REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Eighth Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Friday 9th December 2005 at 2.30 pm.

PRESENT:

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

GOVERNMENT:

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

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 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
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 13th October 2005, were taken as read, approved and signed by Mr Speaker.

ANSWERS TO QUESTIONS

The House recessed at 5.30 pm.

The House resumed at 5.45 pm.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Health moved the adjournment of the House to Monday 12th December 2005, at 11.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 7.10 pm on Friday 9th December 2005.

MONDAY 12TH DECEMBER 2005

The House resumed at 11.10 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

OPPOSITION:

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

ABSENT:

The Hon R R Rhoda QC – Attorney General
The Hon T J Bristow – Financial and Development Secretary
The Hon Miss M I Montegriffo

IN ATTENDANCE:

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 2.35 pm.

Answers to Questions continued.

The House recessed at 5.40 pm.

The House resumed at 6.00 pm.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

THE CRIMINAL OFFENCES (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Criminal Offences Ordinance to implement Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 13th December 2005, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 8.05 pm on Monday 12th December 2005.

TUESDAY 13TH DECEMBER 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

OPPOSITION:

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

ABSENT:

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

IN ATTENDANCE

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

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Gibraltar Regulatory Authority Financial Statements for the year ended 31st March 2005.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE CRIMINAL OFFENCES (AMENDMENT) ORDINANCE 2005

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the primary aim of this Bill is to transpose Council Framework Decision 2001/413/JHA. It is an EU measure that is worthy of support, even though it is mandatory in any event, and pretty uncontroversial although in part unnecessary for a reason that I will explain in a moment. The aim is to ensure that fraud and counterfeiting involving non-cash means of payment are recognised as criminal offences and subject to effective sanctions on a harmonised basis across the EU. Of course, the offences of dishonesty, and this is the extent to which it is in part unnecessary, the offences of dishonesty in Part 16 of our Criminal Offences Ordinance already covers many of the provisions of this Framework Decision. Part 17 of our Ordinance, which deals with forgery, criminalizes the forgery and fraudulent use of some documents and instruments. However, the Framework Decision requires the misuse of certain specified monetary instruments to be made a criminal offence when misuse includes possession of a stolen monetary instrument or of a counterfeit monetary instrument for fraudulent purposes. The Bill therefore makes the forgery with intent to defraud or deceive and fraudulent use of a list of monetary instruments a criminal offence. The list of monetary instruments is set out in the new section 209A and includes such commonly used instruments as bankers draft, promissory notes, credit cards and debit cards, all of which fall within the scope of the new Framework Decision. The new section also creates a power for further monetary instruments to be added by order published in the Gazette should future EU developments require this. New section 209A(2) makes possession an offence in relation to a forged monetary instrument and will also make it an offence for a person to have in his custody or control, or to sell or transfer to another person equipment for making a forged monetary instrument. Sections 221A, clause 7 of the Bill, makes provision relating to offences committed by companies and partnerships. Therefore, this is the EU's harmonised list, minimum list. It is not the case that it is not presently sanctioned by our law to defraud or deceive through the use of one of these monetary instruments, but EU law, this Framework Decision, requires it all to be transposed in Member States in this same form to ensure that the definitions, monetary instruments which are covered, are covered specifically in the laws of all the Member States. I commend the Bill to the House.

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

HON F R PICARDO:

Only to raise one point. In the final section, section 7, inserting a new 221A at sub-section (2) there is a reference in this section which deals with the directors and partners being as responsible as they would have been personally if they were directing the body corporate that is committing the offence, to bodies corporate being managed by their members, which I think is not something which is strictly possible under our law. It may be that that is necessary because of the way that the directive is framed for civil law jurisdictions, but just to point that out to see whether the Government have directed their minds to that.

HON CHIEF MINISTER:

Well, I do not agree with the hon Member that the concept is alien to our law. I think that there are several areas in which our law, I am just trying to think of specific provisions in financial services legislation, where shareholders exercise effective management and control as shadow directors, or because they are acting through nominee directors, the concept of shareholders of a company being in effective management control even though their names do not appear on the list of registered directors, is not that alien even to our Anglo-Saxon system of law. So the Government do not think that that constitutes a defect, I am just trying to see whether it is specifically derived from the directive. It must be specifically derived from the directive however, because the whole thing is. I cannot fish it out from the directive, I was scanning the directive in the hope that it would jump out at me from the page but it is obviously buried there somewhere.

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 CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very short Bill which does no more than delete what is in any event an unused provision of our Criminal Procedure Ordinance. In fact, in a case that recently appeared in the Privy Council about which I will just give a little bit more background in a moment to the hon Members, the Government through the Attorney General undertook to repeal this section because the Privy Council found that although it was not unconstitutional, it seemed I cannot remember if the word was 'untidy', it showed lack of even-handedness in the legislation and that is a provision in the Ordinance which is the one that we are repealing, which entitles the prosecution to obtain an order for costs against a convicted defendant but not

the acquitted defendant to obtain an order for costs against the prosecution.

In other words, in a criminal case under our law the prosecution can seek costs against somebody who is found guilty but except in very limited circumstances, an acquitted defendant is not entitled to obtain costs against the Crown, against the prosecution. The Privy Council commented that it thought that this looked uneven handed and on instructions from the Government the Attorney General undertook in the Privy Council that the Government would remove. No one can recall the last time that the Crown sought an order for costs against a convicted defendant anyway, so it is a defunct section. That is the background of it, what the Privy Council actually said was that, and I quote, 'there is an unattractive and an unjustifiable lack of even handedness in sub-sections (1) and (2) of section 232". What is sauce for the goose ought to be sauce for the gander. The unattractiveness is relieved by the fact that sub-section (1) is a dead letter and the Board was told by the Attorney General on instructions that steps will be taken to repeal it and that is where we are today. Hon Members may be interested to know that that was the case in which actually an acquitted defendant applied for an order for costs against the Crown in Gibraltar, the Chief Justice, the Crown Court refused on the grounds that there was no power to do so. The Court of Appeal ruled, on appeal, that the absence of a provision in our law entitling an acquitted defendant to obtain an order for costs was unconstitutional, in that it was tantamount to a denial of a right to a fair trial. That was appealed to the Privy Council by the Government and the Privy Council unanimously ruled against the Court, in other words, overturned the Court of Appeal's ruling. The Privy Council unanimously ruled that it was not unconstitutional or a breach of the European Convention of Human Rights provision for a fair trial that acquitted defendants should be entitled to seek an order for costs against the Crown. But during the course of making that judgement in favour of the Government, the Court made this remark about the unlevel playing field between the rights of the Crown in the case of a convicted defendant to obtain costs, and the lack of right of an acquitted defendant to obtain costs against the Crown set against the Crown's right to obtain a costs order against a convicted defendant. That is what we are doing today, repealing sub-section (1) to delete the Crown's right to seek an order for costs against a convicted defendant. 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 INCOME TAX (AMENDMENT) (NO. 2) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance in order to transpose into the law of Gibraltar Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, and the amendments made to Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums by Council Directive 2003/93/EC of 7 October 2003, Council Directive 2004/56/EC of 21 April 2004 and Council Directive

2004/106/EC of 16 November 2004, and matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill now before the House serves two purposes. Firstly, clause 2(1) to 2(8) transposes a number of amendments to the Mutual Assistance Directive, that is Directive 77/799, effected by Directives 2003/93, 2004/56 and 2004/106. The remaining provisions transpose the Interests and Royalties Directive which is Directive 2003/49. The Bill, in relation to the transposition of the Interests and Royalties Directive, there will be a need in due course to bring further modifications to those provisions because this directive has been amended by two others, Directive 2004/76 and 2004/66, which for technical reasons are not included in this transposition which is limited to the original Interests and Royalties Directive. The House will recall that the Interests and Royalties Directive is one in respect of which there are infraction proceedings and which we had been desisting from transposing on the basis that hon Members will recall that Gibraltar companies were not listed in the Annex, and there was extreme doubt about whether Gibraltar companies could benefit from it. That has now been clarified, the Commission has written a formal letter confirming that Gibraltar companies are indeed entitled to benefit from it in full, and that the directive fully applies to Gibraltar companies and that is why the Government are now bringing the transposition of that particular directive to this House.

Turning now to the substance of the Bill and going back to the first part, which is the transposition of the amendments in effect to the Mutual Assistance Directive regime. Clause 2 amends section 4B(3) of the Income Tax Ordinance. The entire section has been replaced for reasons only of presentational clarity. In actual fact only paragraph (a) is new. This new provision is intended to clarify that the duty of the Commissioner when offering assistance under the Mutual Assistance Directive is 'to proceed as though acting on his own account'. Clause 2(3) amends section 4B(4). Once again the section remains largely in tact. The only substantive amendments to it are the insertion of the words 'or administrative practices' after the words 'any law' and the deletion of the words 'or using' after the words 'or collecting'. Once again these are points of relatively minor importance and are raised by the amending directives which our Ordinance now needs to reflect. Clause 2(4) amends clause 4B(5). Again this is not a huge amendment and is required again to reflect the amending directives. In essence, the words 'for practical or legal reasons to provide similar information' are replaced with the words 'for reasons of fact or law to provide the same type of information'. Although at first sight both appear to be much of the same, I suppose it is not disputable that something which is a reason of fact may not necessarily be a practical reason. Clause 2(5) amends section 4B(6)(a). The amendment is intended to clarify that any objection to the use of information put to has to be raised at the time that the information is first supplied and not subsequently. Clause 2(6) inserts a new sub-section 4B(6), this enables the Commissioner to use information obtained through Mutual Assistance Directive assistance for the collection of taxes other than that in respect of which the assistance was sought. I ought to mention at this juncture that the provision contained, in other words that this Bill at this point, contains an incorrect cross-reference. The Mutual Assistance (Taxation) Ordinance does not exist and will not exist. The Bill was drafted in that way at a time that it was intended that the provisions which we will debate later this morning, which are in the Schengen amendment Ordinance, Mutual Legal Assistance (Schengen) (Amendment) Ordinance, were going to be included in something called the Mutual Assistance (Taxation) Ordinance. In the event that did not proceed, so therefore I will be moving an amendment to replace the words 'to which the Mutual Assistance (Taxation) Ordinance 2005 applies', and replacing them, I think the hon Members

have already had the letter of amendment, with the words 'as the Minister with responsibility for Public Finance may provide by notice in the Gazette'. Clause 2(7) amends section 4B(7) by inserting a definition of 'tax'. This is merely a cross-reference to the directive. Clause 2(8) inserts a number of new sections after 4B. New section 4C is essentially administrative in scope. It imposes a duty on the Commissioner to serve a person any instrument he may be requested to by a foreign authority. New section 4D addresses the scenario where a person's tax affairs crosses a number of EU borders, in which circumstances this new provision puts in place a framework which enables joint investigation to be decided upon by the Commissioner or the Gibraltar competent authority, of that person's tax affairs.

The remaining provisions of the Bill transpose the Interests and Royalties Directive. Sub-clauses (9) and (10) make consequential amendments for the insertion into the Income Tax Ordinance of a new Part IIIA by sub-clause (11), and a new Schedule by sub-clause (12). The first provision of this new Part is section 47A and this is a definition section. New section 47B sets out the payments to which Part IIA does not apply. These include payments enabling the creditor to participate in the debtor's profits and payments treated in the source stated as distribution of property in repayments of capital. In other words, those are interest payments to which the Interests and Royalties Directive regime does not apply. New section 47C sets out the companies to which the Part does apply. In essence, the company receiving the payment must be either a Gibraltar company or an EU company and is an associated company of the one making the payment. In a nutshell, the regime created by the Ordinance is that when an associated company in one part of the EU makes an interest payment or a royalty payment to an associated company, which is a defined term meaning a minimum of 25 per cent holding in one or the other, or a common 25 per cent holding in both by a third company. When such company makes an interest or a royalty payment to the other associated company, one cannot withhold tax if it is a territory of the paying country and one must make an allowance for any tax paid if it is the receiving company, one must make an allowance for any tax paid in the paying company. In other words, it is to prevent the double taxation in two EU countries of an interest payment or a royalty payment between associated companies, the rule is that they should be made in the country of receipt and not subject to withholding in the country of origin. New section 47D(1) makes special provisions for Greece, Spain and Portugal, who obtained derogations against this regime on account of the difficulties that their economies would risk facing with the full implementation of this directive within the timescale originally proposed. This was part of the Greece, Spain, Portugal transitional provisions on their entry into the EU. These are not new provisions, these have been there from the time of their entry. A number of amendments will be tabled and set out in the letter in relation to these Greece, Spain, Portugal provisions which actually are not accurately transposed in the Bill, and they are set out there. For example, sub-clause (1) is amended by inserting after 'shall not apply' the words 'in the case of Spain six years and in the case of Greece and Portugal' before the words that are already there. Secondly, sub-clause (3)(a) would be replaced by a new sub-clause (3)(a)as follows: 'the tax payable in Greece, Spain or Portugal on such income which (i) in the case of Greece and Portugal would be at a rate not exceeding 10 per cent during the first four years and 5 per cent during the final four years; and (ii) in the case of Spain, would be at a rate not exceeding 10 per cent or'. New sections 46E, 46F and 46G set the criteria necessary to identify the payer and the beneficial owner. New sections 47H and 47J provides for exemption certificates to be issued by the Commissioner and the supporting administrative regime. In other words, this is not automatic this regime, it has to be certificated by the competent authority in the paying country. In other words, certificated that it is an interest or royalty payment to which the directive applies. For example, a provision is made for the information to be supplied and for the circumstances in which such certificates ought to be cancelled by the Commissioner. New section 47K makes provision for the recovery of tax after an exemption certificate has been issued but the provisions of Part IIIA are subsequently found not to have been complied with. New section 47L makes provision for the repayment by the

Commissioner of tax withheld at source in respect of a payment the subject of an exemption certificate. New section 47M contains a regulation-making power. Clause 2(12) of the Bill inserts a new Schedule 2 into the Income Tax Ordinance. This reproduces Article 3A of the directive for the purposes of interpreting new sections 47A and 47F of the Ordinance. 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 MUTUAL LEGAL ASSISTANCE (SCHENGEN CONVENTION) (AMENDMENT) ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures as amended by Council Directive 2001/44/EC, 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 before the House transposes Directive 1976/308 as amended. In order to rationalise the presentation of our laws and thus assist those that have to have access to it the Government have taken the view that since this legislation possesses a common policy aim with that contained in the 2004 Mutual Legal Assistance (Schengen Convention) Ordinance, the transposition of this directive ought to be incorporated into the 2004 Ordinance. In other words, they are both mutual legal assistance provisions. However, the previous one, the 2004 Ordinance, related only to Schengen, this relates to the EU which of course is a wider concept of Schengen. Therefore, the name of the 2004 Ordinance is also being changed to the Mutual Legal Assistance (EU) Ordinance as opposed to the Mutual Legal Assistance (Schengen) Ordinance as it used to be called before. Schengen is part of the EU but the EU is not co-extensive with Schengen, and therefore EU is a better phrase when an Ordinance is going to contain provisions that apply both to Schengen and to the EU. That in itself does not introduce any changes, that is just a change of nomenclature of the Ordinance.

Clause 2(5) of the Bill turns the existing Ordinance, that is to say the existing Mutual Legal Assistance (Schengen Convention) Ordinance, that converts it into Part II of the new enlarged Bill and the main provisions of this Bill before the House becomes Part III. So once we have passed this Bill, the previous content of the Mutual Legal Assistance (Schengen Convention) Ordinance will become Part II of the enlarged Bill, and what we are now making as law today would become a new Part III of that enlarged Ordinance, the name of which enlarged Ordinance will have been changed to refer to be called Mutual Legal Assistance (EU) Ordinance as opposed to what it is presently called which is Mutual Legal Assistance (Schengen Convention) Ordinance.

New clause 24, the opening clause of Part III, is the definition clause. There are a number of points to highlight here. Firstly the Minister with responsibility for Public Finance is empowered to designate a competent authority. Secondly, in order to accord the legislation the flexibility of adapting to changing circumstances, the taxes and states to which the legislation will apply will be the subject of regulations made by the Minister. New clause 25 sets out the scope of the legislation. In essence, its purpose is to assist with the recovery of claims relating to the taxes set out in Schedule 2, which includes taxes on income and capital, or rather criminal fines and penalties are not included. It is important to remember that this is not an exchange of information legislation. This is not exchange of information to enable taxes to be assessed, that is all in the Mutual Assistance Directive provisions which is already in our law. This is recovery of claims. In other words, when a tax authority in one EU country has already established a claim and there is now a debt for a tax claim, then this is a regime that requires the EU countries to help each other in collecting. That is to say, almost the nearest parallel that we have got at the moment is the mutual recognition of judgements legislation where we help each other enforce each other's court judgements. Well this is something akin to that but in relation to established tax assessments. It is not mutual legal assistance leading to the assessment of the tax, it is assistance in the recovery of tax that has already been assessed and is due under the law of another country. Of course, it works both ways, we can be asked by an EU country to assist them with the collection of their tax debts and we can ask EU countries to assist us with the collection of ours. One of the noteworthy aspects of this legislation is that following the judgement of the European Court in Case 349/03, that is the one that went against Gibraltar and the UK recently, that one of the rare cases where the Court did not follow the advice of the Advocate General which had also taken the same line as Gibraltar and the UK, we cannot desist. In other words, we cannot say 'this legislation does not apply to Gibraltar because we do not have VAT, or because we do not have capital taxes'. What the Court decided in that case that was lost was that these are not harmonising measures. In other words, measures to assist each other in the collecting of a tax has nothing to do with whether one actually has that tax or not in their own country. In other words, it is not a measure that harmonises the Europe-wide regime in relation to the liability to those taxes. Had the Court answered that question the other way then we would not have to do that either, but the Court drew a distinction between measures that harmonise liability to the tax on the one hand, where we would not have to comply, and measures which were administrative in which it did not matter whether one was liable to the tax at all. So that is why if the hon Members look in the Schedule they will find listed there taxes that do not exist in Gibraltar, and indeed to the extent that they are EU taxes that we are excluded from, VAT, others that we do not have but not that we are excluded from for VAT purposes for example, capital taxes, we do not have them because we do not have them not because they are an EU harmonisation measure.

New clause 26 provides for assistance to be given with the recovery of claims. The clause contains a number of important qualifications. Firstly, the requesting authority has to supply substantial background information relating to the request. Secondly, our competent authority is not obliged to do anything for a requesting State which it could not do in respect of a claim owed to the Gibraltar Government, or which prejudices the commercial interests or public security of Gibraltar. Those are both directive permitted derogations. New clause 27 provides for assistance with the service of documents. Once again, assistance in this case has to be preceded by substantial background information relating to the case. New clause 28 provides for assistance with the recovery of claims by judicial means. Once again therefore, the competent authority will not possess any power in this respect which he does not enjoy in relation to a tax debt owed to the Government of Gibraltar. In other words, I think it is clear but just for the benefit of the hon Members, an EU country cannot ask the Gibraltar competent authority to do something which the Gibraltar competent authority would not have the statutory right to do on its own account collecting Gibraltar tax. So it does not sort of import any powers from the foreign country. New clause 29 sets out a

number of qualifications to the preceding clause. For example, no assistance needs to be afforded where the competent authority has reason to believe that the debt is being contested in the requesting State. So, if there is doubt as to whether this is an established tax debt and might still be contested, or may still be contested by the tax subject, then there is no obligation to provide the assistance, or for example, where the requesting State has already put in place parallel domestic recovery procedures which have proven to be successful. Again in those circumstances there is no need to give the assistance. In this respect the requesting State must supply a declaration in addition to the other information needed to be supplied, confirming that the claim is not being contested and that full recovery of the debt has not already been achieved in the home State. New clause 30 makes provision for Court orders enforcing a request for assistance. In other words, it is not just a question of the Commissioner receiving, or the competent authority receiving a letter and going off to take enforcement action. The enforcement action has to be ordered by the Gibraltar court as well.

New clause 31 makes consequential provision including methods of payment to be included. In other words, the methods of payment also have to be included in the Court order. New clause 32 is a general sweep-up clause. For example, it includes the duty to maintain the applicant authority informed of the developments at all times, the duty to keep the competent authority informed of any challenges to the debt, and the right of the competent authority to apply for interlocutory measures, where a claim is being contested and the applicant authority nevertheless requests the competent authority to assist with recovery and the debtor ultimately wins his case, provision is made for the applicant authority to remain liable for costs. New clause 33 provides for exceptions to the duty to provide assistance. These include old debts, that is debts which are more than five years old, conflict with public policy and where the competent authority does not posses the necessary powers in relation to domestic debts. New clauses 34 and 35 provide for limitation periods and the need to maintain confidentiality respectively. New clause 36 provides for all requests for assistance to be in English. New clause 37 establishes the principle that the costs of recovery are to be borne by the debtor. No claim will subsist as against the applicant authority save in limited circumstances, such as where a large amount of costs are to be incurred. New clauses 38 and 39 make provision for subsidiary legislation. New clause 40 imposes the duty to inform the Commission of the adoption of the Ordinance. Schedule 2 sets out the taxes and levies referred to in new clause 25(2).

I have given notice of amendments to certain provisions of this Bill. The first one is that clause 29(2)(a) is amended by deleting the word ‘information’ and substituting it with the word ‘recovery’. The following clauses are amended by deleting erroneous cross-references to clause 29(5)(c) and substituting it with reference to 29(1)(a). The seven places where that appears are listed in paragraph 2 of my letter. New clause 34(2) is amended by inserting the words ‘where had it been carried out by the applicant authority’ after the words ‘the period of limitation applicable’. Also by deleting the words ‘where had it been carried out in that Member State’ appearing after the word ‘situated’. The reason for this amendment is that the clause as it currently exists is confusing. The amendment is intended to clarify that the relevant limitation period is that subsisting in the applicant state. New clause 37(4) is amended by deleting all words appearing after the words ‘for any costs incurred where’ and substituting therefore the words ‘the substance of the claim or the validity of the instrument issued by the applicant authority are held to be unfounded’. The purpose behind this amendment is to ensure that the wording of the clause remains faithful to the directive language, avoiding any unnecessary scope for misinterpretation. Finally, the opening sentence of new Schedule 2 is amended by deleting the references to section 3(2) and substituting with the reference to section 25(2) which is the correct reference, I will be moving those amendments at the Committee Stage. I commend the Bill to the House.

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

HON J J BOSSANO:

There are just two points that I would like clarification on. One is, this does not apply to EEA States that are not in the EU then? Normally now for some time directives have been applied to the European Economic Area as opposed to the EU. Secondly, if the previous Bill that we are now incorporating into this one, the existing law the 2004 one, was the legal assistance that we have to provide in the case of Schengen members and now we are legislating for the whole of the EU which includes the Schengen members, is there something that only applies to Schengen but not to the non-Schengen?

HON CHIEF MINISTER:

Yes, the bits that were in the 2004 Ordinance only applied to Schengen and continue to apply only to Schengen and all that becomes Part II of the new enlarged Ordinance. All of this that we are doing today goes into a Part III of the Bill and that applies to the whole EU, including Schengen. So Part III has wider application than Part II. I am advised that in answer to the first of the hon Member's observation, these particular directives like the Mutual Assistance Directive of which it is a family member, apply only to EU and not to EEA.

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 NO. 2) ORDINANCE 2005

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to amend the Public Health Ordinance to transpose parts of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to partly transpose Council Directive 2003/35/EC, commonly referred to as the public participation directive. The public participation directive requires amendment of five legislative instruments. Of these the following have already been amended: (1) the Public Health (Air Quality Limit Values) Rules; (2) the Public Health (Air Quality Ozone) Rules; (3) the Pollution Prevention and Control Ordinance. The necessary amendments to the Town Planning (Environmental Impact Assessment) Regulations are being

drafted. The House will therefore recollect that the purpose of the public participation directive is to amend a substantial number of directives, some of which apply to Gibraltar, in order to make EU law compliant with the UN Economic Commission for Europe Convention (UNECE) on access to information, public participation in decision making and access to justice in environmental matters, commonly referred to as the Aarhus Convention. The EU is a signatory to the Aarhus Convention in its own right and is therefore required to align its legislation into Aarhus. The net effect of the public participation directive is that a statutory consultation scheme and provision for access to justice is introduced into existing directives, either by way of direct amendment or through their inclusion in the Annex of the directive. The Bill before the House relates to one such directive listed in the Annex, namely Council Directive 75/442/EEC of 15 July 1975 on waste. The waste directive was transposed in 1995 through the insertion of Part VA into the Public Health Ordinance. The Bill is therefore necessarily limited in scope and merely seeks to effect the changes that will require a statutory consultation where waste management plans are made or where these are reviewed. The current waste management plans require a review in approximately four years time, and in accordance with the provisions of this Bill, public consultation will take place. The Environment Ordinance also makes public consultation a requirement in respect of certain plans and programmes. In the circumstances, provision is made by the insertion of sub-section (2)(e) so that the obligation to consult twice does not arise. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

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

Question put. Agreed to.

THE GIBRALTAR ELECTRICITY AUTHORITY (AMENDMENT) ORDINANCE 2005

HON F VINET:

I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Electricity Ordinance 2003, be read a first time.

Question put. Agreed to.

SECOND READING

HON F VINET:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Gibraltar Electricity Authority Ordinance of 2003 in order to incorporate into the Gibraltar Electricity Authority those areas of responsibility that were initially excluded under Schedule 1, Part 2, clauses 1(a), (b) and (d). These areas, namely those serviced by the generation and electro-technical divisions, were excluded at the time of passing of the Bill by the House of Assembly on 28th March 2003, because the relevant personnel within these areas had not transferred to the Gibraltar Electricity Authority at the time. Following successful negotiations with the Unions, the generation and electro-technical divisions, transferred to the Authority on 1st February 2004, and therefore this amendment aims to incorporate the areas previously excluded. The amendment also includes under Schedule 1, Part 1 the addition of two new paragraphs, namely, 1(a) and 1(b). Paragraph 1(a)

recognises that as from 1st February 2004 all matters related to the generation and sale of electricity were transferred to the Authority, and 1(b) that as from 1st April 2003, all matters related to the provision of electrical services and works as specified and requested by Government, comes under the responsibility of the Authority.

I would like to give notice that I will be moving a minor amendment to the Long Title, which presently reads, 'a Bill for an Ordinance to amend the Gibraltar Electricity Ordinance', it should read, 'to amend the Gibraltar Electricity Authority Ordinance'. I commend the Bill to the House.

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

HON L A RANDALL:

Just to say that the Opposition will be abstaining. We will thus be consistent with the way we voted when in 2003 this House considered the Bill which created the Authority.

Question put. The House voted.

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

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

The Bill was read a second time.

HON F VINET:

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

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 Criminal Offences (Amendment) Bill 2005;
2. The Criminal Procedure (Amendment) Bill 2005;
3. The Income Tax (Amendment) (No. 2) Bill 2005;
4. The Mutual Legal Assistance (Schengen Convention) (Amendment) Bill 2005;
5. The Public Health (Amendment No. 2) Bill 2005.

THE CRIMINAL OFFENCES (AMENDMENT) BILL 2005

Clauses 1 to 6 – were agreed to and stood part of the Bill.

Clause 7

HON F R PICARDO:

The proposed amendment to 221A first of all it needs a capital 'w' in the first letter of the sentence. In section 221A(1)(a) after the words "body corporate" insert the words "and it"; and in section 221A(1)(b) after the word "partnership" in the first line insert the words "and it".

HON CHIEF MINISTER:

I am not sure that is necessarily right, I agree it is not brilliant language construction. Forget the (a) and the (b) and read (a) together with the prefix, which is a prefix to both (a) and (b). 'Where an offence under this Part has been committed by a body corporate is proved to have been committed with the consent or connivance of or' …….. and he is suggesting that we should put what? 'Where an offence under this Part has been committed by a body corporate and ……..'. Well certainly I think it improves the language, I do not think it necessarily does not read without it but certainly the suggestion improves it. We are happy to agree to that.

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

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

THE CRIMINAL PROCEDURE (AMENDMENT) BILL 2005

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

THE INCOME TAX (AMENDMENT) (NO. 2) BILL 2005

Clause 1

HON CHIEF MINISTER:

I have given notice to amend but I do not know whether to take these amendments as read, I do not know if I should read each one of them out but there is an amendment there to clause 1 as per the letter. So that should read the Income Tax (Amendment) (No. 3) Ordinance and not (No. 2).

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

Clause 2

HON CHIEF MINISTER:

In clause 2 at sub-clause (6) there is an amendment which is to delete the words "to which the Mutual Assistance (Taxation) Ordinance 2005 applies" and substitute with the words "as the Minister with responsibility for public finance may provide by notice in the Gazette."

In the new clause 47D(1) in the first line after the word "apply" we should insert the words "in the case of Spain 6 years and in the case of Greece and Portugal". Then further down the page in the new clause 47D(3)(a), after the word "income" add the words set out there in the letter: "(i) in the case of Greece and Portugal will be at a rate not exceeding 10% during the first four years and 5% during the final four years; and (ii) in the case of Spain, will be at a rate not exceeding 10%; or".

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 MUTUAL LEGAL ASSISTANCE (SCHENGEN CONVENTION) (AMENDMENT) BILL 2005

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

Clause 2

HON CHIEF MINISTER:

In clause 2 again it is the same point as before. I think I am right in saying that all the amendments now fit into clause 2 of the Bill. Again they are set out in my letter but on page 866, that is sub-clause (6) in Part 2 the word "Part" in sub-clause (6) it should be "Ordinance", and in sub-clause (7) the first word "Part" should be "Ordinance" as well but not the second one.

HON F R PICARDO:

Just before we move on to the other substantive amendments, I just want to note that we are actually going to change the date of the Ordinance that we are amending to make it an Ordinance dated, at least the Short Title of which will be 2005, so we are going to end up having started with the Mutual Legal Assistance (Schengen Convention) Ordinance 2004 with the Mutual Legal Assistance (European Union) Ordinance 2005. Now, changing the Title is perfectly all right of course, there is provision for that, I think it is the first time I have ever come across actually changing the date of the Ordinance. There is no form of power to do that. It is not the date itself that is being changed, because obviously the date is the date in which it was passed in the House the first time, and today will be the date of the amendment but we are changing the title to reflect a date of 2005. I just want to note that that is the first time I have ever seen that done and would be comforted if I am told that we are able to do it.

HON CHIEF MINISTER:

In fact, in Gibraltar there is no relevance in a year appearing in the date, the name of the Ordinance is what matters and indeed the hon Member may recall or he may not because it has fallen into disuse, I remember when I first arrived in legal practice the date of the year was almost never referred to, it was the chapter number, cap this or cap that in the laws of Gibraltar. The date, that is to say the year because it is not a date, 2004 is a year not a date, a date would require a month and a day in the month, it is not a date of the legislation, it is no more than part of the name. It might just easily have no year at all. This could very easily be called the Mutual Legal Assistance (Schengen Convention) Ordinance and need not have been called (Schengen Convention) 2005 Ordinance. It is odd to change the name of an Ordinance and not change the name insofar as a year is referred to in the name. He may not have seen it before, indeed, I am not sure this may be the first time we have changed the name of an Ordinance before.

HON F R PICARDO:

We changed the Long Title in the last House.

HON CHIEF MINISTER:

No, this is the Short Title, I am not sure that we have done the Short Title. The Long Title does not name the Ordinance, what names the Ordinance is the Short Title. I do not recall having changed a Short Title before, which is not to say that we have not done it simply that I do not recall it. In any case, the 2005 or 2004 is just another word in the nomenclature of the Bill. There is no question of the need for power to do so or right to do so, it is as if we just had another word there, so there is absolutely no reason why we should not change the name of the title in this respect. It is not necessary to do so, we could change the rest

of the name and leave the 2004 in place but no issue arises one way or the other.

So the next amendment is the deletion at page 872 of the Bill, at sub-clause (2) of new section 29, a request it says for information and that word "information" is to be deleted and replaced with the word "recovery". So it would read "a request for recovery". Then in a number of places reference to 29(5)(c) should be a reference to 29(1)(a) and they are at 30(1), (2) and (3); 32(2), (5) and (8); and 36(b). In clause 34(2) after the word "applicable" we should insert the words "where had it been carried out by the applicant authority" and we should delete the words "where had it been carried out in the Member State" in the next line. In sub-section 37(4), we should delete all the words after 'for any costs incurred where' and those words should be replaced by the words "the substance of the claim or the validity of the instrument issued by the applicant authority are held to be unfounded." Finally, in the second Schedule on page 881 in the opening line of it, the reference to section 3(2) should be a reference to section 25(2).

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 NO. 2) BILL 2005

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Criminal Offences (Amendment) Bill 2005, with amendments; the Criminal Procedure (Amendment) Bill 2005; the Income Tax (Amendment) (No. 3) Bill 2005, with amendments; the Mutual Legal Assistance (Schengen Convention) (Amendment) Bill 2005, with amendments; and the Public Health (Amendment No. 2) Bill 2005, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Criminal Offences (Amendment) Bill 2005;
The Criminal Procedure (Amendment) Bill 2005;
The Income Tax (Amendment) (No. 3) Bill 2005;
The Mutual Legal Assistance (Schengen Convention) (Amendment) Bill 2005; and
The Public Health (Amendment No. 2) Bill 2005,
were agreed to and read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Tuesday 20th December 2005, at 10.00 am.

Question put. Agreed to.

The adjournment of the House was taken at 11.20 am on Tuesday 13th December 2005.

TUESDAY 20TH DECEMBER 2005

The House resumed at 10.05 am.

PRESENT:

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

GOVERNMENT:

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

BILLS

FIRST AND SECOND READINGS

THE GAMBLING ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to repeal the Gaming Ordinance and the Gaming Tax Ordinance and to make new provision for licensing, regulating and taxing, betting, gaming and lotteries, 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 before the House contains provisions which are, in the Government's view and in the view of the gaming industry, necessary to modernise Gibraltar's gambling legislation and create a new statutory, licensing and regulatory framework for this increasingly important sector of our economy. As the House is aware, the gambling industry has become a

valuable contributor to Gibraltar's economy. In addition to the well-established onshore casino and betting shops there are currently 15 internationally owned gaming companies operating from Gibraltar. These create significant employment, utilise our telecommunications and other services and generally raise Gibraltar's level of economic activity, including significant contributions to Government revenue. Current legislation is contained in the Gaming Ordinance and various regulations made thereunder. Although we have successfully developed and grown within the framework provided by the current Gaming Ordinance it has become evident, especially over the last few years, that a significant modernisation of our legislation is appropriate to accommodate a growing sector. The current Ordinance was enacted in 1958 and is currently out of date and in need of revision. I should add that other European countries have recently also initiated the process of modification of their gaming legislation, and in particular to make provision for the regulation of internet gambling and gambling services as provided to domestic and international clients. The Bill will replace not only the Gaming Ordinance but also the Gaming Tax Ordinance. It is under the terms of the Gaming Tax Ordinance that the current level of betting duty, calculated at 1 per cent of turnover but subject to a minimum floor of £85,000 per year and a maximum ceiling of £425,000 per year is levied. Government have decided it is more sensible for the licensing, regulation and taxation of gaming and betting activity to be provided for under the same Ordinance. It is likely, however, that initially only the Gaming Ordinance will be repealed and the substantive licensing and regulatory aspects of the new Gambling Ordinance will be brought into effect. Separate provision by way of regulation thereunder will be made in relation to duties and levies, at which time the Gaming Tax Ordinance will be repealed.

The Bill makes provision for the issue of a number of different types of licences. In particular, it should be noted that a specific licence will be required in relation to remote gambling activities. In the Bill remote gambling activity is defined as gambling in which persons participate by means of remote communications. That is to say, communication using the internet, or the telephone, or the television, or the radio, or any other kind of electronic or other technology for facilitating communication. Given the particular requirements arising from remote gambling, special provision is made in Part VI of the Ordinance to which I will refer in more detail later. The Bill makes provision for both a licensing authority and a gambling commissioner. The licensing authority will be empowered to grant licences and impose such terms as appear to the authority to be appropriate in any given circumstances. It is intended that the licensing authority shall be the Minister with responsibility for gambling or such other individual or body as the Minister may appoint. The gambling commissioner is intended to be the Gibraltar Regulatory Authority. The commissioner will be responsible for ensuring that the holders of licences conduct their business in accordance with the terms of their licences, the provisions of the Ordinance and in such manner as to maintain the good reputation of Gibraltar. In the exercise of the commissioner's duty he will be required to consult with the Minister and in appropriate cases with licence holders. In other words, in a nutshell the Minister will be the licensing authority but the Gibraltar Regulatory Authority will be the regulator of the industry.

The Bill is divided into various parts. As indicated previously, some parts deal with non-remote betting and gaming with specific provision being made for non-remote lotteries. I can confirm that no change is envisaged to any of the practical arrangements in respect of the Gibraltar Government Lottery. Specific provision for remote gambling is contained in Part VI of the Bill. These arise from the special requirements of an industry which deals with international clients and which relies on very sophisticated information technology infrastructure. Among the various matters covered is the need for remote gambling equipment to be accredited by approved testing houses. Such accreditation will ensure the fairness and integrity of all equipment used and number generation systems. The Ordinance also makes general provision with regard to the minimum permitted age for gambling. As the House is aware,

there is currently no minimum age prescribed in Gibraltar with regard to gambling. In general terms the minimum age in respect of lotteries is set at 16 and in respect of other gambling activity at 18. There is however power reserved to the Minister to vary the minimum permitted age having regard to different classes of gaming and different circumstances. In other words, circumstances may arise in which whilst it is thought to be okay for the minimum age to be 18, some forms of gambling may be thought to be all right for persons under 18. For example, scratch cards or things of that sort and there is therefore the power to moderate the age, lower the age if it is generally thought that for a particular type of gambling the age should be less than 16. The Bill also includes a number of enforcement and investigation powers to support the functions of the licensing authority and the gambling commissioner.

I should like to highlight, as I will in more detail in a moment, the transitional provisions of the Bill. These provide that a Gaming Ordinance authorisation, that is to say an existing authorisation, shall upon enactment of this new Bill have effect as if it were granted or entered into by the licensing authority under the new Ordinance. It is intended therefore that there will be a seamless transition from the old legislation to the new Ordinance without the need for current operators to have to apply for new licences. It is envisaged that the licensing authority will issue new licences to existing operators without the need for specific application as soon as practical. The Bill makes detailed provision in relation to the application process and the requirements generally to be followed when applying for or seeking a renewal of a licence.

In respect of the more detailed principles of the Bill, hon Members will have seen that clause 2 is the main interpretation clause and contains several important definitions. The most important are the definition of the gambling commissioner, which takes the reader to clause 6; the definition of licence, which takes the reader to clause 3; and the definition of licensing authority which takes the reader to clause 5. In other words, the definitions of those terms are by reference to a regime created in the particular clause of the Bill. Of course the other most important of all definitions is the definition of the term “remote gambling”. Clause 3 of the Bill sets out the various types of licences required by the Bill, and that all licences must specify not only the holder of the licence but also the premises on which the activity permitted by the licence may be carried on. Clause 4 deals with the imposition of terms on a licence and the power of the licensing authority to permit the holder of a bookmakers licence to take bets by telephone, which is a form of remote gambling. In other words, the definition of “remote gambling” is gambling via any method of communication, which includes the telephone. But of course it is historically the case that onshore bookmakers sometimes take bets on the telephone, and clause 4 specifically provides that when an onshore bookmaker takes a bet by telephone, that will not be regarded as remote gaming so he will not require a remote gaming licence in addition to his bookmakers licence. The clause also introduces Schedule 1 which in addition to dealing with applications and the forms of the licences, contains provision about the grant and renewal of licences and certain notification requirements. Clause 5 provides for the licensing authority to be the Minister or such individual or body as he may appoint. Clause 6 provides for the Gibraltar Regulatory Authority to be the gambling commissioner for the purposes of this legislation.

Part II of the Bill deals with the regulation of non-remote betting and betting offices. Non-remote in relation to gambling is defined in section 2(1) as being gambling which is non-remote gambling, so everything turns on the phrase remote gambling, that is at the core of the regime of this Bill. In effect, non-remote gambling relates to betting by persons in Gibraltar with other persons in Gibraltar primarily on a face to face basis. Essentially, the provisions cover the same areas as two clauses of the present Gaming Ordinance, but the provisions of the Bill are of course drafted in terms of the new licensing system established by the Bill. So there is not a huge change in substance in relation to non-remote gambling but there is a modernisation of the terminology of the legislation. Clause 7 corresponds to section 5B of the present Gaming Ordinance, in its requirement for every bookmaker to have a bookmakers

licence. Clause 8 corresponds to section 5A(1) of the present Ordinance in providing that premises used for bookmaking purposes must be premises covered by the bookmakers licence. This is a reflection of clause 3(5) of the Bill. Clause 9 of the Bill corresponds to sub-sections (2) and (3) of section 5A of the present Ordinance. It penalises people who for betting purposes frequent premises which are not covered by a bookmakers licence. Clause 10 on the other hand, does not reflect any provision of the present legislation. It imposes a requirement that a person carrying on pool betting must hold a pool promoters licence. Part III of the Bill deals with non-remote gaming and gaming establishments, as opposed to non-remote gambling or bookmaking. As with Part II some of the provisions of Part III have their origin in the present Gaming Ordinance. Clauses 11 to 13 make provision which broadly corresponds to that previously made by sections 3, 4 and 5 of the Gaming Ordinance. Clause 11 requires any person managing, conducting or providing facilities for gaming to hold a gaming operators licence. Clause 14 of the Bill excludes from the requirements of a gaming licence, gaming conducted "on a social occasion" in private houses. The exclusion depends upon the fulfilment of various conditions set out in the body of the Bill. Clause 15 relates to gaming machines and provides that any person who keeps a gaming machine on any premises, or allows such a machine to be kept on premises, must have a gaming machine licence covering those premises. This provision corresponds to that made by sections 3A and 5 of the present Gaming Ordinance. Part IV of the Bill relates to three types of non-remote lotteries. They are listed in clause 16 of the Bill and are (1) a Government lottery; (2) a lottery of a description specified in Schedule 2 of the Bill; and (3) a lottery promoted by a person who holds a lottery promoters licence. The substance of the provisions of Part IV correspond closely with those of sections 6 to 12 in Part II of the existing Gaming Ordinance. Clause 17 empowers the Government to promote and conduct a lottery, that is to say, a Government lottery and confers various supplementary powers on the Minister. Clause 18 provides that after paying out prize money, the proceeds of a Government lottery are to be paid into the Consolidated Fund. Clause 19 empowers the Minister to make regulations prescribing matters relating to Government lottery. These provisions are mainly the same as the present legislation. Clause 20 relates to the lottery specified in Schedule 2. On an application to the licensing authority the applicant may be authorised by the authority to conduct a lottery of a description specified in Schedule 2. Clause 21 contains a number of offences which police the earlier provisions of Part IV of the Bill.

Part V consists of one clause only. In relation to non-remote gambling Clause 22 prohibits a person from acting as a betting intermediary unless he is the holder of a betting intermediary's licence. Part VI establishes the regulatory regime for conducting remote gambling from Gibraltar. So this is the main part that deals with the regulations of the remote gambling industry. Clause 23 imposes the requirement that anyone conducting or providing facilities for remote gambling must hold a remote gambling licence. The only exceptions are: (1) the taking of telephone bets by the holders of a bookmakers licence, which specifically authorises taking of such bets; and (2) the taking of orders for the sale of lottery tickets by the holder of a lottery promoters licence, which similarly specifically authorises the taking of such orders. Clause 24 explains what is meant in the Bill by conducting or providing remote gambling in or from within Gibraltar, and that really is the crux of this part of the legislation. Clause 25 is concerned with the safeguarding of the integrity of computer equipment used to facilitate the carrying on of remote gambling. In particular, it requires the holder of a remote gambling licence to send annually to the gambling commissioner a certificate that the equipment has been tested by a testing house approved by the commissioner. Now this is vital to the jurisdictional reputation, most virtual gaming is conducted by machines and therefore one's chances of winning or not winning are directly related to the calibration and the functioning of a machine. It could be a virtual horse race which somebody might have seen on television, or it could be a casino, a poker game. All of these games, they are not human beings playing against human beings, these are machines playing against human beings. So unless the machine is

subject to regular calibration checks, verification procedures, the people playing that machine may not be getting a fair crack at the whip, so to speak. So, the certification by approved testing houses, of which there are a few around the world, of the integrity and condition of the equipment is a vital piece of the integrity and therefore the jurisdictional reputation of Gibraltar as a base for virtual gaming activities.

Clause 26 requires a licence holder to supply information to the gambling commissioner with respect to the supplier and specification of software which is used by the licence holder for the purposes of remote gambling. The information is to be supplied on receipt of a request from the gambling commissioner, describing the software in respect to which he requires information and the information is to be supplied in such form and manner as is specified in the request. Clause 27 deals with responsible gambling, another important part of this legislation. Sub-clause (1) requires the licence holder to contain on the home page a direct link to the website of at least one organisation dedicated to assisting problem gamblers. Sub-clause (3) requires the licence holder to take various steps to guard against problem gambling. Clauses 28 to 30 deal with the registration of participants in remote gambling sites. Clause 28 requires the holder of remote gambling licences to obtain and keep up to date a register of specific information related to persons who participate in the gambling, and also to inform participants of their individual responsibility to ensure that under the law of the jurisdictions which governs them personally, they are legally entitled to engage in the remote gambling provided by the licence holder from Gibraltar. Under clause 29 every licence holder must provide the gambling commissioner with such information relating to the accounts of registered participants, as the commissioner may by notice reasonably require. Under clause 30 information relating to a registered participant may not be disclosed to a third party except in three cases which are set out there. In clause 31 the situation is dealt with where there is an interruption in a remote gambling transaction as a result of a failure of the licence holder's remote gambling equipment or telecommunication equipment. So one can envisage the situation where somebody is taking part in a poker game, or in a virtual horse and there is a failure of the system and the virtual gaming activity is interrupted and cannot be concluded after the punter has already paid his stake. The clause provides for refunds of stakes in appropriate cases, and for notification to the gambling commissioner of any failure which cause detriment to a participant or if there is any suspicious circumstance. Equally, if the licence holder believes or suspects that an interruption to a transaction has been caused or effected by some illegal activity, he may withhold any prize pending an investigation. The matter must be reported to the gambling commissioner who may direct the payment of the prize or confirm the withholding. Clause 32 requires any website maintained by a licence holder to contain certain information, including particulars relating to himself and to his business address. It also empowers the Minister to prescribe rules with respect to the advertising of the activities carried out under any remote gambling licence.

Clause 33 is concerned with money laundering or other illegal acts arising in connection with remote gambling. Under sub-clause (1), where the licence holder becomes aware or reasonably suspects that a participant has obtained a benefit as a result of any illegal conduct, he can take action in relation to the account of the participant concerned. The rest of the clause is concerned with ensuring that the facts of any money laundering or other illegal activity are notified to the gambling commissioner and that appropriate action can be taken by the law enforcement bodies of Gibraltar. Finally, the licence holder is required to cooperate in investigations arising out of any illegal activity which he is called upon to notify to the commissioner. Part VII, as explained in clause 34, sets out certain obligations common to all licence holders under all parts of the legislation. Clause 35 seeks to ensure that the rules under which the licence holder runs his gambling operation are brought to the attention of those who seek to participate in gambling with it. Clause 36 imposes a duty on a licence holder to establish a system of internal controls and procedures to seek to prevent money laundering and other suspicious transactions

by persons taking part in remote gambling conducted by the licence holder. Clause 37 requires licence holders to take all reasonable steps to prevent underage gambling, another quite important part of the regulation of this industry. Winnings which would otherwise be due to a person who is underaged are forfeited to the Government and paid to the Consolidated Fund, provided that the winnings paid or payable to an underaged gambler before the licence holder became aware that he was an underaged gambler shall not be forfeited to the Government. Therefore, what is forfeited to the Government are the winnings with somebody who is known to be an underaged gambler. Otherwise, it is not enough simply to say one does not have to pay the winnings, because that would make the gambling industry a beneficiary. It almost suits them to blow the whistle, if they have to make a big pay out they will say, 'no you are a minor' and they get away. So there has to be some degree of forfeiture in the worst cases otherwise there is no deterrent whatsoever.

Clause 38 requires the licence holder to inform the gambling commissioner of the place where his transaction records are to be kept and requires those records to be kept in such a manner as to enable true and fair financial statements and accounts of his business to be prepared and audited. Every licence holder is required to provide the gambling commissioner with a copy of his audited financial statements and accounts together with any additional information which the commissioner may request in writing. Clause 39 is concerned with ensuring that every licence holder maintains banking arrangements which are for the time being approved by the licensing authority. Before giving any such approval, the licensing authority is required to consult the gambling commissioner. Clause 40 requires every licence holder to inquire promptly into any complaint from a participant concerning a transaction, and also any complaint referred to the licence holder by the gambling commissioner. In other words, there is a mechanism there by which people gambling with Gibraltar remote gamblers can complain. Clause 41 requires every licence holder to pay such charges, fees and gaming taxes as may be prescribed by the Minister, all the sums due are to be paid into the Consolidated Fund. In other words, this is the clause under which the Gaming Tax Ordinance will be replaced by a new gaming tax regime established under regulations made under this clause. Under Part VIII, which deals with administrative provisions, clause 42 empowers the Minister after consulting with the licensing authority and the gambling commissioner, to appoint investigators to look into the affairs of any licence holder suspected of carrying on business contrary to the provisions of the Ordinance. The inspectors are given wide powers of entry and search of premises and associated powers to obtain information. There is a criminal penalty for obstruction or failure to comply with the requirement of the inspector. Clause 43 gives the licensing authority power to suspend or revoke a licence. In principle, by virtue of clause 44, a licence may be suspended or revoked on any ground on which a renewal of it could be refused under Schedule 1. Additionally, sub-clause (6) of clause 43, under that clause the licensing authority can suspend or revoke a licence immediately if the licensing authority considers that the licence holder is carrying on his activities in a manner prejudicial to the public interest. The power in sub-clause (6) of clause 43 can be exercised without prior notice but in all other cases, that is to say, other than the public interest, in all other cases the licensing authority must give notice to the licence holder of the intention to suspend or revoke the licence, and give him an opportunity to make representations. As an alternative to revoking or suspending a licence, the licensing authority may add, remove or amend a term to the licence.

Under clause 45 a Justice of the Peace, on being satisfied that gambling is taking place on any premises contrary to any provisions of the Ordinance, may issue a warrant authorising the gambling commissioner or any person designated by him, including a police officer, to enter the premises and search for, seize and remove for possible use in a criminal prosecution any material documents, money and other material or instruments of gaming. Clause 46 produces the substance of section 15 of the Gaming Ordinance but that clause applies only to prize competitions in newspapers. Clause 46 covers prize

competitions conducted in any media. Clause 47 is a general provision making it an offence for a licence holder to fail to comply with the obligations in Parts VI and VII of the Bill. Clause 48 establishes the level of penalties appropriate on summary conviction and on conviction on indictment for the majority of offences under the Bill. Part X contains supplementary provisions. Clause 51 provides that the decision of the licensing authority on matters relating to the grant, renewal, suspension or revocation of licences, or the addition, removal or amendment of any terms of a licence are final and conclusive. This form of words does not prevent the possibility of judicial review. So in other words, the form of appeal allowed for is by way of judicial review which under the rules of our judiciary cannot be excluded by legislative provision. In other words, where a legislation says final and conclusive in respect of the decision of any particular authority, what it is really saying is that the promoters of the legislation, in this case the Government, have chosen that the means of approval of appeal shall be by means of judicial review. In other words, that the court shall have an opportunity to decide whether the decision was made in breach of some law or other. In other words, that the decision was not lawful in substance or that it was unreasonable in process or procedure leading to it. Clause 52 gives the Minister power by regulation to appoint a gambling ombudsman to carry out functions specified in the regulations.

Clause 52 contains transitional provisions. Clause 55 provides for the repeal of the existing legislation, namely the Gaming Ordinance and the Gaming Tax Ordinance. The Schedule to the Bill, Schedule 1 contains the details about applying for the grant and renewal of a licence under the Bill. The required documentation will be prescribed by regulations. Under paragraph 4 a licence holder or an applicant for a licence is required to obtain in advance the approval of the licensing authority to any proposal which would have the effect of making a material change in relation to the responsible person. Under paragraph 5 the licensing authority is given power, after notice to a licence holder, to add, remove or amend a term of a licence. Under paragraph 6 there are provisions for the renewal of the licence and the mechanics for the renewal of a licence. Schedule 2 when taken with clause 20 of the Bill, reproduces the provisions of the present Schedule to the Gaming Ordinance, with one exception. The various types of lottery listed in the Schedule must not offer prize monies or money prizes, but bingo or tombolas run by the type of club, charity or society listed in paragraph 2 of the Schedule, can offer money prizes in their lottery. That regime is designed to ensure that the present sort of things that go on in the community can carry on without this being used as a loophole by others to set up what are lottery businesses disguised as charitable activity.

I would simply add to that extensive and detailed review of the principles, and I do so in such detail because it is an important piece of legislation, we are moving legislation forward very considerably in an important area of activity. Gibraltar is and seeks to be, and by this piece of legislation will remain at the forefront of this industry on a global basis. The other thing that I would add is that I have been in very close consultation with the gambling industry throughout the last two months in relation to the drafting of this legislation, and I am pleased to confirm that it meets with their entire approval and support. 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 STAMP DUTIES ORDINANCE 2005

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to provide for the levying of stamp duties in certain cases, 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 principal objective of this piece of legislation is to implement the budget measures that I announced in relation to stamp duty, but the opportunity is also taken to modernise certain aspects of our Stamp Duties Ordinance, many of which derive from 1933 which is when the original language that survives in the present Stamp Duties Ordinance derives from. Therefore, the main provision of this Bill is to sweep away from liability to Stamp Duty all instruments, it is important to bear in mind that stamp duty is not a tax on transactions, it is a stamp on instruments governing transactions, so it sweeps away stamp duty on all instruments except those relating to three types of transaction, two of which the Government would have happily swept away too but the Finance Centre industry advised the Government that there was a benefit because other countries would only recognise certain things if there was an element of charge in Gibraltar. Basically, what the Government would otherwise have done is sweep away stamp duty in Gibraltar for everything except instruments relating to transactions relating to real estate property in Gibraltar. So the transactions that are left subject to stamp duty, and everything else is removed by the Bill in front of the House today, is transactions relating to instruments relating to transactions relating to real property situate in Gibraltar and also the transfer of ownership of any vehicle or legal entity when and to the extent that it owns real estate property in Gibraltar. So the rule is, that if one sells the share of a company stamp duty on the transfer of shares is abolished, but if the company whose shares one is transferring owns a property in Gibraltar, then one pays stamp duty as if what was being transferred was the property. Hon Members will immediately realise the purpose of that, it is to prevent people from putting properties in companies and then dealing in the companies and thereby avoiding liability to Stamp Duty. But not limited only to companies, there are other sorts of legal entities which can be used as vehicles for the ownership of assets, unit trusts, all manner of things, so hon Members will see in a moment how this is achieved when I take them through some of the principal provisions of the Ordinance.

The two elements where we have left, and I think hon Members will recall that we introduced this in a brief Bill about two months ago because the industry was keen for this to happen quickly, which Bill by the way is now repealed and the same provision incorporated in this Ordinance, is the fixing at £10 flat the nominal share capital duty and the nominal duty on loan capital of Gibraltar companies. With the exception of those three things, this Bill abolishes stamp duty on all other types of instruments. By way of modernisation the Bill also abolishes the concept of paying stamp duty through adhesive stamps. In other words, in the past one has been able to pay stamp duty either through embossing the document with that sort of red legal-looking stamp that one might have seen on the top of a document, or by buying the postage stamps to the same value and sticking them on the document. The latter method has been abolished so now all stamp duty is payable through the Stamp Duty Commissioner by the embossment of the necessary amount of stamp duty or the affixing by the Commissioner of a certificate to the effect of the stamp duty. Another old provision in the legislation that has been abolished, which I suppose derives from the fact that in 1933 there was no air mail and everything came by donkey or equivalent, is that there was a rule that liability to stamp duty on a document did not arise until the document reached Gibraltar. So one had 30 days from the

date that the document reached Gibraltar, that is no longer necessary in this day and age of air mail and of couriers and of electronic mail, and therefore that rule is abolished, there is no longer any period of grace whilst the document arrives in Gibraltar but the period for stamping any document, whether it is signed in Gibraltar or not, is extended from 30 days to 40 days.

Another provision that the hon Members will wish to take note of are the new penalty provisions, I will take them through it in a moment, but basically the penalty regime now is tougher than it used to be. It is now the payment of the duty, as it always was, and this is new, 10 per cent of the duty payable or £100 whichever is the greater and interest at the rate of 5 per cent if the duty payable is more than £1,000. There are in section 40 anti-avoidance provisions and those are important too. There are important repealed provisions, which I will take the hon Members through in a moment, and important transition provisions. The Schedule sets out the changes to the rates of stamp duty for real estate transactions which I will take the hon Members of the House briefly through in just a moment.

So, turning to the substance of the Bill itself, there are of course many amendments to the index at the front of the Ordinance to reflect the substantial amount of amendments to the Bill itself. The first important provision is the Title and Commencement. Sub-section (2) says that any duty paid or payable between 1st July and the repeal of the present Ordinance, other than on Gibraltar real estate transactions, will be repaid or remitted. The first important new definition is the definition of "Gibraltar real property investment" and the significance of that concept is that that is the definition that eventually, when we get to the body of the legislation, will charge to duty property when it is owned in a vehicle, in a legal person, as opposed to a natural person, the shares of which are transferred. The other definition which is relevant to that regime, in other words, the regime whereby shares remain subject to duty to the extent of the value of an underlying Gibraltar property, is the definition of "relevant body", which when read together with the terms "Gibraltar real property investment" and the term "investment", are the three definitions that are relevant to that regime. So there is a whole load of deletions to reflect all the things that are no longer relevant because of the abolition of stamp duty on so many of the transactions on which it is presently due, commercial agreements, bills of exchange and all that sort of thing. All those definitions go out, much of the language where the language of the old Ordinance continues to apply in the sense that there is a continuing part to duty, the language has been left unchanged however old it might be. In other words, we have wanted to keep to a minimum the changes that have to be made to a regime and to statutory provisions with which practitioners, both legal and real estate, are familiar.

So, clause 16 of the Bill is the clause that establishes, as I said earlier, the new penalty provisions for late payment. I should perhaps just have mentioned the earlier provisions. Old section 8, which of course is no longer present hence the abolition achieved, old sections 7 and 8 dealt with adhesive stamps, all that is there. So when I say that the payment of stamp duty by adhesive stamps has been abolished, what has happened is that the sections that used to provide for it are no longer in this Ordinance, and that is how the abolition is achieved. In clause 16, there is the new regime at the moment, the penalty for non-payment of stamp duty, is the payment of the unpaid duty a penalty of £10 and interest at 5 per cent, provided the duty unpaid exceeds £10. We have added by way of penalty an amount equal to 10 per cent of the duty payable or £100 whichever is the greater, and we have increased the amount of duty that must be due before interest becomes payable, to £1,000 from £10. So there is some give and some take.

Those Members of the House who are familiar with the old Ordinance will know that were sections, whole rafts of sections which have disappeared obviously, dealing with the stamping of agreements and appraisements, and instruments of apprenticeships and bank notes, and bills of exchange, and bills of lading and bills of sale, and bonds and contract notes and all manner of different types of instruments, which of course have all been swept away consequent upon the abolition of stamp

duty on that type of instrument. The relevant clause in relation to the business of Gibraltar real property investment, is new clause 24(7) which reads: "where a Gibraltar real property investment consists of an investment representing real property in Gibraltar, and also represents other property or is in a relevant body owning real property in Gibraltar and also owning other property, ad valorem duty is to be charged and paid on the basis that the consideration is a sum equivalent to the value of real property in Gibraltar, that is to say, as if the property being sold were the real property in Gibraltar." Now that is significant in two different ways. First of all, not only are we excluding from the abolition of stamp duty, not only are we leaving subject to stamp duty the transfer of shares in a company and other types of entity, when that company or entity owns a Gibraltar property, but we are saying that the value of that share transfer for stamp duty purposes is the gross value of the Gibraltar property. So, if one has a company that owns a Gibraltar company, worth £100,000, but also has corporate debts of £100,000, the shares in the company would theoretically be worth nothing because they are shares in a company with assets matched by liabilities, so the shares are worth zero. Nevertheless, a transfer of those shares will be subject to duty on the gross value of the Gibraltar real estate property, ignoring all the other assets and all the other liabilities of the company that owns it. So it will be treated as a transaction to convey the property and effectively would not be treated as a transaction relating to shares, because normally the stamp duty payable on a share transfer relates to the consideration paid for those shares. That consideration paid for those shares would normally take into account the value of those shares, the value of the shares in turn takes into account not just the assets of the company and its commercial prospects but also its liabilities and its debts and its other things which are on the other side of the balance sheet as negative to value rather than positive to value. I am sorry that I am not being more fluent but I am just trying to pick out, for the benefit of the House, and explain the more important of the provisions whilst not delaying on what are really consequential on the abolition of stamp duties.

I think that the next important provision is to be found in the transitional section. I should just point out that the hon Members will see, for example, at new section 37 hon Members will see at new sections 36 and 37 the provisions that we passed recently in an Ordinance relating to capital duty on shares and things of that sort, and there is no change there. I suppose another noteworthy amendment is that at the moment there are certain provisions in the main body of the Ordinance as to the stamp duty regime as it applies to the amalgamation of companies and also to the reconstruction of companies. Those provisions are swept away and replaced by a regulation-making power because it is proposed to re-enact those in the form of regulations rather than having them in the principal body of the legislation. As I said, there are at clause 40 important powers to the Minister to make regulations to plug any loopholes that clever lawyers may find to avoid these new regimes, so there are what are generally called anti-avoidance provisions which allow us to plug holes as fast as we spot them to make sure that the revenue raising ability of this legislation is not prejudiced by clever structuring of transactions by lawyers and others. The next noteworthy provisions of the Bill is at clause 48, the transitional provision, from which the hon Members will see at section 49 rather, a transitional arrangement that we have included in this legislation to protect from any increase real estate transactions that have in effect already been contracted. So there is a quite complicated but we think reasonably effective regime that maintains stamp duty, or rather protects from any increase so that if one is a zero transaction one benefits but if one pays higher, one is not exposed to the higher and the regime is as follows. Where in respect of the sale of a property subject to duty an agreement has been entered into on or before the 9th December 2005, then provided that all of the conditions stipulated in sub-section (2) are satisfied, upon completion of the sale contracted under the terms of that agreement, the instruments of transfer shall notwithstanding any provision of this Ordinance imposing a charge at a higher rate, be charged to duty at the rate of 1.26 per cent which is the current rate. The conditions referred to in sub-section (1) are the following, a copy of the agreement has been delivered to the Commissioner by

midday on the fifteenth working day after the date of commencement of this Ordinance, and upon completion of a purchase and sale, the purchaser and transferee of the property subject to duty shall be the same as the purchaser named in the agreement. In other words, that this benefit is given for the benefit of the person who has already committed himself and not if they traffic in that agreement at a huge profit, they do not benefit from it in those circumstances by selling the contract on to another purchaser. In this section, (a) "agreement" means an agreement for the purchase and sale, or if a property subject to duty is under construction or not yet constructed and the vendor is the developer thereof, a reservation agreement upon which a non-refundable reservation fee of at least £2,000 shall have been paid; (b) is signed by both the purchaser and the vendor; and (c) is entered into in good faith and at arms length between a bona fide vendor and a bona fide purchaser, and a judgement of the Commissioner of Stamp Duties and his decision on any fact, circumstances or other matter relevant to this transitional provision, shall be final and conclusive.

In conclusion, the other main provision of this Bill is to be contained in the Schedule which those hon Members who are legal practitioners will know, is where the rates of duty are to be found. Of course many of them are swept away consequent on the abolition of stamp duty on many instruments. The two principal provisions of the Schedules are that in the case of a conveyance, what people would normally think of as a sale of property, there is instead of a flat 1.26 per cent on all transactions, there is a scale and it is important to hear what I am about to say, that hon Members bear in mind the exact new wording. In other words, what is relevant is not for the purposes of these thresholds is not the consideration of any particular instrument but the value of the whole of the property, because otherwise if for example, if there is a threshold between zero and £160,000 one pays nothing and between £160,000 and £200,000 one pays something else, one could always have zero by simply selling one's property in 10 instruments, each of which was worth less than £160,000, each of which pays zero per cent but together one could have sold the house worth £1.6 million because stamp duty as a transaction is a tax on instruments and not a tax on transactions. So obviously it is necessary to make sure in introducing a scaled regime, that we also guard against that, which did not apply before because everything was at 1.26 per cent, so one did not have that opportunity, one would have paid 1.26 per cent on each slice of the transaction. So, where the value of the whole property subject to duty does not exceed £160,000 a sum equivalent to zero per cent of the amount to value, because one can do it in as many or in as few documents as one likes, or stages as one likes, what is relevant to deciding the exemption of the threshold into which one falls, is the underlying value of the whole property. So if one sells half of a property worth £300,000 the consideration for that transaction may only be £160,000 but one will not be exempt because what counts is the fact that the whole property is worth £300,000. So subject to that explanation, which I will not repeat now in all the thresholds, the regime is zero duty, abolition of stamp duty where the property is worth less than £160,000 or less, maintain the 1.26 per cent where the value of the property is between £160,000 and £250,000, increased to 1.6 per cent where the value of the property exceeds £250,000 but does not exceed £350,000, and increased still further to 2.5 per cent where the value of the property exceeds £350,000. The second change to the rate relates to stamp duty payable on mortgages. At the moment the duty payable on a mortgage is 0.13 per cent, that is thirteen hundredth, just over one tenth of one per cent, on the amount secured. In other words, on the amount that one owes the bank that is secured by that mortgage. That is under the terms of this Bill, maintained at that level where the amount due to the bank, where the debt secured by the mortgage does not exceed £200,000, but where the amount due to the bank exceeds £200,000 it is increased, the stamp duty on the mortgage is increased from 0.13 per cent to 0.2 per cent on the basis that these are high value transactions. Remember we are talking about a debt in excess of £200,000 that must relate to a property worth more than £200,000 because the bank will not lend 100 per cent, so one is necessarily talking about high value transactions and not talking about the sort of mortgages that most normal or even normal plus wage earners in Gibraltar

would be taking. In other words, it is a very low amount of stamp duty, 0.2 of 1 per cent.

The other thing that we have done, but bearing in mind that it no longer applies to commercial agreements and commercial contracts, is that we have increased all the references to 3p and 50p in the Ordinance to £5 but bearing in mind that those now only apply to real estate transactions, because they are the only transactions to which stamp duty as a whole now applies. This Bill is the last piece of the jigsaw of the legislation that I explained to the House we would be putting in place in order to mitigate the closure of the exempt status company regime, part of which related to the benefits that exempt companies could obtain by way of exemption from stamp duty. I commend the Bill to the House.

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

HON F R PICARDO:

The Opposition Members support the Bill presented by the Chief Minister but there is one issue in particular that we wish to highlight. In the existing Ordinance at section 19(3), there is provision for the Commissioner if he thinks fit to mitigate or remit any penalty payable on stamping. That is now reproduced in section 16(3), given the omission of the two other sections that the Chief Minister has referred to, and I have given notice of a number of amendments I intend to move at the Committee Stage. The substantive issues are in my (iv) and (v). One can see in the new 16(3) as it is presently numbered, that that power of the Commissioner continues to exist where he can exercise it if he thinks fit, but we see the introduction of the words "and with the consent of the Minister", which were not in the existing Stamp Duties Ordinance. We would like to know why it is that the Chief Minister thinks that it is proper that there should be a provision for a Minister to consent to the exercise of a discretion that is presently simply in the hands of the Commissioner for Stamp Duties. A similar point arises but not identical in new sections 44 and 45 of the Bill which deal with the provision in almost identical terms to the provisions in sections 104 and 105 of the existing Stamp Duties Ordinance. We support the fact that the power contained in sections 44 and 45 of the Ordinance is a power which was previously in the Governor and is being taken away from the Governor. We believe that the power is of such a nature that it should not be the Minister but it should be the Commissioner for Stamp Duties. It is the power to relate to penalties and rewards and to make allowance for misused stamps. There is power, power which is in our view perfectly right and proper in the Minister, in section 46 in sub-section (f) to set out the circumstances by regulation in which the Commissioner may in fact mitigate or remit fees. So the Minister can set out the objective criteria when that should occur for the Commissioner to determine but as the Ordinance is presently framed, the power in section 44 is kept entirely in the hands of the Minister. Perhaps the mover could tell the House why the Government consider that it is appropriate that that power should be in the hands of the Minister and not in the hands of the Commissioner, for the Commissioner to determine objectively based on the criteria laid down by the Minister in regulations whether or not it should be exercised. Other than that we have no substantive points.

HON CHIEF MINISTER:

I am obliged to the hon Member, all of them, for their support for the Bill. I hear what the hon Member says but I have to say that I do not agree with him and we will not be supporting those particular amendments when he moves them. In relation to section 16(3), where at present there is a power on the Commissioner if he thinks fit and to the consent of the Minister to mitigate or remit any penalty payable on stamping, we do not agree that that should be left as it is. First of all, we have not given the power to mitigate or remit to the Minister. I am not suggesting that the hon Member implied that but I just want to leave clear that we are not transferring to the Minister the power

to make the decision to remit or mitigate stamp duty. The power to mitigate or remit, the decision to mitigate, remains exclusively with the Commissioner but he cannot exercise it without the Minister's consent. We just do not think that officials should be allowed to give away Government revenue on a case by case basis without having regard to Government policy on the matter. Bear in mind that at the moment the Commissioner of Stamp Duty is a quasi-Government Minister in the person of the Financial and Development Secretary, that will not be the case in the future, it will be somebody else. It will be somebody designated, perhaps the Managing Director of LPS or somebody like that, who I think should not be, there seems to be some dispute on this side of the House as to whether he is still technically the Commissioner of Stamp Duties or not, we will establish it one way or the other in a moment. Certainly, we think it is right that there should be some oversight of those who otherwise would have an unbridled power to say, "you pay stamp duty on this transaction but you do not on a similar transaction". That is the logic. In any event, we see that there is no harm whatsoever in the exercise by one person of a power being subject to the consent of the other. I have to say that I would not think it wrong for the Minister to have the power of mitigation and often has, there are many areas of law where such a power is vested in a Minister. Lots of things but this does not go that far, but even if it had gone that far, I would not think it particularly untoward, but as I say it does not go that far and therefore is nowhere near the sort of where some people might think the line is properly to be drawn on what a Minister should do or what a Minister should not do. So perhaps we can just agree to differ on that. In relation to sections 44 and 45, well, as a matter of policy whenever something used to be done, albeit as long ago as 1933, by the Governor and it is to be done by somebody else, I think the policy is that what used to be done by the Governor is now done by a Minister. [*HON F R PICARDO: There is support.]* Yes, but he does not support giving it to the Minister, he wants it given to the Commissioner. I do not think I have, subject to being corrected, I do not recall any other incidence where we have deprived the Governor of a function and given it to somebody more lowlier than a Minister. I suppose this might have been the first example of it but certainly up till now the rule has been that when we replace the word "Governor" in this House it is always for "Minister". Why it is Governor in the first place of course is another matter. This could easily have been "Commissioner" in the first place but I think I would rather not depart from the precedent. I do not think any of these points are so great, I am grateful to the hon Members for what is a helpful approach otherwise to this Bill, which is actually now quite urgent because first of all the Finance Centre needs it in place soon and then I am told that there are some real estate transactions which people were sitting on, waiting to pay less, some of them may end up paying more but anyway. I think for those reasons it is important to get on with it. I am obliged to them.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Gambling Bill 2005.
2. The Stamp Duties Bill 2005.
3. The Gibraltar Electricity Authority (Amendment) Bill 2005.

THE GAMBLING BILL 2005

Clauses 1 to 43 – were agreed to and stood part of the Bill.

Clause 44

HON DR J J GARCIA:

There is one point in relation to clause 44. The point is that the clause refers to clause 45(6) of this Bill which does not actually exist. I think it should be 43(6).

HON CHIEF MINISTER:

Yes, I am grateful to the hon Member it should be 43(6).

Clause 44, as amended, was agreed to and stood part of the Bill.

Clauses 45 to 55, Schedules 1 and 2 and the Long Title – were agreed to and stood part of the Bill.

THE STAMP DUTIES BILL 2005

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

Clause 2

HON F R PICARDO:

I have given notice of a minor amendment here in the definition, I think, capitalised 'R's' and 'P's' have crept in.

HON CHIEF MINISTER:

If ever I need a proof reader I shall know where to go, but I agree.

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

Clauses 3 to 14 – were agreed to and stood part of the Bill.

Clause 15

HON F R PICARDO:

In sub-section (2) there is a reference to "the Treasury". Now I have just raised the point that perhaps we should delete the word "Treasury" and put there for the words "the Accountant General" which appears later in the Bill. There are provisions for payment to the Accountant General. The Accountant General is easy to determine in law, the Treasury I am not able to find a defined term of in the legislation. It may be that someone else has found one where I have not.

HON CHIEF MINISTER:

I think it is a useful observation. I think the phrase "pay into the Treasury" is a UK phrase, I do not know where it has come from, is it in the original Act? Perhaps there is an even better improvement because paying it to the Accountant General still does not say where it goes. One can pay to the Accountant General and then from there into a Government company. Perhaps it should say "shall be paid into the Consolidated Fund" which is the usual formula that we use when we mean that it should be paid into the Government General Account. So whilst I am grateful to the hon Member for spotting the rather unusual references to payment into the Treasury, perhaps he would agree then that rather than his proposed amendment it should be "shall pay into the Consolidated Fund".

HON F R PICARDO:

I wrestled with Government General Account, Consolidated Fund and Accountant General. I only trumped for Accountant General because it appears later on in the text but I have no difficulty with the proposed amendment, and it is by the way in the original text so it is very ancient drafting.

HON CHIEF MINISTER:

In 1933 stamp duty was paid to the HM Treasury in the United Kingdom, who knows?

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

Clause 16

HON F R PICARDO:

This appears in the original text of the Bill. It is a very strange legislative style where one goes from 16(1) straight into an (a) and then 16(1) (b). What I am proposing, simply to make it easier, and there are no cross-references backwards that would be affected, is that we should have a 16(1), a 16(2) which would deal with 16(1)(a) and 16(1)(b) at the moment, and then just renumber sub-section (2) and sub-section (3) as they are now to sub-section (3) and sub-section (4), which is the much more modern practice to make it easier to cross-reference to sub-sections.

HON CHIEF MINISTER:

Whilst I have no objection to the secretarial reorganisation of the language, it would depend on the hon Member being absolutely certain that there are no cross-references anywhere. This is not an Ordinance with a huge number of cross-references it has to be said anyway. I can accept the amendment provided that we can agree that any cross-referencing that may exist that he has not spotted, is also secretarial in nature and can be sorted out at the printing stage and not brought back to this House.

HON F R PICARDO:

Yes, the only cross-reference that I have been able to find to section 16 is that Schedule 2 refers to it being made under section 16 but it does not say sub-sections.

HON CHIEF MINISTER:

Well, I do not mind section 16(1)(a) can be section 16(1), (b) can be section 16(2), (2) can be sub-section (3) and (3) can be sub-section (4).

HON F R PICARDO:

In relation to section 16(3) the Chief Minister has kindly dealt with the points that I raised as substantive points. He did say that one of the reasons for objecting to or not agreeing to the deletion of the words "and with the consent of the Minister", was that an official should not be able to determine for himself whether or not to remit and give away in that way Government funding. Can I just remind him, I did not want to interrupt him when he was replying, that in fact he has the power by regulation or the Minister would have the power by regulation at section 46(f), to actually set out in the regulations in what circumstances the Commissioner would be able to remit or mitigate fees in any event, if that in any way affects his considerations. Other than that, given what he said in reply, I will not move my amendment.

HON CHIEF MINISTER:

I am grateful to him. In any event, it would now be an amendment to section 16(4), see immediate cross-reference.

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

Clauses 17 to 38 – were agreed to and stood part of the Bill.

Clause 39

HON F R PICARDO:

The amendment of which I have given notice is simply to add the word "any" in front of "official receipt" because at the moment it reads "and the number of official receipt given in respect thereof". I think it should be "the number of any official receipt given in respect thereof."

HON CHIEF MINISTER:

I am grateful to the hon Member for pointing out the correct fact that there is a word missing there. I think it should be "the" rather than "any" because "any" suggests that there may not be an official receipt. There has to be an official receipt and that is the number that has to go in there.

HON F R PICARDO:

The only reason I put "any" was in case there might be two official receipts which need to be referred to on the same document. Perhaps because I am still thinking of the days when one could pay stamp duty in two parts. Given the stamping provisions it is now only going to be possible to pay them in one go. So perhaps "the" works now where it would not under the old one.

HON CHIEF MINISTER:

Well, we would agree to "any" too but I think "the" would be a better amendment.

I think to be consistent with the amendment to section 15(2), we might put there the Consolidated Fund too instead of Accountant

General, that is presumably the section where the hon Member said it appeared. The first reference to the Accountant General should be "shall be paid into the Consolidated Fund", so the word "to" becomes "into", "the" remains and "Accountant General" becomes "Consolidated Fund". But only on the first occasion, the second reference to Accountant General is correct because we are talking about the person who does the certificate or the endorsement.

Clause 39, as amended, was agreed to and stood part of the Bill.

Clauses 40 to 49 and Schedule 1 – were agreed to and stood part of the Bill.

Schedule 2

HON F R PICARDO:

The word "the vendee" appears under the heading "person liable to pay", now that is actually in the original legislation, it is almost impossible these days to find a definition of "vendee". I consulted five dictionaries and found it only in one and it is not included in legal dictionaries. The vendee is obviously the purchaser as we now know him and I think that although I can see why it is that in many instances a lot of case law surrounds the existing wording, no case law that I am aware of, and I think the hon Gentleman will agree, would turn on whether we refer to somebody as a "vendee" or a "purchaser", and the word "purchaser" I think is the one that is much easier for anybody who might consult the legislation to understand.

HON CHIEF MINISTER:

I agree. I suppose the same might be said of mortgagor or mortgagee but people understand that more clearly, but I agree. It is a word that has fallen into disuse in the English language and should not be contained in a 2005 Gibraltar Ordinance.

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

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

THE GIBRALTAR ELECTRICITY AUTHORITY (AMENDMENT) BILL 2005

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

The Long Title

HON F VINET:

I gave notice during the Second Reading that the word "Authority" is to be inserted after the word "Electricity", so that it reads, "an Ordinance to amend the Gibraltar Electricity Authority Ordinance 2003".

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Gambling Bill 2005, with amendment; the Stamp Duties Bill 2005, with amendments; and the Gibraltar Electricity Authority (Amendment) Bill 2005, with amendment , have been considered in Committee and move that they be read a third time and passed.

Question put.

The Gambling Bill 2005; and
The Stamp Duties Bill 2005, were agreed to and read a third time and passed.

The Gibraltar Electricity Authority (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
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

The Bill was read a third time and passed.

ADJOURNMENT:

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

Question put. Agreed to.

The adjournment of the House was taken at 11.35 am on Tuesday 20th December 2005.