the policy permitting choice in use of IAS. The new sections reflect the fact that some companies will continue to prepare their own accounts in accordance with the Ordinance, and others will use IAS as adopted by the EU Commission. In the interests of consistency and compatibility new sections 3(2) and 3(3) provides that companies choosing to prepare their accounts under IAS must continue to do so in subsequent years, and again that is subject to the exception that that will not apply when the company is taken over or becomes a subsidiary of an EEA undertaking which prepares accounts on a non-IAS basis. Clause 8 makes consequential amendments necessitated by the Modernisation Directive and implements article 1.2 of the Modernisation Directive. Member States may permit or require the presentation of amounts within items in the Profit or Loss Account and Balance Sheet to have regard to the substance of the reported transaction. This will permit compliance with IAS 32. This is being implemented as a requirement and will require accounts to reflect the substance of the transaction. Clause 11 inserts new sections 7A and 7B. New section 7A re-enacts in a slightly more detailed way the existing disclosure requirements regarding the particulars of staff in Schedule 7, paragraph 1(j) which is omitted by clause 24(1).

These provisions have been removed from Schedule 7 because these disclosures will have to be given by a company preparing accounts in accordance with adopted IAS. Again, to aid anyone using these accounts, there is a requirement in new section 7B that companies preparing accounts under IAS must disclose that fact in the notes to the accounts. Clause 12 inserts new sections 8, 8ZZA and 8ZZB in order to provide for further disclosures in the director's report in implementation of articles 1.14, 1.17 in part, and 2.10 of the Modernisation Directive. Clauses 14 and 18 amend sections 10 and 16 respectively in relation to the content of the Auditor's report. These clauses implement articles 1.15, 1.16 and 1.18 of the Modernisation Directive concerning the audit report of individual companies, and article 2.11 concerning the audit report of groups. By specifying matters to be covered in the auditors report, articles 1.15 and 1.18 of the Modernisation Directive seek to achieve greater harmonisation and reflect best practice concerning the format and content of audit reports which currently differ across Member States. The amendments require disclosure whenever non-statutory accounts are published of whether the auditors have drawn attention in their report to any matter by way of emphasis without qualifying the audit report, as well as of whether the audit report was qualified or unqualified. Clause 19 amends Schedule 1 regarding the qualification of a company or a group as small or medium sized. It provides that where a company or a group prepares accounts under IAS it can qualify as a small or medium sized company if it meets the threshold requirements on the basis of amounts extracted from accounts prepared in accordance with adopted IAS. Clauses 23 and 24 give companies the options to extend the use of fair value accounting to other asset categories. The IAS on investment properties, which is IAS 40, and living animals and plants which is IAS 14 on agriculture, have been adopted pursuant to these IAS Regulations. Therefore, it is now permitted that these categories of assets require to be valued on a fair basis in both the individual and consolidated accounts. This will facilitate convergence with IAS and the optional approach is in line with the proposed policy on fair value accounting for financial instruments. Again, as with the previous Bill, clauses 9, 10, 13, 15, 16, 17, 20, 21 and 22 make minor consequential amendments, mainly as to terminology necessitated by the

implementation of these directives and also the exercise of Member State options in the IAS Regulations. 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 CREDIT INSTITUTIONS (REORGANISATION AND WINDING UP) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to implement into the law of Gibraltar Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit 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, hon Members will be familiar with the terms of the Bill. The directive which it seeks to transpose applies to reorganisation measures and winding up proceedings affecting credit institutions and their branches set up in a Member State, other than those in which they have their head offices. In other words, it creates a regime which chooses a jurisdiction in which winding up proceedings of an organisation with activities in various Member States, which jurisdiction has the jurisdiction to organise its winding up, the winding up of that institution. That is the regime created by this Bill. For the purposes of this Bill a credit institution is an undertaking whose business it is to receive deposits or other repayable funds from the public and to grant credit for its own account. This means that the directive applies to any bank or building society or other person authorised to carry on the regulated activities of accepting deposits or issuing electronic money.

The purpose of the directive is to establish for the proper functioning of the internal market and the protection of creditors, coordination rules to ensure that the reorganisation measures adopted by the competent authority of the home Member State in order to preserve or restore the financial soundness of a credit institution, as well as the measures adopted by persons or bodies appointed by those authorities to administer the reorganisation measures, are recognised and implemented throughout the community, and also to establish coordination rules for winding up proceedings in order to ensure that any such proceedings commenced in the home Member State are recognised and have full effect throughout the community, in accordance with the principles of unity and universality. In other words, that credit institutions will be wound up in their home Member State and then that all host Member States will recognise those winding up proceedings and reorganisation. In a nutshell that is the regime created by this directive and by the legislation before the House to transpose it.

The main purpose of the directive therefore is to ensure that reorganisation measures or winding up proceedings affecting credit institutions are recognised in all Member States without further formality. Only the administrative or judicial authorities of the Member State in which the credit institution is authorised, and that is the definition of credit institutions home Member State, in other words, where one is authorised for a licence can authorise the implementation of reorganisation measures or the opening of winding up proceedings in respect of that credit institution, including branches of that institution in other Member States. It is not the purpose of this directive to harmonise reorganisation and winding up arrangements across Member States. In other words, Member States can still have different procedures and different substantive laws but if an institution falls to be dealt with under the laws of one Member State, all other Member States have got to recognise those proceedings and those processes. So this is not a harmonisation measure as much as a recognition of other countries' processes measures. Accordingly, the approach in implementing the directive has been to maintain existing insolvency law as far as our national law is concerned, making only the minimum changes necessary to comply with the requirements of the directive. The Bill does not define reorganisation measures and winding up proceedings, this is because there is a significant blurring between the two categories. However, the measures which certainly fall into one category or the other are winding up by the court, a creditor's voluntary winding up which has been confirmed by order of the court, and the appointment of a provisional liquidator. Measures which may fall within one or both of these categories are compositions or arrangements under section 205 of the Companies Ordinance, where the purpose of such an arrangement brings it within the scope of a reorganisation measure or winding up as those terms are defined in the directive.

Clause 3 prohibits the reorganisation or winding up of an EEA credit institution under the law of Gibraltar. In other words, our law now recognises where there is a branch in Gibraltar of an EEA institution which we are only the host Member State, because it is authorised elsewhere and has passported into Gibraltar so that the home Member State is another Member State, in other words the one that has licensed or authorised it, such institutions cannot now be reorganised under our laws. That is the effect of clause 3.

Clause 4 provides that the Gibraltar courts may impose section 205 schemes on EEA credit institutions or a branch of an EEA credit institution in certain circumstances. Where the credit institution or branch is subject to a reorganisation measure or winding up proceedings in its home Member State, the scheme cannot be confirmed by the court without the consent of the liquidator and the relevant administrative or judicial authority and the judicial authority in the home Member State.

Clause 5 provides for the recognition in Gibraltar of reorganisation measures or winding up proceedings which have effect under the law of another Member State in relation to a credit institution which is authorised in that Member State. It also implements the requirements of the directive with regard to the rights and duties within Gibraltar of competent officers appointed by judicial or administrative authorities in other Member States. That is important because part of the recognition of processes and arrangements in other Member States are for example, if the judicial authorities in that other Member State appoints a liquidator, an administrator or authorises an officer to do this or that or the other, then that person has authority to do those things throughout the whole EEC wherever there may be a branch of that authorised institution.

Part 3 of the Bill modifies general insolvency law as it has effect in relation to Gibraltar credit institutions but only in order to implement the provisions of the directive relating to notification to regulators and creditors. There is one area where we will have to change our substantive law a bit to make it compatible with the directive relating to notification to regulators and creditors. Clause 7 provides that general insolvency law applies, except to the extent necessary, to comply with the

specific requirements of the directive. Clause 8, for example, requires the authority to be notified of any intention to serve a notice of a meeting at which a resolution to wind up a credit institution voluntarily is proposed. Clause 9 sets out the circumstances in which the authority must be informed that a reorganisation measure or winding up proceedings have been commenced. This clause imposes its duty on the courts. The last sentence of that point is that the clause imposes its duty on the court. In other words, clause 9 sets out the circumstances in which the authority must be informed that reorganisation measures or winding up proceedings have been commenced. This clause imposes its duty on the courts. So for example, under the directive the authority, because the authority then has a responsibility to inform creditors, has got to be told about the commencement of proceedings. In Gibraltar proceedings are commenced by order of the court, so the Court Registrar has to inform the authority of the orders made up by the court on winding up proceedings. Then clause 10 imposes a requirement on the authority in turn to inform the home Member State competent authority, hence the chain. Under the directive the authority, which is the competent authority, has the obligation to spread this information around the EU, creditors and home but there has to be a mechanism by which it in turn is informed and that is the effect of those clauses.

Clauses 11, 12, 13 and 14 sets out the regime for the communication by the authority to the Gibraltar competent authority to creditors and to home Member State authority of any winding up or reorganisation proceedings commenced in Gibraltar. Clause 15 provides that an EEA creditor may submit claims in his domestic language, provided that the document contains a heading in English. Clause 16 provides that liquidators shall keep creditors regularly informed of the process of winding up proceedings. Clause 17 provides for how things may or should be sent in accordance with various requirements of the Bill. In other words, the mechanics of notification where there is a notification obligation. Clause 18 requires all persons required to receive or divulge information given to or by the regulatory authorities to be bound by professional secrecy as required by existing directives. Clause 19 makes it clear that the provision of Part 4 of the Bill apply to both winding up proceedings and reorganisation measures within the meaning of the directive. Clause 22 details the matters that are determined in accordance with the general law of insolvency in Gibraltar. Clauses 23 to 25 implement article 20 of the Directive. That article provides derogations from articles 3 and 9, which require winding up proceedings and reorganisation measures to be carried out under law of the home Member States, for certain contracts and rights by requiring that these be determined in accordance with the law of the Member State which governs the contract or where the interest is registered. So that is a derogation from the general rule that reorganisations and winding up are done in accordance with the law of the home Member State.

Clause 23 concerns contracts of employment that are governed by the law of another Member State. Clause 24 concerns contracts in connection with removal of property situated in another Member State. Clause 25 concerns assets that are subject to registration in a public register in another Member State. So those are the categories of circumstances in which there is this derogation from the general rule that the applicable law is the law of the home Member State. Clause 26 provides that the opening of reorganisation measures or winding up proceedings will not affect the rights of third parties, who have proprietary rights in relation to property or other assets which are situated in the territory of another Member State. The rights in question include but are not restricted to the rights of secured creditors. Clause 27 provides that reorganisation measures or winding up proceedings must not interfere with the sellers exercise of those rights, in any case where the goods are situated in a Member State other than the home Member State of the credit institution. Clause 28 requires the commencement of reorganisation measures or winding up proceedings shall not affect the rights of creditors to demand the set off of their claims against the claims of the credit institution where this is permitted. Clause 29 is intended to ensure that transactions on a regulated market to which a credit institution undergoing reorganisation or

winding up proceedings is a party, will be dealt with in accordance with the rules of that market. This ensures that the market will not be disrupted by the commencement of reorganisation measures or winding up proceedings against the credit institution. Clause 30 introduces a derogation from the normal principle that a reorganisation measure or winding up of a credit institution may only be carried out under the law of the home Member State of that credit institution. That derogation is provided where a person who has benefited from a legal act detrimental to all the creditors, can provide proof that the act was carried out in accordance with the law of another Member State, and that the law of that Member State does not allow the act to be challenged.

Clause 31 introduces a derogation from that normal principle by requiring that the validity of the sale of certain classes of assets will be determined in accordance with the laws of the Member State in which the assets are situated. Clause 32 introduces a further derogation from that general principle, in other words, the principle of the applicability of the home Member State laws where a law suit is pending in a Member State other than the credit institution's home State, when the reorganisation or winding up procedures in relation to that credit institution are opened in the home Member State. The effect of opening home State insolvency measures or proceedings on the law suit will be governed by the law of the Member State in which the suit is pending. Clause 33 deals with rights in instruments, that is, securities which can be traded on financial markets. This clause provides that the enforcement of proprietary rights in these securities, or other rights the existence of transfer or which presupposes their recording in a register, account or centralised deposit system is governed by the law of the Member State where the register, account or centralised deposit system is held. Clauses 34 and 35 provide that the effects of a reorganisation or winding up on a netting agreement, or a repurchase agreement respectively, shall be determined in accordance with the law applicable to that agreement. Clauses 36 to 38 apply to branches within a Member State of credit institutions whose head offices are situated outside the community. A branch of a third country credit institution situated in Gibraltar should be treated as if it were a Gibraltar credit institution. In other words, everything that we have just said relates to when the Gibraltar branch is a branch of an EEA credit institution but when the branch is a branch of a non-EEA, in other words established and licensed in a country that is not part of the EEA, then it is treated as if it were a Gibraltar credit institution. The other provisions of the Bill will then apply as if the branch were a Gibraltar credit institution. I commend the Bill to the House.

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

HON F R PICARDO:

I think I have indicated already to the Chief Minister that this is not a controversial Bill, it is a complex piece of legislation because of the need to cross-reference to the general insolvency law, and I think the first point to make is that we have been given an indication by himself that there is likely to be a new piece of legislation dealing with insolvency updating Gibraltar insolvency provisions, and I wonder whether he can tell us whether this piece of legislation will also be incorporated in that new insolvency statute when it comes, or whether it will continue to be a free standing piece of legislation. The reason for that is of course that a lot of the insolvency provisions are presently in the Companies Ordinance, if they are going to go elsewhere then there is going to be a need for major revision of this piece of legislation which is referring to the present sections of the updated and renumbered Companies Ordinance.

The second point is simply to refer to those parts of the Banking Ordinance which deal with reconstruction and similar arrangements in respect of licensees established in Gibraltar, which are not cross-referred to here although there is a cross-reference to sections 86 and 86A of the Banking Ordinance which deal with confidentiality issues. Sections 51 and 52 of the

Banking Ordinance deal with issues of reconstruction in relation to a licensee that is established under the law of Gibraltar. Principally this Ordinance deals with licensees established except that the wording has now changed, perhaps as directors have been superseding themselves to authorise a licence in other EEA States and with branches in Gibraltar, and sets out a regime for that purpose. The present language of the sections of the Banking Ordinance that deal with reconstruction refer to undertakings or licensees established under the law of Gibraltar. Now, I think that the intention is that these should run in parallel and that those parts of the Banking Ordinance that I have referred to continue to apply to institutions which are authorised or licensed in Gibraltar but I think it might be useful to show that they are intended to run in tandem and that there is no derogation of the power of the Commissioner in those parts of the Banking Ordinance to be the authority that must approve those arrangements for reconstruction. Finally, referring to the section that I asked the Chief Minister to simply read again, which is section 9 where he rightly points out that the court itself takes on an obligation, probably to be discharged through its Registrar, to notify the authority of any orders it makes under the provisions of that Ordinance, I also note that in sub-section (4) there is an obligation on a liquidator who has been appointed under sub-section (2) also to notify the authority of his appointment and it is an obligation that is sanctioned with criminality if it is not complied with, which is a very onerous provision. My concern would simply be this, a liquidator who today looks at his obligations under the Companies Ordinance would not see that obligation and might miss it, and it might be that it may be useful to somehow in the Companies Ordinance also reflect that there is a provision elsewhere that a liquidator must comply with when he is dealing with a particular type of company, namely a company that is a credit institution. It may be that all those issues will be dealt with if the Insolvency Ordinance does in fact, when it comes, also include the provisions contained herein at the moment simply in relation to credit institutions.

HON CHIEF MINISTER:

If I could briefly deal with the three points that the hon Member has touched on, I cannot tell the hon Member when the new Insolvency legislation will emerge in Gibraltar, it is something that (a) I am not sure is ready for consultation, and even if it were it would then be substantial consultation, but whether when that date arrives this will be consolidated into that or not is for decision and is moot. There is an argument for not consolidating it in the sense that this is a very particular regime for only credit institutions, whereas the rest would be a general body of law but the matter I am sure will be given due consideration and if there are advantages of the sort that the hon Member describes in consolidating this Bill, perhaps it could be a chapter, I am sure that will be given due regard by the draftsman. Nothing in this Bill, except in a very small way as I indicated, basically on notification and information requirements, alters any of Gibraltar's substantial law on winding up generally or of licensed financial services institutions. So all the powers of the authority of the Financial Services which is called the authority in the Financial Services Commission Ordinance, remain in tact as he has expressed. I think implicit in his remark was that he believed that that should indeed be the case and indeed, it is the intention of the Government that the authority under this Bill to be designated will be the same authority. So the Financial Services Commissioner, the authority for financial services will be the authority under this Bill as well. As to the possibility of conflict I do not have the Banking and other financial services legislation here so I do not know to what extent there may or may not be tension between the language established in one Bill and authorised on the other. Speaking only from recollection, which could therefore be wrong, I have got a feeling that the definition of 'established' in all those other legislations is by reference to authorised. It may be a different defined term but the definition imports the concept of authorisation, but I may not be right in saying that. Obviously somebody will have to see, I am sure the Financial Services Commission, the competent authority would bring to our attention if they form the view that the tension that the hon

Member suggested might exist, if it does indeed exist I am sure it will be brought to our attention by the competent authority and we would then bring clarifying legislation as necessary.

Question put. Agreed to.

HON CHIEF MINISTER:

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

Question put. Agreed to.

The House recessed at 11.30 am.

The House resumed at 11.40 am.

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 Stamp Duties (Amendment) Bill 2005;

2. The Public Health (Amendment) Bill 2005;

3. The Insurance Companies (Amendment) (No. 2) Bill 2005;

4. The Companies (Consolidated Accounts) (Amendment) Bill 2005;

5. The Companies (Accounts) (Amendment) Bill 2005;

6. The Credit Institutions (Reorganisation and Winding Up) Bill 2005.

THE STAMP DUTIES (AMENDMENT) BILL 2005

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

Clause 2

HON CHIEF MINISTER:

Here it has been suggested to me now and it may be worth doing, an amendment has been proposed to me which I think has no legal effect or need for but may make the Ordinance more user friendly for people. Hon Members, at least some of them, will be aware that there is the Schedule at the back of the Stamp Duties Ordinance which is what most practitioners refer to. The amendment at the moment that is proposed is for the total deletion of the bits under the heading "Capital Duty" in the Schedule. The proposal is that so that the £10 flat will continue to appear in the list rather than be removed from the Schedule, is to leave the paragraph up to the words "Companies Ordinance", put in the margin the words "£10" instead of "50p" and then delete the sentence "for every £100 and for every fractional part thereof". So we leave the item but make it non ad valorem by simply having a fixed £10. That means that when practitioners are scanning the list, this will continue to feature on it, the list is not all only ad valorem items. For example, the hon Member will see there that there are many items in the Schedule which are not ad valorem, for example, Marriage Licence 50p, so it is not just the list and whilst it would be perfectly effective to proceed with the Bill as it stands before the House, it will result in this item disappearing from the Schedule so that lawyers would only see it if they examine the principal parts of the Ordinance, sections 92 and 91. Whereas the amendment is really just presentational, a change of amendment to the Schedule so that instead of disappearing from the Schedule it stays but in non ad valorem form. So I would therefore propose

that the Bill be amended by not deleting the paragraph beginning "on the nominal share capital" up to "Companies Ordinance", in other words not deleting that, continuing with the deletions of the words "for every £100 and also for any fractional part of £100 of such nominal share capital", that is deleted and then instead of deleting the reference to "50p" that that should be substituted by reference to "£10". Is the proposal sufficiently clear to the hon Members?

HON F R PICARDO:

Yes clear, and I think it certainly will serve to make the Ordinance more readable. In that proposal I think we leave in the reference to sections 91 and 92 anyway so that people can go back to the original section……

HON CHIEF MINISTER:

The amendments proposed to sections 91 and 92 are not affected.

HON F R PICARDO:

No of course, but we leave in the reference which would have been taken out under the original and also I think otherwise if we had done what was being proposed, it is good that we have looked at the Schedule, we would have ended up with the words "on loan capital" floating without a heading 'Capital Duty'. So I think it is very useful actually to do it as is now proposed.

HON CHIEF MINISTER:

Well, it would not quite have been the effect because the Bill as it stands does not propose the deletion of the words 'Capital Duty'. Delete the following words appearing under the heading 'Capital Duty', but still it would have been Capital Duty with just these two floating on loan capital. I think it is presentationally more attractive all round.

MR CHAIRMAN:

As a matter of drafting might I venture to suggest, is there not a call for a sub-paragraph (d) which will bring in the £10 in the margin in the area not deleted now after the Chief Minister's proposed amendment. Where does the £10 come in?

HON F R PICARDO:

I think if it is amended to say 'delete the following words' and just delete 'for every £100' instead of what is presently there and insert ……

MR CHAIRMAN:

That takes care of that 50p ad valorem but what about the £10 where does that come in?

HON CHIEF MINISTER:

Yes, I have articulated the amendment by reference to the effect not by the mechanics of how one gets there. So (c) of clause 2 of the Bill would read: 'in Schedule 1 under the heading 'Capital Duty' delete the words 'for every £100 and also for any fractional part of £100 or such nominal share capital. 0.50' delete the words altogether, then delete also the figure '50p' and replace that with '£10' and insert in its place £10. If this was given in writing that is how the letter would read.

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

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

THE PUBLIC HEALTH (AMENDMENT) BILL 2005

Clause 1

HON CHIEF MINISTER:

I have given notice of the amendments and perhaps we could just take that as read rather than recite it. I think the amendments in the letter are as I explained them in the Second Reading.

1. The reference "(1)" is inserted immediately before the words "This Ordinance may be cited as";

2. All words appearing after "2005" are omitted;

3. The following sub-clauses are inserted after sub-clause (1) -

"(2) Section 2(a) shall be deemed to have come into force on 1 July 2005.

(3) Section 2(b) shall be deemed to have come into force on 1 October 2005."

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

Clause 2

The Hon the Chief Minister moved the following amendment:

In clause 2(a), for the new paragraph (k) there is inserted the following –

"(k) such premises occupied by such club, association or society not established or conducted for profit as may be approved by the Chief Secretary in accordance with the criteria laid down for that purpose from time to time by the Government of Gibraltar."

Clause 2 - as amended, stood part of the Bill.

The Long Title – stood part of the Bill.

THE INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 2005

Clauses 1 to 17 and the Long Title – were agreed to and stood part of the Bill.

THE COMPANIES (CONSOLIDATED ACCOUNTS) (AMENDMENT) BILL 2005

Clauses 1 to 20 and the Long Title – were agreed to and stood part of the Bill.

THE COMPANIES (ACCOUNTS) (AMENDMENT) BILL 2005

Clauses 1 to 24 and the Long Title – were agreed to and stood part of the Bill.

THE CREDIT INSTITUTIONS (REORGANISATION AND WINDING UP) BILL 2005

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

Clause 2

HON F R PICARDO:

In relation to the definitions which are included here in clause 2, there are a number of points which I just draw to the attention of the Chamber. Firstly in the definition of "creditors' voluntary winding up" I think there is a superfluous reference to the section. I think has the meaning given by section so delete the word "the" appearing before the word "section". In the definition of "Directive winding up proceedings" a more substantive point, which is meaning winding up proceedings as defined in article 2 of the Reorganisation and Winding Up Directive, which were opened on or after the date. I think in our law it is which were commenced on, I think winding up proceedings are commenced not opened. The references in the Companies Ordinance are to winding up proceedings being commenced from a particular date not opened.

HON CHIEF MINISTER:

I do not think the hon Member is right in this point because I think the 'were' refers to proceedings and not to directive. Which proceedings were opened…….

HON F R PICARDO:

Yes, that is exactly what I mean. I think that winding up proceedings under our law are not opened, they are commenced. The Companies Ordinance says that a winding up proceeding is commenced on the date that a winding up petition is presented. It does not say opened so I think just the words 'were opened' should be replaced by the word 'commenced'. Finally, the definition of "liquidator", I think at the moment needs some work. Liquidator is defined as 'except for the purposes of section 4, including any person or body appointed by the administrative or judicial authorities whose task it is to administer winding up proceedings in respect of a Gibraltar credit institution which is not a body corporate'. I am having some difficulty with that, I think that the words 'which is not a body corporate' go after the word 'body' in the second line not 'Gibraltar credit institution'. That suggests a Gibraltar credit institution which is itself as a credit institution not a body corporate, so I would simply propose that we move the words 'which is not a body corporate' to after the word 'body' where it appears in the second line.

HON CHIEF MINISTER:

Well, the hon Member would be right only if the 'which is not a body corporate' is intended to refer to the liquidator and not to the credit institution. Well if he is right I think the change that he proposes is correct. If he is not right, I would need notice of the observation to see whether he was right or not. Let me just read it again. No I think it must refer to the liquidator.

HON F R PICARDO:

The credit institution must be corporate that is why we are talking about winding them up.

HON CHIEF MINISTER:

Yes, I think it is a grammatical point anyway, there is too much distance between the word 'body' and 'which is not a body corporate'. So the words 'which is not a body corporate' can certainly be brought up to after the word 'body' in line 2 of the definition of "liquidator". I do not support the hon Member's second proposal in relation to the word 'opened' because the definition of "directive winding up proceedings" means winding up proceedings as defined in article 2 of the Directive. If the directive uses the word 'opened' I think we should leave the word 'opened' to be consistent with the language of the directive which it incorporates by reference. If this was a definition that referred to our own law which used the word 'commenced' then I

think the hon Member's point would have more merit, but because it is a definition by reference to the language in the article of the directive, if that is the word that the directive uses I think it is safer to leave it. The definition in article 2 of the directive of 'winding up proceedings' shall mean collective proceedings opened……

HON F R PICARDO:

I accept the Chief Minister's point, I think it is one of the problems with European Union pieces of legislation that they are often incompatible with all of the laws of all the Member States but probably designed to be more compatible with the civil law states than with ours.

HON CHIEF MINISTER:

I do not think this point would cause any trouble to any court, 'opened' 'commenced' they both have the same meaning. I do not think it alters the legal effect.

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

Clauses 3 to 11 – were agreed to and stood part of the Bill.

Clause 12

HON F R PICARDO:

In sub-section (2) the definition of a 'qualifying order' includes a qualifying appointment in sub-paragraph (b) which means the appointment of a liquidator and the Bill presently says 'as mentioned in section 275 of the Companies Ordinance'. I think that that should be as provided for in section 275 of the Companies Ordinance. Section 275 of the Companies Ordinance is a section which gives power to the court to appoint and fix remuneration of liquidators and it is not an issue which is mentioned in that section, it is a provision that is provided for in that section.

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

Clauses 13 to 38 and the Long Title – were agreed to and stood part of the Bill.

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Stamp Duties (Amendment) Bill 2005, with amendments; the Public Health (Amendment) Bill 2005, with amendments; the Insurance Companies (Amendment) (No. 2) Bill 2005; the Companies (Consolidated Accounts) (Amendment) Bill 2005; the Companies (Accounts) (Amendment) Bill 2005; and the Credit Institutions (Reorganisation and Winding Up) Bill 2005, with amendments, have been considered in Committee and I now move that they be read a third time and passed.

Question put.

The Stamp Duties (Amendment) Bill 2005;
The Insurance Companies (Amendment) (No. 2) Bill 2005;
The Companies (Consolidated Accounts) (Amendment) Bill 2005;
The Companies (Accounts) (Amendment) Bill 2005; and
The Credit Institutions (Reorganisation and Winding Up) Bill 2005, were agreed to and read a third time and passed.

The Public Health (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 R R Rhoda
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 F R Picardo
The Hon L A Randall

The Bill was read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 28th November 2005, at 10.30 am.

Question put. Agreed to.

The adjournment of the House was taken at 12.05 pm on Wednesday 9th November 2005.

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The House resumed at 10.30 am.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

ABSENT

The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Income Tax (Allowances, Deductions and Exemptions) (Amendment No. 2) Rules 2005.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE RE-USE OF PUBLIC SECTOR INFORMATION ORDINANCE 2005.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the Law of Gibraltar Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill has been published with quite an extensive Explanatory Memorandum which sets up, just for the purposes of Hansard if the House will allow I will go through quickly what some of the clauses say. I think the important thing for the House to bear in mind is that this is not a freedom of information act. In other words, it does not oblige a public sector body to make information available. It rather regulates the mechanics and the terms upon which information which a public sector body decides should be free for use by other people, the terms and the manner in which it is made available but it does not oblige the information to be made available in the first place. So not to be confused with a freedom of information legislation which it is not, it is rather saying if a public sector body decides that information that was produced internally by the Government for one purpose, for its purpose, should nevertheless be available for use by others for a completely different purpose, there are mechanics and the legislation sets out how that permission should be sought, in what circumstances it can be granted or not granted and the conditions that it is legitimate to attach to it or not.

Re-use of public sector document is the use of a document held by a public sector body which is quite widely defined in the legislation, a public sector body. For example, a Government department or a Government agency or a Minister, in fact I think we have added a catch-all at the end, any entity covered by the Public Services Ombudsman Ordinance for a purpose other than the original purpose within the public sector body's public tasks for which the document was produced. For example, where a document is initially produced for internal Government use, for example, a review, policy guidelines or an information document that is then made available outside Government. The Directive, as I have just explained, does not require public sector bodies to make internal documents public but puts in place

certain minimum standards of accessibility where a decision has been taken to allow re-use of a document. Hon Members will be aware that one of the provisions of the Bill requires every public sector body to publish a list of its internal documents that are available for public re-use so that people know what documents they can ask for permission to use under this legislation. Therefore, the Bill transposes the Directive as follows.

Clause 2 is the general interpretation section, as hon Members can see. Clause 3 defines "public sector body", the definition includes not only Government departments but also corporations which are financed wholly or mainly by the public funds for the purpose of meeting public needs. So hon Members will see a pretty wide definition there, 'public sector body' for the purpose of this Ordinance includes a Minister of the Government, a Government department, the House of Assembly, the City Fire Brigade as constituted by the Fire Services Ordinance, the Royal Gibraltar Police as constituted by the Police Ordinance, a corporation established or a group of individuals appointed to act together for the specific purposes of meeting needs in the general interest not having an industrial or commercial character and financed wholly or mainly by another public body. Then it goes on in that vein and then there is this catch-all that I referred to earlier, without prejudice to the list, a public sector body includes any authority listed in Part 1 of the Schedule to the Public Service Ombudsman Ordinance, it is quite a wide definition. Clause 4 defines re-use of documents and specifically excludes from that definition the transferring of a document from one public sector body to another. Clause 5 sets out the exclusions. The exclusions include documents whose copyright is not held by the public sector body and documents which have not been identified by the public sector body as available for re-use. Public service broadcasters, schools and cultural establishments, such as libraries and museums, are also exempt from compliance with the Bill's requirements. Clause 6 sets out how to make a request for re-use, and clause 7 provides that the public sector bodies may permit re-use. Clause 8 sets out time limits within which a public sector body must respond to a request for re-use. Clause 9 provides that where a public sector body refuses a request for re-use it must notify the applicant in writing of the reasons for and inform them of the complaints procedure. Indeed, one of the mandatory requirements on public sector bodies under this Bill is not only that they publish lists and terms and fees for the re-use of its information, but also that each public sector body must have a complaints procedure when requests are denied and ultimately the matter can be referred under the Bill to the Ombudsman if there is still a grievance. Clauses 10 and 11 deal with the processing of requests for re-use and the format of documents made available for re-use. Where possible, electronic means such as e-mail and the internet are to be used and the Bill specifically encourages and requires public sector bodies to facilitate the re-use of information through electronic means. Clauses 12 to 15 deal with conditions for re-use, the granting of licences and charges. Public sector bodies may impose conditions on re-use but such conditions shall not discriminate between persons who wish to use the document for comparable purposes and shall not unnecessarily restrict competition. Exclusive licences for the re-use of documents may not be granted save where this is in the public interest and where such exclusive licences are granted, they shall be reviewed at least every three years. Public sector bodies may charge for allowing the re-use subject to the criteria which are listed in clause 15 of the Bill. Clause 16 provides a public sector body shall make the following available to the public: 'any conditions for re-use, any standard charges, a list of the main documents available for re-use and details of the means of redress in case of complaints relating to this legislation. Clause 17 requires public sector bodies to establish an internal complaints procedure relating to this legislation, and Clause 18 provides that where a person has exhausted the complaints procedure, they may refer the complaint to the Ombudsman. In transposing this directive the Bill continues the Government's approach of encouraging public sector bodies to use information technology and the internet to provide information to the public where appropriate. I commend the Bill to the House.

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

HON F R PICARDO:

The Bill obviously reflects the transposition of the directive to which the Chief Minister has referred and it is done really in terms almost identical to the Statutory Instrument in the UK which is the Re-use of Public Sector Information Regulations 2005. I note that in that Regulation there is a reference to the exclusion of public service broadcasters and public service broadcaster is defined in section 5(4) as having a particular meaning. Now, in Gibraltar we have taken the route of also in section 5(3) excluding, as the directive more or less indicates we are able to do, the application of these rules to public service broadcasters but we have not provided the definition of public service broadcaster and I assume that that is because as we only have one public service broadcaster, it is not envisaged at least it has not been suggested that it is envisaged that there will be another one, there is no need for that but I see that the reference is in the plural and it may be that we want to tidy that up when we come to the Committee Stage.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE 2005.

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Imports and Exports 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 Bill responds to a representation made to the Government by the Magistrates' Association in which they have asked the Government to alter the provisions that we introduced into the Ordinance some years ago imposing mandatory sentence for the exportation of tobacco without a licence. Hon Members will recall that that was one of the measures that we took in order to ensure that there was a deterrence, particularly in relation to the 'matuteras' and that sort of activity. Some members of the Magistrates' Association it has to be said, not all of them, feel that this deprives them from taking the personal circumstances of the individuals into account, a concern which actually clashes with the policy objective of the Government, because of course people who engage in that activity are almost always from a lower socio-economic background and if one therefore takes that into account when deciding on sentence, one loses the whole purpose of the measure which is to act as a deterrent precisely to that sort of people. So there was this sort of Catch-22, however we think that the situation with that particular activity in Gibraltar is now sufficiently under control to enable the Government to give some quarter, hon Members may know and this is a debate that rages in the United Kingdom, judges never like to be told by legislators what sentence they must impose for

breaches of particular offences. It is quite controversial in the UK now where quite a lot of mandatory sentences are beginning to sneak in to UK legislation, such things as two strikes and one is out and all that sort of thing. So the Government are not willing to go back to a situation where the court can impose a sentence of whatever degree of leniency it pleases because we regard this as an important area of public policy in which there is a significant public interest of Gibraltar at stake which cannot be out of the Government's hands, but we are willing at this stage in the matter to give some quarter to the views of the Magistrates and that is done by this Bill, which rather than say that somebody who is fined and does not pay must be imprisoned for three months. The Ordinance says a fine of I think £1,000, I will take hon Members through the detail in just a moment, or in default three months imprisonment, but three months mandatory not up to three months. So what we are now doing is replacing the three months mandatory imprisonment in default of the fine for a range between one month and three months, so there is a minimum of a month but between a month and three months the Magistrate can take if he or she wants the personal circumstances of the person into account. So in other words, a mandatory three months is substituted for a mandatory one month allowing the range between one and three but not below one. Hon Members will see that section 91B of the Imports and Exports Ordinance, 1986 deals with exports by land and sub-section (1) says 'no person shall without the written approval of the Collector export or attempt to export tobacco or any other article or goods by land other than through the pedestrian or vehicular gate at the frontier when it is opened for authorised commercial traffic under the supervision and control of a customs officer.' This Bill simply amends the sentencing powers under section 91B(2) of the Ordinance. At the moment it says in sub-section (1), 'he shall be guilty of an offence and shall be sentenced on summary conviction to a fine at level 4 on the standard scale (which is £2,000) or in default three months imprisonment'. Sub-section (2) is amended by this Bill by deleting the fixed period of three months imprisonment for default of not paying the fine and inserting a period of imprisonment of "not less than one month but not exceeding three months". 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 move that the Committee Stage and Third Reading of the Bill be taken today.

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 2005.

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, I shall be moving a very small amendment

and that is that the title of the Bill should read "(Amendment) (No. 2) Ordinance" so I will be moving an amendment that will make the title of the Bill 'The Income Tax (Amendment) (No. 2) Ordinance 2005'. The Bill brings into effect the remainder of the Income Tax measures announced in the Budget this year, which have not been dealt with by amendment of the rules which have been laid in the House earlier today. Section 6(1)(g)(b) amends the existing Ordinance by taking out of tax further capital sums paid in commutation of small pensions by increasing the value of the capital sum excluded from taxation to an amount which would generate a pension of £2,000 a year rather than the existing £1,000. Hon Members will remember that mechanism and this in effect by doubling the amount of an income that it needs to generate before it is taxable, in effect doubles the amount of capital that can be taken in a tax efficient manner.

Section 6(2) is amended also by clause 2 of the Bill. This section previously imposed tax on the income of any individual or company ordinarily resident in Gibraltar whose activities included ownership, chartering or operation of any ship. The tax was imposed with no regard to where the ship was registered or where the activities of the individual or company took place. This approach actually was inconsistent with the remainder of the Income Tax Ordinance which imposed tax in section 6(1) by reference to income in respect of profit or gains accruing in the right form or received in Gibraltar. In other words, historically our income tax legislation has treated shipping companies differently and whereas other companies were taxed depending on whether their income was accruing, derived from or received in Gibraltar, which is the main charging section under section 6(1), section 6(2) created a separate and different regime for shipping companies which were in effect taxed in Gibraltar on their worldwide basis regardless of whether the income was received in, derived from or accrued in Gibraltar. We are abolishing that so that shipping companies will now be taxed in accordance with the same rules as affect all other companies engaged in commercial activities in Gibraltar and that is what clause 2(2) of the Bill does when it repeals section 6(2) of the Ordinance. Clause 2(3) of the Bill adds new sections 6(8) and 6(9) but the sub-sections of section 6 are not re-numbered despite the fact that section 6(2) is repealed. So even though we have repealed section 6(2) when we add a new sections 6(8) and 6(9) further down on the list, sections (3), (4), (5). (6), (7), (8) and (9) are not and that is typical of tax legislation where sections that are repealed are left blank because there are many cross references in legislation, and if one amends and changes one has got to change all the cross references as well, so the standard technique in taxation legislation is to leave numbers blank or unused if they are vacated through amendment. These two new sub-sections implement the budget undertaking to take out of taxation all dividends paid by a Gibraltar company to another company, all dividends payable by a Gibraltar company to those who are neither tax resident in Gibraltar nor permitted individuals, and also to take out of taxation the income from savings. The sub-section then goes on to define savings income as all dividends received from companies quoted on a recognised stock exchange, all interest payable by a licensed financial institution licensed under Gibraltar legislation or equivalent legislation elsewhere, all income from debentures, loan stock, bonds and other similar investments issued by a quoted company, Government local or public authority and the proportionate part of a dividend from a company whose income derives from exempt sources and which relates to exempt sources. Sub-section (9) allows the Commissioner of Income Tax to designate stock exchanges as recognised for the purposes of the section and in fact the Commissioner will be designated the same stock exchanges as are recognised for financial services legislation purposes in Gibraltar.

Clauses, 3, 5 and 6 repeal sections 39, 42 and 43. Section 39 is repealed to allow the payment of dividends without an obligation on the part of the payer to withhold tax on account of the liability of the recipient. In other words, we are abolishing the system of withholding as a mechanism for the taxation of dividends. The repeal of sections 42 and 43 are consequent on this repeal. A new section 39 and section 42 is however introduced by the Bill. These new sections are necessary to maintain the ability of the Commissioner of Income Tax to identify those who are liable to

tax on receipt of a dividend and to maintain the current liability position for a person who is charged with tax in Gibraltar on a dividend. In other words, it requires the company to submit a return of dividends to the Commissioner of Income Tax where a dividend is paid to somebody who may be liable to tax in Gibraltar and it continues to create a tax credit. Hon Members know that the position at the moment, and none of these things really change the taxation base, is that if a company pays a dividend to a shareholder because the dividend is paid out of taxed income the receiving shareholder gets a credit in his tax assessment at the rate that the company paid the tax, if then one is a higher rate tax payer one pays on the difference. This new section 42 simply continues that system of ensuring that there is a tax credit available to the shareholder at the rate at which the company has paid tax and also creates a regime whereby the company has to continue to pay the difference between tax paid and tax credits in circumstances where for example there has been double taxation relief because a company has paid tax abroad, gets relief in Gibraltar and therefore the tax credits given may actually exceed the amount of tax that the Government have actually received from that company because of the incidence of such things as double taxation relief and things of that sort.

The one amendment which I do not think was actually covered in the budget but the opportunity has been taken of this amendment to the Ordinance to bring it about, is something which has been giving the Commissioner of Income Tax some statutory grief for some time, in particular in pursuit of the Principal Auditor, and that is that the regime for the imposition of penalties, I am not quite certain what the regime is, I think section 84 imposes an additional penalty of 10 per cent of the tax due where the tax remained unpaid for five months and for every five months thereafter. That, which actually has never been implemented on an every case basis since it was introduced many years ago, is nevertheless drafted in mandatory terms. The Commissioner of Income Tax considers it difficult to operate and in fact has requested that it be made discretionary which is how it has operated since it was legislated many years ago by a previous House in a previous time, and therefore all that this does is to make the power discretionary allowing the Commissioner of Income Tax, as he does at the moment and has always done I am assured, to decide which cases are so serious as to impose a penalty. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE EMPLOYMENT (ARCHITECTS) (EEA QUALIFICATIONS) (AMENDMENT) ORDINANCE 2005.

HON DR B A LINARES:

I have the honour to move that a Bill for an Ordinance to amend the Employment (Architects) (EEA Qualifications) Ordinance 1996 in order to partly transpose into the law of Gibraltar Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the

professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor, be read a first time.

Question put. Agreed to.

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House forms part of the trilogy of Bills featuring in today's agenda serving to complete the transposition of Directive 2001/19 which commenced in 2003 with the Recognition of Professional Qualifications Ordinance (Amendment) Ordinance 2003. This is an umbrella directive amending a significant number of other directives dealing with areas as diverse as veterinary, architectural and medical qualifications. The other Bills in today's agenda, the Bill to amend the Medical and Health Ordinance 1997 and the Bill to amend the Veterinary Surgeons (EEA Qualifications) Ordinance 1996. There is a new section 4 of the principal Ordinance introduced by this Bill which provides that an EEA national holding qualifications from a non-EEA State is able to practise provided he possesses written evidence of the qualification is recognised by a State anywhere within the EEA. The only other amendment carried forward is an offences creating section and an updating of the definition on 'architects directive'. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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

Question put. Agreed to.

THE VETERINARY SURGEONS (EEA QUALIFICATIONS) (AMENDMENT) ORDINANCE 2005.

HON DR B A LINARES:

I have the honour to move that a Bill for an Ordinance to amend the Veterinary Surgeons (EEA Qualifications) Ordinance 1996 in order to partly transpose into the law of Gibraltar Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor, be read a first time.

Question put. Agreed to.

SECOND READING

HON DR B A LINARES:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House forms part, as I said before, the trilogy of Bills in today's agenda serving to complete the transposition of Directive 2001/19 which commenced in

2003 with the Recognition of Professional Qualifications Ordinance (Amendment) Ordinance 2003. This is an umbrella directive, as I also explained before, amending a significant number of other directives dealing with areas as diverse as veterinary, architectural and medical qualifications. The new section 4 of the principal Ordinance introduced by the Bill provides that an EEA national holding qualifications from a non-EEA State is able to practise provided he possesses written evidence of the qualification which is recognised by a State anywhere within the EEA. The only other amendment carried forward is an offences creating section and an updating of the definition of 'Veterinary Surgeons Directive'. Provision is also made consequential to the insertion of the new section 4 into the principal Ordinance. To understand new section 4 it is important to note that at least in respect of the medical professions the directive operates by listing in an annex all qualifications to which the directive applies, broken down by the awarding State. This appears in the Bill as a new schedule to the principal Ordinance. New section 4 softens up the inevitable rigidity of this approach by providing that an EEA national with an unlisted qualification may practise in Gibraltar providing the awarding EEA State recognises in writing that the qualification is in full compliance with directive requirements. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON DR B A LINARES:

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

Question put. Agreed to.

THE MEDICAL AND HEALTH ORDINANCE (AMENDMENT) ORDINANCE 2005.

HON LT-COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to amend the Medical and Health Ordinance in order to transpose into the law of Gibraltar Council Directive 2001/19/EC which amends the Directives relating to nurses responsible for general care, midwives, dentists, pharmacists and doctors and to implement in part Annex II to the Act annexed to the Treaty relating to the conditions of accession of new Member States signed at Athens on 16th April 2003 insofar as it amends the Directives relating to those health care professionals, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT-COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House transposes Directive 2001/19. This directive is an umbrella directive amending a significant number of other directives dealing with areas as diverse as veterinary, architectural and medical qualifications. One element of this directive was transposed in 2003 through the Recognition of Professional Qualifications Ordinance (Amendment) Ordinance 2003. The manner in which this directive is structured, as with most others dealing with the mutual recognition of qualifications, is through an annex setting out in detail the diplomas subject to the mutual recognition regime. The difficulty we had with this of course is that the

annex failed to cite our own nursing qualifications awarded by the School of Health Studies. This was discriminatory on our nurses who had to obtain the equivalent UK qualification should they wish to practise elsewhere in the EEA. After some discussion with the UK I am pleased to announce to the House today that a commitment has been obtained from the UK Government that an amendment to the annex will be tabled by the UK citing the Gibraltar nursing qualification. The House will therefore be pleased to learn that the effect of this is that our nurses will be able to work anywhere in Europe on the strength of their Gibraltar awarded diploma.

The principal aim of the Bill is to transpose into Gibraltar law the technical adaptations, (1) which Council Directive 2001/19/EC as regards health care professionals only requires; and (2) the annex to the Act of Accession made to the EU secondary legislation consequential to enlargement. Insofar as the transposition of the annex is concerned the Bill provides for the listing of qualifications awarded by those States which are eligible for automatic recognition and the recognition of qualifications awarded for training began before accession and which does not comply with the minimum requirements on proof of a minimum period of professional experience. This provision is consistent with that made on previous EU accessions. The position is that the new States are obliged to ensure that the qualifications they award for training begun on or after accession comply with applicable training requirements. The European Commission's assessment is that training on the ground in all new States will meet this requirement, although in the case of the Czech Republic, Latvia and Poland, whose transposition of the relevant directive's international legislation was not completed on accession. The Commission is committed to continue to closely monitor the progress of the new States. In the event that safeguards were needed, it would be open to Her Majesty's Government under the terms of articles 37 and 38 of the Treaty of Accession, to make a reasoned request to the Commission to take appropriate measures, the obligation on existing Member States to comply with the Community law remains unaffected.

The effect of Part C of annex 2 to the Act of Accession insofar as it amends the directives relating to health care professionals is to extend rights already enjoyed by the nationals of the 15 existing Member States to the recognition of professional qualifications in the field of health and social care to the nationals of the 10 new Member States. EU Directives for the mutual recognition of professional qualifications also applied by virtue of separate agreements to the nationals of the non-EU European Economic Area States. These EEA States are Iceland, Liechtenstein, Norway and Switzerland. These agreements have been adjusted to take account of the Treaty of Accession. Article 20 of the Act of Accession annexed to the Treaty gives effect to certain permanent technical adaptations of EU secondary legislation, including directives on the mutual recognition of professional qualifications which are consequential to the enlargement. The Bill introduces the corresponding technical amendments to existing transposed legislation concerning the recognition of professional qualifications in the fields of health and social care. The current position is that doctors, dentists, general care nurses, midwives and pharmacists who are nationals of and who are qualified in the existing Member States are entitled to automatic recognition throughout the Community on the basis of compliance with coordinated minimum training requirements. For health and social care professionals these training requirements are not coordinated and the general system of recognition applies. This is based on comparative scrutiny of migrants' qualifications and experience against the national requirements of the host Member State. In the event of a substantial difference they may be required to prove additional experience or to pass an adaptation period or aptitude test as a condition of recognition. Migrants who cannot benefit from either of these arrangements are entitled by virtue of their fundamental rights under the EC Treaty to an individual assessment. The Medical and Health Ordinance 1997 is already designed to reflect some of these rights for measures specific to the professions concerned. 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 LT-COL E M BRITTO:

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

Question put. Agreed to.

THE PRISON (AMENDMENT) ORDINANCE 2005.

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Ordinance to amend the Prison Ordinance, 1986, be read a first time.

Question put. Agreed to.

SECOND READING

MINISTER FOR SOCIAL AFFAIRS:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the House will recall that in 2000 an Ordinance was passed repealing sections 57 to 65 of the Prison Ordinance dealing with the sentence of death. The short Bill before the House is the result of further housekeeping and deletes references to the sentence of death in section 2, the definition of prison, and section 17(2) and repeals Schedules 1 and 2 of the principal Ordinance. I give notice that I will be moving a small amendment at Committee Stage to renumber section 3 to section 4, a small typographical error. 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 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 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 Investor Compensation Scheme (Amendment) Bill 2005;

2. The Re-use of Public Sector Information Bill 2005;

3. The Imports and Exports (Amendment) Bill 2005;

4. The Income Tax (Amendment) Bill 2005;

5. The Employment (Architects) (EEA Qualifications) (Amendment) Bill 2005;

6. The Veterinary Surgeons (EEA Qualifications) (Amendment) Bill 2005;

7. The Medical and Health Ordinance (Amendment) Bill 2005;

8. The Prison (Amendment) Bill 2005.

THE INVESTOR COMPENSATION SCHEME (AMENDMENT) BILL 2005

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

THE RE-USE OF PUBLIC SECTOR INFORMATION BILL 2005

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

Clauses 2 to 4 – were agreed to and stood part of the Bill.

Clause 5

HON F R PICARDO:

Just here as I indicated in my intervention in the Second Reading, at section 5(3) there is a reference to 'public service broadcasters', in the English Statutory Instrument at sub-section (4) the definition of 'subsidiary' there is also a definition there of what public service broadcaster means. In the UK of course there is more than one public service broadcaster, in Gibraltar there is only one and my suggestion would be that we somehow show that by perhaps including a reference to the definition of public service broadcaster being as defined under the Gibraltar Broadcasting Corporation Ordinance, which would I think serve to properly limit the definition of those words which are defined words in the Instrument from which we have taken section 3(a).

HON CHIEF MINISTER:

I am grateful to the hon Member for his proposal but the Government do not intend to act on it at this stage. We will consider it and whether we deal with it at a different stage given the context that this is an exclusion from re-use of public documents that there is at the moment only one public service broadcaster, I would like to give further thought to whether the UK definition is actually directly borrowable or not because there is a difference between a public service broadcaster and a publicly funded broadcaster. The concept of public service broadcasting relates to the nature of the broadcaster and in Gibraltar our definition of public service broadcaster is actually different, the way we have always used it historically, in the UK the BBC is a public service broadcaster but ITV may not be. In Gibraltar public service broadcasting has always been thought of in terms of community broadcasting, the nature of the programme rather than the control of the entity that does it. I would like to give just a little bit more thought to whether we should just borrow the UK's, I do not think it dis-habilitates given what the purpose is, well I think it would certainly benefit *ex abundanti cautela* from some sort of definition in case somebody argues that the exemption should not apply to a particular broadcaster and that therefore they are entitled to the re-use of a document, but that is not going to arise at the moment because there is only one broadcaster which is clearly a public sector broadcaster and therefore I would like to take it in slower order and if necessary bring an amendment with appropriate wording if I am advised that the legislation would be better with the definition of public service broadcaster. So I suppose if I could just defer consideration for an amendment rather than for introduction into the Bill at this stage, that is the way that we would prefer to deal with it.

HON F R PICARDO:

I have no difficulty with that whatsoever. I just recall that in one of the debates we had since November 1993, we had some

discussion about the use of broadcasters in emergency situations where we, I think, also pursued this question of public service broadcasting from a different angle, I think there was an issue there with BFBS and whether BFBS Radio also became involved, so it may be necessary to look at that permutation also.

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

Clauses 6 to 18 and the Long Title – were agreed to and stood part of the Bill.

THE IMPORT AND EXPORTS (AMENDMENT) BILL 2005

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

THE INCOME TAX (AMENDMENT) BILL 2005

Clause 1

HON CHIEF MINISTER:

In clause 1 if we could just insert after the word "(Amendment)" the new brackets and "(No. 2)", so it would read 'this Ordinance may be cited as the Income Tax (Amendment) (No. 2) Ordinance'.

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

Clauses 2 to 8 and the Long Title – were agreed to and stood part of the Bill.

THE EMPLOYMENT (ARCHITECTS) (EEA QUALIFICATIONS) (AMENDMENT) BILL 2005.

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

THE VETERINARY SURGEONS (EEA QUALIFICATIONS) (AMENDMENT) BILL 2005.

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

THE MEDICAL AND HEALTH ORDINANCE (AMENDMENT) BILL 2005.

Clauses 1 to 13, Schedules 1 to 4 and the Long Title – were agreed to and stood part of the Bill.

THE PRISON (AMENDMENT) BILL 2005.

Clauses 1 to 3 – were agreed to and stood part of the Bill.

Clause 4

HON MRS Y DEL AGUA:

I gave notice that the second clause 3 should be renumbered to clause 4.

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that:

The Investor Compensation Scheme (Amendment) Bill 2005;
The Re-use of Public Sector Information Bill 2005;
The Imports and Exports (Amendment) Bill 2005;
The Income Tax (Amendment) Bill 2005, with amendments;
The Employment (Architects) (EEA Qualifications) (Amendment) Bill 2005;
The Veterinary Surgeons (EEA Qualifications) (Amendment) Bill 2005;
The Medical and Health Ordinance (Amendment) Bill 2005;
The Prison (Amendment) Bill 2005, with amendments;

have been considered in Committee and agreed to and 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.

ADJOURNMENT

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

Question put. Agreed to.

The adjournment of the House was taken at 11.45 am on Monday 28th November 2005.