

**REPORT OF THE PROCEEDINGS OF THE HOUSE OF
ASSEMBLY**

The Ninth Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Tuesday 21st March 2006 at 2.30 p.m.

PRESENT:

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

GOVERNMENT:

The Hon J J Holliday - Minister for Trade, Industry, Employment
and Communications
The Hon 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 P R Caruana QC – Chief Minister
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 9th December 2005, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

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

1. Consolidated Fund Supplementary Funding – Statements Nos. 2 and 3 of 2005/2006;
2. Consolidated Fund Pay Settlements – Statement No. 4 of 2005/2006;

3. Consolidated Fund Reallocations – Statement No. 5 of 2005/2006.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 5.35 p.m.

The House resumed at 5.55 p.m.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Trade, Industry, Employment and Communications moved the adjournment of the House to Wednesday 22nd March 2006, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 8.30 p.m. on Tuesday 21st March 2006.

WEDNESDAY 22ND MARCH 2006

The House resumed at 10.00 a.m.

PRESENT:

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

GOVERNMENT:

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 P R Caruana QC – Chief Minister

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 1.30 p.m.

The House resumed at 3.05 p.m.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Trade, Industry, Employment and Communications moved the adjournment of the House to Thursday 23rd March 2006, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 4.30 p.m. on Wednesday 22nd March 2006.

THURSDAY 23RD MARCH 2006

The House resumed at 9.30 a.m.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Hareh 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)

BILLS

THURSDAY 6TH APRIL 2006

FIRST AND SECOND READINGS

**THE FINANCIAL SERVICES (TRAINING AND COMPETENCE)
ORDINANCE 2006**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to provide for a training and competence scheme in Financial Services in Gibraltar, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 6th April 2006, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 12.25 p.m. on Thursday 23rd March 2006.

The House resumed at 10.05 a.m.

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 K J Colombo - Attorney General (Acting)
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

OATH OF ALLEGIANCE

The Hon K J Colombo took the Oath of Allegiance.

BILLS

FIRST AND SECOND READINGS

SECOND READING

**THE FINANCIAL SERVICES (TRAINING AND COMPETENCE)
ORDINANCE 2006**

HON CHIEF MINISTER:

I have the honour to move that the Bill be read a second time. Mr Speaker, the purpose of this Bill is relatively straight forward. It is a Bill that establishes in Statute a training and competency, known as a Skills Council, for Financial Services. The intention, as hon Members will be able to see from the Bill, is that although it will be statutory it will be tripartite in the sense that it will be all three of the Government, the Regulator and the industry that will meet, not just to establish the standards of training and competency that our Financial Services Centre should expect

from those who operate within it but indeed to ensure that those courses are designed, that they are available and then to police compliance with it. It is a framework piece of legislation because this legislation does not itself establish that regime, it simply establishes the Council and the detail of how the Council would work. So it is envisaged it will be established by subsidiary legislation under clause 7 of the Bill now before the House. I think many Members in this House will welcome the principle of this Bill for which there is a significant degree of demand and support, not just from within the industry itself but indeed the Regulator supports it hugely, wants it and episodes that Gibraltar has gone through of late, not least the TEP Plans that we have so frequently discussed in this House, does suggest that a regime to establish standards and to police compliance with those standards in areas of the qualification, people who sell financial services products, I think is a useful addition to the infrastructure of our Financial Services Centre.

Hon Members will see that the Skills Council would be chaired by the Minister with responsibility for Financial Services and that it would be composed as set out in clause 3. In addition to the Chairman or such other person as he may designate to replace him, there would be a member nominated by the Financial Services Commission, the Director of the Finance Centre, an officer of the Department of Education and Training, in other words, a Training Officer and then eight other members appointed by the Minister, one from persons nominated by each of and then the hon Members will recognise in the list Roman (i) to (viii) most of the associations of the sector, if not all indeed the leading sector of the Financial Services Centre. The Bill enables or rather grants the Council legal personality, it gives its members immunity, indemnity in respect of suit in respect of any action taken or omission made by them acting in good faith. The rules of procedure of the Council amongst other things would be prescribed by rules made under clause 7. The duties of the Council are established there in clause 4 and they are described as being 'to design and implement a training and competency scheme in financial services in Gibraltar to set down standards of competence which practitioners in financial

services feel it should achieve to determine what training courses, whether offered by external institutions or offered in-house by financial institutions in Gibraltar, will provide the required standards of competence and issue a letter of accreditation to the offerer of such course. To monitor the continuing development of any training courses and as appropriate issue further accreditation or withdraw an existing one. To keep standards of competence under review, issue statements of principles and codes of conduct.'

Mr Speaker, I believe that not in the form established by the Bill, because I say the Bill does not establish the regime it facilitates it sets up some of the basic infrastructure, but this Skills Council and the expertise that it will be able to call upon and the duties and functions that it will have once it has been set up and established will provide for that degree of on-going training, competency and testing of that which I think will not only help to protect domestic consumers of financial services products but indeed will serve to further enhance Gibraltar's reputation abroad amongst its international financial services client base, as a well-regulated jurisdiction with the interests of all stakeholders in the industry at heart. I commend the Bill to the House.

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

HON F R PICARDO:

Can I before doing anything else add my welcome to yours to the new Member sworn in today, Mr Colombo, who joins us today in the post of Acting Attorney, and can I then welcome also the Bill and say that it is a Bill which will enjoy the support of both sides of the House. Certainly this is the type of progress that highlights how our Finance Centre is changing, how it is becoming much more sophisticated, how the products that we offer are greater added value. I think it is important that we not just have a framework built to enable us to do the things that this

Bill sets out to do but that we also back these sentiments up with action. In that respect I am informed that the Government have at different stages supported and financed and at other stages not financed, although I am sure supported, certain employees in the Finance Centre industry taking the courses offered by the Society of Trust and State Practitioners in Gibraltar, and perhaps he could tell us what the attitude of the Government in terms of funding of further education at that level would be after the implementation of this Ordinance which sets up the Council that will be monitoring people taking those courses et cetera. Otherwise, it is a Bill that will enjoy the support of the Opposition.

HON CHIEF MINISTER:

The Bill does not deal with the question of how the Council would be funded. The Government, as the hon Member has been good enough to recognise, do spend a considerable amount of effort and money in supporting training and qualification acquisition in various sectors of the economy, not just financial services. We do so in financial services but of course I think the Government's, for which the tax payers funds and the degree of them which are to be invested in things in which Gibraltar at large has an interest such as this, have also got to be tempered by the fact that this is a wealthy industry that makes a huge degree of money, thankfully for us all because they therefore employ people, and that the burden of initiatives such as this should not necessarily fall exclusively on taxpayers' shoulders but indeed, imaginative ways should be found of ensuring that those who will also benefit through better management, through better human resources to work within their own organisations should perhaps contribute. This is one of the factors that the Council will have to debate and come up with suggested financing models and then the Government would consider it. Certainly there would be financial implications for the Government in this training and competence in the Skills Council but I think that financial burden should be shared by

others who will benefit from it too, not the consumer but certainly financial services providers.

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

Could I just say which I omitted to do that at the Committee Stage I intend to move two very small and inconsequential amendments. I will not trouble the House with them now but they are not such as to change the meaning of any provision of the Bill, really just to correct language.

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

Question put.

Agreed to.

THE FINANCIAL SERVICES (CROSS-BORDER PAYMENTS IN EURO) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to provide for effective sanctions in case of a breach of the provisions of Council Regulation (EC) No. 2560/2001 of the European Parliament and the Council of 19 December 2001 on cross-border payments in euro, be read a first time.

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is necessary only for the purposes of providing for sanctions for breach in Gibraltar of an EU Regulation which as hon Members know has direct legal application in Gibraltar. The Regulation relates to cross-border payments in euro and Regulation 2560 of 2001 lays down rules for cross-border payments and provides that charges for such payments have to be at the same rate as charges for payments in euro within a Member State. The Regulation is supported by a system of what are called in short 'IBANS' international bank account numbers and bank identifier codes. Indeed hon Members may have noticed on their cheque books that these things are now present on them, Gibraltar has its own IBANS number prefixed by the international country code GI. The Bill provides for penalties in the case of a breach of the European Regulations, in particular clause 3 provides that civil legal proceedings may be brought if an institution charges more for a cross-border electronic payment transaction, that is to say, cross-border cash withdrawals at a dispenser machine or cross-border transfers of funds effected electronically, or cross-border credit transfers, that is, a transfer of funds from one Member State to another, that a corresponding payment in euros transacted within Gibraltar. In other words, the principle behind the Regulation is that there cannot be higher bank charges for sending euros across EU country borders than are charged domestically by the bank within the country in which it operates. The important point to note about clause 3 is that it establishes a civil sanction. In other words, the sanction that it establishes is that it enables the affected bank customer, it gives the affected bank customer a claim of right in civil law against the bank.

Clause 4 provides that it will be an offence, so that is now a criminal sanction as opposed to a civil sanction, punishable with a fine not exceeding level 4 on the standard scale, which hon

Members may recall amounts to £2,000, for an institution to fail to make available to its customers written information on the charges levied for cross-border payments and domestic payments in euro or information on charges for exchanging currencies into euro, for an institution to fail to communicate to customers information relating to their IBAN, the bank's identifier code and any charges which may be levied as a result of a customer failing to communicate their IBAN or relevant identifier code. Or for a supplier which accepts payment by transfer to fail to communicate to customers information relating to their IBAN and bank identifier code. In other words, clauses 3 and 4 split the sanction regime. It is a criminal offence to fail to provide one's customers with the sort of information that they would need to see if their rights have been infringed but thereafter it is a civil matter to actually seek redress for any rights that may have been infringed. The logic of that is that it is no consolation to a bank customer that has been overcharged, perhaps on very significant transactions, that the State can prosecute and impose a fine. What the customer wants is the ability to recover the money that he has been overcharged. So the law through the criminal sanction ensures that the customer will always have the information that he needs so that he can execute his civil law remedies should he have suffered loss as a result of those breaches by the bank. Clause 5 provides for corporate criminal liability in the event of a breach of clause 4.

As I said at the outset, the effect of this Bill is simply therefore to provide teeth through sanctions to a body of law that already applies in Gibraltar without the need for this House to have implemented it, because hon Members know that unlike directives, Regulations of the EU have direct legal force throughout the territory of the whole EU without the need for national legislatures to transpose it into national law. I commend the Bill to the House.

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

HON F R PICARDO:

There is little to add to what the Chief Minister has said is obviously the purpose of this Bill, but I am a little concerned about the manner in which the extension of the offences created to partnerships and companies and unincorporated associations has been set out, because I think as presently phrased if there were a person who is an impostor on behalf of a company or a partnership, in other words, in clause 5(1)(a) 'or any person purporting to act in any such capacity', in other words, as a director, chief executive, manager, secretary or other similar offence of the body corporate or similarly in relation to a partnership a person purporting to act as a partner, or in an unincorporated association a person purporting to act in any such capacity as a Member of the governing body of the unincorporated association. What the Bill then goes on to say is that he, as well as the company partnership or association, is guilty of an offence. Now there may be circumstances where the company partnership or unincorporated association do not know that there is a person out there holding themselves out as a director or partner of that association et cetera, and there is no reason why they should be deemed to be guilty of an offence in those circumstances. Although if they do know that those circumstances are arising, or if they have given ostensible authority they would likely to be found to be guilty of the offence also. This is not dissimilar language to the language that is used routinely when offences are created for companies and partnerships and I simply flag the issue up as one that may bear looking at in greater detail to make explicit that it would only be in circumstances where the company and unincorporated association or partnership is aware or has created ostensible authority to that person to hold themselves out in that way, which is in breach of the offences created, that they should be deemed by the language of the Ordinance which says very clearly that they would be guilty of an offence that they should not be guilty when they have not acted in that way. I simply flag that up for us to have perhaps, if the Chief Minister wants to reply now, to look at in Committee when we are looking at the language used.

HON CHIEF MINISTER:

I do not believe that the concern that the hon Member has articulated actually arises. It has got to be somebody within the organisation, we are talking about failure by in effect money transmission businesses to provide their clients with information about the transaction that they have carried out on behalf of their clients. It is not possible for an interloper outside of the organisation to be in a position to give or not to give the information. The bank or other money transmitting organisation is obliged to provide its clients with its tariff of fees for sending money out of Gibraltar on their behalf. Well, how can somebody outside of the bank fail to provide the information? What this says and what it envisages is that if there is somebody within the organisation it has to be purporting to be the case of the body corporate but the same point applies to all the other forms of legal person, is purporting to act as a director, or a chief executive or a manager or a secretary or other similar officer of the corporate body, or any person purporting to act in such a capacity. Well, an interloper from the street cannot act or purport to act in that capacity, and that is exactly what it is intended to cover. Remember, so that bodies corporate do not hide behind 'oh, the employee was not authorised'. It is up to those providing money transmission services for their clients to ensure, and particularly those who direct it, to ensure that the culture of compliance permeates throughout the organisation and that it will not be a defence for somebody to say 'ah, that is the office tea-maker who was not authorised to refuse to give somebody', it is about systems. Now, even if what I was saying to the hon Member was not right and that there was in the language something that was capable of being interpreted in the way that he has suggested, well, I think we then have to rely on the good sense of the Attorney General who in his capacity as Director of Public Prosecutions who would have to decide in all cases whether a prosecution is justified or not, so there is always that ultimate safeguard.

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 FINANCIAL SERVICES (MISCELLANEOUS PROVISIONS) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Financial Services Ordinance 1989 and the Financial Services Ordinance 1998, be read a first time.

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill as I have said amends the 1989 and 1998 Ordinances and is part of a package of legislation which will enable Gibraltar investment services to be passported into the United Kingdom. Hon Members will recall that that is the remaining element of the Investment Services passporting badge that remains to be put into place. The Bill introduces the following amendments to the Financial Services Ordinance 1989. Clause 3 amends the definition of 'relevant supervisory authority' to give it the definition set out in the Financial Services

Ordinance 1998. Clause 4 amends section 3(2) by excluding from the definition of 'carrying on investment business' those activities excluded by the new Schedule 2A and referring to new Schedule 2B which is the interpretation schedule. Clause 5 amends section 6 to limit the type of applications for licences from European authorised institutions in respect of items 7 to 12 of the business so listed. Clause 6 deals with licensing applications which could be a European subsidiary institution. It amends section 8 by deleting sub-section (3) which currently prevents the authority from considering the licensing applications which are not European authorised institutions and renumbers existing sub-section (4). Clause 7 inserts a new section 11B which allows the authority to direct that certain regulations shall not apply to authorised firms or licences or shall apply with modifications. Clause 8 deals with advertising regulations and in particular allows regulations to be made prohibiting or restricting the circumstances and manner in which licensees can promote investments or investment business to the public. Clause 9 introduces a new section 33A which allows the authority to request what are called 'skilled persons reports'.

Mr Speaker, I had given notice that in Committee I shall be proposing a small amendment in this clause by inserting a new sub-section (4) and I will say something to the House about that a little later. Clause 10 amends section 34 to allow the authority to request information and production of documents from an additional category of persons, that is, persons holding themselves out as carrying on an investment business or controlled activity. Clause 11 inserts a new section 35(1)(a) which allows the authority to direct persons who it considers "not fit and proper" to not carry out particular functions. Clause 12 amends section 42 to extend the categories of persons whom the Supreme Court may order to furnish information to cover "persons appearing to have information relating to any contravention". Currently this power exists only in relation to persons who appear to have contravened the provisions of sections 3 or 10. Clause 11 amends section 44 by inserting a new sub-section (ee) with the effect that the requirements of sections 44 and 45 are extended to cover directions by the

authority under section 35. Clause 14 amends section 46(b) which deals with discretionary notices in the Gazette, to refer to section 35 instead of section 24. The effect is that the authority will have the power to publish in the Gazette decisions it makes cancelling or suspending a licence or directing that a person shall not carry out a specified function. Clause 15 amends section 53 to provide that regulations are to be made by the Minister with responsibility for Financial Services rather than by the Governor.

I have given notice that in Committee I shall be moving an amending to clause 51 so that the references to 'Governor' are replaced with references to 'Minister' throughout that section 53, which is the regulation-making power. Clause 16 amends section 56(1) which is the fees regulations to provide that fees shall be paid to the Financial Services Commission as opposed to the authority which is the Commissioner, and that fees may also be prescribed for authorised Gibraltar and European investment firms. Section 56(1)(d) which dealt with European firms is therefore deleted. Clause 17 inserts a new section 57(a) which allows the authority to issue guidance with respect to the Financial Services Ordinance 1989, Financial Services Ordinance 1998, the functions of the authority or other matters by which it seems to the authority desirable to give information or advice, and I am proposing amendments just to make it clear that those all have to be issues which are otherwise within the statutory competence of the Financial Services Commission under these or any other Ordinance. Clause 18 amends Schedule 2 which relates to activities constituting investment business and it particularly inserts new provisions dealing with custody of investments and the sending of dematerialised instructions. Clause 19 inserts two new Schedules, Schedules 2A and 2B. Schedule 2A sets out excluded activities and Schedule 2B is an interpretation schedule. Clause 20 amends Schedule 3. Paragraph 1(2) to clarify that the activities of a person as servant or agent of a licensed management company may be taken into account as well as the activities of a person as principal of such a company. Clause 21 amends Schedule 4 (exempted persons), to include, at new sub-paragraph (bb)

licensed insurers, and to limit the application of sub-paragraph (h) in respect of persons who are directors of other companies in certain circumstances therein set out.

The Bill also amends the Financial Services Ordinance 1998. Clause 23 amends the definition of 'Minister' in section 2(1) to refer to the Minister with responsibility for Financial Services rather than the Minister for Trade and Industry who used to hold the portfolio as part of that wider Ministry. Clause 24 amends the definition of 'authorised European investment firms' in section 18. Clause 25 inserts a new section 27A which allows the Minister to make regulations concerning the provision of investment services in the United Kingdom. This Bill, together with associated legislation, will enable Gibraltar amongst other things, investment firms, to passport investment services into the United Kingdom as was recently announced by the Government in a public statement. Hon Members will get, I suppose, a letter setting out the notice that I have given of amendments, I do not think any of them change the principles of the Bill and therefore it is probably just as well that we consider them at Committee Stage because if I take the hon Members through it we will in effect end up discussing the amendments now rather than at Committee Stage. I commend the Bill to the House.

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

HON F R PICARDO:

Of course this Bill will be supported by the Opposition although we make no comment on the way in which the ability to passport into the United Kingdom has come about. Of course we will support the Bill. I would simply say that when we have notices of amendment it would be useful to have them before the Chief Minister gets on his feet so that we can follow more clearly exactly what amendments he is going to make. I undertake to give him, if ever I am able to prepare my notice of amendment in

writing, before I get on my feet so that he has them whilst I am speaking those notices, not that he might care much for my proposed amendments but in any event. The ability to disqualify wholly or in part what activity an individual may undertake is of course got to be welcomed in this House for reasons also related but not exclusively those that arose in the recent TEP Plan debacle. We welcome of course also the continued consolidation exercise which takes power from the Governor into the hands of the Minister. I will be asking the Chief Minister to look at the language of section 25 of the Bill which introduces the new section 27 because as presently drafted, perhaps this is an issue for Committee but I give notice of this now, I think it is designed perhaps by design or by mistake, I await the Chief Minister's comments to enable the Minister to make regulations affecting a specific authorised Gibraltar investment firm, when it may be that it was intended to have a power to direct authorised Gibraltar investment firms about the manner in which they must act once they are authorised in that way. At the moment the language is, 'the Minister may by regulation make specific provisions requiring an authorised Gibraltar investment firm to do certain things'. I think it should be 'to require authorised Gibraltar investment firms to do certain things' but I will be guided by him as to what the intention of the Government was when preparing that section. Other than that the Bill will be supported by the Opposition.

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 TRANSNATIONAL ORGANISED CRIME ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the implementation of the United Nations Convention Against Transnational Organised Crime, be read a first time.

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill, as already has been said, is to transpose and give effect in Gibraltar to that United Nations Convention which has already been referred to, the Transnational Organised Crime Convention, which is sometimes referred to as the Palermo Convention. The international community regards this Convention as an important flank in the fight against international crime and therefore the Government view participation in this measure as a further step in reinforcing this jurisdiction's commitment to and reputation for being at the forefront of best practice. The Bill before the House does not define what constitutes a serious organised criminal group. The reason why this approach has been taken, as has been the case in other common law jurisdictions, perhaps might be of interest to the hon Members. The Convention defines 'organised criminal group' as follows. It says, 'organised criminal groups shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention in order to obtain directly or

indirectly a financial or other material benefit'. This definition has several ingredients that can be broken down as follows. A group that is structured of at least three individuals, existing over a period of time, acting in concert, aiming to commit at least one crime with a view to obtaining a benefit. The multiplicity of ingredients would make a prosecution infinitely more difficult than if we were to proceed on the basis of our existing conspiracy laws which only requires two persons acting in concert with a view to committing a crime. In the circumstances a definition along the lines of the Convention text would actually weaken rather than strengthen current legal principles and current enforcement powers already available in Gibraltar in the context of the definition of the ingredients of the inchoate offence of conspiracy.

The House may wish to note that clause 3 sets out the administrative procedures that must be complied with in relation to any request for assistance relying on this Ordinance and therefore on this Convention. The key feature of this provision is that the Chief Secretary must be satisfied that a State is both a signatory to the Palermo Convention and will reciprocate a request for assistance in similar terms if made by Gibraltar. This is in keeping with the safeguards that are built into the Mutual Legal Assistance (International) Ordinance 2005 that is relied upon in Part 3 of the Bill. In other words, this Bill instead of creating yet a further mutual legal assistance regime for the use in the cases covered by the Palermo Convention, simply says the regimes created under the Mutual Legal Assistance (International) Bill, which hon Members may recall because we passed it not so long ago, will apply to these things too. Clause 4 sets out the offences to which the Ordinance will apply. They are relevant offences that are transnational in nature. A relevant offence is defined in clause 2 of the Bill as one carrying a term of imprisonment of at least four years. The transnational element is that the offence or its effect is either committed in one State but has effects in another State. Clause 5 grants jurisdiction to courts in Gibraltar over offences committed outside Gibraltar where the commission of that offence has an effect in Gibraltar. Parts 2 and 3 of the Bill respectively make

provision for extradition and mutual legal assistance. On both occasions rather than creating new structures, as I have just said to the hon Members, reliance is placed on the Fugitive Offenders Ordinance 2002 and the Mutual Legal Assistance (International) Ordinance 2005. In other words, our existing extradition regime and our existing MLA regime are applied to the serious transnational crimes regime set out and regulated by the Palermo Convention applied in Gibraltar by this Bill.

By availing ourselves of these structures the Government have intended to avoid the scenario where a multiplicity of structures, regimes and avenues exist for dealing with essentially the same matters. This in turn relieves the burden on the enforcement authorities and should avert unnecessary confusion, delay and even expense. Part 4 of the Bill, aptly entitled 'Miscellaneous', houses various clauses. Clause 10 allows for a prosecution for corruption under Part XIX of the Criminal Offences Ordinance to apply to officials of another sovereign State or power or Government. Clause 11 makes provision for a witness to be able to give evidence over a live television link subject to conditions being satisfied. The circumstances where the giving of evidence via this medium is contemplated is where a witness is overseas and fears intimidation were he to travel to Gibraltar. An application for the use of this procedure is further balanced by a need to show that it would be both in the interests of justice and not unfair to the accused. Witness protection under clause 12 is vested in the Commissioner of Police. In this clause the Commissioner of Police may take such steps as he deems necessary to secure the protection of a witness. Clause 13 relates to controlled deliveries. Hon Members will see that both the police and customs may participate in so-called controlled deliveries of consignments of illegal substances that they know or have reason to believe have illegal content. That is, where a controlled delivery is to be made the written authority of the Commissioner of Police or the Collector of Customs is required. Where the intention is that the consignment will transit Gibraltar prior to allowing this the competent authority of the State to which it will travel must accept responsibility for continued monitoring, or if it is in the State of destination that it will

undertake the delivery. Obviously the purpose of this controlled deliveries regime is so as to create a situation whereby it is lawful to allow illegal consignments to enter Gibraltar for the purposes of tracing it and maximising the number of illegal participants in the transaction that can be caught and brought to justice. Clause 15 allows for rules of court to be made by the Chief Justice where these are required. Clause 16 permits the making of regulations by the Government.

I give notice, as I have in writing already, that I intend to move one small amendment. In the definition of 'State' in clause 2 of the Bill which presently reads, 'Gibraltar or a State that has ratified the Convention', I intend to add the words 'or a territory covered by such a ratification' because otherwise Gibraltar would not be able to give the benefit of this to places like the Channel Islands, or indeed other overseas territories which are not themselves a State that has ratified the Convention, they may be covered by another State's ratification. I think it would be undesirable that Gibraltar should not be able to cooperate on this basis with other countries which like ours is not itself a State that is able in international law and therefore has not ratified the Convention. I commend the Bill to the House.

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

HON F R PICARDO:

This is the first Bill I have seen in my time in this House that has not been published with an Explanatory Memorandum. The publication of the memorandum is not mandatory, it is a practice that always the Government publish an explanatory memorandum, some of them are very useful, some of them are just one line saying this Bill transposes or makes provision for the implementation of the United Nations Convention Against Transnational Organised Crime, which is what the title does. In any event I think that we have all got used to having an

explanatory memorandum which is of use to the House and I am surprised that there is not one with this Bill. There is no need for us to take into consideration articles 6, 7 and 14 of the Convention because those deal with money laundering, and despite all that may be said by those that like to criticise Gibraltar and its Finance Centre and Gibraltar generally, Gibraltar has been an example to many others in respect of money laundering having substantially provided all the legislation in that respect from 1993 onwards. There are many different definitions in our laws of what a serious crime is, we now find another one. A crime that carries at least four years of imprisonment as a sentence, that I was surprised to see when I read the Bill but comes directly from the text of the Convention. In section 16 the Government are taking the power to make regulations rather than a specific Minister. I think that the hon Gentleman has been effecting the practice of stipulating which Minister it is that is going to make regulations and I am surprised to see that there the power is generally to the Government, perhaps he can say something about that when he replies. In respect of the final amendments to be moved I could not agree more that a territory such as Gibraltar should be making provision for territories in similar provision to have the benefit of this type of legislation and Convention. I assume, nonetheless, that we will be asking all the other for example British Overseas Territories to take the same attitude to the provisions that they make in their law to be able to assist us, otherwise the clause that says that the Chief Secretary will not assist unless they reciprocate will mean that they are not entitled to the benefits of the Bill. The Opposition will be supporting the Bill.

HON CHIEF MINISTER:

Only to point out to the hon Member that which I thought he had by now spotted but obviously not. That is that where there is not a Minister with specific responsibility under our current system for the subject matter of legislation, the regulation-making power is given to the Government at large. There is not yet a Minister for Justice, when there is a Minister for Justice he will have

responsibility for making regulations in this sort of area. Where there is not a Minister under our existing system of defined domestic matters, the regulation-making power is given to the Government at large which is then exercised by a Minister but they would be wrong to name a specific Minister who does not in law have responsibility for the subject matter 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 will be taken later today.

Question put. Agreed to.

THE COLLECTIONS (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill comes to the House really as part of the Government's legislative updating consolidation and modernisation process. It does not really create a huge amount

of change to the system of street collections in Gibraltar, which is what the Bill refers to, but the changes that it does bring about are the following and they are achieved by way of amendments to an Ordinance which has not been amended since its enactment in 1948. The first amendment that the Bill introduces is that it establishes the concept of an authority and the Bill establishes the authority for the purposes of the Bill as the Chief Secretary or such other person as the Minister may from time to time designate by notice in the Gazette, the Minister being the Minister with responsibility for Public Finance. Hon Members may know that under the present 1948 Ordinance street collections are authorised not by the Government but by the Commissioner of Police, despite the fact that it does not really raise any policing or law enforcement issues. Under this amendment the Government take over responsibility for the authorising of flag days in common parlance through the person of the Chief Secretary, and this will facilitate obviously the keeping of registers and other administrative control of street collections. The amendments to section 4 are various and as I have already said it substitutes for references to 'the Commissioner of Police' in the Ordinance it substitutes them for references to the Authority as the authority for the approval of flag days. In sub-section 4(4) Governor is substituted by Minister as the person entitled to make regulations under the Ordinance. In section 6 after the words 'a police officer' the Bill seeks to insert 'and any other person designated by the Minister' because very often these Bills which create quasi-administrative offences are not usually policed by the police as such, very often they are policed like the Employment legislation, the Public Health legislation to name just two, they are usually policed by the officials that administer the legislation itself and that is what that is aimed at facilitating. In section 7 of the Bill there is in sub-section (7) an amendment to section 7 of the existing Ordinance simply to bring the fines up to date by reference to levels on the standard scale. I beg to give notice that in the Committee Stage I will be giving notice of a very small amendment which is really just to delete in clause 2(7)(iii) to delete the reference to sub-section (3) and replace it with a reference to sub-section (2). I commend the Bill to the House.

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

HON F R PICARDO:

Yes, of course we welcome the continuation of the consolidation exercise taking power to Ministers and the Government from the Governor which was commenced in 1988. Of course, in any such instance there must be an appropriate check and balance. We are concerned in this particular incidence that with power going to the authority of the Chief Secretary and the inclusion of the definition of Minister as it is at the moment, appeals from the decision of an authority who is the Chief Secretary at the moment unless somebody else is designated, will go to the Chief Minister and there is an element of proximity there which perhaps the hon Gentleman may well want to think about. Other than that the Bill will enjoy the Opposition's support.

HON CHIEF MINISTER:

Well I assume that by proximity the hon Member means physical proximity, namely, a reference to the fact that the Chief Secretary's office is in the same building one floor above mine. I do not suppose he means that the Chief Secretary, who is effectively the Head of the Public Administration in Gibraltar, is not independent of the Chief Minister in the exercise or indeed any other Minister, because of course to suggest that not the Minister with responsibility for Financial Services or Public Finances because he is the Chief Minister and works in the building but it would be all right if it were some other Minister of the same Government because he works in a building further up the Main Street, I do not think would be a logical, rational distinction. I think our whole system of Parliamentary, democratic public administration is based on the fact that Ministers make policy and pass laws and give policy steers and then the Chief Secretary or whichever public official the legislation designates, administers the law. I do not think there

is anything specific about the relationship between the Chief Secretary and the Chief Minister which I think would entitle this House to take a different view than it takes about the designation of any official in relation to his relationship with the Minister with which he works. That would be criticism of the whole system of Government both in Gibraltar and in the United Kingdom so I believe that this is perfectly okay.

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put.

Agreed to.

THE INCOME TAX (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance in order to complete the transposition into the law of Gibraltar of 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, 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 amends the Income Tax Ordinance in order to complete the transposition of the Interest and Royalties Directive. In addition, the Bill transposes Directive 2004/76 and 2004/66 and carries out consequential amendments to the Ordinance as follows. Clause 2(2)(a) the definition of 'a company' as set out in section 47A(1) of the Income Tax Ordinance leaves open to interpretation whether or not Gibraltar companies are included in the definition, and the amendment is intended to put the matter beyond doubt. Clause 2(2)(b) the definition of 'permanent establishment' refers to a permanent establishment having a fixed place of business situate in Gibraltar. This is not quite accurate, for example, it is not quite an accurate transposition of the directive. Section 47D(3)(c) refers to a permanent establishment situated elsewhere. The proposed amendment is intended to provide a more complete definition containing all the different permutations implicit in the directive. Clause 2(2)(c) deals with the definition of 'source State' which leaves open to interpretation whether or not Gibraltar is covered and this is now, again, put beyond doubt by clause 2(2)(c). Clause 2(3), that is sub-section (3) of clause 2, a number of amendments are proposed to section 47C(4). Firstly to prevent tax being deducted at any point, it is proposed to add 'at the time of payment' after the words 'deduction of tax at source'. Secondly, the phrase 'in his absolute discretion' is too extensive and risks being at odds with what is required by Article 1(1) of the Directive which states, and I quote from the Directive, 'interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalty is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State'. In

other words, the taxation of interest and royalty payments in those circumstances is not and cannot be a matter for the Commissioner's discretion, it is a requirement. His role therefore needs to be limited to applying the principles set out in the directive and not giving him discretion to override those principles as the legislation as presently drafted gives him. It is therefore proposed to remove the words 'in his absolute discretion'.

Clause 2(4) implements Directive 2004/76 which provides for derogations for the new members in the same vein as those previously in existence for the then new members, Spain, Greece and Portugal. This is achieved by substituting the whole of existing section 47D with a new section reflecting the requirements of the 2004 directive, and this approach was preferred to just amending the existing section because the re-working of the section would have been too extensive and too difficult for everyone to follow and to apply. The proposed amendments principally relate to: (1) the different expiry dates of the section depending on the State concerned of their transition periods; (2) whether the derogations relate to interest, royalty or both, these differ depending on the State involved; and (3) the maximum tax deduction thresholds, once again these differ with each of the States mentioned in that section. Clause 2(5) amends section 47F as follows. Firstly, Belgium and Spain, in the case of those two countries the taxes set out in Article 1(5) need to be replicated in sub-section 2(b). This is because permanent establishments will otherwise not be treated as beneficial owners where the interest or royalty payment is subject to the relevant Belgian and Spanish taxes. Secondly, a new sub-section (3) is inserted to transpose Article 1(6) of Directive 2003/49. This amendment is required to ensure the deduction is not given twice to different incarnations of the same company. Clause 2(6) amends section 47(2) as follows. Firstly, the opening lines of sub-section (2) are amended to ensure full compliance with the opening lines of Article 1(13) of Directive 2003/49. Secondly, paragraph (a) is amended to ensure full compliance with paragraph (a) of that same Directive. Thirdly, the amendment to paragraph (b) is simply intended to ensure an

appropriate cross-reference is inserted. Fourthly, Article 3A(iii) imposes the qualification that the company concerned has to be subject to certain taxes thereby excluding exempt status company. The amendment is therefore intended to include disqualification into the paragraph for the sake of clarity. Finally, a new paragraph (e) is inserted to transpose Article 1(13)(e). Clause 2(7) amends Schedule 2 to the Income Tax Ordinance in order to transpose Directive 2004/66. This Directive updates the 2003 directive to include the taxes and companies in existence in the new 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 ask whether the decisions to make these amendments are decisions which are home-grown or whether the failure of the earlier transposition to comply would be requirements of the Directive, because it is not the directive it is the original directive that have been brought to our attention from elsewhere. Other than that, complying with a directive is not something that is going to be opposed by the Opposition.

HON CHIEF MINISTER:

In answer to the hon Member's questions, in the context of the usual discussions with the UK in relation to the new directives that are being here transposed, it was pointed out to us that certain provisions of our original transposition were open to challenge if discovered by the Commission and we were invited to correct them before it happened and of course we did.

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 INSURANCE COMPANIES (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is short and simple. There are certain things which now can require regulations passed by the Minister to be done, they are substantially of an administrative and regulatory nature and the proposal of this Bill is that regulation-making powers are given to enable regulations to be made to delegate the power to do these things directly to the Financial Services Commissioner. So, for example, it will now no longer require regulations by the Minister to determine the manner in which accounts and balance sheets are to be audited. This is something that when the regulations are passed they will enable the Commissioner himself to determine that. Similarly, the persons by whom accounts and balance sheet, abstract statements, reports and other documents are to be

signed, and finally the contents of any advertisements or invitations published by insurers or connected persons and linked contracts. There is not much more to say simply to repeat that if this Bill is passed, the Minister will have the power to make regulations authorising the Commissioner to do all these things himself rather than being subject to subsidiary legislation. I commend the Bill to the House.

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

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put.

Agreed to.

THE TRUCK (AMENDMENT) ORDINANCE 2006

HON J J HOLLIDAY:

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

Question put.

Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is part of Government policy of modernising the laws of Gibraltar. In section 2(2) and (3) of the Bill the powers are moved from the Deputy Governor to the Director of Employment, and in sections 3 and 4 the fines are placed on the standard scale. I commend the Bill to the House.

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

Question put.

Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put.

Agreed to.

THE PUBLIC HEALTH (AMENDMENT) ORDINANCE 2006

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to amend the Public Health Ordinance in order to transpose into the law of Gibraltar Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances, 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, this Bill before the House transposes Directive 2003/105/EC of the European Parliament and of the Council amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances. Council Directive 96/82/EC was transposed in Gibraltar by the Public Health (Amendment) Ordinance 2000. The proposed amendment seeks to broaden the scope of the implementing provisions of the Council Directive 96/82/EC to better achieve its aims. Clause 2 amends section 95A to replace the definition of 'directive' to include the reference of the amending directive by the definition of 'notified' in order to be in writing. Clause 3 makes sections 95A to 95T and their Schedules not applicable to certain fields, including the exploration, extraction and possessing of minerals in mines, quarries or by means of boreholes, the offshore exploration and exploitation of minerals, including hydrocarbons and waste landfill sites. It also provides for some exceptions. Clause 4 amends section 95D and provides for a time limit for every operator to prepare and to keep major accident prevention policy documents. Clause 5 amends section 95E and provides for a notification to be sent by the operator to the competent authority within three months containing information specified in Schedule 8. Clause 6 amends section 95F and specifies the content of the report to be sent to the competent authority. Clause 7 amends section 95G and provides for a review of the report sent by the operator. Clause 8 amends section 95H and provides for the requirement of on-site emergency plans to be made before an establishment starts its operation if that establishment has not yet started to operate, and in other cases within a maximum period of one

year. Clause 9 amends section 95J and provides that in the case of a review of an offsite emergency plan, the competent authority shall consult the members of the public. Clause 10 amends section 95N and requires the operator of every establishment to supply regularly the information on safety measures at the establishment and on the requisite behaviour in the event of a major accident at the establishment to every person who is likely to be in an area in which, in the opinion of the competent authority, that person is liable to be affected by a major accident occurring at the establishment and every school, hospital or other establishment serving the public which is situated in such area. It also requires that such information be made permanently available to the public. Clause 11 replaces Schedule 6 that provides for dangerous substances to which Part 2A of the Ordinance applies. The main changes brought about by this Bill are contained in clause 2 which substitutes the existing Schedule 6 for a new one. The new Schedule 6 includes a re-definition of ammonium nitrate to cover a wider range of this substance with lower percentages composition and new clauses; a new category for potassium nitrate fertilisers not previously included; the inclusion of seven new carcinogens and raise threshold limits for all carcinogens; a new and wider category for petroleum products to include gasolines and nitrates, kerosenes including jet fuels and gas oils. The thresholds for these new categories are half those of the previous automotive petrol category. Lowering the qualifying threshold for substances dangerous for the environment; a re-definition of 'explosive' and a change of the aggregation rule when different substances are present in one location. Clause 12 amends Schedule 7, clause 13 amends Schedule 8 and clause 14 amends Schedule 9. This Bill will help the prevention of major accident hazards involving dangerous substances and limit their consequences to the public health and the environment. 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 ANIMALS AND BIRDS (AMENDMENT) ORDINANCE 2006

HON J J NETTO:

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

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is part of the Government's successful consolidation process of modernising the laws of Gibraltar. Section 2 places the fines on the standard scale. 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 PRISON (AMENDMENT) ORDINANCE 2006

HON MRS Y DEL AGUA:

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

Question put.

Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill amends the Prison Ordinance by inserting two new sections, section 49A and section 49B. Section 49A enables the Superintendent of Prison to authorise a Prison Officer to require any person held on remand or on temporary release to provide a urine sample, undertake a breath test, or a sample of any other description whether instead of or in addition to a urine sample or breath test. It is not proposed that this section apply to intimate body samples. Section 49B builds on new section 49A but extends it to prisoners. In other

words, to those that are not on remand or on temporary release. Section 49B(1) enables a prison officer to test a prisoner for drugs in his body by requiring the prisoner to provide a sample of urine and/or any other samples which are not intimate samples. Section 49B(2) enables a prison officer to test a prisoner for alcohol in his body by requiring the prisoner to provide a sample of breath and/or any other samples which are not intimate samples. Pursuant to section 49B(3) intimate samples which are dental impressions may only be taken by a dentist. Other intimate samples may only be taken by a doctor or nurse. Examples may include blood or certain hair samples. Section 75, the regulation-making section, is also amended to enable subsidiary legislation to be made on the conduct of drugs and alcohol tests, the type of samples to be taken and the information to be given to the prisoner tested. I think it is important to highlight that the overall aim of bringing this legislation is to reduce both the supply of drugs and alcohol in prison, whilst at the same time offering inmates the chance of rehabilitation. The expectation, therefore, is that the introduction of mandatory drug testing will serve to identify those prisoners who misuse drugs and to respond accordingly, both in a punitive and supportive way. I have already given notice in writing that I will be moving some minor and I think inconsequential amendments at Committee Stage. I commend the Bill to the House.

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

HON F R PICARDO:

Of course the sentiments which are purported to give effect to by this Bill are to be welcomed by the House. I have some concern about the way that sections 49A and 49B refer to prisoners in different ways. Having heard the hon Lady it is clear that there is an intention to treat prisoners who are entirely confined and prisoners who are confined on remand or on temporary release in a different way. I have gone back to the

Prison Ordinance and I do not find anywhere there anything which is helpful to the type of differences that appear and are probably quite appropriate when dealing with this type of testing. Section 20 of the Prison Ordinance just talks about a prisoner being lawfully confined in a prison but it does not create different classes of prisoner. Section 49A(1) as presently drafted refers to any prison officer requiring a prisoner confined on remand or on temporary release. Now, I think that is designed to mean only prisoners who are on remand or on temporary release but because of their use of the reference 'confined' I do not know whether that could also be interpreted to include long-term prisoners, because when one goes to section 49B we then see the language 'a prisoner whilst in custody' without any differentiation between on remand, on temporary release or totally confined to the prison. In section 49(2) we have the reference to a prisoner confined to the prison. I am not objecting to what the hon Lady is suggesting that the Bill is intended to do, I am just asking that we ensure that we do it in the right way by perhaps adopting a clearer way of referring to prisoners who are wholly already serving a sentence, prisoners who are on remand and prisoners who may be on temporary release. It may be that the Minister or one of her Colleagues can assist me in understanding the way it has been done already. In any event, I think that at section 49B(1) we need to be talking not just about 'any prison officer may' but because of the regime that is being set up I think what we intend to say there is, 'any prison officer authorised by the Superintendent of Prison under section 49A(1) may', otherwise there seems to be a blanket power there to a prison officer to do things without the consent of the Superintendent of Prison. It may be that that is actually what was intended if the class of prisoner referred to in section 49B(1) is different to the class of prisoner intended to be referred to in section 49A. Namely, that one needs the consent of the Superintendent if dealing with a prisoner who is on remand or on temporary release but one does not need the consent of the Superintendent if dealing with a prisoner who is serving a sentence. Those are the only issues that I would take. I would add that I think, and this is not intended as a joke, that in the definition of 'intimate sample' at (c) I think we need to be

referring to bodily orifices plural and not bodily orifice, because I think we have more than one other than our mouths. Apart from that the Bill will enjoy the support of the Opposition.

HON MRS Y DEL AGUA:

I actually raised exactly the same questions that the Hon Mr Picardo has just raised and I was assured by the law draftsman who drafted this legislation that there was a legitimate reason for distinguishing between prisoners on temporary release and the way the Bill had been drafted. The distinction is made, according to them, for legitimate reasons. Unfortunately those legitimate reasons were not properly explained to me when I asked the question, but I believe it has been taken from the UK legislation and brought into this legislation.

HON F R PICARDO:

I agree entirely with the Minister and I certainly can appreciate the reasons for differentiating between those classes of prisoners, and I am with her on everything she is saying at the moment. What I am questioning is whether the language actually does that what it appears it is intended to do. Perhaps it is something that we can look at in Committee rather than argue now.

HON MRS Y DEL AGUA:

Yes, I agree.

Question put.

Agreed to.

The Bill was read a second time.

HON MRS Y DEL AGUA:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken 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 Financial Services (Training and Competence) Bill 2006;
2. The Financial Services (Cross-Border Payments in Euro) Bill 2006;
3. The Financial Services (Miscellaneous Provisions) Bill 2006;
4. The Transnational Organised Crime Bill 2006;
5. The Collections (Amendment) Bill 2006;
6. The Income Tax (Amendment) Bill 2006;
7. The Insurance Companies (Amendment) Bill 2006;
8. The Truck (Amendment) Bill 2006;
9. The Public Health (Amendment) Bill 2006;
10. The Animals and Birds (Amendment) Bill 2006.

THE FINANCIAL SERVICES (TRAINING AND COMPETENCE) BILL 2006

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

Clause 3

HON CHIEF MINISTER:

(1) In section 3(2)(d) add the words ‘and Training’ after the word ‘Education’ at the end of the sub-paragraph.

(2) In section 3(4) delete the word “letter” and insert ‘notice’.

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

Clauses 4 to 7 – were agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES (CROSS-BORDER PAYMENTS IN EURO) BILL 2006

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

Clause 3

HON F R PICARDO:

In section 3 delete the word ‘incidents’ and insert ‘matters’.

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

Clauses 4 and 5 – were agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES (MISCELLANEOUS PROVISIONS) BILL 2006

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

Clause 7

HON CHIEF MINISTER:

Mr Chairman, clause 7 introduces a new section 11A which gives the Financial Services Commissioner a new power which is a power to disapply the law from individual licensees and persons in the circumstances set out where, for example, he believes that the circumstances of the case do not relate to the issues that the laws were intended to be addressing. Given that the laws are made by the Minister the amendment that I am moving to our own proposal is that the exercise of the power by the Authority should be made subject to the consent of the Minister who made the regulation in the first place. So it would read, "The Authority may with the consent of the Minister". I do not think that it is good practice for laws that have been made by the Legislature, and in this context the Minister is part of the Legislature rather than part of the Executive, should be waived by administrators without reference to those who made the laws in the first place and then I am accountable in this House for giving my consent to the disapplication of laws to people where otherwise there is no accountability in the Legislature for the disapplication of laws.

Consequential thereto subsection (6) says that the Authority may (a) revoke a direction or (b) vary it, again with the consent of the Minister on the application. So any direction to disapply or any subsequent variation of that disapplication should be with the consent of the Minister so that there is accountability in this House for the way in which laws are applied differently to different people.

HON F R PICARDO:

Mr chairman, that makes a lot of sense but why then are we putting the words in the second amendment at (6)(b) 'with the consent of the Minister', after the words 'vary it' and not after the word 'may'. In other words the Authority as the amendment presently stands may of its own motion revoke a direction but only with the consent of the Minister vary it.

HON CHIEF MINISTER:

Well I did think of putting it after 'may' and then I thought that it was not necessary because the arguments that I have just given why I think it should be with the consent of the Minister really applied to the disapplication of the law. A revocation of it, in other words, making the person subject to the law again is not really something that invokes the principles that I have just described. In other words, I believe that it should require the consent of the Minister to disapply the law to somebody but if having given that consent and had the law being disappplied the Commissioner then wants to re-apply the law to that person, disapply the exemption, there is no good reason why that should require the consent of the Minister. I am perfectly happy to do it but it would look quite odd that the Minister's consent should be required for a decision to once again make the law applicable to somebody, as opposed to, make the law disapplicable to somebody in the first place. I think the last one should require Ministerial consent, the first one the arguments do not stack up in the same way.

HON F R PICARDO:

Except of course the Minister will have given consent for the direction disapplying the law and then the Authority will unilaterally revoke something which the Minister has consciously done.....

HON CHIEF MINISTER:

So the Minister is not the doer, the Minister is only the consentor. If the hon Member feels that it would be better.....

HON F R PICARDO:

I am quite satisfied for it to remain as proposed in the Chief Minister's amendment.

MR CHAIRMAN:

Is the heading to clause 7 strictly correct, this is the new section 11B not new A.

HON CHIEF MINISTER:

That is correct, yes.

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

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

Clause 9

HON CHIEF MINISTER:

After section 33A(3) insert:

“(4) The costs of producing a report under subsection (1) shall be borne by the relevant person required to provide the report.”

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

Clauses 10 to 14 – were agreed to and stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

Replace section 15(1) as follows:

“15(1) In section 53 for all references to “Governor” substitute “Minister”.”

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

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

Clause 17

HON CHIEF MINISTER:

This clause is reworded as follows:

“Guidance.

57A(1) The Authority may issue guidance consisting of such information and advice as it considers appropriate-

- (a) with respect to matters within its competence relating to the operation of this Ordinance or the 1998 Ordinance;
- (b) with respect to any matters relating to the discharge by the Authority of its functions under this or any other Ordinance;
- (c) with respect to any other matters within the statutory competence of the Authority about which it appears to the Authority to be desirable to give information or advice.”.

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

Clause 18 – was agreed to and stood part of the Bill.

Clause 19

HON CHIEF MINISTER:

In Schedule 2B, section 2(1)(a) delete the word ‘other’.

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

Clauses 20 to 24 – were agreed to and stood part of the Bill.

Clause 25

HON CHIEF MINISTER:

(1) In new section 27A delete the word ‘an’ appearing before ‘authorised’ and add an ‘s’ to the word ‘firm’;

(2) In sections 27A(a) and (b) delete the ‘s’ from the word ‘provides’.

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

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

THE TRANSNATIONAL ORGANISED CRIME BILL 2006

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

Clause 2

HON CHIEF MINISTER:

In clause 2, in the definition of ‘State’, to add after the word ‘Convention’ ‘or a Territory covered by such a ratification’.

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

Clauses 3 to 10 – were agreed to and stood part of the Bill.

Clause 11

HON F R PICARDO:

In subsection (2) there is reference to the prosecutor or the defence in any proceedings, I think in our legislation that should be a reference to the prosecution or the defence in any proceedings. In section 11(2) delete the word ‘prosecutor’ and insert ‘prosecution’.

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

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

Clause 13

HON F R PICARDO:

In subsection (2) I think we are missing either the word ‘if’, ‘when’ or ‘where’ after the word ‘consignment’ in the penultimate sentence, otherwise it does not read. In section 13(2) after the words ‘delivery of the consignment’ add the word ‘when’.

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

Clauses 14 to 16 – were agreed to and stood part of the Bill.

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

THE COLLECTIONS (AMENDMENT) BILL 2006

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

Clause 2

HON CHIEF MINISTER:

In (iii) where it says 'in subsection (3) delete the figure of '£25.00', that should read in subsection (2), the figure £25.00 does not appear in subsection (3) it appears in subsection (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 INCOME TAX (AMENDMENT) BILL 2006

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

THE INSURANCE COMPANIES (AMENDMENT) BILL 2006

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

THE TRUCK (AMENDMENT) BILL 2006

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

THE PUBLIC HEALTH (AMENDMENT) BILL 2006

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

Clause 4

HON F R PICARDO:

There are a number of references in this Ordinance, two of which I have spotted, here in subsection (1) 'every operator shall without delay but at all events within three months', I think that should be 'but in any event within three months' that is the way it appears in the rest of our legislation. It appears again in section 6 in the new 8B at the very end of page 3. I think that should read 'but in any event'.
In section 4(1) delete the words "at all events" and insert "in any event".

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

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

Clause 6

HON F R PICARDO:

In section 6(a) sub-paragraph (8B) delete the words 'at all events' and insert 'in any event'.

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

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

Clause 8

HON F R PICARDO:

In section 8(a) sub-paragraph (d) delete the words ‘at all events’ and insert ‘in any event’.

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

Clauses 9 and 10 – were agreed to and stood part of the Bill.

Clause 11

HON J J NETTO:

I did actually give notice that I wanted to do two amendments which are basically typographical errors. In clause 11 in column 1 of the Table in Part 2 of Schedule 6, references to “Note 8” shall be replaced by “Note 7” in four places in the consecutive rows. In the Table in Part 2 of Schedule 6, the second part of column 2 shall be deleted and the figure “25000” under petroleum products shall be shifted to column 3.

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

Clauses 12 to 14 – were agreed to and stood part of the Bill.

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

THE ANIMALS AND BIRDS (AMENDMENT) BILL 2006

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

Clause 2

HON J J NETTO:

Here again another typographical error. In clause 2(6) delete the words ‘of’ and ‘at’ and in section 2(12) delete the reference to ‘section 25(2)’ and insert ‘section 25(3)’.

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Financial Services (Training and Competence) Bill 2006, with amendments; the Financial Services (Cross-Border Payments in Euro) Bill 2006, with amendments; the Financial Services (Miscellaneous Provisions) Bill 2006, with amendments; the Transnational Organised Crime Bill 2006, with amendments; the Collections (Amendment) Bill 2006, with amendment; the Income Tax (Amendment) Bill 2006; the Insurance Companies (Amendment) Bill 2006; the Truck (Amendment) Bill 2006; the Public Health (Amendment) Bill 2006, with amendments; and the Animals and Birds (Amendment) Bill 2006, with amendments, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Financial Services (Training and Competence) Bill 2006;
The Financial Services (Cross-Border Payments in Euro) Bill 2006;
The Financial Services (Miscellaneous Provisions) Bill 2006;

The Transnational Organised Crime Bill 2006;
The Collections (Amendment) Bill 2006;
The Income Tax (Amendment) Bill 2006;
The Insurance Companies (Amendment) Bill 2006;
The Truck (Amendment) Bill 2006;
The Public Health (Amendment) Bill 2006;
The Animals and Birds (Amendment) Bill 2006,
were agreed to and read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 19th April 2006, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 12.25 p.m. on Thursday 6th April 2006.

WEDNESDAY 19TH APRIL 2006

The House resumed at 9.45 a.m.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Hareh 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 C A Bruzon
The Hon S E Linares
The Hon L A Randall

ABSENT:

The Hon F R Picardo
The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

DOCUMENTS LAID

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

1. The Statement of Supplementary Estimates No. 1 of 2005/2006;

2. The Report and Audited Accounts of the Gibraltar Heritage Trust for the year ended 31 March 2005.

Ordered to lie.

HON CHIEF MINISTER:

Mr Speaker, if I may on a point of order just before we proceed with the revised agenda for the House, the House will be aware that under the terms of the Constitution the Estimates of Revenue and Expenditure, the Schedule therefore to the Appropriation Bill for the forthcoming year has to be laid in the House before the end of April, in other words, within 30 days of the start of the new financial year. The House cannot convene during the last week of April, which is the earliest that the document can be ready, because a substantial part of it is travelling to the Commonwealth Parliamentary Association meeting in Malta. It is open to me to convene a meeting of the House with a minimum quorum, which is three on one side and two on another, and it would require a temporary Speaker given that Mr Speaker is accompanying the Gibraltar delegation to the CPA Conference. However, in prior discussion with the Leader of the Opposition he has indicated to me, for which I am grateful, that if a way can be found of avoiding the need for that meeting which would be limited, literally it would last just 30 seconds just lay the thing on the table and go away with a minimum quorum, but if a way can be found of avoiding that Opposition Members would be content. The Constitution speaks of laying, the document being laid in the House, but of course what constitutes laying a document in the House is a matter for Standing Orders, so we could if the House were content by Standing Orders resolve but on this occasion, so as not to create a general precedent for it, but on this occasion the Financial and Development Secretary's submission to the Office of the Clerk of the House, I say the Office of the Clerk because of course the Clerk himself will also be away, since submission to the Office of the Clerk of the House shall constitute laying on the Table of the House, even though the House will not then be in sitting it will be in meeting because we will not have adjourned sine die but it will not be in sitting, and then the Clerk can distribute it when he returns on the Tuesday morning, he can distribute it

to all the Hon Members of the House but that the Financial Secretary will have complied with his constitutional obligations by laying, in accordance with the resolution of the House by submitting it to the Office of the Speaker before the end of April as it says he constitutionally must. I make that proposal for the consideration and if thought fit approval of the House.

HON J J BOSSANO:

Yes, as the Chief Minister has indicated, he has consulted me on this and I think it is unnecessary really for five Members to come here as he says for 30 seconds when in fact the purpose of the exercise is to comply with the constitutional requirements and to allow Members to be able to study the document before it is debated. I am quite happy to support him and I think it makes sense.

MR SPEAKER:

Given the measure of agreement by Members on both sides of the House, I am happy to rule that for the purpose of this occasion the constitutional requirement of laying before the House of the Estimates by the Financial and Development Secretary shall be satisfied by the delivery by the Financial and Development Secretary to the Office of the Clerk, of the Estimates for circulation by the Clerk in due course.

HON CHIEF MINISTER:

Obliged Mr Speaker and the hon Members.

BILLS

FIRST AND SECOND READINGS

THE COMMUNICATIONS ORDINANCE 2006

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to provide for the assignment or conferring of functions to a Minister and to the Gibraltar Regulatory Authority; to make provision for the regulation of the electronic communications sector and of the use of the electro-magnetic spectrum; to transpose and to make provision for the transposition of Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and Council and Directive 2002/77/EC of the European Commission; and for connected purposes, be read a first time.

Question put. Agreed to.

HON J J HOLLIDAY:

I wish to give notice that this Bill will not be proceeding to the Second Reading today.

THE CHILDREN AND YOUNG PERSONS (ALCOHOL, TOBACCO AND GAMING) ORDINANCE 2006

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Ordinance to regulate the sale and supply of alcohol and tobacco to children

and young persons and their use of gaming machines and for matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill addresses three areas of concern which are encapsulated in the title, namely, the relationship of children with alcohol, tobacco and gaming machines. Before dealing in more detail with the different parts of this Bill it is important to highlight that the overall aim of this legislation is not to criminalise young persons, it is to protect them. It does, however, seek to more effectively reduce the sale and availability of these substances by creating new offences, by giving certain new powers to the police and by empowering the courts to impose a variety of penalties on suppliers or procurers, ranging from the imposition of restrictions, the imposition of heavy fines and the suspension or revocation of licences. The Bill contains five parts. Part 1 relates to the sale of alcohol. Clause 3 prohibits the sale of alcohol to persons under 16 years of age. The penalty for breaching this provision is a fine up to level 5 on the standard scale. The offence is not a strict liability offence, however, in order for a person to establish the defence provided in sub-clause (2), he must satisfy the court that (a) he believed the child to be 16 years or more; and (b) either he had taken all reasonable steps to establish the child's age or nobody would reasonably have suspected that the child was not at least 16 years old. A person who relies on clause 3(2)(b)(i) will also have to satisfy the court that he asked the child for evidence of his age and that such evidence as was provided would have convinced a reasonable person. The Bill at clause 7 also creates the offence of procuring alcohol for a person under the age of 16 in respect of which similar penalties and defences

apply as for the selling offence. In addition to the foregoing, the Bill makes provision in clauses 4 and 5 respectively for the erection of notices in premises where alcohol is being sold. The notice will state it is illegal to sell alcohol to, or procure alcohol for any one under the age of 16. The notice will have to be exhibited in a prominent position that is visible to persons at the point of sale. Minimum dimensions for the notice are provided for in addition to sanctions for failure to have a notice or one that does not meet with the prescribed criteria. Clause 6 relates to the consumption of alcohol in public places. It is an important measure which will assist the police in the execution of their duties. It provides them with the power to confiscate and dispose of alcohol where there is reason to believe that the person is under the age of 16 and is, has or intends to consume alcohol in a public place.

Part 2 of the Bill relates to tobacco. Clauses 9 to 13 replicate the regime created for the sale and procurement of alcohol to the sale and procurement of tobacco. Additionally, Part 2 under clause 14 makes provision for vending machines and in particular the need to have a notice displayed on vending machines. Under clause 16, where a vending machine is used by an underaged person, proceedings may be issued against the owner of the vending machine or the occupier of the premises upon which the machine is located. Additionally and perhaps of greater impact, where a complaint is made to the Magistrates' Court the court is given the power in clause 17 to make an order imposing conditions to prevent the further use of that vending machine by such persons, irrespective of whether the complaint is made out or not. Indeed, the court may even bar such machines from the premises in question.

Part 3 of the Bill makes provision for gaming machines. In this Part under clause 18, a person is guilty of an offence if being the owner of a gaming machine or the occupier of premises upon which such a machine is located, allows a person under the age of 18 to use the machine. A defence is available in the same terms as that which is available in relation to the sale of alcohol and tobacco. As with tobacco vending machines, gaming

machines are required under clause 19 to carry a prescribed notice and a breach of this requirement constitutes an offence under clause 20. Clause 21 allows the Magistrates' Court to impose conditions relating to the gaming machine, including banning the gaming machine from the premises, again whether the complaint is made out or not. Part 4 of the Bill provides for repeat offenders. Clause 22 applies to licences issued under the Licensing and Fees Ordinance or the Leisure Area Licensing Ordinance 2001. Where a person is convicted for a second or subsequent time the court is required to consider suspending a licence for a specified period of time, or revoking a licence issued under either Ordinance. Part 5 of the Bill concerns amendments and repeals. Clause 23 amends section 6(6) of the Tobacco Ordinance 1997. The effect of this amendment is that the Collector of Customs is not permitted to issue or renew wholesale or retail licences under that Ordinance where that person has been convicted of an offence under clause 9, that is, the prohibition of the sale of tobacco to persons aged under 16. Clause 24 repeals section 264 of the Criminal Offences Ordinance. Those provisions are built upon and incorporated into this Bill. I have already given notice in writing that I will be making amendments at Committee Stage. I commend the Bill to the House.

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

HON S E LINARES:

Just to say that the Opposition is in favour and welcome this Bill.

Question put. Agreed to.

The Bill was read a second time.

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

**THE SUPPLEMENTARY APPROPRIATION (2005/2006)
ORDINANCE 2006**

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to appropriate further sums of money to the service of the year ending on the 31 March 2006, be read a first time.

Question put. Agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill seeks an additional £3.1 million of Consolidated Fund contribution to the Gibraltar Electricity Authority as set out in the Bill and explained in the Explanatory Memorandum. This additional expenditure is covered by higher than anticipated Consolidated Fund revenue which will shortly be disclosed when the Estimates are laid before the House. The increased deficit of the Electricity Authority this year can be explained primarily by the higher than anticipated price of fuel. The cost of fuel, inclusive of handling charges, increased from £243 roughly per ton in March 2005 to £280 per ton in April 2005, peaking at nearly £356 per ton in September 2005. The additional monies are primarily required for that. There are also some elements related to a slightly increased overtime bill to the Electricity Authority, and in addition, the deficit carried forward from one year to the other we projected at zero but in actual fact

it turned out to be about £300,000 which we are making good through this Bill. I commend the Bill to the House.

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

HON J J BOSSANO:

I note that the Financial and Development Secretary has told us that the main reason is the increased fuel costs, £300,000 being brought forward from the previous year whereas the Estimate produced for the year was that the £4.4 million last year would balance the books and produce a zero amount carried forward. So I take it that that means that in fact the expenditure last year was £300,000 higher than the amount in the estimate and I would like to know whether in fact what has been, I know we will know next week but since we are debating this now I would like to know whether there has been any change in the revenue estimate. The revenue was estimated to be £2 million higher from sales of electricity in the year ended last month compared to the 2004/2005 financial year. So even if the bulk of it is increased costs is there any element in terms of a shortfall of the estimated revenue from sales, or has that met expectations or is it higher? The Financial and Development Secretary has told us that in fact the £3.1 million extra appropriated from the Consolidated Fund will be met by higher income in the Consolidated Fund, I imagine from PAYE which we have seen in the monthly amounts has been higher than was originally projected at Estimates time. Does it mean then that this Supplementary Appropriation for this particular Fund is the only one that is required? That is, that the other Funds will not require supplementation?

HON CHIEF MINISTER:

I am speaking from memory of recently seen documents, I am almost certain my memory is correct on the point, but I think the

revenue was actually higher than estimated by a sum of the order of £1.4 million. So the figure of £3.1 million deficit is in fact a net figure. Revenue and expenditure were both higher, expenditure by more than this, but some of it was covered by higher revenue. The answer to the last point that the hon Member raised is yes, no other Fund will require supplementary. There is a small provision unspent, a very small provision unspent in the Supplementary Expenditure vote, the normal one, I think about £100,000 or £150,000 because the hon Member knows that sometimes the forecast outturns turn not to be exactly correct. So subject to that not being higher that has been allowed for, subject to that temporary inaccuracy not being higher than has been allowed for in the unspent bit, unallocated bit of the Supplementary Expenditure vote there would be no need for further supplementary appropriations in respect of the last financial year.

Question put.

Agreed to.

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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 Children and Young Persons (Alcohol, Tobacco and Gaming) Bill 2006;
2. The Supplementary Appropriation (2005/2006) Bill 2006.

THE CHILDREN AND YOUNG PERSONS (ALCOHOL, TOBACCO AND GAMING) BILL 2006

Clause 1

HON MRS Y DEL AGUA:

Although I have not given notice of this I would like to make an amendment. Remove the words 'on the day of publication' and substitute by 'on a date to be designated by the Government by notice in the Gazette'.

HON CHIEF MINISTER:

Could I just say that the purpose of that amendment is this, as we are passing this Bill in all its stages today, it may be that those who will be affected by this, basically retailers and wholesalers of alcohol and tobacco and operators of gaming machines, will need some time to become informed of and become aware of the provisions, and if we commence it as the Bill actually now says 'on the day of publication' then it is a little bit of a guillotine. This way it allows us to publicise the provisions of the Bill, the fact that it has been passed, have a period of public information and then commence it, rather as we have done for the Data Protection legislation but obviously on a shorter time scale.

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

Clauses 2 to 12 – were agreed to and stood part of the Bill.

Clause 13

HON MRS Y DEL AGUA:

I have already given notice of these amendments. In clause 13(1)(b) substitute the words 'this subsection' with 'section 12'.

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

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

Clause 15

HON MRS Y DEL AGUA:

Similarly, in section 15(1)(b) substitute the words 'this section' with 'section 14'.

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

Clauses 16 to 19 – were agreed to and stood part of the Bill.

Clause 20

HON MRS Y DEL AGUA:

In clause 20(1)(b) substitute the words 'this subsection' with 'section 19'.

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

Clause 21

HON MRS Y DEL AGUA:

The penultimate line of clause 21(1), substitute the word 'vending' with 'gaming'.

Clause 21, as amended, was agreed to and stood part of the Bill.

Clauses 22 to 24 – were agreed to and stood part of the Bill.

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

THE SUPPLEMENTARY APPROPRIATION (2005/2006) BILL 2006

Clauses 1 and 2, the Schedule 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 Children and Young Persons (Alcohol, Tobacco and Gaming) Bill 2006, with amendments, and the Supplementary Appropriation (2005/2006) Bill 2006, have been considered in Committee and I now move that they be read a third time and passed.

Question put.

Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 8th May 2006, at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 10.20 a.m. on Wednesday 19th April 2006.

MONDAY 8TH MAY 2006

The House resumed at 2.35 p.m.

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 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 E G Montado CBE - Financial and Development Secretary (Acting)

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 Lt-Col E M Britto OBE, ED - Minister for Health
The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

OATH OF ALLEGIANCE

The Hon E G Montado CBE took the Oath of Allegiance.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Ombudsman's – 6th Annual Report for the period January to December 2005.

Ordered to lie.

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

1. Consolidated Fund Supplementary Funding – Statement No. 6 of 2005/2006;

2. Consolidated Fund Pay Settlements – Statement No. 7 of 2005/2006;
3. Consolidated Fund Reallocations – Statement No. 8 of 2005/2006;
4. Improvement and Development Fund Reallocations – Statement No. 1 of 2005/2006.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INCOME TAX (AMENDMENT) (NO. 2) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill makes a small amendment to section 82 of the Ordinance. The effect of the amendment is to make corporation tax for any year of assessment payable by the 28th

February of that year, rather than 31st March as law stands today.

The purpose of the amendment is as follows. The present wording of section 82 of the Income Tax Ordinance provides that the 31 March, in other words, the last day of Government's financial year, is the due and payable date for the tax due on any assessment issued for a current year of assessment. The proposed amendment will principally impact on corporate taxpayers as an assessment for a current year of assessment will normally only be issued on companies given their previous year basis period. Following the Tax Office's efforts in the area of Corporation Tax assessments, a substantial proportion of the Corporation Tax payable in any financial year is now due on the 31 March. This is obviously inconvenient and any delay in payment by the big corporate payers, or in the processing of a payment, could result in distortions or shortfalls on the projected revenue for the financial year. Hence the bringing forward of such due and payable date by one month. I commend the Bill to the House.

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

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put.

Agreed to.

THE COMPANIES (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill makes provision consequential to the coming into force of the Financial Services (Experienced Investor Funds) Regulations, 2005 which came into force in August of last year. Clause 2(a) inserts new subsections (3) and (4) into section 40 of the Companies Ordinance. This amendment addresses the problem created by the fact that it is of benefit to the Experienced Investor Fund industry for such vehicles to constitute private companies due to the lower cost associated with these, but that private companies cannot market shares to the public. The proposed new clauses solves this problem by enabling the constituting documents of such funds to conflict with section 40(1)(a) until they are authorised or licensed as a fund, as the case may be, but creating the statutory implication that, notwithstanding the conflict, the subsection applies until then. So those are the sort of provisions that section 40 of the Companies Ordinance presently makes. Of course this makes it impossible for private companies to be used as experienced investor fund vehicles because experienced investor fund vehicles will have more than 50 experienced investors and they need, under the terms of the Collective Investment Schemes Ordinance, they need to publish the equivalent of the prospectus yet section 40 of the

Companies Ordinance says that a private company cannot issue a prospectus. So the effect of these amendments to section 40 of the Companies Ordinance is in effect to exclude the application of section 40 as it presently applies to private companies to exclude its application from private companies that are authorised under the Collective Investment Schemes Ordinance by the Financial Services Commission to carry on business as an experienced investor fund. Therefore, clause 2(b) disappplies the provisions of the Companies Ordinance relating to prospectuses and clause 2(c) makes amendments consequential to that made by clause 2(a). Section 41 is amended to enable the Articles of Association of a fund to conflict with section 40 without by that token losing the status of private company. Clause 2(d) inserts a new section 96A on the subject of fractional shares. This is an amendment which the industry has requested the Government to make, so for example what happens is that the value of shares in an experienced investor fund company will reflect the on-going value of its underlying fund. If an investor says, 'well please invest £100,000 in this fund', and the shares are only whole shares then the investor has to give his instructions by reference to buy so many shares and not by reference to invest such a sum of money, because one may not divide equally into the other. So this clause 2(d) allows for funds to issue what are called 'fractional shares'. In other words, shares can be issued in wholes of one or in fractions of one, so if an investor says 'invest £100,000 in the fund' that may buy one 9¼ share, or 9.65 share so one share would be a fraction of a share and not a whole share. It is just a way of giving a little bit more flexibility because these funds do not normally deal in shares of £1, normally the shares are small in number and high in value because they are for experienced investors. So that is the effect of clause 2(d) of the Bill, inserting as it does a new section 96A. The new clause enables, as I say, the issue of these fractional shares provided that its Articles of Association allows it to do so. In those circumstances such fractional shares will carry with them the corresponding fractional rights that the full share would enjoy.

I do not suppose that this Bill is controversial, it reflects fine tuning of legislation that we approved last year in order to give a further string to the bow of the Finance Centre, and that is that the concept of experienced investor funds, which hon Members may recall, are collective investment schemes which do not suffer the same degree of tight regulatory control as would enjoy funds aimed for retail investment by ordinary private investors who cannot be attributed a particularly keen knowledge of investment matters and whom the law therefore protects to a greater degree by a more robust regulatory regime. These are funds which exist only and are restricted to so-called experienced investors, which are defined in the legislation that we have passed, and they are investors which by their degree of wealth and experience in investment matters are deemed not to require the same degree of regulatory protection as the ordinary citizen needs and for whose benefit the normal regulatory regime is required. 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 COMMUNICATIONS ORDINANCE 2006

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that a Bill for a Communications Ordinance, be read a second time. Mr Speaker, the Bill before the House implements and sets out the framework for the further implementation of a package of six directives adopted by the European Community in July 2003 on electronic communications. It also makes provision for connected matters. The six directives in question are sighted in the preamble to the Bill. Foremost amongst these is the Framework Directive, EC Directive 2002/21, this is the umbrella instrument. It sets out the harmonised framework and general principle for the regulation of the electronic communications sector. The Framework Directive is accompanied by the Authorisation EC Directive 2002/20, Access EC Directive 2002/19 and Universe Service Directives, EC Directive 2002/22, jointly referred to as 'the specific directives' which give effect to the general principles set out in the Framework Directive. Two further directives form part of the 2003 packages. These are the Competitive Directive (which is the EC Directive 2002/77), the Privacy Directive (Directive 2002/58). This 2003 package of EC directives is the second wave of measures adopted by the European Community with a view to regulating the telecommunications and related sectors.

The first wave of such measures was adopted progressively throughout the 1990's and is commonly referred to as 'the 1998 package'. That package was implemented in Gibraltar by the Telecommunications Ordinance 2000 and subsequent legislation adopted under it. The six directives in the 2003 package repeal and replace the 26 directives that make up the 1998 package. Only one measure, which did not in any event apply to Gibraltar, survives. In the same way, the Bill deals with

the Telecommunications Ordinance and its subsidiary legislation although some of their provisions are maintained. The extent of the repeal is set out in the Schedule to the Bill. Such an extensive repeal has been necessary in Gibraltar, like in other Member States, by virtue of the very substantial changes introduced by the 2003 package. The most important of these are the following ones.

1. Convergence

The 2003 package takes full account of the convergence of the telecommunications media and information technology sector. It therefore sets a common regulatory framework for all three sectors, referred to jointly as the 'electronic communications sector'. This means that unlike the 1998 package which only applied to telecommunications sector, the 2003 package applies to telecommunications, broadcasting, information technology, internet based services and spectrum management. It establishes common rules for all telecommunications network, fixed or wireless, as well as for broadcasting network, terrestrial satellite and cable, internet access and IP services. The 2003 package, however, only applies to transmission and not the content of service delivered over electronic communications network. It does not therefore regulate broadcasting content of certain information society services. One small manifestation of convergence in the drafting of the Bill is that the word 'telecommunications' does not appear once.

2. Technological neutrality

Linked to convergence the 2003 package introduces technological neutrality. This means that all networks and services are governed by the same regulatory framework and rules. The 1998 package was not technologically neutral, therefore, different rules applies to services provided over mobile and fixed telecommunications networks.

3. Single system of general authorisation

The current dual system of individual licences and general authorisation is abolished. Henceforth all electronic communications services and networks are to be provided under a regime of general authorisation. This means that a person wishing to provide an electronic communications service or network is only required to notify the regulator of his intention to do so. He does not need an explicit decision of entitlement. That is, the current individual licence to provide the service for network. However, all such persons will have to comply with general conditions that are applicable to the provision of this service or network. This will also still have to apply for and be granted (a) a licence if they require the allocation of radio spectrum; and (b) an individual right if they require the allocation of numbers. They will also be required to make an application to the Minister if they need to be granted rights of way to install facilities. In addition, specific obligation can still be imposed ex ante on (a) individual operators in relation to access and interconnection; (b) operators who are designated as having significant market power; and (c) operators who need to comply with universal service obligations. The fourth issue is the new SMP definition. One of the aims of the 2003 package is to bring the electronic communications sector more in line with general competition laws. Consistently with this aim, the 2003 package changes the way in which operators with significant market power, SMP, will be identified and regulated. This means that whereas under the 1998 package SMP determination was based on a fixed test of over 25 per cent market share, allowing the regulator some discretion to take other factors into account, the 2003 package requires the regulator to define the concept of SMP by reference to the general competition law concept of dominance under Article 82/EC Treaty. This will require the regulator to define relevant markets, carry out market analysis and make determinations as to dominance.

Related to the new SMP definition the 2003 package introduces the following new provisions. The regulator will be under an obligation to remove SMP obligations where it finds that a given

market is effectively competitive. The European Commission may in certain circumstances prevent the regulator from defining a market in the way it proposes to do, notably, where the regulator seeks to depart from a European Commission recommendation on market definition. The fifth issue is public consultation with other regulatory authorities and with the European Commission. Numerous provisions of the 2003 package require the regulator to carry out a public consultation before he can adopt a measure. In Gibraltar's case this will apply to measures with which the Minister and the GRA intend to adopt. In addition, the regulatory authorities in the European Community are required to consult with each other and with the European Commission, much more than under the 1998 package, notably whenever they intend to adopt a measure which (a) identifies a relevant market; (b) makes an SMP determination; (c) relates to the setting, modification or revocation of an access related condition; or (d) relates to the setting, modification or revocation of an SMP obligation and which will affect trade between Member States. The sixth issue is access and interconnection. Whereas in the 1998 package the obligation to negotiate access and interconnection was only placed on a certain category of operator, described in Schedule 2 of the Telecommunications (Interconnection) Regulation 2001, the 2003 package extends this obligation to all operators of public electronic communications network. In addition, various provisions of the Access Directive prohibits linkage to be made between the interconnection charges payable by a new entrant and its degree of investment in network infrastructure. The seventh issue is the general system of appeal. The 2003 package requires Gibraltar and all the Member States for the first time to ensure that an effective appeal mechanism is in place for virtually all decisions taken by the national regulatory authority. This new requirement has required a significant enlargement of the scope of application of the current appeal procedure contained in section 32 of the Telecommunications Ordinance, which under that Ordinance only applies to the decision taken by the Minister in relation to the electro-magnetic spectrum.

I would now like to analyse the Bill by clauses. The Bill does the following. Firstly it implements the Framework Directive, the Competition Directive and the general provisions of the other directives in the 2003 package. The more detailed provisions in the other directive will be implemented by regulations to be adopted once the principal Ordinance enters into force. In this way the same structure as that adopted by the European Community has been retained. Mainly, one framework measure, the Bill in this case, and various specific measures, the various regulations, in our case. Secondly, to the extent that it maintains provisions of the Telecommunications Ordinance and to the extent that such provisions were based on UK legislation, notably the Telecommunications Act 1984 and the Wireless Telegraphy Acts of 1949 and 1998, it updates and amends such provision whenever the UK provisions have been updated or amended. Thirdly, it introduces new provision in connection with the new regime which it puts in place.

I will now turn to an examination of the provisions of the Bill. Clause 1 (Title and Commencement) only contains minor amendments to section 1 of the Telecommunications Ordinance. Clause 2 (Interpretation) replaces section 2 of the Telecommunications Ordinance, which has been almost completely redrafted in view of the numerous new terms and concepts introduced by the 2003 package. Clause 2(2) to (14) contains various explanations of the meanings to be given to certain terms in the Bill. Clause 3 (Duty of the Minister and the Authority) in subsection (1) only minor amendments to section 3 of the Telecommunications Ordinance are made. Clause 3(2) is new. Clauses 4 to 6 are information gathering provision. They either maintain Telecommunications Ordinance provision as amended, or implement the requirements of the 2003 package. Clauses 7 and 8 (Power to establish Advisory Bodies and Annual Reports) are amending the Telecommunications Ordinance provision. Clause 9 (Regulations) contain the regulation-making power. Amongst other things it allows the Minister to adopt regulations setting out the procedure and principles for the imposition of financial penalties on a person who fails to comply with a condition or obligation imposed on

that person under or pursuant to the Bill, or with any other requirements specified under or pursuant to the Bill. Clauses 10 and 11 (Directions by the Minister and the Authority and Administrative Notes) are amending the Telecommunications Ordinance provisions. Clause 12 (Power of the Authority to issue notices) is new. It grants the GRA powers to issue notices. The insertion of this provision has been deemed useful in view of the numerous documents which the GRA will be required to issue under the new regime, and in order to ensure that all such documents carry one title and are identifiable to specific powers granted to the GRA under the Bill. Clause 13 (Public Consultation Procedure) introduces the new public consultation procedures required under Article 7 of the Framework Directive and Article 14(1) of the Authorisation Directive. Clauses 14 to 17 are new. They are administrative provisions concerning the manner in which documents have to be served and includes provisions on the service of documents in electronic form and on the timing and location of things done electronically.

Clause 18 (General Functions of the Authority) sets out the functions of the GRA. It supplements section 4 of the Telecommunications Ordinance with the requirements under the 2003 package. Subsection (4) empowers the Minister to adopt regulations requiring the payment of administrative charges for the purposes of meeting expenses properly incurred by the GRA in the discharge of its duties and functions. It is an adapted version of section 29(3) of the Telecommunications Ordinance which applied to licence fees. The actual regime on administrative charges will be contained in regulations to be adopted once the Ordinance enters into force. Clause 19 (Objectives of the Authority) sets out the objectives of the GRA as required by the implementation of Articles 7 and 8 of the Framework Directive. It is a new aspect of the 2003 package. Clauses 20 and 21 (Standardisation and Harmonisation Procedures) implement provisions of the 2003 package which requires the GRA to ensure compliance with relevant international standard and to take due account of any recommendations issued by the European Commission seeking

the harmonised application of the Framework Directive or the specific directive.

Clauses 22 to 24 sets out the procedure for cooperation between the GRA, the European Commission and the regulatory authority in the Member State. This is an important new aspect of the 2003 package of Article 7 Framework Directive. The effect of this provision is that whenever the GRA intends to adopt a measure referred to in section 22(1), these concern measures on market definition, SMP determinations or the settings modification or revocation of access related condition or SMP obligation where such a measure will, in the GRA's opinion, affect trading services between Gibraltar and one or more Member States. It must first send a copy of its proposed measure to the European Commission and to the regulatory authority in the Member State. Clause 23 implementing Article 7(4) Framework Directive prevents the GRA from adopting a proposed measure if the European Commission is opposed to it. Clause 24 allows the GRA to disregard the procedure set out in clauses 22 and 23 whenever it needs to act on an urgent basis. Clauses 25 to 27 sets out the GRA's general information function. The most important of these provisions is clause 26, which implements Articles 5(2) and (3) of the Framework Directive. Clause 26 requires the GRA to provide the European Commission with such information as the Commission considers necessary to allow it to carry out its task under EC law. The Commission is entitled to pass on such information to regulatory authorities in Member States, although the GRA may oppose this in clauses 26(2) and (4). Article 5(2) Framework Directive also requires the GRA to pass on information upon request to other regulatory authorities.

Under Part IV the Electronic Communications Networks and Services the vast majority of the provisions in this part of the Bill implement requirements of the 2003 package. This part effectively replaces Part III of the Telecommunications Ordinance. Clauses 28 to 31 sets out the provisions liberalising the electronic communications sector. They implement various provisions of the Competition Directive and Article 13 of the

Framework Directive. Clauses 32 to 34 sets out the basic regulatory framework for the electronic communications sector. These sectors set out the general principle contained in the Authorisation Directive, the Access Directive and the Universal Service Directive and which will be spelt out in the regulations adopted once the Ordinance enters into force. Clause 32 deals with general authorisation. As explained in my introduction, one of the key changes introduced by the 2003 package is the removal of the regime of individual licence which is replaced by a single regime of general authorisation. However, the operator will still have to comply with the following. Firstly, they will still have to comply with general conditions. This will be set out in regulations to be adopted and in a notice to be issued by the GRA once the Ordinance enters into force. Secondly, clause 32(2) allows the Minister to impose restrictions which are justified under EC law in respect of public interest, public security et cetera. Clauses 35 to 37 sets out the provisions on numbering. Clauses 35 and 36 implement requirements under the 2003 package and take over regulation 13 of the current Telecommunications (Interconnection) Regulations 2001. Clause 37 is new, it sets out the procedure for bidding for numbers. Bidding for numbers is envisaged by recycled 23 and Article 5 (the Authorisation Directive). The procedure in clause 37 is adapted from that currently contained in section 29(22) of the Telecommunications Ordinance in relation to bidding for a telecommunications licence which was in itself based on section 3 of the Wireless Telegraphy Act of 1998. Clauses 38 to 41 set out the SMP procedures. As explained in my introduction, these concern a key change introduced by the 2003 package. Clauses 38 to 41 sets out the procedure the GRA would have to follow in order to define markets and assess whether any given person, or combination of persons dominant in that market, in accordance with Article 82 of the EC Treaty. Clause 41 applies whenever a market is for the time being identified by the European Commission as being a transnational market. In such a case the GRA will be required to enter into arrangements with the regulatory authority or authorities in the Member States or State concerned in order to make an SMP determination. Clauses 42 to 44 deal with miscellaneous matters on electronic

communications, prohibitions and restrictions applying to lessees with respect to electronic communications, and retain as amended provision of the Telecommunications Ordinance. Clauses 45 to 48 deal with offences under Part IV. These provisions retain, as amended and restructured, provisions of the Telecommunications Ordinance.

Part IV of the Bill takes over from sections 17 to 20 and 46 of the Telecommunications Ordinance. Clauses 49 and 50 (Right to Install Facilities and the Power to modify rights, conditions and procedures with regard to the installation of facilities) are new and implement requirements under the 2003 package. Clauses 51 to 55 also implement requirements under the 2003 package and largely retain, as amended, provisions of the Telecommunications Ordinance and regulation 12 of the Telecommunication (Interconnection) Regulation 2001. The most important change concerns clause 54 on the electronic communications code. That is, a code setting out rights and obligations on right of way. This scope was the subject matter of two very long provisions in the Telecommunications Ordinance, sections 17 and 18. Experience under the Telecommunications Ordinance indicate there is no need for such a code in Gibraltar. Clause 54 is therefore much more streamlined and it essentially grants the Minister the power to adopt the code when and if it is considered necessary to do so.

Part VI of the Bill replaces Part IV of the Telecommunications Ordinance. Under the Telecommunications Ordinance the Minister retains responsibility under this part. Part IV of the Telecommunications Ordinance integrated Gibraltar's Wireless Telegraphy Ordinance, which was itself based on the UK Wireless Telegraphy Act of 1949. Part VI of the Bill maintains these provisions as amended to take into account the many amendments which the UK has made to the Wireless Telegraphy Act of 1949 since then. Clauses 56 to 59 sets out the basic provisions on the control of the use of the electronic magnetic spectrum, largely implementing requirements under the 2003 package. Clauses 60 to 66 sets out the framework for the general grant of the licences. The Telecommunications

Ordinance term 'telecommunications licence' is now simply replaced by the term 'radio communications licence, which in itself simply refers to as licence, since the individual licence under the Telecommunications Ordinance regime no longer exists. All of these provisions are either an implementation of requirements under the 2003 package or redrafted versions of equivalent provisions in the Telecommunications Ordinance. The bidding procedures in section 29(22) of the Telecommunications Ordinance is now contained in clause 65 of the Bill. It has been amended and updated in the light of the various amendments made to section 3 of the Wireless Telegraphy Act of 1998, on which section 29(22) of the Telecommunications Ordinance was based. Clauses 67 to 81 sets out the regime for dealers of radio communications, operator offences and limited number of miscellaneous matters. They all take over existing Telecommunications Ordinance provisions as amended or restructured, and otherwise update them with the changes made in the UK to the equivalent Wireless Telegraphy Act 1949 provision. The only new provision is clause 77 of the Bill which introduces a new offence of deliberate interference consistently with changes made to the Wireless Telegraphy Act of 1949. Clauses 82 to 85 specify the type of regulations that may be adopted for the purpose of this part.

Part VII, Offences, Appeals and Dispute Resolution, clauses 86 to 90 restructures and groups together various general provisions and offences which were previously spread out throughout the Telecommunications Ordinance. Clause 91 sets out the procedures for appeal to be made against decisions of the Minister or the GRA. It is almost entirely based on section 32 of the Telecommunications Ordinance with new amendments made. The principal change in accordance with the requirement contained in Article 4 of the Framework Directive and Article 2(5) second paragraph of the Competition Directive, is that the appeal procedure now applies to virtually every decision taken by the Minister or the GRA. As stated in my introduction, such an extension of the appeal procedure is an important change introduced by the 2003 package. Clauses 92 to 98 sets out the

procedure for the resolution of disputes between operators. These sections implement Articles 20 and 21 of the Framework Directive, which requires regulators to resolve the dispute when requested to do so by the operators. Clause 96 sets out the procedure for the resolution of a dispute involving Gibraltar and one or more Member State. Clause 96(6)(b) provides that where the GRA is called upon to resolve a dispute, it may require the parties to the dispute to make payments to the GRA in respect of costs and expenses it incurs in resolving the dispute.

Part VIII which is the final provision, covers clauses 99, 101 and 102, largely maintained provisions from the Telecommunications Ordinance. Clause 100 is new. It ensures that unless otherwise specified by the Minister with responsibility for Public Finances, as provided for in that clause, any monies receivable by the Minister with responsibility for Communications or the GRA under the Bill, shall be paid into the Consolidated Fund. I commend the Bill to the House.

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

HON L A RANDALL:

The Opposition will be supporting the Bill. However, the Bill establishes the framework, as the Minister alluded to, and the detail will be established by subsidiary legislation. In this respect I would like to refer to number portability which is referred to in Article 30 of the Universal Service Directive, and encourage the Government to follow the practice set by some Member States who provide this facility to subscribers free of charge.

HON F R PICARDO:

I note that the definition of 'the Crown' means the Crown in right of Her Majesty's Government in the United Kingdom and in right of Her Government of Gibraltar, and I note that in section 101 there is a provision that this Ordinance binds the Crown. The provision at section 101 is a provision that we are familiar with in this House but the definition of Crown to include both the Crown in right of Her Majesty in the Government of the United Kingdom and in the Government of Gibraltar is an unusual one, especially given the provisions of the Crown Proceedings Ordinance, and I would be grateful for some clarification as to how that mechanism and that definition will work. I note that there is a small typographical error in section 84(1)(b) where there will be a need for renumbering, which we can deal with more substantively at Committee Stage. Also, in section 86 which deals with offences, in subsection (3) there is a reference not dissimilar to the reference in section 92 of the Criminal Procedure Ordinance, as to the provisions which relate to the need to give an alibi notice at least seven days before proceedings before examining justices have been completed. My concern here is that there is provision for notice of a defence to be filed and the Ordinance at present says, 'within a period ending seven clear days before the hearing'. The term 'hearing' I cannot find a definition of and I think there is authority that the term 'hearing' can include a reference to the first appearance in the Magistrates' Court or any subsequent appearance. Those of us who are lawyers will know that often those are referred to as 'mentions' but in fact there is authority that each of them is separately a hearing. The way that this issue is dealt with in section 92 of the Criminal Procedure Ordinance is that there is a very clear provision as to when the seven clear days must run from, and that is seven clear days before the end of the hearing before examining justices. I think we would benefit there from having a better definition of when those seven days are up. For example, changing the words 'the hearing' to the words 'the trial', which is also language which is more commonly used when such periods are being set out in our Criminal Procedure Ordinance. Other than that, nothing else to add.

HON CHIEF MINISTER:

Only to comment that whatever may or may not be the merits of the hon Member's comments in respect of section 86(3), it is not new, it is contained in section 49(5) of the present Telecommunications Ordinance and is a simple re-enactment of the present law.

HON F R PICARDO:

I was not in this House when the Telecommunications Ordinance was passed, I am looking at the sections now. I know that that Ordinance has not actually been an Ordinance in respect of which, at least I think it is not an Ordinance in respect of which there has been many prosecutions et cetera, so simply telling me that this is the way that it was done before might not address the substance of the points I am raising. Perhaps the hon Gentleman may wish to consider doing so.

Question put.

Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put.

Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Income Tax (Amendment) (No. 2) Bill 2006;
2. The Companies (Amendment) Bill 2006;
3. The Communications Bill 2006.

THE INCOME TAX (AMENDMENT) (NO. 2) BILL 2006

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

THE COMPANIES (AMENDMENT) BILL 2006

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

THE COMMUNICATIONS BILL 2006

Clauses 1 to 83 – were agreed to and stood part of the Bill.

Clause 84

HON F R PICARDO:

In section 84(1)9b(i) the second roman (i) appearing therein should be renumbered (ii).

Clause 84, as amended, was agreed to and stood part of the Bill.

Clause 85 – was agreed to and stood part of the Bill.

Clause 86

HON CHIEF MINISTER:

Mr Chairman, the hon Member makes the point in respect of section 86(3). This can only mean the trial, I cannot imagine that the words 'the hearing' could be interpreted to mean anything else. It means the hearing at which the alibi, just to use a shorthand language, is going to be put up. I do not think it is open to the interpretation that it could be the first mention in court, which I suppose would be Monday morning after one has been arrested or charged. I do not think it could possibly mean that, it probably is a phrase 'the hearing' that is used widely through our criminal administration legislation. So I do not wish to concede by expressing a willingness to just put it beyond a shadow of doubt, I do not wish Hansard to be produced in connection with any other Ordinance in any other place, to suggest that there is any ambiguity on what the word 'hearing' in a context similar to this means. I think it can only mean the substantive hearing at which the matter is to be adjudicated. In this case it would be the trial on the indictment, if it is an indictment, or the substantive hearing if it is a summary offence before the Magistrates' Court. That said, and therefore for those purposes, without conceding that wherever this language appears in any other Ordinance it is open to that ambiguity, I do not mind altering the word 'the hearing' in this particular Bill to read 'the trial date' if that is amongst the options that he proposed for dealing with this point, which I think is what the words 'the hearing' is intended to mean here, but there is no harm done by making it clearer.

HON F R PICARDO:

I believe that there is authority that the words ‘the hearing’ can mean the date other than the trial date, so I am grateful for the Chief Minister’s indication. As to what it might mean in other Ordinances is a matter really no longer for us but for the court interpreting those Ordinances. So, in section 86(3) delete the word “hearing” and insert the words “trial date”.

Clause 86, as amended, was agreed to and stood part of the Bill.

Clauses 87 to 102, the Schedule 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 Income Tax (Amendment) (No. 2) Bill 2006; the Companies (Amendment) Bill 2006; and the Communications Bill 2006, with amendments, have been considered in Committee and I now move that they be read a third time and passed.

Question put. Agreed to.

The Bills were read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 26th May 2006, at 11.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 3.40 p.m. on Monday 8th May 2006.

FRIDAY 26TH MAY 2006

The House resumed at 11.00 a.m.

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

BILLS

FIRST AND SECOND READINGS

THE STAMP DUTIES (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Stamp Duties Ordinance 2005, be read a first time.

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill does not introduce any substantive changes to the new Stamp Duties Ordinance that the hon Members will recall we passed last year. The most significant thing that it does is, out of an excess of caution and not that the Government think that there is any doubt about it at the moment, but some of the more theoretically minded lawyers or at least one or two of them have expressed the view to the Government that as real property is presently defined it leaves open for argument, we do not agree, but they say it leaves open to argument whether the present definition of 'real property' is wide enough to include leasehold property. We do not share that view but in order to dispel whatever doubts some people might have in their minds, there is a new definition of 'real property in Gibraltar' which simply is just a longer form version of what before used to be done by reference to the phrase 'real property', that is clause 2(2) of the Bill. Clauses 2(3) and 2(4) contain no amendments of substance whatsoever, they simply serve to insert words inadvertently left out of the 2005 Ordinance and also some incorrect punctuation.

I will take the hon Members through both changes that it makes. At section 25 of the present Bill it presently reads, 'for the sale of any equitable estate or interest in property' and it should read, 'sale of any legal or equitable estate' et cetera so we are just adding the words 'legal or' in section 25. In the Schedule at the definition of 'mortgage, bond, debenture and covenant' a line has just been left out. In fact this may well be a printing error. It says at the very bottom of the page there it says, 'and also where any further monies added to the' and that should read 'money already secured'. This is just literally that a line of the print was left out. So there is no substantive amendment, all the amendments are either to correct the Ordinance in the sense of words left out, or to clarify the definition of 'real estate in

Gibraltar' to make it clear to those to whom it was not already clear, which does not include the Government or their advisers, that it is not already done by the current definition. I commend the Bill to the House.

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

HON J J BOSSANO:

Well, since there are in fact no new principles and it is just correcting something we have already approved unanimously in the House, we have nothing further to add.

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. 3) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill does three things, it introduces the definition of 'Minister' as being the Minister with responsibility for Public Finances; it endows on the Minister rather than on the Governor the powers appearing in the Ordinance to deal with income tax issues; and it does to the Interest and Royalties Directive what we amended recently for the Parent and Subsidiary Directive. Hon Members may recall that I recently brought an amendment to that legislation to eliminate a period of qualification during which shares in a company had to be held before it could be regarded as an associate. There was a two year qualification so to speak or eligibility period. This is, as I explained at the time that we amended this for the Parent and Subsidiary Directive, for the case of dividend payments between such companies. This is an option that the directive allows Member States, in other words, before a parent can have the benefit or a subsidiary the benefit of this regime, which is in effect the right to be exempted from tax, the relationship of parent and subsidiary had to be in existence for at least two years beforehand. It does not suit Gibraltar that that should be the case because what we are trying to do is attract companies to Gibraltar to establish such structures in Gibraltar, it serves no purpose of Gibraltar or of the Government exchequer indeed, that this qualification period should be required, and just as we eliminated it from the Parent and Subsidiary Directive so too now through the amendments to section 47C(2)(a) in this Bill are we eliminating the two year qualification period from the legislation that we passed to transpose the Interest and Royalties Directive. In other words, that now neither will require this qualification period, this minimum period of two years, during which the relationship of associate or parent and subsidiary must have existed before the group corporate structure can avail itself of these facilities in Gibraltar. 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 GIBRALTAR HEALTH AUTHORITY (COMPLAINTS REVIEW PANEL) ORDINANCE 2006

HON LT-COL E M BRITTO:

I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Health Authority (Complaints Review Panel) Ordinance 2004, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT-COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill now before the House replaces section 17 of the Ordinance in order to make certain important amendments to the workings of an independent review panel

which may be appointed as part of the complaints procedure. The guiding philosophy of the GHA's internal complaints procedure is to provide a person making a complaint with a comprehensive reply upon the completion of an internal investigation within a pre-determined time frame. On receipt of a complaint by the GHA a clock begins to tick and the final response to the complainant should be provided within 20 working days, and if there is any delay, the complainant is kept updated on a weekly basis up to a maximum of eight weeks. Thus, the whole emphasis is on a comprehensive investigation of complaints within strict time limits in order to provide prompt answers to those who may feel aggrieved by an act of the GHA. Similarly, the Ordinance creating the Complaints Review Panel adopts the rationale of thorough investigation by an independent panel within a strict time limit of 12 weeks, with a final report being prepared in the ensuing two weeks, a total of 14 weeks. After representations from review panels it was considered necessary to seek this amendment of the Ordinance giving the Ombudsman, when requested to do so by a review panel, authority to extend the time limit for an investigation up to a total of 26 weeks. Circumstances may arise when an investigation cannot be conducted by a review panel within the 12 week period for simple reasons such as the independent medical expert appointed to assist the panel not being able to come to Gibraltar until after a date when the prescribed time limit may have expired. The Ombudsman can either accept or reject the request to extend the time limit from the review panel. Where the Ombudsman allows a request the maximum extension of time he can give is not longer than 26 weeks from the date of the referral of the complaint to the review panel. The new maximum time limit of 26 weeks which the Ombudsman may allow is in keeping with the Government's objective of producing an independent report of an investigation to the aggrieved person within a reasonable time and thus avoiding prolonged delays. I commend the Bill to the House.

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

HON J J BOSSANO:

The House will recall that when the Government introduced in 2004 this procedure we took the view that we were maintaining a neutral position on the procedure. Frankly we do not know to what extent this additional change is required and therefore we are continuing with the position that we adopted in 2004.

HON LT-COL E M BRITTO:

Quite honestly I find the Opposition's position disappointing, not to put it more strongly. This amendment is designed to strengthen the case of the complainant. It is designed to make the procedure better so that, as has already been the case or is in the process of being the case, if an independent review panel cannot complete its work because the legislation stipulates that the investigation is guillotined at 12 weeks, and if that has already happened, an independent expert has been unable to come to Gibraltar at the request of the Independent Review Panel because he has not been available, if the legislation were not to be amended in those circumstances it would mean that the complainant would not have the satisfaction or would not be able to have access to a fully completed investigation. Therefore, what this amendment does is allow the Ombudsman, not the Minister, not the Government, not anybody else, it allows the Ombudsman if it is requested by the Review Panel, not by the Government, not by the Minister, not by anybody else but by the Review Panel to extend the original 12 weeks, it allows the Ombudsman to do so and this is in keeping with the Government's philosophy of giving every facility to a complainant to have his complaint fully investigated. In those circumstances I would urge the Opposition to think again and to support what is a measure designed to improve the Complaints Procedure for the benefit of the complainant.

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 LT-COL E M BRITTO:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Stamp Duties (Amendment) Bill 2006;
2. The Income Tax (Amendment) (No. 3) Bill 2006;
3. The Gibraltar Health Authority (Complaints Review Panel) (Amendment) Bill 2006.

THE STAMP DUTIES (AMENDMENT) BILL 2006

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

THE INCOME TAX (AMENDMENT) (NO. 3) BILL 2006

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

THE GIBRALTAR HEALTH AUTHORITY (COMPLAINTS REVIEW PANEL) (AMENDMENT) BILL 2006

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

Clause 2

HON LT-COL E M BRITTO:

I have just noticed a small typographical error in section 17(7)(c) where at the end of the sentence there should be a semi-colon and not a full-stop and I would therefore propose the amendment accordingly.

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Stamp Duties (Amendment) Bill 2006; the Income Tax (Amendment) (No. 3) Bill 2006; and the Gibraltar Health Authority (Complaints Review Panel) (Amendment) Bill 2006, with amendment, have been considered in Committee and I now move that they be read a third time and passed.

Question put.

The Stamp Duties (Amendment) Bill 2006; and the Income Tax (Amendment) (No. 3) Bill 2006, were agreed to and read a third time and passed.

The Gibraltar Health Authority (Complaints Review Panel) (Amendment) Bill 2006 –

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

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.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

I beg to move a motion of which I gave notice, namely:

“THIS HOUSE:

1. **ACKNOWLEDGES** the sustained and lifelong commitment of the Hon Peter J Isola to the development of the people of Gibraltar in the positions he held in the Legislative Council, in this House and in his contribution to the public life in this City over many decades;
2. **RECOGNISES** the importance of his appearance at the United Nations assemblies on decolonisation alongside Sir Joshua Hassan's in the defence and promotion of the legitimate aspirations and interests of Gibraltar and its people;

3. **AND** in recognition thereof and gratitude therefore resolves to bestow on him posthumously the Honorary Freedom of the City of Gibraltar.”

Mr Speaker, as Members of the House know, particularly those of us who were on the Constitutional Committee and involved in the recent negotiations, it was a sad and unpleasant experience to see in the middle of this work one of our members taken away from us. In fact, I think we all expressed at the time our appreciation and our admiration for his work and his commitment to Gibraltar and to what we were collectively engaged in. In acknowledging in this motion the role of Peter Isola I think perhaps it is in the context of the issues of decolonisation and constitutional change that Peter has been or was involved from a very long time, from well before in fact I was a Member of this House, because he was originally the Chairman of the committee that made the recommendations that led to previous constitutional changes. In fact, in 1964 I think it is worth recalling, we are talking about 42 years ago, the position that was adopted then by unanimity by the House that was elected as a result of the 1964 Constitution, which was at the time considered to be the penultimate step before full decolonisation. The Legislative Council under the preceding Constitution had taken a unanimous position on the way ahead, which was described as close association, and the newly elected Chamber under the 1964 new Constitution which brought a change in bringing for the first time the concept of Ministerial Government and by reducing the number of Elected Members was taken by Peter Isola and Sir Joshua Hassan with the support of the United Kingdom Government to the Committee of 24 as the basis for decolonisation within the term of the then legislature which was then a five year term. So by 1969 the Elected Representatives of Gibraltar were expecting, with the support and involvement and the help of the United Kingdom Government, that they would be able to come up with a final Constitution that would decolonise Gibraltar finally. Peter, of course, was involved in that exercise and therefore in laying together with Sir Joshua I think the foundation stone for

everything that has happened subsequently in our continued drive to get our right to self-determination and decolonisation recognised internationally, and particularly at a stage frankly where the United Kingdom was more forthcoming and more supportive and more clear cut in its position in the United Nations than it has been in recent years in that respect.

I stood for election in 1972 with Peter Isola and we parted ways before the 1976 elections and I think an important element of what we should look for in the political life of our City is that one can have respect for other peoples' views even if there is an ideological gap, as there certainly was in many issues, other than perhaps the fundamental issue of making sure that Gibraltar would not become Spanish, which practically the whole of Gibraltar is agreed, on many issues of policy, domestic areas, in matters of Trade Union organisation, in the ideological dimension between the left and the right there was a big gap but nevertheless it was possible to put that ideological difference on one side and have a deep affection and personal friendship and acknowledge that from different ideological perspectives one can have a different perception of what is in the best interest of our people and our country, and still acknowledge that that difference does not prevent us from working together for the common good and for a common objective. I think when we look at the political history post-War of Gibraltar, there is no doubt that alongside Sir Joshua and alongside Bob Peliza, Peter Isola was one of the great figures of Gibraltar's political life and of the evolution of the Gibraltarian in increasingly producing people giving political leadership and a sense of direction to Gibraltar and its people. We feel that it is right that we should honour his memory in the only way that this House can, which is in fact by giving to him the same honour that we have given to the other two great figures in Gibraltar's political life, one of whom is no longer with us, Bob is still with us and I hope he will be for many more years to come. Therefore, there is this conviction, we discussed it at the level of Elected Members, we felt that this was something that we should bring forward and that would enjoy the support of the people of

Gibraltar and that is the reason for bringing this motion to the House. I commend the motion to the House.

HON CHIEF MINISTER:

The Government will be voting against the motion. As we have already indicated publicly, we do not believe that the Freedom of the City should, and indeed it is probably true that it cannot under the terms of the applicable legislation in Gibraltar, be awarded posthumously. If I can just deal with the legalities first, I should however say that that is not the basis upon which we have made the decision but it is a reason to, we could have amended the legislation in order to eliminate this point had we wanted to, but the fact of the matter is that under the provisions of the Freedom of the City Ordinance, which I think few people remember exists, indeed judging by some of the blank looks on the Opposition Side I suspect that some of them may not have known that it existed, but under the terms of that it says 'the Government may, following a Resolution of the House of Assembly, admit to be Honorary Freemen of the City of Gibraltar persons of distinction and persons who have rendered eminent service to the City', there are no provisions relating to deceased persons who are in a sense no longer in the present persons and indeed if the House wanted to grant posthumously, for which incidentally there is no precedent, if the House wanted to be free to award posthumous Freedoms of the City then I think we would have to start by amending the Freedom of the City Ordinance to make it perfectly clear that we are able to do so. Always bearing in mind that under that Ordinance it is the Government that bestow the Freedom following a Resolution in this House and not the other way around.

We would have preferred that there should have been consultation with us given that this Resolution cannot be carried without Government support, so that we could have expressed these views to Opposition Members before they had published the motion and before perhaps putting the Government in the position of having to take action which is certainly, in a sense,

awkward but which nevertheless cannot be avoided in terms of doing what the Government believe is the right thing. As I say, there is no precedent for the grant of the Freedom to anybody posthumously, and of course if the House wanted not only to break with precedent but indeed establish legislation to grant the Freedom of the City posthumously, there would then be many such potentially deserving cases for such a posthumous award. I think it would be invidious to mention any other names here but one can readily think of people who if we were going to go back to square one and do things posthumously, may also fit even into the category of person that the hon Member has drawn out in describing Peter Isola's contributions to the community. Indeed, by that definition there are even people alive today who would be equally meritorious, so the question of posthumous awards, apart from whatever legalistic thing would need for it to be fixed, but of course the House could do that, the House could bring legislation if it wanted to, to be able to award. Another question is whether we should in fact award the Freedom of the City, which I think pre-supposes that there is somebody around to exercise the freedom, this is not a medal, this is a civic honour which intrinsically cannot be enjoyed by somebody who is not around to enjoy it. Therefore the concept of posthumous Freedoms of the City are, I think, something which would need to be carefully considered, for example, in the United Kingdom, not that we are bound by what the United Kingdom does, but in the United Kingdom civic awards are not granted posthumously. Some military awards for bravery are granted posthumously when, Colonel Jones in the Falkland Islands or someone goes out with all guns blazing and gets it posthumously because it was the very reason for granting him the award resulted in his death. So when the reason for giving the award is an act of bravery in which one loses one's life then either one gets it posthumously or does not get it at all I suppose. So that is the position in the UK, so the Government actually do not believe that the Freedom of the City should be awarded posthumously, except perhaps in exceptional circumstances where, let us assume for a moment that this House were debating or the Government and the Opposition were in consultation about giving the Freedom of the City to Mr

'A' or Mrs 'B', then alive, and before we finish our business and before we go to the procedures and before we pass the Resolution, or before the ceremony takes place, Mr 'A' or Mrs 'B' dies, in other words, that death intervenes in a process, that is the sort of exceptional case where the Government may be persuaded posthumous awards are appropriate. But certainly we do not think it is appropriate when we have all had plenty of time, if we had wanted to, to recognise somebody's achievements and for no reason we wait until he has died in order to bring a motion for the Freedom of the City. Perhaps I could articulate the point that I am trying to make in this sense just by reference to the hon Member's motion. The Motion cites two reasons. One is the development of the people of Gibraltar in the positions he held in the Legislative Council, well look it is well over 20 years that Peter last held a seat in the Legislative Council, and the second was his trips to the United Nations, important as they were, with Sir Joshua, also much more than 20 years ago. Those are the two reasons that are cited for bestowing the Freedom of the City. All of these are qualifications which were already in existence 25 years ago, so the only thing that has happened since he acquired these qualifications and today that we are debating the motion, is that sadly Peter has passed away. Frankly, passing away is not of itself a sufficient reason for granting somebody the Freedom of the City posthumously.

Mr Speaker, the Government do not think that the facts of this case fall into the exceptional category that we think should prevail in the considerations of granting awards posthumously. The death in this case has not intervened in a process which was already afoot or which would have taken place in any event. Nothing of what I am saying should be interpreted as a negative view of Peter Isola's contribution to political life in Gibraltar, indeed to his visits to the United Nations, to membership of this House for several years, to his office as Leader of the Opposition, and indeed to his considerable political skill, experience and judgement. Skill, experience and judgement which I, on behalf of this Government, took every opportunity to harness and recognise by inviting Peter to

contribute that political skill, experience and judgement when my Government had need for it. For example, he was part of the Foreign Affairs Advisory Council, which I created to advise me at the time of the joint sovereignty challenge and of course I invited him to serve on the Gibraltar delegation for constitutional reform negotiations. However, the issue of the regard in which we held him collectively, and indeed in which I personally held him, is not the issue, is not the criteria which can properly be applied to decide whether the Freedom of the City should be awarded posthumously. If this motion had been brought on a timely basis, as indeed it could have been done by the hon Member when he was Chief Minister, or indeed by me when I have been Chief Minister since 1996, or by himself between 1988 or by any of us, one does not have to be the Chief Minister or the Leader of the Opposition to bring a motion. It could have been brought at any time by anybody we would have debated then, presumably and preferably and indeed one of the things that I regret here is that there was not a degree of private consultation between us first that would have enabled the Opposition to have the benefit of our views and at least decide whether they wished to proceed in the knowledge of what those views were going to be, but if at least it would have been brought on a timely basis and whilst Peter was still amongst us, then we would have been debating this on the basis of the merits of Peter's contribution to the community over the years. But we are not, we are discussing it after Peter has passed away in the context of a motion that was presented after Peter had passed away and therefore what we are debating today is the appropriateness of a posthumous award, and that is the basis upon which the Government feel that they have to oppose this motion. So it is with regrets and with a sense of sadness that we should have been put in a position of perhaps having to risk causing offence to Peter's family, which is the last thing that we would wish and intend to do, but nevertheless the Government feel that the circumstances in which they have been placed by the bringing of this motion and whatever difficulty there might be to the Government in adopting this position, cannot dictate whether the Government do what they consider is the right thing or not the right thing. Therefore, in

those circumstances we regret that we shall oppose this motion in order that the Freedom of the City should not be granted posthumously because it is posthumous.

HON J J BOSSANO:

Well, obviously we knew that the Government were going to defeat the motion because there was a press release issued yesterday afternoon saying that that is what was going to happen. Let me say that the fact that the motion cannot be carried without the support of the Government because the Government have the majority in the House, is not something peculiar to this motion or peculiar to the fact that we are seeking to make the award posthumously. That is to say, every motion that the Opposition bring to the House can only be carried if the Government support the motion, that does not prevent the Opposition from bringing motions and has never prevented the Opposition from bringing motions to the House in the knowledge that it could well be defeated, because if the Opposition only brought motions to the House that were guaranteed to be passed, they might as well leave the Government to bring the motions in the first place and be done with it.

Secondly, I think that what the Chief Minister has said is true. That is to say, that it could have been brought before while Peter was still with us by anybody else and nobody else thought of doing it. It seems to me to say well look, because we did not think of it while he was still with us we cannot consider doing it now that he is not. If there is merit in the possibility of the House wanting to honour him in this way while he was still alive, then I do not see why the merit disappears when he has passed away, and to say well look, the fact that the person has passed away is of itself not enough to grant it posthumously then I do not see how else it could be granted posthumously if he has not passed away. But certainly it is true that I was not aware that the interpretation of the law that provides for the Government to grant the Freedom of the City to a citizen or an organisation required that the person, presumably given that the person

includes the Royal Engineers, the Royal Marines, the Christian Brothers and the Loreto Sisters, all of which cannot cease to exist presumably.....

HON CHIEF MINISTER:

Under the Interpretation and General Clauses Ordinance the word 'person' includes natural or legal person.

HON J J BOSSANO:

Yes I am aware of that, the point that I was making and was about to go on to say is that given that none of these organisations presumably can pass away, then the constraint only exists on physical persons and not on entities. I am not sure that the legislation was intended to discriminate between a person that is a physical person and an entity that is deemed to be a person by the Interpretation and General Clauses Ordinance, but we will certainly look at that legislation given the view and the position that the Government have taken on it and form our own view as to whether to enable the House to do so there is a real need to change the legislation or the interpretation put on that legislation is capable of being different. We believe that it is something that is perfectly reasonable to do at this stage. Perhaps it would have been better if somebody else had thought of doing it to have done it earlier but we do not accept that that is sufficient reason for not doing it now. There is an old saying that better late than never and we believe this applies in this case. So we regret that the Government have got a different view and clearly what I am saying now would not have been any different, and our position would not have been any different, if the arguments that we have heard in public had been put to me in private prior to moving the motion because I do not accept the logic of that argument and do not share it. Therefore, if it does not happen now it will happen at a future date.

Question proposed. The House divided.

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

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

The motion was defeated.

ADJOURNMENT

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

Question put. Agreed to.

The adjournment of the House sine die was taken at 11.55 a.m. on Friday 26th May 2006.

**REPORT OF THE PROCEEDINGS OF THE HOUSE OF
ASSEMBLY**

The Tenth Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Monday 12th June 2006 at 2.30 p.m.

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:

M L Farrell, Esq, RD - Clerk of the House of Assembly (Ag)
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 21st March 2006, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Minister for Trade, Industry, Employment and Communications laid on the Table the following reports:-

1. Employment Survey Report for the period ended October 2005;
2. Tourist Survey Report 2005;
3. Air Traffic Survey Report 2005;

4. Hotel Occupancy Survey Report 2005.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 5.30 p.m.

The House resumed at 5.50 p.m.

Answers to Questions continued.

ADJOURNMENT

The Hon the Minister for Trade, Industry, Employment and Communications moved the adjournment of the House to Tuesday 13th June 2006, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 7.45 p.m. on Monday 12th June 2006.

TUESDAY 13TH JUNE 2006

The House resumed at 9.30 a.m.

PRESENT:

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

GOVERNMENT:

The Hon J J Holliday - Minister for Trade, Industry, Employment and Communications
The Hon 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 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 P R Caruana QC - Chief Minister
The Hon Mrs Y Del Agua - Minister for Social Affairs
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:

M L Farrell, Esq, RD - Clerk of the House of Assembly (Ag)

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 11.30 a.m.

The House resumed at 11.43 a.m.

Answers to Questions continued.

BILLS

FIRST AND SECOND READINGS

**THE TOBACCO (ADVERTISING AND SPONSORSHIP)
ORDINANCE 2006**

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, be read a first time.

Question put. Agreed to.

ADJOURNMENT:

The Hon the Minister for Trade, Industry, Employment and Communications moved the adjournment of the House to Thursday 22nd June 2006, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 2.10 p.m. on Tuesday 13th June 2006.

THURSDAY 22ND JUNE 2006

The House resumed at 9.35 a.m.

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 APPROPRIATION ORDINANCE 2006

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that a Bill for an Ordinance to appropriate sums of money to the service for the year ending with the 31st March 2007 be read a first time.

Question put.

Agreed to.

SECOND READING:

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, my contribution, as usual in respect of the

Second Reading, will be confined to an outline of the contents of the Bill. The Appropriation Bill, as last year, is in four parts. The first three deal with the appropriation sought for the current financial year 2006/2007, and the fourth concerns the application of sums voted to Pay Settlements and Supplementary Funding. First, the House is being asked to appropriate an amount not exceeding £157 million from the Consolidated Fund. A further £28,461,000 Consolidated Fund Charges, not requiring a vote of the House, will bring the total estimated recurrent expenditure for 2006/2007 to over £185 million. Details of this planned expenditure, together with an analysis of the Government's projected revenues, are set out in the Estimates laid before the House on 28th April 2006. The amendments to the Estimates circulated last week have no impact on the appropriation being sought for the current financial year and solely concern changes to the Forecast Outturn 2005/2006, arising from Consolidated Fund contributions to the Gibraltar Electricity Authority and the Gibraltar Health Authority being less than was anticipated at the time the Estimates were drawn up. Secondly, the House is being asked to appropriate up to £5.4 million of contributions from the Consolidated Fund Reserve. This is mainly in respect of the Improvement and Development Fund, with the residual balance being for an exceptional one-off item. The third part of the Bill seeks funding for the Improvement and Development Fund spending on capital and economic projects. The amount being sought this year is up to £38,462,000. The funding for this expenditure, in addition to the £5 million appropriation being sought from the Consolidated Fund, is set out in the Government's Estimates. The fourth and final part of the Bill provides for how the supplementary provision voted in the first part of the Bill can be applied to Consolidated Fund Heads of Expenditure.

At the Committee Stage, there may be one or two small gremlins which have crept into a 132 page Estimates Book but none of these affect any numbers and have any material bearing on the debate that will take place at the Second Reading. I now give way to the Chief Minister to present the Government's

Budget 2006/2007, and in so doing commend the Appropriation Bill 2006/2007 to the House.

HON CHIEF MINISTER:

It is an honour to present my eleventh successive budget of Government revenue and expenditure to this House, and it is my pleasure to inform this House that both in terms of public finances and in terms of the economy as a whole, Gibraltar's economic position has never been better. In summary: the Government's budget surplus in the year just ended was a record all time high overall £22.3 million. The Government's capital reserves stand at a record all time high of £93.6 million. The number of jobs in our economy stands at a record all time high of 16,874, a recorded 880 increase on the year. The rate of taxation stands at a record, all time low; and will fall further by the time I sit later. Government investment in public services and capital projects and amenities stands at an all time high. The economy is bigger than ever before. By any and every measure the economy is healthy, prosperous and growing. The Government will continue to share the fruits of this economic success throughout the whole community by, once again this year, lowering taxes significantly. Indeed, later on in my address to the House, I will outline the most radical changes to our tax system and to our Social Insurance Contribution system, since taxation and social insurance were introduced in Gibraltar. These measures will benefit thousands of people. The Government will also continue to share out the fruits of our considerable economic success throughout the Community by investing, from our record capital reserves, in affordable housing, in rental housing, in public housing refurbishment, in parking projects, in new roads, in sports and leisure amenities, in heritage projects, in street beautification projects and many more, which I will set out later in my address. Indeed, the Government have £140 million worth of capital investment projects in the pipeline for execution during the next 18 to 24 months or so.

Mr Speaker, luxury developments are important to Gibraltar's economy. They provide economic activity, valuable assets and indeed revenue and capital to the Government, which Government are then able to invest in public services and in capital projects and in cuts in taxation, as I will now demonstrate once again this year through the measures that I shall be able to announce. That said, it needs to be borne in mind that the overwhelming majority of buyers in these so-called luxury developments are Gibraltarians. During the remainder of this address I will analyse in some detail, firstly, the public finances, Government's budgetary performance, the public sector as a whole, and I will review the Government's capital projects programme. Secondly, the state of the economy as a whole; thirdly, I will comment on some of the economic issues that other commentators in Gibraltar have raised publicly during the last year; and finally I will, of course, be announcing my budget measures for this year.

As I said in my introductory remarks, public finances have never been in better shape. Starting with the budget surplus for the year ended 31st March 2006, that is the financial year just ended. Every year I have explained to this House how the Government use the budget surpluses generated in the previous year or years. I have explained that Government give part of it away in tax cuts, use another part of it to finance improvements and developments of public services (like health, education, social services and sport and leisure services) and use yet another part of it to invest in capital projects. Our successful management of the economy has enabled us to do all three of these things in record amounts during each of the last ten years, and last year's record Government budget surplus enables us to continue to do this, this year. Last year's overall budget surplus stood at a record level, as I have said, of £22.3 million including the Consolidated Fund, and Government Agencies and Authorities. This is an all time record and reflects mainly buoyant tax revenue. There are no budgetary deficits carried forward in any of the Agencies, so the figure of £22.3 million is gross and net of deficits carried forward. The overall surplus of revenue over expenditure of £22.3 million is struck as follows.

On the revenue side there is a total revenue collected by the Government last year of £246.2 million, made up as follows: £198.5 million in Consolidated Fund revenue; £26.2 million in GHA revenue (Gibraltar Health Authority); £16.6 million in Gibraltar Electricity Authority revenue; £600,000 in Elderly Care Agency revenue; and £4.3 million in Gibraltar Development Corporation revenue. On the expenditure side the overall figure was £223.9 million, made up as follows. £131.3 million of Consolidated Fund recurrent expenditure; £500,000 (these figures are rounded up to the nearest £100,000) Consolidated Fund exceptional expenditure, that is to say, the sum that is taken below the line which I think last year was £500,000 or £600,000 of Police settlement; £50.7 million of expenditure by the Gibraltar Health Authority; £21.6 million by the Gibraltar Electricity Authority; £5.8 million of expenditure by the Elderly Care Agency; £5.7 million of expenditure by the Gibraltar Development Corporation; £3.8 million of expenditure by the Social Services Agency; £900,000 of expenditure by the Gibraltar Sport and Leisure Authority, and £3.6 million of expenditure by the Social Assistance Fund.

The Consolidated Fund expenditure figure is net of contributions to the Agencies and Authorities, and the revenue of the agencies and authorities is net of contributions from the Consolidated Fund. The result, therefore, provides Government's overall revenue and expenditure position. As far as concerns the Consolidated Fund only, the forecast outturn surplus, reflected in the amended Budget book tabled in the House, shows a figure of £19.4 million surplus, but final Treasury reconciled figures will show that the actual amount for the year was £20.3 million, and this is also a record for the Consolidated Fund. This Consolidated Fund surplus (that is the published figure of £19.4 million) was achieved following revenue of £197.6 million in the Consolidated Fund, and expenditure in the Consolidated Fund of £178.2 million (including the £600,000 of exceptional expenditure). The actual Consolidated Fund surplus that will appear in the accounts for 2005/2006 is £20.3 million and not £19.4 million. This is because revenue is £900,000, that is £0.9 million more than is

reflected in the forecast outturn. In other words, the Treasury has further perfected the closure of the figures for the year and the revenue is higher than forecast at the time that the Estimates Book was printed, and that was not reflected in the amended page that was tabled.

Mr Speaker, revenue in the Consolidated Fund at £197.6 million was £16.4 million higher than was estimated at the start of the year. The House is aware that the Government's estimating of revenue usually tends to the conservative side, in order to provide a buffer in the event of unexpected falls or volatility in revenue levels. The main contributions to this higher than estimated revenue were Income Tax (£7 million), Company tax (£5 million), Exempt Company tax (£1.2 million), Rates (£750,000), Gibtel dividend (£1 million) and Gaming Tax (£1.8 million). Those are the items that account for the revenue being higher than estimated. Consolidated Fund expenditure, on the other hand, was £178.2 million, compared to the estimated figure of £181 million, that is, Consolidated Fund expenditure was £2.8 million less than estimated. Comparing the year on year actual figure for 2004/2005, that is, the last but one financial year, with the forecast outturn for the financial year just ended, that is to say, comparing last year's actual expenditure as forecast with the actual expenditure the year before that, to see whether there has been growth or not, the figures produced would be as follows.

In terms of revenue, the actual revenue on the Consolidated Fund for 31st March 2005 was £181 million and the forecast outturn for March 2006 is £197.6 million. In terms of expenditure in the year to March 2005, it was £180 million and we are forecasting for this year just ended £178.2 million, showing a reduction, therefore, of £1.8 million. This fall in Consolidated Fund expenditure does not of course mean that less money was spent on services last year than the year before. Indeed more money was spent, but the comparison with the year ended March 2005 shows a fall, because in that year there was expenditure on clearing prior year deficits carried forward in certain Authorities and Agencies, and this was not

expenditure in actually delivering services in that financial year. So comparing money spent on delivering public services during last year, with money spent delivering public services during the previous year, the position is an increase of £13.2 million. That figure is arrived at with the following levels of expenditure. In respect of the year ended March 2005, in the Consolidated Fund recurrent £126.9 million; Consolidated Fund exceptional £2.2 million; Gibraltar Health Authority £46.6 million; Elderly Care Agency £4 million; Social Services Agency £3.5 million; Gibraltar Electricity Authority £17.8 million; Gibraltar Development Corporation £6.4 million and Social Assistance Fund £3.4 million. The same expenditure for the year just ended would be, Consolidated Fund recurrent £131.3 million; Consolidated Fund expenditure £0.6 million; Gibraltar Health Authority £50.7 million; Elderly Care Agency £5.8 million; Social Services Agency £3.8 million; Gibraltar Electricity Authority £21.6 million; Gibraltar Sport and Leisure Authority £0.9 million; Gibraltar Development Corporation £5.7 million; Social Assistance Fund £3.6 million, totalling £224 million, the previous total for the previous year was £210.8 million, giving an increase of £13.2 million. Of this increase of £13.2 million real growth in expenditure last year, £4.4 million was in the Consolidated Fund and £8.8 million was in Authorities and Agencies. Of the £4.4 million in the Consolidated Fund, £3 million was the result of an increase in the cost of Government public sector pensions, and £1.7 million was an increase in payroll costs in broad figures. Of the £8.8 million higher expenditure last year in Authorities and Agencies, £4 million was increased expenditure on Health Services; £3.8 million was increased expenditure in Electricity; £1.8 million was increased expenditure in Elderly Care; £0.9 million was increased expenditure on Sport and Leisure and £0.3 million was increased expenditure on Social Services.

Mr Speaker, turning now to the budget of revenue and expenditure for the current year started on 1st April. In terms of overall revenue and expenditure, the Government is estimating on the basis that they will receive revenue of a total of £250 million and will spend a total of £232.7 million, both of these

figures obviously being the overall figure and not just the Consolidated Fund figure. These figures include, therefore, the Consolidated Fund and Agencies and Authorities. Accordingly, we are estimating for this year an overall surplus of £17.3 million.

The main estimated expenditure or the main expenditure items that are estimated to increase this current financial year are, £3.6 million in recurrent Consolidated Fund Expenditure; Health Services £1.7 million; Electricity Services £1.5 million; Social Services, Elderly Care Agency and Gibraltar Sport and Leisure Authority £0.3 million, that is, £300,000 each of them; the Gibraltar Development Corporation £900,000 and the Social Assistance Fund £300,000. All these figures are again real expenditure and that is net from contribution to and from the Consolidated Fund. This represents an estimated year on year increase in overall expenditure estimated for the year of £8.7 million or 3.88 per cent, from £224 million to £232.7 million. Overall revenue is estimated on the basis of growth by £4 million, that is, from £246 million last year to £250 million in the current financial year. An estimated increase growth in revenue of 1.63 per cent, which of course is a conservative estimate. In terms purely of the Consolidated Fund, the Government are estimating on the basis that revenue will grow by £4 million, which is 2 per cent, which also is a conservative estimate and that expenditure will rise from £178.2 million to £185.9 million, which is £7.7 million or 4.32 per cent. Obviously, these figures that relate to the Consolidated Fund are inclusive of contributions to Agencies and Authorities. These are the figures in the Budget Book of the Consolidated Fund. I should point out that these figures for estimates for the current year do not include the effect on estimated revenue figures of the budget measures that I will announce today, nor do they include on the costs side the impact of the increased services that I am announcing today.

Mr Speaker, moving now to a brief review of the public revenue and expenditure increases that there has been since 1997. Since 1st April 1997, that is starting with the financial year

1997/1998, which is the first year for which we have reconstructed, comparable financial statistics, that is during the last eight financial years, overall public revenue has grown from £138.4 million to £246.2 million per annum, that is an increase per annum this year, rather the year just ended, compared with the year 1997/1998 of £107 million per annum, or 78 per cent. Overall public recurrent expenditure in the same period has grown from £126.9 million per annum in 1997/1998 to £223.4 million per annum, that is an increase of £96.5 million per annum or 76 per cent. These figures, being recurrent expenditure, exclude exceptional expenditure of which there was £2.2 million in 2004/2005 and £600,000 in 2005/2006. So including those, that would increase the overall expenditure figure by £2.8 million to £226.2 million or a growth of 78 per cent over these eight years. These are per annum, these are not cumulative in the sense that what we are doing is comparing the expenditure level last year with the expenditure level in 1997/1998, and in broad rough terms, the public services which have most benefited from this increase in public expenditure are Health, expenditure of which in 1997/1998 stood at £23 million and last year stood at £51 million; Education where £13 million was spent in 1997/1998 and £20 million was spent in 2005/2006; Social Services in which £9 million was spent in 1997/1998 and £18 million was spent in 2005/2006; Sport in which £500,000 was spent in 1997/1998 and £1 million was spent in 2005/2006; and the Environment and environment related matters in which £8.5 million was spent in 1997/1998 and £12.5 million was spent in 2005/2006. These ballpark figures show the extent to which the Government have invested in expanding and/or improving health services, social services, education, sport and the environment of Gibraltar.

Mr Speaker, moving to public reserves, thanks to sustained budget surpluses in all but one year, the sale of ex-MoD properties received as part of the lands agreement, and premiums received from private developers for sale of land and development rights to them, the Government's cash reserves at 31st March 2006 stood at the all-time record figure of £93.6 million, which is double the level of reserves in 1997. The

Government expect that substantial parts of these reserves will be spent during the current year on affordable housing and other major projects, and indeed next year. But the Government will during the same period also receive more premiums on land sales and development rights, and will also generate budget surpluses. The level of reserves at the end of the current financial year will thus depend on a number of variables, mainly levels of sales, extent of current year budget surplus, and extent and cost of progress on projects. The estimated figure quoted in the Budget Book as what we expect the reserves to be on 31st March 2007 which is £82 million should therefore be treated in that light. There are a number of variables but on the capital expenditure and the capital revenue side, which will determine the level of the reserves and therefore where there are two variables, the estimate is very much an estimate.

In terms of public debt Mr Speaker, in the meantime and despite the Government's on-going, substantial capital investment programme, public debt remains at £93 million. Since it remains static in absolute cash terms, whilst GDP and Government revenues have continued to grow very significantly, the level of public debt, as measured in economic terms under OECD and EU principles, has continued to fall. By OECD and EU measurement principles, Gibraltar's public debt is very low indeed, representing only 15.7 per cent of GDP and the debt servicing cost represents only 3.6 per cent of total Government revenue. This will fall to as low as 2 per cent this year. To place the figure of public debt as a percentage of GDP in context, the international benchmark is 40 per cent of GDP; the UK benchmark is 40 per cent; the UK actual figure is 33.7 per cent; the EU target for all EU countries under the Maastricht Treaty convergence criteria is 60 per cent. Our debt stands at just 15.7 per cent of GDP.

Mr Speaker, speaking now to the affairs of the public sector and in relation first of all to head count. Recently, one trade union official said that the Government's recruitment policy represented a threat to manning levels throughout the public

sector. A few statistics will serve to prove the lie and to show that, as part of our policy for the last ten years to upgrade and develop public services, the Government have substantially increased the number of people employed in the public sector, and continue to do so. Since 1999 Government related public sector employees have grown in number from 2,857 to 3,672 (that excludes 52 temporary supply staff in the GHA, Social Services and other Government Agencies), an increase of 815 (excluding those 52) people or 28 ½ per cent, and the numbers as I say continue to rise as the Government require to deliver expanded, modernised and improved public services. The public sector employee breakdown, in case the House is interested, is as follows: in Government Departments there were 2,153 in 1998/1999 and 2,170 in 2005/2006; in the Gibraltar Health Authority there were 617 in 1998/1999 and 808 in 2005/2006; in the Elderly Care Agency there were none, because there were some employees scattered around in the Mackintosh Trust and places like this, there are now 243 people employed by the Elderly Care Agency in delivering care for the aged; 9 in the Gibraltar Regulatory Authority last year, which did not exist in 1998/1999; 104 in the Social Services Agency, which did not exist in 1998/1999; 155 in the Gibraltar Electricity Authority now, which did not exist in 1998/1999; 23 now in the Sport and Leisure Authority which were not there, and in respect of the Gibraltar Development Corporation 87 back in 1998/1999 and 160 now. These figures of 2,857 for 1998/1999 and 3,672 for 2005/2006 do not include employees of wholly owned Government Companies, of which there are a further 320. In analysing these figures, a few points should be borne in mind. The number of Civil Servants in Government Departments has increased by much more than 17. The 17 is the figure thrown up by the first statistics that I gave, 2,170 against 2,153. The reason for this is that because the figure of 2,153 for 1998/1999 includes Electricity Department and Sports Department employees (totalling about 169), but the 2005/2006 figure of 2,170 does not include those staff or departments because by then they had moved into the Authorities, so they are reflected in the Authority figures that I have given. The overall increase in staff in the Government Departments is therefore about 186.

GHA employees are, in the main, overwhelmingly, Government employees, Crown employees, even though they work in the Gibraltar Health Authority and not in a Government Department. The same is true of some Social Services Agency staff, particularly on the clerical and administrative side and on the probation service and social worker side. The House may be interested in learning that last year, of the Government's overall total expenditure of £224 million, £122 million related to payroll costs (that is, pay and pensions), which is nearly 55 per cent overall Government expenditure related to payroll costs, social insurance, pay, pensions.

Mr Speaker, much has been said recently, including by the outgoing President of the Chamber of Commerce about the Civil Service generally and the affordability of Civil Service pensions into the future in particular. Much of this comment, I have to say, is simply misinformed folklore. Firstly, let me say that the Government make no apology for rebuilding the Civil Service and other parts of the public sector, and so significantly increasing staffing levels in them. The public sector is at the very heart of the delivery of all public services, including key services such as health, education and social services upon which this community is built, and it is not possible to modernise, expand and improve public services without an adequate number of staff. Contrary to the myth propagated in some areas of the private sector, the vast, overwhelming majority of public servants are competent, hard working, committed and productive workers with little to envy in this respect, many of their private sector colleagues. I know this from personal experience, having now worked for a long period of time in both the private and the public sector. Of course, where there is inefficiency, lack of value for money or abuse of absenteeism, the Government should and will seek to remedy the situation. Similarly, and in co-operation with trade unions the Government will seek to modernise the way things are done, where this will improve the public service or value for money or route out inefficiency. My experience is that most public sector employees welcome that, take a stake in the process and contribute enthusiastically to it, because they value their job

satisfaction and their public appreciation levels as well. Where the Government do this in isolated parts of the public services, that is to route out inefficiency and lack of value for money, it is absurd for any trade union leader to try and pretend that this is an assault or a threat to the whole public sector. The Government's superb record on recruitment, rebuilding staffing levels, promotion and training opportunities, as well as investment in improving public sector offices, depots and other work places speaks for itself. Similarly, there is misinformed comment from time to time in the private sector, to the effect that the public sector is "getting too big". This is usually a calculation made on the back of a thrupenny stamp. Such remarks are simply, economically misconceived. Whether one measures the public service in terms of its cost as a percentage of GDP, or its employees as a percentage of the total number of jobs in the economy, the public sector is either staying roughly the same size or getting smaller. It is economically speaking, misconceived, to say that it is getting bigger simply because the cost of running it increases each year in absolute terms. Whatever indicator one chooses to use, shows that, if anything, the public sector is getting economically smaller and not bigger. In 1998, for example, the Government and its public sector related entities employed 22 per cent of all jobs in the economy. As at 2005 that figure had fallen to 20 per cent. In other words, measured by employment, measured by the percentage of jobs in the economy that are accounted for by the public sector, the public sector is getting relatively smaller in size to the job market and to the economy of which it is a part. A comparison with the United Kingdom reveals too that our public sector is not "too big". In the United Kingdom public expenditure as a percentage of GDP was 38.2 per cent in the year 2004/2005, in Gibraltar it stood in the same year at 30.3 per cent. So our public sector is smaller, considerably smaller, up to 8 percentage points in GDP smaller than the public sector expenditure in the UK.

Mr Speaker, turning to public sector pensions, as with the cost and size of the Civil Service, so too with public sector pensions, it is not economically meaningful to speak of rising costs, or of becoming too expensive, or of being unaffordable in the future,

without seeing those costs in the context of the economy of which it forms a part and in the context of rising Government revenues. Perhaps I could illustrate that in the following way. In 1997/1998 the bill for Civil Service pensions was £8.8 million a year. By last year, by the financial year just ended, it had risen to £18.2 million. At first sight a huge increase and of course in absolute terms a huge increase, but in economic terms both figures are more or less the same percentage of total Government revenue, 6 per cent in 1997/1998 and 7 per cent in 2005/2006 or, measured as a percentage of GDP, the Government occupational pensions bill was 2.43 per cent in 1997/1998, 2.64 per cent in 2003/2004, which is the last year for which the GDP estimate was known. The GDP for 2005 is not yet known, but if (which is unlikely), the economy grew by only 5 per cent in 2005, the figure for 2004/2005 would be 2.6 per cent of GDP. It is also said, therefore, suggesting that nothing has been done that the Government should tackle this issue by eliminating final salary pensions for new employees and replacing them with contributory money purchase schemes. Such commentators appear not to be close followers of the reality of what is happening in Gibraltar. They should be aware, before they make such comments, that hundreds of public sector workers in the GDC, in the Social Services Agency, in the Elderly Care Agency and others are indeed already on contributory money purchase schemes and that as a result of the setting up the Electricity Authority and the Sports Authority, future employees of those will also be on contributory money purchase schemes as opposed to Government final salary schemes. There has therefore been a huge amount of progress made in limiting the incidence and therefore the future cost of final salary pension schemes on future generations of Gibraltar taxpayers.

Mr Speaker, I would like to turn now to a review of the Government's capital projects programme as the final part of my review of the public finances section of this Budget address. Since 1997, the Government have invested £195 million in capital projects, which have transformed the physical appearance of Gibraltar and many of its public amenities. This

sum excludes the new hospital. Earlier I referred to the Government's capital projects programme which would be funded from accumulated reserves and from the on-going property sales programme. The programme of projects for execution during the next 12 to 24 months, falls mainly into three categories: housing projects; roads, parking and beautification projects; and other major projects. The following are the principal projects in each category which are either already under way, or which will be commenced during the current financial year.

In addition to the Government's on-going annual housing estate refurbishment and beautification and lift installation programme, which will of course continue this year, the Government's housing projects include:

- The construction of Waterport Terraces;
- The Co-ownership scheme relating to Waterport Terraces, Nelson's View, Cumberland Terraces and Bayview Terraces;
- Continuation of the £1.3 million remedial works programmes to correct the defects at Brympton Estate;
- Continuation of the £2.2 million project of remedial works to correct the defects in the podium at Harbour Views;
- The refurbishment and sale, as affordable housing, of three old buildings in the Upper Town area;
- The building of a new worker hostel at Devil's Tower Road;
- Providing a women's half-way hostel, the first ever in Gibraltar;

- Converting part of the old St Bernard's Hospital site into a new sheltered residential home for the elderly;
- The rebuilding of sheds at the Laguna Estate.

In relation to roads, parking and beautification projects, the Government have an extensive programme of such projects which are either under way already, or are expected to get under way during this financial year. They are: the building of four new roads, all of them to decongest traffic and circulation. These are:

- A new road linking Castle Road and Willis' Road;
- A new road linking Reclamation Road and Fish Market Road;
- A new road linking Europort to Queensway at the Coaling Island Junction; and
- A new covered and protected Dudley Ward Tunnel access road.

We have four major projects to provide car parking facilities in residential areas: -

- An underground car park at Sandpits. This project will also provide three spanking, upgraded new tennis Courts for the Sandpits' Tennis Club and two new paddle tennis courts for the Sandpits' Tennis Club;
- A multi-storey car park at Willis' Road;
- A new car parking deck at New Harbours; and
- A car parking area between Old Naval Hospital Road and Vineyards.

Together, these four projects will provide well over 500 parking spaces and lock-up garages for local residents. We also have under the heading 'roads, parking and beautification projects' the Upper Town Renewal Scheme, which continues to progress with a variety of street and building refurbishment and heritage projects; the recovery, refurbishment and beautification of Orange Bastion and Chatham Counterguard; the refurbishment and beautification of the Public Market and "La Plaza del Reloj".

Under the heading 'other major projects' the principal projects in this category include: -

- A major beautification and refurbishment of the cemetery, which is already under way;
- The replacement of the frontier fence, which is already under way;
- The building of a new prison at Lathbury Barracks which will commence shortly;
- The completion of the new Bayside Sports Complex;
- The recovery and refurbishment of the King's Bastion, and the building in it of a leisure centre;
- The refurbishment of the Guardhouse at John Mackintosh Square;
- The conversion of the Retrenchment Block at Lathbury Barracks;
- A programme of refurbishment works to the Upper Rock;
- New premises for the RGP and Customs Marine Section and for the Sea Scouts; and

- The refurbishment of the Northern Defences and Tunnels.

All of these projects have a total value of about £140 million, of which around £63 million is expected to be incurred in this financial year. Other major projects will be announced during the course of the year, including the Government's further plans for rental housing.

As I have said Mr Speaker, this massive capital investment programme which will transform our streets and our squares, retrieve much of our heritage, transform our housing, our sports and leisure facilities, build new roads and massively increase car parking facilities – in short a further major stage in the already extensive transformation of Gibraltar since 1996, possible in part because of the Government's economic success, but also because of the Government's (sometimes criticised) policy of selling development land and rights to private developers, so that the proceeds can be invested for the benefit of the whole community.

Mr Speaker, some of the projects that I have just described are provided for in this year's Improvement and Development Fund's estimated expenditure of £38.5 million. This Improvement and Development Fund expenditure will be largely funded from sale of Government properties (to the tune of £31 million) and contributions from reserves (to the tune of £5 million). Last year we were able to spend £16.64 million against an estimate of £24.6 million, amounting to around 67 per cent. This year, following the introduction of a new system for rolling out, supervising and managing the execution of capital projects, we expect to be able to spend much more. Furthermore, there are more high value individual projects many of which are already under way or for which tenders have already been awarded. This also will facilitate a higher spend.

Mr Speaker, turning now if I may to the economy insofar as concerns the private sector. I am happy to once again report to

the House that the private sector economy remains robust and buoyant, and continues to grow healthily. As I told the House in December, during 2004 the economy grew by a gross 10.4 per cent and an inflation-adjusted 8 per cent. GDP in 2004 stood at £560 million. This increase or growth, has been brought about largely by an increase in total income from employment (which is up 11.2 per cent) as a result of the increased number of persons in employment (which is up by 8.1 per cent), and the increase in annual average earnings over that period of 3.9 per cent. The prediction (though not an estimate) for GDP in 2005 is around £600 million, which would represent a growth of around 7 per cent. The proper estimate figure, as I told the House last week, will not however be known until the autumn or later on in the year anyway.

Mr Speaker, the House may be interested in the following anecdotal information. If Gibraltar were an independent country (of which there are 185) our economy would rank now 159th largest in the world, according to the World Bank list for 2004. In terms of personal affluence, our GDP per capita is tenth in the world. In fact, it may be even higher because it is tenth when comparing Gibraltar GDP for 2004 with GDP for other countries for 2005, so we are tenth ignoring our GDP growth during 2005.

Mr Speaker, inflation in Gibraltar during 2005 was running at 2.8 per cent. Given the openness of the Gibraltar economy, the rate of price inflation is determined to a large extent by factors which are outside local control, for example the rate of interest, oil prices, exchange rates, and inflation in countries from which we import our manufactured goods. The Government predict that the rate of inflation in Gibraltar is likely to continue within the 2 per cent to 3 per cent range throughout 2006.

In terms of employment Mr Speaker, the number of jobs in the economy grew in 2005 by a huge 880 jobs or 5.5 per cent. This is a very large increase in a single year and reflects the continued growth of most of the sectors of our economy. There are now 3,894 more jobs in the economy than in 1996, representing an increase of 30 per cent. There are now 16,874

jobs in the economy, and we believe that this has continued to increase during 2006. Obviously, these 16,874 jobs represent an all time record high level of jobs in our economy, and is a further indicator of the economic success of which I spoke earlier. A total of 782 of these new jobs were in the private sector, and 371 of those were in the gambling industry. As at October 2005 the gambling industry employed 1,495 people, of which 120 were at the Casino, but the number of jobs in the online and telephone gambling industry alone has now risen further to 1,634, as I told the House at Question Time last week, showing that the gambling industry has become consolidated as a pillar of our economy.

Mr Speaker, the number of Gibraltarians economically active, that is, participating in the labour market or self-employed or seeking employment continues to rise and stands at an all time record high. The 2001 Census showed that 10,090 Gibraltarians were economically active. Despite a constant, if ageing population, this has risen as at October 2005 to 11,203. This represents an increase of 11 per cent in the number of economically active Gibraltarians over the past five years. In 2005 the Gibraltar population aged 15 and over totalled 18,500 of which 55 per cent were economically active. This stood at 61 per cent in October 2005. This is supported by the 2005 Employment Survey which shows that the number of jobs held by Gibraltarians increased from 9,154 in October 2001 to 9,870 in October 2005 - a rise of 7.8 per cent. Thus, employment within the economically active Gibraltar population is estimated at 97 per cent, which is almost full and effective full employment. This makes it inevitable that the bulk of new jobs resulting from further economic growth will be taken by outsiders. Indeed, without importing labour, our economy simply cannot grow and could indeed stagnate over time. The Government therefore reject the economically misconceived, and I suspect and fear sometimes pseudo nationalistically and politically motivated used remarks that one hears from time to time, to the effect that there are 'too many Spaniards employed in Gibraltar'. The Gibraltar labour supply is effectively fully deployed already at around 9,900 people. Gibraltarians

reaching retirement age are replaced in the labour market by school leavers and returning graduates, but in net terms Gibraltarian labour supply is effectively fully deployed. Therefore, without so-called 'too many Spaniards employed in Gibraltar' our economic growth and the additional wealth that it brings to Gibraltar simply could not be achieved. Indeed, Mr Speaker, since 1996 the number of Gibraltarians in employment has risen from 9,390 to 9,870, an increase of 480, represented entirely by women. If we go back to 1988, the number of Gibraltarians in employment has risen by 1,034 or 11.7 per cent comprising 945 women and 85 men. Average earnings in respect of all employees increased in 2005 by 8.7 per cent from £17,834 per annum to £19,383 per annum. Mr Speaker, in 2005 the average wage earner in Gibraltar was at least 30 per cent better off in terms of net take home pay compared to the average wage earner in 1995, after pay rises and inflation. The principal reason for this 30 per cent net improvement in net take home pay is the impact of the Government's very significant tax cuts since 1996.

Turning now Mr Speaker to the sectors of our economy and starting with tourism. The buoyancy of the economy is not just reflected in rising GDP, rising employment numbers, and rising tax yield from companies and individuals. It is visible also from those economic indicators that relate specifically to individual sectors of the economy. In relation to the tourism sector, the number of visitors to Gibraltar in 2005 reached a record high of 7.8 million. Arrivals by land and sea reached record levels, and arrivals by air were the highest since 1989. Cruise ship passenger arrivals increased by 15.4 per cent reaching the record level of 187,824, in 171 cruise ship calls. Hotel occupancy rates crept up to another record of 68.6 per cent even though a reduction in the guest nights offered was reflected in a slight reduction in the guest nights sold and total arrivals. At 68.6 per cent hotel occupancy rates compare with 43.3 per cent in 1996. The Government remain of the view that hotel business in Gibraltar will not improve further substantially, unless and until there is a substantial increase in the number of hotels and hotel rooms and beds available. This will give

Gibraltar a capacity which will more interest tour operators. Arguably, Gibraltar is already short of hotels even for current demand. The 68.6 per cent occupancy rate conceals the fact that there are many times of the year during which tourists and businessmen alike simply cannot get a room in our hotels. This constrains economic growth. Government are thus embarked on a policy to encourage and attract new hotel investment and construction in Gibraltar.

Mr Speaker, the financial services sector, for which I have direct Ministerial responsibility, also continued to both prosper and to reposition itself in higher value, sustainable activities, despite the continuing uncertainty in relation to tax. Government continue to work well with the industry to carve out new opportunities and to shore up existing ones. This is reflected in such things as the recent amendments to the Income Tax Ordinance, administrative tax rulings by the Commissioner of Income Tax, and the recent legislation for Experienced Investor Funds. The latter will, I think, be an exciting new growth area for our Finance Centre, which several operators are already successfully exploiting. But our banks continue to develop and grow as well, their investment and banking operations and their assets under management, all despite the arrival of the Taxation of Savings Directive, which has not had the impact that some of the more pessimistic observers had feared and predicted. The reputation of Gibraltar in international finance circles remains high, and I was able to witness this myself in Switzerland last week. This will be further bolstered by the positive assessment that we expect to receive from the IMF following their recent inspection visit. Bank deposits and other liabilities increased by over £1 billion or 18.7 per cent last year, following an increase of 18.6 per cent the previous year, as did cash loans and other assets by a similar amount. One new banking licence was issued in 2005. Insurance related licences grew by ten to 83 in 2005 (having grown from 73 in 2004) and by a further five to 88 in 2006 so far. This sector has now grown from 29 licences in 1996 to 88 licences now. Similarly, investment firms continue to grow in number from 12 in 1996 to 22 in 2004, 24 in 2005 and 26 so far in 2006. During this year we have agreed the

establishment of investment services passporting into the UK and this should further bolster this sector. Company and Trust management also continues to grow, albeit more slowly, from 77 in 1996 to 80 in 2004 and 82 now. This is creditable and encouraging given the turmoil represented by the end of our exempt status company product. Once again, the versatility and skill of the sector, coupled with the close working relationship with the Government has cushioned the impact of this measure on business levels. Employment levels in the Finance Centre in 2005 stood at 2,320, up 5.6 per cent or 123 from 2004. It is up 724 jobs or 45 per cent from 1996. The sector now accounts directly for 13.7 per cent of the jobs in the economy. However, these figures exclude self-employed professionals within the Finance Centre, and it is thus certain that the number of people active in this sector is higher, probably nearer 2,700.

Mr Speaker, the gambling industry in Gibraltar, for which I also have direct Ministerial responsibility, has seen Gibraltar now established as one of the world's foremost and pre-eminent centres for on-line gambling activities. We are also amongst the world's pioneers in devising legislative and regulatory framework for the on-line and telephone gambling industries. Employment in the gambling industry, as I have said, currently stands at 1,634, up from just 185 in 1996. We are proud to host three listed and publicly traded companies, in Partygaming, 888.com and 33 Red Bull. These companies, which are fully established in Gibraltar and carry on their business from here, enhance our business profile and promote our economy as a whole. Anecdotally, the House may be interested to learn that the financial sector, the hotel and restaurant sector, and the gambling sector now account for 28.7 per cent of all jobs in the economy, virtually the same as the MOD represented back in 1981 when it stood at 32.3 per cent. This is a mark of the extent to which Gibraltar has successfully since that year replaced the lost MOD activity with the financial sector, tourism, and now gambling and has repositioned its economy. Indeed, the MOD now account for just 6 per cent of jobs in the economy.

Mr Speaker, the port continues to make an important and growing contribution to the economy, with the number of ship visits and bunkers sold both standing at record highs, and cruising continuing to grow. The wholesale and retail trade is important to Gibraltar, economically and socially. It employs a total of 2,692 people, of whom 1,422 are Gibraltarians. This is perhaps the sector of our economy that is most challenged by a combination of factors. There are fewer high-spending Americans cruising in the Mediterranean; Spain's retail offering is now very competitive, both as to price and range of goods; some of our large retailers are by-passing our local wholesalers and importing their own stock from the United Kingdom; Gibraltar residents understandably seek the best options, both as to price and choice, and so often shop in Spain. It is not realistic to expect people to forego the opportunity to buy goods more cheaply and thus make their disposable incomes go further. The Government will seek to work closely with the new Board of the Chamber of Commerce to see what Government can sensibly but realistically do to help these important sectors. But Government tinkering with peripheral operating costs is not usually an alternative to a sound product and a sound business model. Our businessmen must do as they have always done, and that is to vary the offering and the shopping experience to carve out a commercial opportunity despite our lack of price competitiveness. Main Street in particular must remain a distinct and unique shopping environment. I believe that if it becomes indistinguishable from a UK High Street or a Spanish shopping precinct, by a proliferation of retail franchise outlets it will struggle to survive in the long term future. All that said, according to the Chamber of Commerce's 2005 Report, 2005 was "another reasonably good year for the retail sector with most retailers reporting single digit growth on a like for like sales". I would especially urge large retailers to buy as much of their stock as possible from local agents and wholesalers. The employees of such local wholesalers are the customers of the large retailers in Gibraltar. It is therefore hugely in their interests to sustain the jobs and thus the purchasing power of the employees of Gibraltar wholesalers. Some of the measures

that I will announce later in this address are intended to assist these businesses.

Mr Speaker, the property development sector continues to prosper and to provide very substantial levels of economic activity and growth. This continuing boom in property development benefits the economy in several ways. It provides employment, both during the construction phase and afterwards in relation to staffing, management, repairs and maintenance. It provides the Government with revenue and also capital from the sale of land and development rights. We have already seen how Government reinvest this capital in other projects which benefit the whole of Gibraltar, and of course, it reflects and projects the huge international investor confidence that now exists in Gibraltar, as a reputable and successful business and investment location. There is a considerable pipeline of investments, that will boost, not only the supply of quality residential accommodation but also the supply of office and commercial premises which are now in short supply. These projects include the very impressive Ocean Village, which will additionally enhance Gibraltar's marina and leisure facilities; Tradewinds; the Anchorage; King's Wharf; the Midtown Development and of course the huge and transforming Eastside Development.

Mr Speaker, the outgoing Chairperson of the Gibraltar Federation of Small Business, (the one who said that she was not going into politics) said more or less at the same time that the Government lacked interest and did not care about small business, perhaps she already knew that she was going into politics after all. The outgoing President of the Chamber of Commerce, was generous enough to recognise in his 2005 Annual Report that during his several years as President, Gibraltar had made "huge strides on both economic and political fronts" and he applauded "the Government's record on economic growth". He went on to raise several issues upon which I think it is appropriate for me to comment. Firstly, let me remind those who say that this Government do not care about small business, of the unprecedented number of measures that

this Government have introduced to help small business. We have introduced a reduced rate of tax of 20 per cent for small businesses; we have abolished tax on a company's investment income; we have discontinued the practice of annual 10 per cent increases in social insurance contributions, and instead, have had only two increases in ten years; we have built three new industrial parks; we have simplified the payment of social insurance contributions by abolishing stamps and cards. We have put out all procurement contracts to open tender, thereby establishing a level playing field and equality of opportunity for all businesses. We have exempted computers and commercial vehicles from import duty. We have radically improved the postal service. We have set up the Invest Gibraltar one stop shop to advise small businesses and to advise people in establishing small businesses. We have provided extra tax relief for replacement of business facades. We have taken over liability for payment of Maternity Allowance, which was previously payable by employers. We have relieved students on holiday jobs from tax and social insurance contributions. Self employed businessmen have seen a very substantial reduction in their tax rates. We have introduced a 20 per cent (later reduced to 10 per cent) discount for early payment of rates. We have introduced a 'one stop shop service' for registration of new employees. We have halved the rate of import duty on many goods, and reduced it to zero on many others. We have relieved businesses on Main Street of the obligation to pay for half the cost of the Main Street beautification project. We have extended the street beautification programme in manner that has benefited many small businesses. We have introduced telecommunications liberalisation which has resulted in a significant reduction in telephone tariffs. The growth in the finance centre, gambling industries and port activities has hugely benefited small businesses who supply and service their needs. We have financed hotel refurbishment through the hotel assistance scheme, and we have financed a very substantial amount of training opportunities for the staff of private businesses. Against all of these measures it is said that we have increased rates 'by 10 per cent and more'. We have not increased rates, we have reduced from 20 per cent to 10 per

cent an early payment discount which we ourselves introduced. It is said that we have increased the minimum wage by 12.5 per cent last year. We make absolutely no apology for this. The economy of Gibraltar has generated substantial wealth and it is important that the benefits of this reaches the lowest paid. Government do this through substantial tax cuts, but employers need to contribute also through socially responsible minimum wages. £4.50 an hour, which is what the minimum wage currently stands at after the 12.5 per cent increase complained about, £4.50 an hour for a 39-hour week represents a weekly wage of just £175 per week. No good employer should be paying less than that, and all should be paying more than that. It is said that we increased social insurance contributions by 10 per cent. With respect, the proper way to look at it, is that we have discontinued the previous annual 10 per cent increases and limited increases to only two in ten years. That is to support business, not to ignore it or not care about it. It is said that we increased electricity and water tariffs by 12 per cent and 17 per cent respectively. Indeed we did, but the proper way to look at it, is that we absorbed years and years of huge fuel and other cost rises and did not pass the costs on to business users as they do in every other country. In most of Europe the tariffs are going up by similar percentages every year due to the massive increases in oil prices – let alone once in 20 years. The Government are still hugely subsidising electricity and water to business. The recent increases do not even recover the cost of the most recent fuel price rises. The reality is that tariffs have increased by much less than the inflation rate over the last 20 years. Utilities prices are therefore hugely lower, in real money terms, than they were in 1986. It is said that Government do not consult about rises in taxes, fees and tariffs affecting business. No Government does so. What would be the point anyway? Is it likely that any business would ever support any such rise? It is said that there is concern about Government's financial management because Government are not more effective in collecting arrears. Indeed the Chamber of Commerce's 2005 Annual Report says this, about it:-

“This apparently lax attitude does nothing to discourage unscrupulous traders, and others, from the continued practice of not meeting their liabilities on time. It just penalises those businesses that do play by the rules”.

Mr Speaker, I could not agree more with those sentiments, but when Government got tough by introducing heavy fines for illegal labour, that is to say, that is not registered and does not pay social insurance and PAYE, it was the Chamber who accused the Government of taking 'draconian measures'. Mr Speaker, I look forward to meeting with the new Board of the Chamber to work through this issue and establishing an effective, joint approach to remedying it now that we both appear to agree that it should be dealt with.

Mr Speaker, the Treasury is making, and will continue to make, substantial efforts to recover arrears. Companies and Directors (where possible) are being pursued. Companies are being placed into liquidation and meaningful arrears agreements are being entered into, which as well as paying off arrears by realistic instalments, require a commitment to stay up to date with current obligations. There has also been justified criticism of the facilities at the commercial gate and the Customs Entry Processing Unit, and indeed of other aspects of the way Customs Department works. The House will by now be aware that there is a thorough and comprehensive review of Customs currently under way, which has been welcomed by staff and business alike. We are confident that the outcome will address many of the concerns that have been expressed. In the meantime Government are grateful to the staff at the Customs Department for enduring the facilities at the Entry Processing Unit. These are pending imminent relocation, either to a new site or to a facility there or thereabouts, built in the context of any new, relocated Air Terminal that may result from an Airport Agreement. We cannot, at present, invest substantially on the existing EPU building, in case the space is required for the new air terminal. We will, of course, consult fully with staff, customs agents and business in relation to its possible relocation to another site.

Mr Speaker, and so to this year's Budget measures. In relation to Income Tax, as I said earlier, it is the policy of this Government, which we have implemented every year since 1996, to use the tax system as a means of sharing throughout the community the fruits of our economic success. Since 1996 there has been very substantial reform of our tax system that has reduced effective tax rates by nearly 40 per cent. Personal and other allowances have been hugely increased, actually nearly doubled, and new allowances have been introduced. In addition, the tax bands and rates have been widened and recast. For example, in 1996 tax started at 20 per cent and reached 35 per cent after just £7,000 of taxable income. Now, tax starts at 17 per cent and does not reach 35 per cent until £10,000 of taxable income (and that in addition to the effect of higher and new tax allowances). Also, the top rate has been reduced from 50 per cent to 45 per cent, and now senior citizen's allowances are now topped up to £10,000, thus ensuring that the first £10,000 of senior citizen's income is tax-free. Finally, a low-income earners tax credit has been introduced to target tax cuts specifically at the low paid. This year, as in all previous years, we are continuing with our tax cutting agenda.

I am therefore announcing the following important tax cutting changes to the tax system, with effect from 1st July 2006: -

Income tax will no longer be payable on occupational retirement pension income received by any person aged 60 or over. Such pension income will therefore be tax-free. This exemption will also apply, at age 55, to ex-policemen and ex-firemen who retire at 55 by statutory compulsion. This measure will benefit around 6,000 taxpayers.

Every taxpayer's 'total tax allowances' will be 'topped up' to £3,500, if they have less than that. Accordingly, and subject to the allowance apportionment rules, no taxpayer will pay tax on the first £3,500 of annual income. This measure will benefit around 6,000 taxpayers.

The 35 per cent rate band is abolished, and £3,000 of it is transferred down to the 30 per cent band, which thus increases from £6,000 to £9,000. This measure will benefit 3,200 taxpayers.

The top-rate of tax is further reduced from 45 per cent to 42 per cent. This measure will benefit over 4,500 taxpayers.

Therefore, the new (much simplified since 1996) band structure is therefore as follows: -

£4,000 at 17 per cent
£9,000 at 30 per cent
Balance at 42 per cent

Low income earners tax credit, which is worth £230 per annum to people with taxable earnings of less than £8,000, will increase by 20 per cent to £275. This is equivalent to forgiving tax on the first £1,600 of taxable income. This will benefit around 8,000 taxpayers.

All other allowances will be increased by 3 per cent. All taxpayers will benefit from this.

The Income Tax Ordinance contains many provisions that are discriminatory as between men and women. The Ordinance will be thoroughly reviewed during the next 12 months, with a view to the elimination of all provisions that discriminate between men and women. I am announcing one today. The 'wife' allowance, which we sometimes call the married man's allowance but it is a wife allowance, is available only to men in respect of their wives. In future, it will be known as the 'spouse' allowance, and will therefore also be available to women in respect of their husbands.

Mr Speaker, in respect of annuities, at present people that are not on final salary occupational schemes, have to buy an annuity with at least 75 per cent of the capital sum derived from

their pensions (subject to certain exceptions). In addition, any capital withdrawn in excess of 25 per cent is taxed at 20 per cent. Annuities are difficult to obtain and rarely represent good value for money. Accordingly, the need to purchase an annuity with a money purchase scheme capital is abolished. Pensioners may in future withdraw the whole of their capital and, what is more, the 20 per cent tax is abolished, so that they may withdraw 100 per cent of their capital, 100 per cent tax-free.

Until now we have had a covenant system of charity giving which is no longer working well for the charities or for the givers. This will be replaced by a Gift Aid Scheme, under which taxpayers will be able to gift up to £1,000 from their taxed income. The Government will gross up the amount and refund to the approved charity the tax paid at the standard rate, but this will not require a covenant.

Finally, in relation to income tax, the present tax system is harsh on people without certain allowances to claim such as mortgage, pensions/life insurances et cetera. With effect from 1st July 2007, we will introduce a dual system of income tax whereby taxpayers will be able to pay tax in accordance with whichever of the two following systems produces the lowest tax bill for them:

- (1) the present system of tax allowances, tax bands and tax rates; or
- (2) a new flat lower rates and capped system which will be announced during the course of the year.

So that there will be the present system and there will be a new flat lower rate, capped system and the taxpayer will be able to choose which of the two systems delivers to him, given his personal circumstances and his allowances and will pay the tax under whichever of the two lower systems arise. This will level out a little bit the extent to which the tax system is harsh on people that do not have mortgages, do not have life insurances and things of that sort.

Mr Speaker, moving on to social insurance contributions. The reform of this scheme has been pending and under consideration for some time. There are two aspects to the reform: the method of payment and the rate of payment. Dealing first with the method of payment, the Government have already changed the system of payment of social insurance contribution by abolishing the old card and stamps. We are now going one step further by merging the systems of social insurance contribution collection with the income tax collection system. With effect from 1st January 2007, social insurance contributions will be paid and collected through the PAYE tax system. Further detailed technical, administrative and explanatory statements will be made during the next few months. Insofar as concerns the rates of payment of social insurance contributions, with effect from 1st January 2007 the current system of social insurance will be changed. The present system has only two principal rates. One for those who work less than 15 hours per week and another for those who work longer. The present system has two consequences which Government wish to address. Firstly, it results in people who work just over 15 hours paying much more than people who perhaps work just a couple of hours less a week. Government wish to introduce a system that enables contributions to be smoothed out between the part-time reduced rate and the full rate of contribution. Secondly, the present system operates as a disincentive to part-time work, especially for the low paid. The new system, about which the Government will consult with employer organisations and trade unions during the next few weeks, will be earnings related but subject to a cap in contribution rates at the current level, with a mechanism built in to safeguard low paid workers. With effect from 1st July 2006, social insurance contributions will cease to be payable when a contributor reaches the age of 60. However, for those contributors whose statutory occupational retirement age is before 60 for example, firemen and police officers, social insurance contributions will cease to be payable when the contributor reaches the compulsory retirement age. The Department of Social Services will award credits to all such contributors from the period of cessation of payment of

contributions up to the date of state retirement age. This will apply only to employees contributions. Employers will continue to contribute. This measure will regularise the current position whereby credits are only awarded to unemployed persons over the age of 60, whereas employed persons are required to continue making contributions. This penalises those who choose to work beyond retirement.

Mr Speaker, in relation to rates, the 10 per cent early payment discount currently available for commercial rates, will be extended to rate payers of domestic premises with effect from 1st October 2006. This will apply to ratepayers who are up to date with the payment of their current bills, and have no historical arrears or are up to date with their repayment agreement relating to any existing historical arrears. With effect from 1st January 2007, rates on commercial premises used for retailing or wholesaling of goods will be reduced by 15 per cent. This scheme will thereafter be extended to other small business categories. Rates are abolished on individual, privately owned garages and parking spaces.

Television licence fees are abolished.

Persons over the age of 70 will be entitled to a free bus pass to travel free of charge on Government owned bus services, that is to say, services operated by the Gibraltar Bus Company Ltd. Initially, this concession will not apply to Route No 9. Road Tax is abolished with effect from the expiration of current discs, for any vehicle registered solely in the name of a person aged 70 years of age, and driven principally by that person.

As an aid to business, import duty on goods vehicles, for exclusively business use will be abolished and therefore will be exempt from import duty.

Mr Speaker, during the last eight years the Disability Allowance which had remained frozen prior to 1996, has been increased by 70 per cent to £25.80 (weekly child rate) and £36 (weekly adult rate). These rates will now again be increased by 20 per

cent to £31 per week and £43 per week respectively. Maternity Grant is currently payable at £350 and is means tested. It is not payable if joint incomes exceed £35,000 per annum. It will now be payable in future at £400 and the means testing is abolished. The Elderly Persons Minimum Income Guarantee which is a financial safety net for the elderly introduced by this Government, continues to benefit a significant number of elderly persons. The rates of income guarantee presently stand at £98.20 per week for a single person and £131 per week for a married couple. These rates will be further increased by 5 per cent to £103 per week and £137.50 per week respectively.

Mr Speaker, the Government propose in future to use the tax system, especially the indirect tax system, to aid and encourage environmentally friendly practices. As a start, during the next 12 months, Government will review the import duty regime applicable to such things as bio-fuels (when importation of it is available), solar heating systems, energy saving lighting and electrical equipment, and vehicles, and indeed the road tax system relating to vehicles, with a view to encouraging measures that aid the environment.

The Government will, this year, invest £250,000 in upgrading the quality and quantity of computers in all our schools, and in equipping them with interactive whiteboards, digital projectors, and lap top computers, and other peripheral equipment.

The demand on our police force is constantly increasing as a result of the expansion of Gibraltar physically and economically. Furthermore, society much values the presence of policemen and policewomen on our streets. Accordingly, this year, the Government will provide funding to enable the RGP to increase the number of policemen and policewomen available for street policing duties by 23. This amounts to an increase of over 13 per cent in the complement of constables and policewomen available for street policing duties. This will be achieved through a combination of recruiting more policemen and policewomen and recruiting new clerical and administrative staff to do work presently being done in the station by police officers,

that can easily be done by civilians, thus freeing up these police officers for policies duties. This is called civilianisation of posts.

Mr Speaker, these measures demonstrate once again that the Government's economic policies and our management of Gibraltar's affairs are delivering real benefits to the whole community. More jobs than ever, higher incomes than ever, more and better public services than ever, better public amenities and environment than ever, and an unprecedented ten years of continuously falling tax rates. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, before I begin my contribution to the general principles of the Bill, I would like to bring to the attention of the House that regrettably our Colleague Mari Montegriffo is not well enough to participate in this year's debate. It will be the first Budget she has missed in her 22 years in this House, since she was first elected in 1984. Members know that she has been undergoing medical treatment which thankfully has been successful, but with this type of treatment the side effects last for some time. I am sure Members on both sides will want to join me in wishing her a speedy and full recovery so that she may be back to her old self. My Colleague Fabian Picardo will speak on her behalf on medical services and Steven Linares will do likewise on sport.

Mr Speaker, one thing that is predictable with near certainty from one Budget to the next, is that the speech by the Chief Minister will describe the performance of the Government in glowing terms irrespective of whether the results show a surplus, a deficit or a balanced budget. Given that this year's surplus shown is bigger than the estimate provided a year ago, the speech we have just heard was even more predictable this

year than for previous years. However, what is deficient in the approach by the Chief Minister is that it is impossible to discover what the objectives and the targets of the Government are before the event. When the budget last showed a surplus of £17 million some years ago, it was because the Government had got their estimates wrong as on this occasion. They had aimed to achieve then some £7 million more in revenue than they had planned to spend in that year and they finished with a surplus in excess of £17 million. On this occasion a year ago, the Government forecast a £3.8 million surplus and we now have a surplus of £18 million, revised last Friday to a surplus of £20 million. So let us analyse how this has come about. To do this we need to put in context the relationship between the Government expenditure and Government revenue against the background of the performance of the economy. Since the latest available date on the economy is the GDP estimate for 2003/2004, which showed a growth of 10.4 per cent over the preceding year, and we will be making use of this just like the Government have done. We have to revisit therefore, what happened in the Government sector in that financial year. We also now have the audited accounts of the Government for the same financial year. In note 1 to these accounts the deficit is identified in respect of recurrent revenue and expenditure at £7.8 million. This was against the background of expenditure for the year growing by £17.7 million as compared to the recurrent expenditure in 2002/2003, from £178.9 million to £196.6 million. The Government have denied that there was a problem in meeting Government spending in that year. The Chief Minister tried to trivialise the issue by quoting as recently as January 2005 the famous episode of the motorcycle that had broken down and told the Federation of Small Businesses that the concern of the Opposition, our concern, was that we wanted the Government to buy a new motorcycle instead of repairing the old one. That was how careful the Government claimed to be about spending. Well, everybody knows that buying a new motorcycle, even a Harley Davidson, would have made little difference to the increase of £17.7 million in Government expenditure in that particular year, or the resultant deficit of £7.8 million. The other defence mechanism paraded by the Chief

Minister was to insist that it was deliberate that Government policy was to reduce the surplus and that the result arrived at, which he described as a small deficit, was arrived at by design. However, although he claimed that he faced no problems, he announced a wide-ranging set of measures to rectify the non-existent problem. Thus he alleged and expected people to believe, firstly that the Government had deliberately set out to eliminate the budget surplus by design, because he did not believe in having surpluses, hoarding money for rainy days. Then having achieved the desired objective, promptly decided to embark on the opposite course of action and announce that the Government policy was to introduce a number of fiscal measures to raise revenue and restore the deliberately eliminated surplus because it was the prudent thing to do. This shift did not happen in a vacuum. There was the not insignificant detail of an intervening election in which he gave no indication whatsoever of the revenue raising measures already in the pipeline, ready to be announced once the election was over. I do not think there is any doubt about on which side of the election we are in this Budget.

The measures announced in 2004 and 2005 were made up of a wide-ranging package which included increased charges for services provided by the Government, a clamp down on departmental spending and a blitz on the collection of arrears. All intended clearly to keep spending down and bring revenue up and produce surpluses. The increases in the electricity and water charges were defended, as they have been today, on the grounds that the rates had been static for 20 years. Well, we did not agree that there was anything magic about the 20 years interval and we did not support those increases. In last year's Budget, the Chief Minister told the House that the economy had grown by 8 per cent in 2002/2003, and that the Government estimated at the time, that is, in June 2005, that the growth that had taken place in the preceding financial year, that is, in the financial year from 1st April 2003 to March 2004, the year of the big deficit, had been in the range of 5 per cent to 7 per cent. In fact, we now know that the actual result was 10.4 per cent economic growth, which makes the size of the Government

deficit and the failure of Government revenues to grow at a similar rate to the economy, difficult to understand for that particular year. When looking at this figure of 10.4 per cent, one needs to recollect that the major component of this calculation, as was recently confirmed and has been repeated today by the Chief Minister in his contribution, is the result of the Employment Survey October 2003 level of earnings, and as we have been told that subsequent surveys for October 2004 and October 2005 show higher growth than October 2003, we would then expect this plus the second element of the GDP calculation, which is the level of company profits and here again the collection of Corporation Tax for the years 2004/2005 and 2005/2006, as substantially higher than 2003 and 2004. So taking into account the two major components, we would therefore anticipate that the growth in the economy that has already taken place in 2004/2005 and in 2005/2006, will certainly be no lower than that which took place in 2003/2004, namely, that it would be above 10 per cent rather than anywhere near the 5 per cent guesstimate that we have had today.

What is the relevance then of this to the Estimates of revenue and expenditure before us? Well, the fact that as the Government well know, our approach is that the actual expenditure level of the Government and the growth in it from year to year, cannot be judged in isolation to evaluate it, it has to be seen in the context of how the economy is performing and that is why in our analysis every year, and this year in the Government's analysis, what we have always highlighted is the extent to which these three variables, that is, Government revenue, Government expenditure and economic growth, are moving on similar trend lines which effectively means that if that were happening, they would be maintaining more or less constant ratios. The components of the revenue yields we have in the Estimates for 2005/2006 indicate to us that the principal area of growth which had been stimulating the economy, has been the increased activity over the last 24 months of the gaming companies. This is reflected in the Estimates in the direct income from this sector that the Government have already received and that is now budgeting for the future. If the latest

figure of over 1,600 employees in the sector is anything to go by, it means we are likely to become even more dependant in the future on gaming companies than we are already, and that it is by far the biggest single input into the economy. Just how dependant Government revenue is on their presence is difficult to quantify precisely. At 1,600 it would in employment terms already be the biggest industry in the private sector. This means that the Government have to make sure that they are able to retain the presence of the gaming companies here when others try to lure them away, and that means making sure that we offer a welcoming and competitive business environment and there is support from the Opposition for any measures that may require legislative action. Clearly, the other element in the economy is the property market. We see this affecting Government revenue through the level of import duty on building materials and through the employment of additional construction workers having effect on PAYE from property developments currently under way. The demand for property is probably also partly due to the growth in the activity of the gaming sector, especially, from the more highly-paid executive positions in these companies. However, in the lower-paid and more routine type of jobs, the evidence is that a very large proportion of these employees, having found employment in Gibraltar, have subsequently become frontier workers by taking up residence in the towns across the frontier. The increase in frontier workers is evident in the Employment Survey Report tabled recently and is not confined to the sector. The October 2005 Survey shows the following. If we look at Table 5 of the Report we see there is an increase of frontier workers of 464 from 3,458 to 3,922. However, this latter figure is almost certainly understated. One has only to notice that the number of Spanish frontier workers shows an increase of just six compared to the previous year, out of the total increase of 464. Yet, in Table 1 of the Report, we see that the Spanish workforce is shown as having grown last year by 164. Clearly, that would imply that with only six living in Spain, the balance of 158 would have had to have taken up residence in Gibraltar – a highly unlikely event. In fact, the growth of frontier workers in Table 5 is made predominantly of British and other EU nationals. Our indications are that many of

these work in the gaming sector. We believe that the increase in the Spanish frontier workers itself is much bigger than the Report shows, but even on the basis of the Report, what is clear is that the local private sector jobs are increasingly being taken over by outsiders, continuing the trend shown in almost every previous year and which we have consistently highlighted in the House. Clearly, if there are ever more workers living on the other side, more of their spending takes place elsewhere. If we add this to the evidence from the last year's Visitor Expenditure Survey, also tabled recently, which shows a drop in spending in the local economy of £20 million then one can understand the concerns being expressed in the wholesale and retail trade about their future. The evidence that the sector faces problems is very clear, and the 2005 Survey shows the number of employees actually dropping. The failure of the import duty receipts to grow following the increases introduced last year, indicates that the increases have maintained the same level of Government revenue but imply a lower level of sales. That means that in not yielding extra revenue it means that the sales have dropped and the revenue expected from constant sales has not materialised. The figures on import levels also point in the same direction from the import and export statistics.

Mr Speaker, the small business sector, which represents the 1,000 plus mainly local employers, have been the ones most directly affected by the cost increases produced by the Government's revenue-raising measures over the last three years. It seems clear that the sector is in no position to pass on such increases in their operating costs through their selling prices to the final consumer, because they face falling sales and competition from across the border. If the Government fail to address the issue, then the decline is bound to continue and it needs to be remembered that the sector, as well as being predominantly local small business, is still, in spite of the inroads in the labour market, the largest private sector industrial grouping providing jobs for Gibraltarians. A total, as the Chief Minister has acknowledged in his own address, in October 2005 of 1,442 Gibraltarians were directly employed and earned their living in the wholesale and retail trade. We note that these

concerns have been reflected in some measures announced today, but clearly we are not in a position to evaluate it on the spot having heard it five minutes ago. We shall see whether in analysing the impact, in our judgement, enough is being done to turn the tide, because it is in our view the most important sector of the economy from the point of view of involvement of our own people, both as employees and as employers. I know that the Government have said in previous years that the decline of Gibraltar employment in this sector is a good thing because people are simply moving into better paid jobs elsewhere, but we believe they are wrong in this analysis.

Coming back to the Estimates before the House, we see that the amount collected in import duty totalled £31 million compared to £30.3 million last year. Almost all the increase of £700,000 is accounted for by increased receipts from duty on building materials related to the construction projects currently under way. This information has been provided in the figures given on receipts from this source in answer to questions during the course of the year, confirming the point that I have just made, about the lower level of sales in respect of other commodities. The £31 million shows no change from the Estimates produced last year, so in looking at the extra revenue collected it is easy to identify that this must have come from sources in other parts of the Estimates. The biggest single source of Government revenue is income tax and in examining and comparing the collections of one year with the next, the picture we get is as follows. In 2003/2004 the amount collected was £71.1 million, up from £65.5 million in 2002/2003, a year to year increase of £5.6 million. For 2004/2005 the Government estimated in the 2004 Budget, an increase of £5.9 million to £77 million. However, they failed to meet the target and last year the forecast collection for that year was given as £76.3 million, £700,000 below the estimate. Now that the final figure is available, that shows receipts of £75.8 million which is £1.2 million below the budget estimate of 2004. In the Budget last year, the estimate for the year just ended, 2005/2006, was £80 million, a £4.2 million increase over the tax collected in 2004/2005, which can be seen before us now on page 6 of the

Estimates. The forecast results of what was actually taking place is, £87 million collected which is £7 million more than the estimate and an increase of over £11 million compared to the previous year. In answer to a question in this meeting of the House, the Government provided a breakdown of the collections of PAYE in 2004/2005 and 2005/2006, and this shows that the 2004/2005 collection was close to the actual amounts due, since the audited accounts showed, the last ones published for 2003/2004, actually showed the position as at the end of March 2005 in that particular aspect. That showed that in the course of 2004/2005 the increase in the arrears of PAYE of some £400,000 was much less than in previous years. The outturn for last year at £11 million plus over the preceding year, involves a £2 million increase yield from self-employed and near £10 million increase in the payment of PAYE by employers. The projected tax collection in the current year is put at £92 million, which is an increase of £5 million on the forecast outturn of last year. This £5 million in extra income tax expected to be collected is in line with the expected increases estimated for this Head of Revenue in previous years' budgets, as I have shown. One assumes therefore, that the increase experienced in 2005/2006 includes a reduction in the level of arrears and that is why in this year's Estimates the figure is less because a similar level of arrears reduction has not been budgeted for in 2006/2007. I also note that in introducing the Estimates, the Chief Minister said that the revenue estimates were on the conservative side, meaning that he said this was normal practice, I do not think it has been said in previous years, to ensure that there was a buffer in case things did not turn out as expected.

HON CHIEF MINISTER:

When the hon Member surmised that there was a reduced estimate because of the arrears position, was he talking about income tax? I lost the sense of what particular item of revenue he was talking about?

HON J J BOSSANO:

I was saying that given that the estimate for this year is based not on what we have actually experienced in the preceding year but on the normal £5 million plus increase from year to year that we have seen happening in a number of years.....

HON CHIEF MINISTER:

Oh, generally, across the board.

HON J J BOSSANO:

In PAYE, assuming the fact that PAYE last year was £10 million higher than expected is because it includes a certain element of arrears reduction and that a similar element of arrears reduction is not being projected for 2006/2007. Given that we are not seeing a reflection of the £11 million but a reflection of the anticipated £4 million or £5 million which is what I have demonstrated to the House, which in fact in the year 2004/2005 was not actually met but the projection has been around £5 million from one year to the next. We are being told this year that the projections generally for the revenue estimates is on the conservative side, so that if things do not work out as expected, those figures will still be attained. Well, we saw in fact that in 2004/2005 the actual collection was £1.2 million less than the Government had hoped to achieve. I think if one looks at what happened with arrears in that year, that was the year when actually PAYE arrears went up by £1 million and therefore the figure that was not attained, which was £1.2 million short, is matched very closely by the movement of arrears for PAYE alone. The position, therefore, is that when the Government have brought this to the House they have said two things which require us to reassess the position after this debate, and one is that the revenue side is estimated conservatively but that the cost of measures announced in this Budget that may impact in a reduction in revenue, have not been built in. I understood that to

be the case, so it may well be that the conservative of the original estimate may be matched by the failure to build in the possible reduction of revenue of the new measures. We may still see that the outcome eventually is not too far from what is there today. But of course, we are working not on what the Chief Minister has used in his delivery, but on the figures that we have had some time and which we have been analysing until now. Therefore, all the figures that I have been quoting are the figures in the printed book and not in the statement by the Chief Minister.

In his introduction on the question of company tax, what the Government figures show is that the collection has been £27.8 million in 2004/2005 and this is £10.8 million higher than the estimate made last year. In fact, the original estimate showed a figure of £17 million, we were told in last year's Budget that the increase of £10 million would produce £27 million and now the final figure has come in at £27.8 million, so the company tax estimate was out by a total of £10.8 million. In his introduction of last year's Estimates, the Chief Minister told the House that the increase included, that is to say, the higher level collected of £10 million, included items of revenue of £5.8 million which were a one-off and that therefore the estimate that was being put in last year's book of £22 million, was because that was the relevant figure for 2004/2005. That is, we were being told that out of the £27.8 million, £5.8 million was not really generated by activity for that particular year and due for that particular year, and that therefore the figure for that particular year, 2005, without that extra element would have been £22 million. He then went on to tell us, in fact, that that was why the £22 million was being repeated in the estimate for 2005/2006. He got this figure wrong, which is not an unusual feature of his speeches when he quotes lots of figures. The actual estimate tabled by him was £20 million not £22 million that he had mentioned. The result now forecast is a collection for the year ended 31st March of £25 million. That is, £2.8 million less than the preceding year but £5 million more than the target set in last year's Budget. We know from answers to questions, that £17 million of the £25 million that has been collected in the recent financial year, was

collected in the month of March alone and that the balance of the £8 million was collected over the preceding 11 months. We also know that the Government expect to collect in the current year £3 million less than last year, and are estimating £22 million which happens to be what the Chief Minister mentioned in last year's Budget, maybe he already knew then what he was going to do this year. I assume that means that some of the £25 million collected last year represents a reduction of arrears or some other one-off element.

I remember a few Budgets back, when the revenue from company tax had grown steadily over a few years. Then the Chief Minister homed in on that particular discovery and called me an ignoramus for not realising that higher company tax means that the economy is growing at a comparable rate of increase. I do not mind him calling me names because I know it is his way of being friendly. In fact, since this year he has not called me any names I am starting to get worried about whether our friendship is in danger. Certainly, as I have just demonstrated, the estimates of company tax expected to be collected and the results achieved, do not indicate a straight line correlation with the figures for economic growth, but I acknowledge that the explanation given to me recently at Question Time, that the Statistics Office is now adjusting the figures collected from one year to the next to produce estimates of company profits, which will hopefully mean that the GDP calculations are more accurate by smoothing out the figures from one year to the next, and it is a development, obviously, which I welcome. Just how much higher tax receipts are due to the reduction of arrears, and how much due to higher levels of income from individuals and companies, is clearly a major factor in analysing the sustainability of such revenue falls. That is one of the principal reasons for wanting to know to what extent it is one or the other.

The question of the level of arrears as the source of all the Government's money problems was highlighted in January 2004, when the need to restore public finances first surfaced. I think it was in the New Year message of the Chief Minister. The

message was not new, however, the blitz on collection of arrears had been announced by him as far back as 1997 and the result of that blitz was a huge increase in the level of arrears between 1997 and 2003. The message was repeated in January 2005 and the support of the business community sought by the Government. However, what is clear from the latest published accounts is that the 2003/2004 deficit was not the result of a jump in the level of arrears compared to the previous year, because indeed the very contrary took place. The tax collection from PAYE, self-employed and companies in 2003/2004, taken together, show that the arrears position overall was the same at the end of March 2004 as it had been at the end of March 2003. So, if we look at the year just ended and we see that in Head 1 Revenue, tax has produced £12 million more than the Government expected to receive, and gaming has produced £1.8 million more than they estimated they would get, and the dividend of Gibraltar Telecom is £1 million more than the estimated amount put in last year's Budget which came in now at £3.6 million instead of the expected £2.6 million. The difference in these three components produces a total of £14.8 million increase in revenue as compared to the budget estimates. The figure for exempt companies in the forecast outturn is £3.4 million instead of £2.2 million, and that is £1.2 million higher. This results from the increase in the exempt company fees which was the only sensible revenue-raising measure brought in last year, since the exempt company licences were rationed already anyway, and therefore the increase would not have the effect of reducing demand for a number of licences. The total of these levels of revenue shown in the forecast outturn comes to a total of £16 million over the original budget presented a year ago. Then there is the increased income in interest paid into the Consolidated Fund which was £600,000 higher than last year's estimates. I presume it is mainly due to the fact that the amounts raised by selling land and properties through Government companies, is being placed on deposit with the Government at zero interest, and then yields from investing that commercially income that is credited as interest to the Consolidated Fund, generating a resultant recurrent revenue from the sale of these assets. If we

look at the results of last year's performance in the estimates we see that the total estimated revenue column and the total forecast revenue column, show a difference of £16.4 million, and the items that I have identified and listed come to a total of £16.6 million. There are other items generated by Government budgetary increases, such as the £700,000 extra from rates, presumably because of the reduction to 10 per cent in the rebate for business premises introduced last year. This other items, which produced several millions of pounds, have in fact been absorbed into the Government overall revenue accounts and in some areas are compensated by reductions in estimated revenue which have not been fulfilled, such as the lower level of yield from the lottery which we see has come in once again well below what was hoped for. The higher level of income received has resulted in the surplus of nearly £18 million instead of the projected £3.8 million. We know that this has now been changed, and even though we recently voted a Supplementary Appropriation Bill increasing the payment to the Electricity Authority from the Consolidated Fund because it is estimated to have that level of deficit. Last Friday we learned that the income of the Authority up to last March was higher than the forecast shown in the Estimates and that therefore, the Estimates before the House had been altered to reduce the amount already voted in the Supplementary Appropriation Bill and bring the expenditure of the Consolidated Fund closer to the original estimate, as a consequence, making the forecast surplus £20 million in the Consolidated Fund instead of the £18 million.

I do not know whether I am supposed to congratulate the Chief Minister for a surplus of £20 million or commiserate with him. After all, he has been telling me off for the last few years for showing concern that the surplus was heading for oblivion. He was assuring me that this was by design, that that was what he was trying to achieve, that it was deliberate and that it was Government policy to bring the surplus down. Or is it a case of the policy being dictated by the results rather than the other way round? To put it more crudely, is it that the Government cannot admit that they ever get anything wrong, even though consistently they get their figures wrong and therefore have to

say that the eventual result is by design, irrespective of whether it goes up higher than the predicted figure or comes in lower than their prediction. Therefore, nobody ever knows what the Government are going to claim their policy is until after the event.

The changed table in the figure for Consolidated Fund expenditure for 2005/2006 raises one other issue. When we were looking at Government revenue and expenditure as opposed to the resulting balance between the two, with the existence of the Agencies and the Authorities, the consolidated figures cannot tell us what the total change is in the overall Government spending, taking one year with the next, which is of course, what the Chief Minister in the past has said we should do rather than compare the original estimate with the forecast outturn. He said what we should do is compare one year with the next. Whenever he has felt, in fact, that the comparison with the estimates did not reflect too favourably on him. We see this year how the figures in the forecast outturn have been affected by the result of the higher level of receipts by the Electricity Authority in the change we have just made to the book. If the Authority had not been there and it had still been the Electricity Department, the higher income that they have received from commercial work would have been shown as a higher level of Consolidated Fund revenue, but because it is the Authority which requires less money to fill the gap between its income and expenditure, the expenditure is being reduced on the Government side of the equation. This, of course, will enable the Government to say that expenditure is spot on with the estimate of a year ago, but it means that in comparing Government expenditure increases over a number of years, one needs to add back the separate revenue and expenditure flows in the Agencies. This was the reason why I put a recent question to the Government asking for the forecast outturn of general Government revenue and general Government expenditure, taking into account this overall figure. Regrettably, I did not get that information at Question Time but in fact I have had it today from the Chief Minister in his submission, but I am afraid too late in the day for me to digest it and alter the contents

of what I had prepared based on the published book, which of course, we are given with plenty of time so that we can do a conscientious job of analysing its contents. One strange feature about the extra income reviewed last Friday, from commercial work carried out by the Electricity Authority, is that the works appear to have been done without any extra cost to the Authority, it is total profit. There is nothing either in labour or any other costs and given that the income has been revised for commercial works from £1,035,000 to £1,500,000, that is to say, £465,000 worth of work and that for Techno medical services to the Health Authority it has gone up from £120,000 to £250,000 but there is no expenditure above the original forecast outturn shown as having been incurred to supply the extra work, because no revision on the expenditure side has taken place. In addition to this, on the other side of the coin in the case of the Health Authority which was originally estimated to have paid £120,000 to the Electricity Authority prior to March this year, we now learn that this is put at £250,000. We would like to know whether the forecast outturn of the GHA expenditure already included this £250,000, and if so where it is, given that the item 'equipment and related expenses for Medical Departments' shows a figure of £205,000 and this seems to be the nearest item of expenditure that might be capable of being debited with this amount. I appreciate that this, as with all Government accounts, are cash accounts which do not show unpaid bills, but if the cost of the work was reflected in 2005/2006 and the money had not come in 2005/2006, we would then have expected that the projected revenue for 2006/2007 would have reflected the amount that has now come in earlier. Therefore, since it does not appear on the expenditure side reflecting a higher level in the subsequent year, I am afraid the figures do not add up and I hope the Chief Minister will be able to give us an explanation, either in his reply or when we come to the Committee Stage and we have to vote money to these two Agencies from the Consolidated Fund.

Whilst on the subject of the Agencies, I would like to draw the attention of the House to the Social Services Agency budget which is wholly funded from the Consolidated Fund. In

2003/2004 the actual expenditure of the Agency was £3.4 million, which was well above what the Government had originally estimated that the Agency would require to carry out its work. In 2004 in the budget, the amount provided to the Agency was cut below the actual expenditure incurred in the preceding year. The cut was £500,000 and the budget was fixed at £2.9 million. The Chief Minister argued that the Government would not "ratchet up whatever the Agency spent by providing the same amount in subsequent years to the outturn that had been achieved, and that this was simply good budgetary discipline". The Budget of 2004 was the year the Chief Minister discovered budgetary discipline after the shock of the huge 2003/2004 deficit. However, we see now that the actual expenditure for 2004/2005 came in at a higher level of £3.5 million, which given that this is, to quote him, "a demand-led service" does not seem to me to be a great deal of ratcheting up. After all, it represented £100,000 increase on a year to year basis from £3.4 million in 2003/2004 to £3.5 million in 2004/2005. However, last year the amount was cut again since the Agency took over the cost of running the hostel and the provision for the services that it had been running for previous years was of the order of £3.2 million. The year that has just finished shows a forecast outturn below the amount approved by the House last year, an underspending of just over £120,000. During the year that this has been underspent, we have had the parents, the users and the workers complaining about lack of funds, with a recent demonstration outside this House asking the Government to address this issue in this year's Budget. I find it inconceivable that the Government should not even let the Agency keep the £123,000 less left-over from last year's budget, and has reduced the amount voted by the House in Head 5A whilst they boast of having a surplus of £20 million overall in their forecast outturn for the total in the Consolidated Fund and £123,000 is the contribution of the Social Services Agency to that £20 million surplus. Surely, leaving the £123,000 which had already been approved in last year's budget in the Agency where it could have been put to good use would have made sense, especially, since there is no other compelling greater claim on this money. Indeed, if we look at the provision for this

year we see that there is an additional £300,000 included in the budget, but this is entirely due to the estimate for salaries which goes up from £2 million to £2.3 million. We are talking of a £3.6 million budget for 2006/2007 compared with £3.4 million actually spent in 2003/2004. It must be the smallest percentage increase over three years of any of the Government Agencies. I would also ask the House to note that whereas the estimate last year showed an increase in staff from 147 in April 2004 to 153 in April 2005, this year the figure shows in the appendix in the footnote, is a reduction from 153 to 146 as at April this year. Given that there are complaints that staffing levels are insufficient to meet the demands made on the service, it is incomprehensible why the Government policy should be that they decide to increase the staff by six in one year, only to reduce it by seven the following one.

Another area of Agency expenditure that I wish to highlight, in the context of the general principles of the Bill, is the budget for Employment and Training. In last year's Budget statement, one of the areas of higher spending highlighted in the speech by the Chief Minister was that there was going to be £300,000 extra for this section of the Gibraltar Development Corporation, and that this was included in the budget last year. The contribution voted by the House under Head 1B was indeed £300,000 but it was not an increase of £300,000 since exactly the same amount was shown as the forecast outturn for the preceding year 2004/2005. In fact, a year earlier in the 2004 Budget, the amount that had been voted was £600,000, so far from being an increase over the preceding year of £300,000, as he said in his statement, it was in fact a cut of £300,000 from one year to the next. However, that is not the whole story because in 2003/2004 the provision in that year's Budget, made in 2003, included a contribution from the Consolidated Fund of £900,000. Now we have a forecast outturn for 2005/2006 and we find that not even the reduced £300,000 which was provided for and voted in this House, has been spent and the forecast outturn shows that the contribution from the Consolidated Fund is now down to zero as regards the forecast expenditure for this last year. Therefore, the picture here is that the training funds voted by the House

have gone from £900,000 in 2003/2004 to £300,000 in 2005/2006 whilst the House was being told that the item of expenditure was actually being increased from one year to the next and nothing has been spent of the £300,000 we voted. Worse still, the Agency incidentally has money from other sources. Namely, the Training Levy and the EU Social Fund, and it is even failing to spend the money from these sources. In 2003/2004, the year when the Government spending went up, training and development courses accounted for £1,505,000 out of a total budget of £3,653,000 for this department. In 2004/2005 the estimated expenditure was cut by £300,000 to £1,170,000 but the actual expenditure shown for the first time in this year's estimates only came in at £879,000. So we went from £1.505 million in 2003/2004 to £879,000 in 2004/2005, a drop of over 40 per cent. Last year, the estimate provided was higher than 2004/2005 at £1,237,000, just over £1.25 million. The forecast outturn is one third of the amount, only £417,000 has been voted out of the £1.2 million we were told a year ago was going to be provided. On the current year the amount estimated is £1,078,000, I think the House deserves an explanation as to why since 2003/2004 there has been this apparent failure to provide the training courses planned and budgeted for with money voted in the House. Presumably, when these things are put in the budget, it must be because the Government have come to the conclusion that there is a requirement for it, that they know how they are going to spend the money, this is not something that is demand-driven to the extent that the Government are saying, "well look, we have laid on all these courses and we cannot find takers". There is no evidence of that and therefore, we have supported this money because we give a lot of importance to what can be done to make our people competitive with all the competition in the labour market from outside of which we are always complaining. So if the Government are investing in equipping our own school leavers and unemployed adults with skills that enables them to take jobs in the private sector that are going elsewhere, that is something worth supporting and it is an investment as far as we are concerned. Therefore, we will support the expenditure in the

budget in this direction but we are concerned to see that it does not get spent and we would like an explanation.

Coming to the Improvement and Development Fund, we note that this year the Government expect to be able to spend £38.5 million and we have heard how this is expected to happen. The finance for this expenditure is predominantly the £31 million they anticipate they will have from the sale of properties. This House will recall that in previous years, when the expenditure has been £15 million to £16 million a year, the excuse has always been that it was not possible to spend more than this. Indeed, at one stage, the Chief Minister explained that the percentage of voted money actually spent was in the region of 75 taken one year with the next, over a number of years. Based on this he justified reducing the appropriation for the I&D Fund on the grounds that it was not going to be spent because it never did. On another occasion the House was told by him that the reduced spending had become necessary because excess demand meant that we would have used up all the available construction workers in Gibraltar and in all the surrounding area, and that this meant a lower level of workmanship being obtained from the use of less skilled workers, as well as less competitive bids coming in through tenders. I say this because this is, again, another example of the contrast in the philosophy being driven by the reality. Now, because there is a lot of money expected from the proceeds of property sales, it seems that none of these arguments hold water any more. Clearly, another example of expenditure levels being justified by arguments other than the real one, which is availability of funds. Of course, we may well find that the sales of property do not achieve the £31 million, just like the planned sales last year of £21 million did not materialise and the £13.8 million that was obtained is what was spent. Not surprisingly, when less money comes in, the projects that are programmed do not take off and we would not be surprised to see a repetition of this scenario in the current financial year.

To conclude from the recurrent revenue increases that I have identified, the other side of the equation is that the expenditure on this occasion has been much closer to the original estimate

than was the case in the previous years, and that for the year to year increases in some areas have been little more than inflation. The Government should therefore not be surprised if in this context, and as a consequence, it is reflected by persons in their dealings with Government by saying openly that the Government are short of money. If, as those concerned claim, the Government have been delaying payment on bills to their suppliers and yet at the same time pressuring people to make payments due to them on time to bring them within a particular financial year, if the Departments are given a directive to practically keep to the same level of real spending from one budget to the next, to the extent that Heads of Department have to submit monthly reports, which we were speculating in a previous Budget might well be sent by fax or e-mail rather than in person because of the consequences that might be accruing to the deliverer of the message, if the Arrears Collection Unit is given a brief to take a tough line in making people pay their dues and they do all these things following an announcement post-2004 that these policies are all designed to rake in extra money alongside additional revenue-raising measures. If the Government state that this is to restore public finances from a deficit to a surplus and put Government accounts on a sound footing, as they have announced when the measures started coming in over the last two years, and in last year's Budget they claimed that all this was required to finish up with a budget surplus of a not very impressive £3.25 million, then of course people conclude that the Government have got a problem of keeping their books balanced and openly say so. What is obvious is that in addition to the extra collections and the extra revenue-raising measures that they have brought in, the bulk of the reserves are the result of sales of land and property which has been the product of investments of previous Governments. What is obvious to everyone is that if one sells off land reclaimed on the East Side for £20 million and the £20 million is placed in a bank account, then clearly it produces an increase in Government income and the reserves are £20 million higher. Obviously, it is a jolly good thing I ignored the constant calls from the Opposition Benches not to continue with the East Side reclamation when it was being done with building rubble, which

of course they continued doing since 1996, and it is a good thing that it is there as an asset that belongs to the people of Gibraltar and that the use of it, when it is put to additional use, will be one that will bring benefit to Gibraltar. Although of course, whether the best use is the one that is being planned for it or not is a separate thing on which judgement is reserved. Of course, if the sale of land and property which has been carried out produces £42 million in company cash holdings, and instead of this money being put to use to finance a house-building programme that people can afford to buy, a scheme is brought in that gives priority to those who have sufficient money to buy the property outright at 100 per cent, then obviously the Government are likely to use less of that money on housing than they otherwise would and consequently have higher cash balances in the company and claim higher reserves. Equally, if the MOD releases surplus land and property to the people of Gibraltar, and this is sold by the Government to the highest bidder at the sort of prices that have now become prevalent in Gibraltar, well beyond the reach of ordinary people, then the Government can say, as they are saying, that they will receive £31 million this year to spend on capital projects. Getting something for nothing and selling it for as much cash as one can get, or exploiting assets created by the efforts of others, does not require a great knowledge of economics nor any particular skill or policy on the part of any Government. It is the easiest thing in the world to do. Look, one can sell off all the family silver and put the money in the bank but that is not necessarily a wise thing to do and it certainly does not mean that one is any better off. That is all that this Budget is about. That is all that the general principles that we are discussing consist of. An analysis of this cash mountain, created by selling off everything in sight, because the Budget does nothing new in other directions. The real worries of the average Gibraltarians that are being pushed out of their homeland, and being pushed into living on the other side of the border, is not addressed in the Budget. The fact that as a small businessman many are facing increased costs placed on his shoulders since the last election and having to compete with alternatives from across the border with lower operating costs is not addressed. The fact that

workers find that the jobs for the locals in the private sector are tougher and tougher to get and that the competition for these jobs from outsiders means that the only secure level of employment now existing in the public sector is not addressed. The fact that the Government part of the public sector now no longer has the long-established policy of priority for locals over outsiders, that this is now gone and instead the opposite seems to be true, with outsiders getting better pay and conditions based on the mistaken idea that they can come here and teach us how to do things properly, when frequently it is those who come who have to learn from us, something that no doubt the Chief Minister in his reply will be able to add to the list of things that make me a pseudo-nationalist. The fact that the structure of Government Departments and Agencies, priority of employment for Gibraltarians and priority in promotion prospects for those within the Service are now things of the past, none of these concerns in none of these areas by any of those groups of people are being addressed. The fact that the bulk of our very bright children that our schools produce and who do so well when they go to the UK to study, have little future to come back to and that very few come back, that is not addressed. Well, I do not know how many of them are answering phone calls in the gaming industry, which seems to be the ones who employ everybody, but I cannot imagine many people with degrees doing that. There are concerns here that we bring to this House because that is what we hear from the people who approach us throughout the year. That is what we are in the House to do, to bring to the notice of the Government, to bring to a debate in the House what our constituents want us, as their elected representatives, to raise and highlight. The Government have failed to even accept that these are real life issues, they laugh when I tell them about it, they think it is a big joke. They fail to accept that these are real life issues and that we are reflecting here not what public opinion transmit to us, instead they insist that we invent these things in order to undermine them. It should not be that they think we are undermining them because otherwise he would have nothing to laugh about. Well, we are not inventing them but clearly and regrettably, since they do not believe us, and I wrote this before I stood up to talk and I am

sitting down in the knowledge that it is true because it has just been confirmed, they do not believe us. We do not expect them to deal with these issues and therefore the people that have been asking us to bring them to the House and raise them, hoping to see some recognition from the Government of their concerns in the areas that I have spelt out, will once again this year be disappointed and know that the shortcomings which I have identified will continue and grow in the next 12 months. Clearly, in response to the effect of the revenue-raising measures that have been announced towards the end of the Chief Minister's speech, we would need to study that in greater detail than simply hearing them spell them out, but there are at least two items that I can say we have great pleasure in supporting, because they have been pinched from our manifesto of 2003. Two and a half actually, because the road licence is going to be made free for over 70's and we suggested it should be abolished altogether. Let me say on this one I do not have to declare an interest because I am not yet 70 and I cannot drive anyway. We will, of course, be supporting the Budget as we do every year and the Estimates, and I feel we have given this matter the due consideration and seriousness it deserves.

MR SPEAKER:

While I am sure her Hon Colleagues will stand in admirably for the Hon Miss Mari Montegriffo, I very much doubt they will match her style of delivery, with the greatest respect to the two gentlemen concerned. I am delighted to hear she is making satisfactory progress towards full recovery and I am sure all the House join me in wishing her a speedy re-appearance in this House fighting fit.

HON MRS Y DEL AGUA:

Mr Speaker, this year's budget for the Ministry of Social Affairs will, if approved by this House, be close on £20.5 million in

recurrent expenditure, nearly £1 million more than last year. In fact, the budget for the Ministry of Social Affairs has increased by £6 million in just three years. Considering the very low base that this Government inherited in 1996 in relation to Social Services in general, both in financial terms and in the actual delivery of services, some of which were inexistent, I will not be discouraged from saying as often as is necessary, despite the constant, attempted denigration of our achievements by political parties and others, that whilst there is still more to be done I am proud of the huge amount of investment in both financial and human resources that this Government have made for the benefit of our community.

The Ministry of Social Affairs has to date expended in excess of a staggering £100 million. In 1996 the number of persons employed to deliver social services was 29. Today, the Social Services Agency have a total of 156 employees, not 147 as the Estimate Book shows, and I will explain during the Committee Stage why this is the case. In addition, when the Elderly Care Agency was established and took over the running of Mount Alvernia and the Jewish Home, the staff complement was 158. Today it stands at 243, nearly double the amount of employees. This amount of expenditure, the huge increase in human resources and the many and improved services that we have been able to deliver, cannot possibly be shunned by anyone except by those with ulterior political motives. Looking back over our three manifestos, the list of commitments that have been met to date pertaining to my Ministry is quite impressive, if I may say so. The progress that has been made by delivering on these manifesto commitments, and indeed, other measures which were not included in the manifestos, can be summarised as follows.

From a very small team of Social Workers running a very limited service as best they could, from very cramped premises with very minimal facilities, the setting-up of a statutory Social Services Agency has allowed these services to expand and develop in an unprecedented manner. Children in care have moved from what was basically an institution with a tremendous

stigma attached to it, to small group homes in the community, leading as normal a life as possible alongside their peers. The days of clothing these children with hand-me-downs and staff having to raise funds for an occasional holiday abroad for them, are thankfully long gone. Child fostering legislation has been introduced. A Court Social Work team has been set up with the appointment of two new Social Workers. The backlog created in the production of Court Welfare Reports, mostly due to the unfortunate increase in divorce cases over the past few years, will thankfully be cleared by September of this year. Dr Giraldi Home has been divided into three separate flats to allow more independence and privacy to the residents. Staffing has never been higher. The Social Services Agency is fully aware of the residential needs that are foreseen in the short, medium and long term and plans have been made to meet those needs when they arise. In the short term, two residents of Dr Giraldi moving out to independent supported living, will release two beds for people who might require immediate residential care. Architects have for some time now been working on plans to provide more extra living space to meet medium and long term needs. A respite service has been introduced which has been steadily providing increased hours over the years at a cost of more than £500,000. New recruitment procedures and higher standards of competences of support workers has made it increasingly difficult to make suitable appointments and this unfortunately, has led to the service suffering a considerable decrease in the past ten months. Since then, Government have unsuccessfully been pursuing different avenues, in consultation with the Disability Society, including contracting out the hours but I am pleased to say that we have now managed to recruit sufficient new staff, with a level of competence that we all expect and the service should resume very shortly. Works to create an extra bedroom within the respite flat are to start this summer. The allowance paid to disabled people and which had been frozen between 1988 and 1996, has been increased by 70 per cent. As already announced by the Chief Minister, this allowance will again increase by another 20 per cent. Government have created a fund to provide free mobility aids to disabled people, we also fund the operation of a Shop Mobility

Centre which gives disabled people more freedom of movement. This freedom of movement, which so greatly adds to the quality of life of disabled people, has been further enhanced by the provision of lifts in many Government estates. In addition, for the first time ever, people with mobility problems can now make use of our new public bus service, which specifically provides spaces for the disabled which can be accessed via motorised ramps. A purposely-designed swimming pool with very specific features for the safe use and enjoyment by the disabled and the elderly was inaugurated last month. Many local streets have been refurbished and reconstructed in a disability-friendly manner and there is an on-going programme for public sector projects to continue focusing on the needs of the disabled.

Turning to the elderly, our progressive and structured stand for the elderly has at its core enabling them to stay at home for as long as possible, followed by increasing levels of support as need and dependency increases with growing age. Staying at home for as long as possible is facilitated by an on-going programme of lift installation in Government estates, by the delivery of domiciliary care which provides personal care at home, and by this Government's decision to fund and properly resource four day centres which provide meals and companionship to our more vulnerable elderly. For those who need just a little more sheltered environment, we have built 86 flats at the hugely popular Bishop Canilla House and 140 more are in the process of being built within the Waterport Terraces project.

For those who can no longer cope at home, despite the levels of support that I have already mentioned, the next stage is residential care. Currently, this is delivered from Mount Alvernia where residents now receive quality nursing and personal care in a building which has doubled in size and been refurbished to a very high standard. Financially the elderly have also benefited from the policies of this Government. Income tax has been effectively abolished for the vast majority of elderly people. Over 700 senior citizens have taken the four opportunities that

we have offered them to complete their social insurance contribution records, thereby entitling them to a higher State pension. We have introduced a scheme that guarantees a minimum income to elderly people. We have issued high interest, tax-free pensioner bonds to boost savings income. We have abolished tax on savings income and death duties and we have frozen house rents and we have provided free TV licences. In the area of Social Security, social assistance payments, which had been static for many years, rose by 35 per cent in 2003, especially targeting those in genuine financial need. These payment were again increased by 3 per cent in 2004. Maternity Allowance has been extended from 14 to 18 weeks. The combined parental earnings limit for entitlement to the Child Welfare Grant has been increased from £30,000 to £35,000. The lower income level at which the grant is paid at a higher rate has also been increased from £15,000 to £17,500. Unemployment Benefits have increased by 35 per cent. Industrial Injuries Benefits have increased by 33 per cent. The Maternity Grant has increased from £36 to £360. The Death Grant has increased from £72 to £360. Community Service Orders have been introduced, which provide Courts with another sentencing option and which has also proved extremely beneficial to those offenders for whom a stay in prison would have been detrimental. We have assisted Women in Need through the provision of a shelter for women who are victims of domestic violence, together with their children and through financial support. Hon Members will note that the subvention for Women in Need will increase this year from £30,000 to £65,000.

Unlike previous administrations, we have taken the drug problem in Gibraltar seriously. Firstly by admitting that it exists, and secondly and most importantly, by actively tackling the problem. In consultation with the Drugs Advisory Council we have devised and are implementing a drugs strategy, managed by the office of a dedicated Drugs Strategy Coordinator. We have established a Government-funded rehabilitation centre in Gibraltar which also provides after-care services. Current provision to assist persons with drugs problems however, only caters for individuals aged 17 or over. I am pleased to say that

this year we will be starting on a programme to assist young persons below that age via a community-based service. The service will provide a range of responses that have the flexibility to be adapted to each adolescent's needs and which will be comprised of a four tier programme. Tier One establishes a referral point where initial assessments can be made. The emphasis at this point would be on advice and information for young persons and their parents. The type of intervention undertaken at Tier One, will identify any young persons who require continuing support or specialised help and these will move on to Tier Two. Young persons at this level would be dealt with under the auspices of the counselling and therapeutic team, who would work with the young persons directly or who would supervise sessionally-paid qualified therapists. Tier Three will address young persons where Tiers One and Two have not been successful. Additionally, other young people, after initial referral and assessment will automatically enter this stage. Examples of this would be juveniles who are facing drugs charges in Court, those who are placed on probation by the Courts with the condition to receive counselling or referrals from other quarters. This would be the most multi-disciplinary orientated tier in the service. The Four Tier system recognises that there are a very limited, thankfully, number of cases where the young persons drug use has escalated to a degree where medically-supervised detoxification is required. This invariably means residential rehabilitation. Entry point into Tier Four would be strictly under the supervision and recommendation of the Consultant Psychiatrist. Because of the very limited number of cases that would require this level of intervention, providing this service locally in a residential setting would not be economically viable, or indeed beneficial to the welfare of the young person due to issues of isolation. As and when the need arises for this sort of service, assistance will be sought from specialised centres outside Gibraltar.

As hon Members are aware, Government have also introduced stricter and more effective legislation to combat under-aged drinking, recently passed unanimously by this House. The measures that I have mentioned up till now are the major social

policies that this Government have introduced to date and I hope by listing them in this manner, although I appreciate that Opposition Members might not enjoy it, will serve to give an illustration of how much of the over £100 million I mentioned earlier have been spent over the past ten years.

Moving on to the present, I am pleased to say that the vast majority of the commitments contained in our last manifesto, which fall under my Ministry, have already been met only two and a half years into this term of office. In my last Budget speech, however, I said I was hopeful that a scheme to assist divorced women who lose entitlement to the husband's pension, would be implemented in the outgoing financial year, as well as giving women who are paying or have paid married women's stamps an opportunity to pay arrears. Although it has not been possible to do so as soon as we would have liked for very legitimate reasons which I would not like to go into now but which I am happy to share with Opposition Members outside the Chamber, I sincerely hope that these two commitments will be met before our term of office is over, and if possible, during the course of this financial year.

Another of our pending commitments is the introduction of a comprehensive Children's Ordinance. This has turned out to be a very complicated piece of legislation but I am pleased to say that a final draft is now ready and will be considered at Council of Ministers as soon as practicable. Other pieces of important child protection legislation which are not covered by the Children's Ordinance are also in the process of being drafted. Delays to the commencement of works on the construction of a new prison at Lathbury Barracks have been experienced. These should commence shortly and hon Members will note that there is a provision of £1.4 million in the I&D Fund for this purpose. I mentioned earlier in my address that one of the measures to assist elderly people to stay at home for as long as possible was the provision of home help or domiciliary care. I am very pleased to say that funding to deliver this service will be nearly doubled this year from £191,000 to £350,000. Currently home help is being delivered to 39 elderly people. The increase

in funds will allow this service to be delivered to approximately 83 households, thereby having a very significant impact on the waiting list. Government also intend to establish a new residential facility for those elderly people who need or wish to live in a sheltered and supervised environment, but who do not need the high level of nursing support currently being delivered at Mount Alvernia. It is also intended to introduce, during the course of this financial year, several other measures which are not manifesto commitments. Currently, when a disabled adult passes away in the majority of cases the parent or the relatives are not entitled to the death grant because the deceased has never worked and therefore not contributed to the Social Insurance Fund. This will no longer be the case, the grant will now be paid to the next of kin out of the Social Assistance Fund. As in the case of mandatory scholarships, it has become increasingly difficult to effectively apply the means testing criteria for eligibility to Maternity Grant to self-employed persons. Again, as already announced by the Chief Minister, means testing will be removed and the grant will now be awarded in respect of all children regardless of the joint parental income. The grant will be increased from £360 to £400. Since the introduction of the Minimum Income Guarantee Scheme for elderly people on low incomes, we have periodically changed the eligibility rules which has allowed more people into the net. Last year, in meeting another of our manifesto commitments, we extended the scheme to those who are tenants or heads of the households. This year the scheme will also be extended to elderly people who live in the homes of their relatives. In effect, this move will ensure that every single elderly person in Gibraltar whose income is below the set limit will be entitled to minimum income. Disabled people, who in normal circumstances have to live with their relatives and the majority of whom will not be in receipt of any form of income when they reach retirement age, will particularly benefit from this move. In addition, I am pleased to say that the Chief Minister has again increased the minimum income level by another 5 per cent. As we have already heard, other measures that will benefit senior citizens this year are a free bus service for those over 70, the abolition of payment of road tax for elderly people over 70 when

the vehicle is registered solely in the person's name and driven solely by the elderly person, and the abolition of income tax on occupational pensions for those over 60.

So, on this positive note and with my usual words of appreciation to all members of staff of my various departments for their unstinting support and cooperation, I round up my Budget address for this year and thank Opposition Members and Mr Speaker for their kind attention.

HON C BELTRAN:

Mr Speaker, housing being such an important area of Government business, I would have hoped that there would be more Opposition Members present to listen to what I have to say, but let me say nevertheless, that much progress has already been made and will continue to be made in housing, the area of Government that I have been responsible for over the last ten or eleven months. Even as construction works proceed at a fast pace on the 396 quality, affordable homes and 140 Bishop Canilla-style flats for the elderly at Waterport Terraces, Government's housing programme continues to unfold with the on-going preparatory works and the process of allocation of a further 900 flats in the South District projects. All these quality affordable homes, together with the scheme to sell empty pre-war houses in the Upper Town and Rosia Courts, that have already been allocated, should, I believe, satisfy the current demand for this type of property in Gibraltar. If we add to all this the plans that will be announced very soon now to build new houses for renting, I have little doubt that the back of the housing waiting lists will have been broken. Incidentally, I wish to point out that the handful of Gibraltarians living in Spain who have applied for any of these very affordable homes, serves to dispel the myth that this Government, to put it in the words often used by the Opposition, drive Gibraltarians away from their homeland. The Government have also now developed a scheme that will meet the wish of many sitting tenants of pre-war houses, who have wanted to buy but have been frustrated

because other tenants have not wanted to. This scheme now allows pre-war dwellings to be sold to sitting tenants, even if other tenants in the same building do not wish to buy their flats. The scheme is based on the establishment of a separate management company for each such building, with Government being responsible for the maintenance contribution of Government tenants who do not purchase. The Government will retain ownership of flats whose tenants do not buy and Government will remain the landlord of these flats. Because the new scheme involves new documentation, the Government are now proceeding with three test cases to assess, three or thereabouts, to test and assess its documentation and the scheme. Subject to successful conclusion of these test cases, the Government expect to make the scheme available to all sitting tenants of pre-war housing in the autumn. However, a good and effective management of an essential area of Government as is housing, goes beyond providing the number of flats that are necessary to deal with the needs of our community at this moment in time, vital though this is and doing it as we are. Therefore, apart from and in addition to the construction programme and other schemes that I have already mentioned, Government continue to be very much committed to providing quality, cost-effective services of many different types to their tenants in the various existing housing estates, as well as a continuing general programme of capital projects that includes major refurbishment works. All this as very much part and parcel of our aim to address the continuing short and long term needs of our tenants. My contribution will therefore focus on these three main areas. Namely, new constructions and schemes, which I have already mentioned, services, as the second area and major refurbishment capital projects as the third area of my intervention.

I go on to services now. The Ministry for Housing offers a large and very varied amount of services that are sometimes taken for granted, in spite of their representing a big investment by Government and which, not for this reason alone, require enumeration and further explanation. The relatively new centralised reporting office situated at the City Hall is working

very well, I am pleased to say, and is certainly an improvement to our tenants. This is now a much more customer-friendly and more accessible counter that may be contacted personally or by phone. The intention is that tenants' enquiries may be initiated there and subsequently followed-up by our officers with Buildings and Works or any other agency used to deliver our services. This office also carries out the function of keeping tenants informed regarding the progress of their reports, and in assuring that the necessary action is taken to resolve the matter in question. This system includes enquiries in respect of response maintenance, the cleaning within public estates, the replacement of communal light bulbs, housing environmental health issues and Government married quarters. The services are closely monitored and when necessary enhance and from time to time further new services are considered for inclusion if required. The purpose of the centralised reporting system, which is to provide one source of contact for members of the public when seeking relevant information or assistance, is proving to be a success. In order to cater for such improvements a centralised telephone calling system has also been installed to help improve customer care. The Ombudsman recently announced in his Annual Report that despite Housing and Buildings and Works having received a higher number of complaints relative to other departments, there is nevertheless a reduction in the number of complaints when compared to the previous year. This is, I believe, a reflection of the major effort being made by members of staff within the Ministry for Housing and also, obviously, improvements attributed to the level of services made available. I am also grateful to the Ombudsman who has made some interesting suggestions in dealing with complaints, and some exchanges are currently taking place with the Principal Housing Officer in identifying areas that may be improved. That said, I am committed to seeing a further reduction in complaints and, where necessary, will help to facilitate and encourage ways to ensure that this is pursued vigorously with the importance it deserves.

The Housing Report is part of our services. I am very pleased to state that Government's commitment to produce and publish

a Ministry for Housing Report has now been discharged. The first report for 2005, which has already been distributed to Government tenants and residents of private estates, is informative and demonstrates palpably Government's commitment to furthering openness, transparency and accountability. Those households that may not have yet received a copy for whatever reason, and the public in general of course, may obtain one from the Housing Ministry offices at the City Hall. The aim of this comprehensive report is to provide tenants especially, but the public in general with useful information and details of current housing services and reforms, as well as future Government plans in housing.

The asset register. There has been progress with the development of the asset register. Essentially, I can confirm that external surveys of flats have now been completed, although internal surveys require substantial further development. It has to be said that this conditioned survey programme is a slow and tedious process by its very nature, bearing in mind the many properties involved and the difficulties sometimes encountered when requiring access. Nevertheless, despite this, the information made available will prove invaluable to the Ministry for Housing when pursuing a plan and preventative maintenance approach to Government housing.

Much is often made by a few people, I am talking about empty flats now, much is often made, as I say, by a few people who wish to create the erroneous impression that there are large numbers of flats lying empty and that Government somehow are very slow in allocating them. Neither assumption is true. The Ministry for Housing has been making every effort to put in place a strategy through Buildings and Works for the quickest possible return to the housing stock of empty flats requiring cleaning and refurbishing before becoming ready for allocation. These efforts have in fact succeeded in reducing the number of flats waiting to be refurbished from some 45 to 50 this time last year to around 27 now. Unfortunately, this increase in the rate of return of refurbished flats has begun to slow down recently, as indeed has the number of routine, daily repair jobs carried

out, as a result of the unexpected and unfortunate decision taken by the Transport and General Workers Union to withdraw the workforce from the productivity incentive bonus scheme and start industrial action. As is public knowledge, this has happened when Government insisted on a proper implementation of the scheme. The agreement, as its name clearly indicates, productivity incentive bonus scheme, allows for extra incentive bonus payments to be made to workers who have earned them. The Union insist that extra payments should be made to all workers regardless of whether they have earned them or not. This is unacceptable to Government. Given the situation Government, nevertheless, are taking steps to increase the number of houses that can be offered for allocation on a self-repair basis. It is also public knowledge that there are some flats that lie empty as a result of the abuse of tenancy agreements by tenants who are not occupying their flats, to the detriment of persons on the Housing Waiting Lists. In order to assist in recovering these flats for reallocation my Ministry, as is now known, have introduced a telephone recording system that is confidential and allows citizens to provide, totally anonymously, the address of flats which they consider to be empty. These details are then investigated by the Ministry, as it has done for many years now, whenever notice of such flats has been brought to its attention either by members of the public or through the work of its own officers. However, I wish to make it clear that there is a misconception as to the numbers and the reasons why these flats appear to be empty. Firstly and unfortunately, it is sometimes the case that a sitting tenant decides to reside somewhere else, either in Gibraltar or abroad, and his or her flat remains empty giving the impression that Government are simply taking an inordinate amount of time in allocating it to someone else. My Ministry closely monitors any such case that comes to our attention and action is taken as soon as possible, with a number of such flats already having been recovered through the Courts for subsequent allocation to applicants on the waiting list. It needs to be made clear, however, that the process from detection to recovery is lengthy, costly and complex. Secondly, certain flats may also appear to be unallocated when in fact the tenancy agreement has been

signed, but the tenants have not yet moved in for a variety of reasons. Thirdly, it is also the case particularly in the Upper Town area, that flats lying empty and believed by many people to be Government flats, are in fact privately owned. Lastly, there are some very old Government flats that are simply beyond economic repair and await demolition, which is something that is easier said than done for many reasons. Thus, this category of empty flat, also contributes to the popular misconception regarding the number of flats that are ready for allocation.

Whilst on the topic of refurbishment, I wish to make it clear that this coming year the amount of funds available for building materials has been increased to £1 million. Whilst these materials are always available in Gibraltar, one way or another, it has to be said that on occasions some suppliers find it difficult to maintain as steady a flow as we would wish, and this sometimes causes some delay. In order to address this, senior management working closely with the Procurement Office, are introducing new procedures to encourage suppliers to maintain the required constant flow. Speaking of resources, I am very pleased to say that the procurement process that was begun in March of this year, for the purchase of almost £200,000 worth of vehicles, equipment, tools and plant for the Buildings and Works section of my Ministry is well under way.

Parking facilities for tenants as part of services. The House will recall that Government introduced parking restrictions within Glacis Estate about a year ago, in order to improve the available parking facilities for the benefit of residents. Essentially, this has been a one year pilot scheme and the monitoring exercise having now been completed, general parking issues have been discussed with the Glacis Estate Tenants Association and a more permanent system implemented. I plan to apply lessons learned at Glacis Estate to other Government estates, obviously taking into account the particular individual facilities and needs of each estate. That said, I would like to stress the importance of the tenants' involvement in such initiatives, and it is thanks to the proactive participation of the Glacis Estate Tenants

Association, that such a pilot scheme has been possible. I therefore would like to express my gratitude to the Chairman and all the members of the Glacis Estate Tenants Association for their invaluable support and cooperation in these developments.

In keeping with my Ministry's mission statement, orientating housing services to the needs of the community, I meet regularly with established tenants associations as well as with individual tenants and their families who wish to see me, thus providing a clear process of consultation through which the real needs and concerns of people in the community are heard and acted upon as necessary. In this way too, ordinary citizens become true participants in the development of effective, far-reaching housing policies.

Cleaning services. One very clear success story in respect of services has been the continuing arrangements for the cleaning of Government estates. Apart from the effective day to day cleaning service, there is a general programme of street flushing as well as the prompt removal of unwanted furniture or domestic appliances, and the quick replacement of fused light bulbs in communal areas. The work carried out by this company is regularly monitored, and this, together with reports received from tenants generally, can leave no one in any doubt as to the vast improvement that these arrangements have made to their environment, and therefore, the quality of daily lives of thousands of Government tenants. Another example of change for the better, brought about as a direct result of listening to the needs of tenants, is the request made by the Laguna and Calpe Tenants Associations for Government to clear certain open areas in these estates, which serve as indiscriminate dumping grounds and where sheds, huts and chicken coops have, unfortunately not for the first time, been set up and which present a health and safety hazard. The Ministry for Housing is working closely with the Town Planners Office and Technical Services in effecting the necessary works. These are but two of the Government offices with which my Ministry closely liaises and to whom I am very grateful. I take this opportunity to

recognise the big contribution that other Departments make towards the successful completion of our work in the Housing Ministry. There is the Education and Training Department, who assist us with training programmes for our staff as required from time to time. The Ministry for Social Affairs who give very valuable assistance, primarily, to their social workers. The Gibraltar Health Authority, who through their medical staff and the Occupational Therapy Unit provide invaluable advice and professional assessments involving medical issues. Last but not least, the Royal Gibraltar Police for their unstinting and continued support in housing matters in the community. Then, of course, there are the members of the statutory committees who voluntarily and generously give of their time to carry out what is very often pretty serious work and very difficult decision-making. All these organisation, Ministries and individual persons, to all of them I am truly thankful.

Playgrounds in Estates. Prior to the allocation of responsibility for children's playgrounds to the Sport and Leisure Authority, the Ministry for Housing has made the best use of existing suitable open areas in some Government estates and constructed some safe purpose-built playgrounds. This has happened at Glacis, Alameda and Moorish Castle Estates, as well as in the Witham's/St Joseph's Estate area. Further developments in the provision of playgrounds, including in housing areas, will of course now fall within the responsibility of my hon friend the Minister for Sport and Leisure.

New legislation. In August 2005 important amendments were made to those provisions in the Housing Allocation Scheme that deal with the allocation of points for waiting time and also the qualifications required of persons who wish to become applicants for Government housing. These changes are now seen generally as having introduced a much greater degree of fairness, particularly in so far as the qualifications aspects of applicants are concerned. Having said this, I do wish to emphasise that Government are fully committed to the needs of those members of our society who require a greater degree of support, due either to medical considerations or as a result of

social hardship that has arisen through no fault of their own. The Government care for these persons, and we will continue to provide help and support as far as it is possible, whilst not forgetting of course those other persons on waiting lists who wait patiently. I can assure them all that the future looks bright.

In the wider context of housing legislation, the study that was commissioned some time ago into the laws administered by the Ministry for Housing has been completed, and Government are now considering the proposals that have been made. These include the widening of the Ministry's powers needed to address effectively the more complex housing issues of the modern society, as well as improving the necessary corresponding controls on public housing. The new legislation under consideration makes important provisions in areas that have been shown over time to require attention. These include, provision to serve a direction on an employer of a tenant who is a judgement debtor as a result of his arrears of house rent, provision to create an offence for any person who occupies premises without authority, or gives false or misleading information in an application for housing, provision to make it an offence when a tenant carries out unauthorised development in a Government house or in the immediate vicinity, the creation of a Housing Appeals Tribunal, the merger of the three statutory committees into one, amongst many other reforms. There have also been proposals submitted to tackle the different levels of anti-social behaviour in housing areas. There will need to be established a unit, properly staffed and equipped with the necessary powers, to document and react to acts of anti-social behaviour. These officers will be able to interview victims, witnesses and perpetrators, including the parents of children and young persons, and take a range of positive action.

I go on to the third area of my contribution, capital projects. I now wish to highlight further developments in respect of capital projects. This has, and will continue to attract, Government investment in relation to a range of major works from general beautification, refurbishment and replacement of roofs to general repairs and the installation of new lifts. This lift

installation policy has given the elderly a new lease of life, allowing them to enjoy their family homes much longer as well as making it possible for them to go out more often. I should point out that since 1998 expenditure in all these projects has exceeded £20 million as at the end of this last financial year. As an example I can say that this last year over £2.4 million was spent on a variety of different projects that included the Alameda Estate ball playing area, the installation of the lifts at Knight's Court as well as a playground for the area, the Glacis Estate childrens playground, the lifts installed and general refurbishment works at St John's Court, the Moorish Castle Estate playground, Upper and Lower Witham's House refurbishment and balcony replacement, the Varyl Begg Phase 2 and new lifts, roofs and general refurbishment of four blocks, and the commencement of Varyl Begg Phase 3, which will include works on four more blocks, and more recently, the commencement of general refurbishment works and lift installation at Penney House. To all this needs to be added an ambitious programme of windows and shutters replacement and the very specialised conversion works, such as those specified by the Occupational Therapy Unit of the Gibraltar Health Authority.

A further injection of funding will be available this year, as necessary and in line with Government policy, to look after and maintain our housing stock. To summarise, the following are the projects that Government currently have in hand. The new developments for home ownership, a new Bishop Canilla-style building that will house senior citizens, a new development soon to be announced for Government-rented accommodation, a continuing programme of windows and shutters replacement, a continuing lift installation programme, a continuing programme of maintenance and repairs, works on external retaining walls, a continuing programme of maintenance and repairs at Edinburgh Estate and Bishop Canilla House, the Varyl Begg Estate Phase 3 of works on the roofs as well as the installation of lifts, works on the Alameda Estate dry chutes, and last but not least, a variety of other major as well as smaller projects. Whilst not forgetting the heavy investment that Government continue to

make in repairs and refurbishment works at Harbour Views, Brympton and other estates with similar historical needs. The House will no doubt appreciate that this major investment in new housing developments, including purpose-built housing for the elderly, in major refurbishment and repairs programmes, in continuing to enhance the quality of both the physical and the social aspects of the living environment in housing areas, and in bringing housing legislation to a standard that reflects the needs and realities of 21st century society, all of this shows the high priority that the Government give to the very important matter of being attentive to, and indeed acting on the existing and developing housing requirements of our community.

I wish to conclude by thanking those members of staff at the Ministry for Housing who through their hard work and dedication ensure a continuing and ever increasing level of service to the public in general. Thank you.

The House recessed at 1.00 p.m.

The House resumed at 3.00 p.m.

HON C A BRUZON:

Mr Speaker, if I could just make a light hearted comment as I start, it is as follows. A modern poet observed recently that God gave us two ears and one mouth so that we would spend twice as much time listening as we do talking. That is my style so I will be brief, but of course talk I must because that is the custom at Budget time.

Social affairs and housing - these are indeed the two areas that I shadow as Opposition Spokesman and these two Ministries are, indeed, and can be sensitive and not always easy, because we are constantly dealing with people or some aspect of peoples' lives. Let me start with the Ministry for Civic and Social Affairs and make some comments concerning the disabled and the elderly. Contrary to what Government Ministers sometimes

say that the Opposition always react negatively to anything that Government say or do, I was left with no choice since I was elected to this House nearly three years ago, to react to the Government decision to make cuts in the help given to a group of people who we all know are the most vulnerable of our community, that is, the disabled and their families. I am talking, of course, of respite care.

It is the House of Assembly that approves, after proper debate has taken place, what the funding should be for this important service that provides demand-led expenditure. It was for this reason that in November last year we issued a press release expressing concern in connection with the problems that were affecting the Social Services Agency, and in particular the fact that there had been no delivery of respite care service for persons with disability since mid-June. Given that the families concerned had apparently been told that funding was available for 800 hours of respite care per month in the budget of the Agency, it is unacceptable that staffing problems should be given as the excuse for the failure to provide this service. We urge the Minister responsible to give the highest priority to this matter and restore the service. If the Government had rightly identified that these families needed to be given support by having 800 hours a month of respite care available for the family members with disabilities, this support in my view should have been given and not cut to the extent that it was. When the Dr Giraldi Home was built by the GSLP administration, indeed at the request of the Disability Society, it did include provision for respite care, and just as the GSLP introduced improvements after 1988, it was only natural and right that further improvements should have been carried out by the GSD administration after 1996. It is understandable that in any area where additional services are provided, demand for such services increases from time to time. These increases arise in particular in instances where family carers of persons with disabilities themselves start having problems of age and infirmity and face an almost impossible task of having to cope with the needs of their loved ones. That, as we know, is what respite care after all is all about.

Turning now to the elderly, we are indeed as we know living in an ageing society. People are living longer, not just in Gibraltar but in the rest of Europe and in many other places the world over. So here in Gibraltar, as in any other country, it is understandable that increasing provision has to be made to care for the elderly. A simple example, if some years ago the average age life span was 65 or 70 years, now the average age could be something like 85 years. So the fact that more money is needed is because the demand for services to be provided for our ageing population is greater. People with disabilities are also living longer, so the same principle applies. More money has to be invested and allocated for these services because the demand is greater, and this would happen or should happen under any Government. What is unacceptable, in my view, is that once funding has been approved by the House of Assembly for a specific need, as in the case of respite care, the service should suddenly stop to the detriment of the weak and vulnerable. For this reason I am critical of the GSD administration.

Turning now to the Ministry for Housing, let me start by saying that when the Government announced in August last year that at last a building contract had been signed for the construction of Waterport Terraces affordable housing project, and gave details of the selling prices, there was an immediate adverse reaction on the part of the majority of people who come to see us, the many people I spoke to in the street, and from every single family member that I have visited since the announcement was made. The party in Government is on record as having said that the reason why they held back from building these homes earlier was in order to allow house prices to rise. This has proved to be a very seriously misguided policy. Why? Because it has indeed had the effect of driving people who just cannot afford to live in Gibraltar to go and live in Spain. The Government, in an attempt to ridicule the Opposition's claim that many people are being forced to move to Spain on account of their mistaken policy on housing, stated in their press release of 10th January this year, and I quote, "it is interesting to note

that despite comments by some people suggesting a much larger scale, only 28 Gibraltar belongers living in the Campo Area of Spain have applied to buy properties, despite being available on 50/50 terms". Do the Government not realise that not all Gibraltarians living in Spain can actually afford even the 50/50 terms? Not only that, the fact that there were only 28 applicants for Waterport Terraces from Gibraltarians living in Spain, is not and cannot be taken as evidence that there are very few Gibraltarians living there. If it is evidence of anything, it is evidence that once they have settled down on the other side of the fence, having made a commitment to purchase or rent, bought a home in Spain, it is not always easy to attract them back to Gibraltar. Rather than the fact that only 28 Gibraltar belongers living in Spain applied for Waterport Terraces being a cause for rejoicing, it is the very opposite. It is evidence of the sad truth that the longer people are settled on the other side of the frontier, the more difficult it is for them to move back to Gibraltar. The GSD concept of affordable housing is that priority for obtaining a home is not so much based on the need of the purchaser but on means, on how much money one has and whether one can afford 100 per cent of the price. It is based on means and not on need. This is just not helping those who are less well off, it is certainly not helping, in my view, the majority of people on the housing waiting lists.

What about the new pointage system introduced by Government shortly after the summer last year? The Minister claimed that the new procedure would prevent people on the waiting list being unfairly overtaken by others who were less time on the list, but the reality is that now applicants with bad living conditions have less chance of getting accommodation until they have been a considerable length of time on the housing waiting list. A comment that many people share with us is this: "What is the use of having thousands and thousands of points when the real problem is that Government have just not provided real affordable housing and housing for rental?". The Government seem to think that they can airbrush away their disastrous record on housing which has seen the waiting lists for Government accommodation triple in ten years, while in the

same period the shortage of available housing has caused prices to spiral in the market to unprecedented levels. The problem of shortage of housing that we have today is the result of ten years of failure to act and this is a fact that cannot be denied. I have written a number of letters to the Minister for Housing on behalf of the people who come to see me, in an attempt to give some urgency to our peoples' housing needs, but all I get is an acknowledgement from the secretary, for which I am grateful of course, but with no follow-up letter from the Minister giving me some kind of reply. Just as it is the right of any citizen to write to the Minister and the Minister will respond and write back, that after all in my view is his duty. So likewise, if an Elected Member writes to a Minister, in this case the Minister for Housing, on behalf of a constituent, the Minister has the duty to write back in a meaningful way. This is what Members of Parliament, among other things, are paid to do.

I must point out that despite the failings that I have identified in the Social Services Department, I must admit, and I think this is the honourable thing to do, that whenever I have had reason to write to the Minister for Social Affairs concerning one of our constituents, she has always answered my letters and not just acknowledged them, or has spoken to me on the phone about a specific concern that the member of the public may have shared with me.

Mr Speaker, the following thought, and I am coming to the end of my speech, the following thought is the thought that I have shared before in this House and I have shared it with the general public. We may well ask what the concept of good citizenship and moral behaviour has to do with the proper administration of Government finances. The reality is that economics has a lot to do with how people live and work and budget decisions can and does affect peoples' lives. Keeping people living in cramped and overcrowded conditions can and does give rise to all sorts of pressures between family members, gives rise in many cases to alcohol and drug abuse, and in some cases to domestic violence. All have encountered, I am sure, an increasing number of cases of anti-social behaviour.

All the beautification and external refurbishment of Government estates, the installation of some lifts, yes, these are good things, that is all fine, but Gibraltar is still suffering from an acute housing problem and the solution is taking far too long.

All of us who have been elected to serve the people of Gibraltar as Members of this House, must genuinely put the people first. The shortage of adequate housing for our people that we have today is the result of a very misguided policy on the part of the GSD administration, and this is a fact that cannot be denied.

HON DR B A LINARES:

Mr Speaker, I will be reporting to the House on my Ministerial responsibilities for Education, Training, Civic and Consumer Affairs giving an account of progress during the past financial year and pointing to future developments planned by the Government for the forthcoming financial year.

Education

The 14-19 Curriculum

I have previously informed the House of major and wide-ranging curricular reforms planned in the UK for the age range 14-19. The White Paper submitted by the UK Government in February last year, "14-19 Education Skills" has now passed on to an implementation plan which has been published earlier this year. I will not burden the House with details of this very technical document but it is important to note the overall aims of what is afoot in the UK.

The centrepiece of the programme of reform is the creation of a new national curriculum and qualifications entitlement intended to offer every young person a sufficiently broad education to be able to progress further in learning and into employment. But there will be a choice of routes for achieving this – young people

from the age of 14 onwards will be able to choose between pursuing general qualifications, including what is being called a new 'General Diploma', to be awarded to those young people achieving the equivalent of five A* to C grades at GCSE, including English and Mathematics, and new employer-designed 'specialised diplomas' which will develop young peoples' knowledge, understanding and skills through a mixture of general and applied education. There will be 14 sets of specialised diplomas at three levels up to advanced level covering the occupational sectors of the economy. In her foreword to the document setting out the implementation plan, Ruth Kelly the ex-Minister for Education says:

"Delivering the entitlement will require profound change in the education system. It will require diverse and autonomous institutions to work in collaboration to achieve more together than any single school, college or training provider can achieve on its own."

Mr Speaker, Members will agree that all this presents an exciting but also challenging scenario. Although these reforms have not yet reached the stage of legislation it is important for us to keep abreast of proposed changes in UK, as inevitably we will have to adopt and, as always, adapt these changes locally. For this purpose, the Department of Education and Training has widened both the scope and the composition of the existing 16-19 working group to consider these wide-ranging developments in UK, and in due course recommend to Government how to proceed locally. Regular weekly meetings are being held between members of the group as well as direct contact between school and advisory staff to consider all conceptual and logistical time tabling implications of furthering the joint efforts between our three institutions at secondary level, that is, the two comprehensives and the College, particularly at AS and A-level, in order to gradually offer a more comprehensive package to all students.

The National Agreement in the UK

Another important development in UK, which is bound to have implications and repercussions locally in the context of parity, is the National Agreement reached between the Government, the employers and the school workforce unions. Changes will take place to amend the current School Teachers' Pay and Conditions Document (the 'Blue Book' as it is called) which also governs the conditions of service of our own teachers. The NASUWT locally and the Department of Education and Training are meeting regularly to arrive jointly at a local workload agreement and the smooth introduction of the proposed new structures and responsibility allowances.

As I announced last year, in the UK the traditional graded management allowances are being replaced by what is being called 'Teaching and Learning Responsibility Payments' (TLRs). The aim of this change is to place emphasis on teachers' and, indeed, headteachers' roles in the teaching/learning process rather than the present overload of administrative chores. Full implementation of the new structures in UK is to be completed by 31st December 2008. Meanwhile, as I explained in my speech last year, all vacant management posts within the current structures in our schools are being filled at this stage with in-house acting appointments in order to ensure on the one hand the smooth running of the schools, but without perpetuating structures which may well have to change as from next year.

Performance Management

Performance management in schools has now become an established feature of the way in which the pay of teachers is managed. I am pleased to announce that the Government, in keeping with their policy of parity, will also be awarding to all teachers the latest national pay award in UK, that is, 2.5 per cent as from September this year and a further 2.5 per cent as from September 2007. As I announced last year as well,

September instead of April has now been established as the annual pay review date.

Maternity and Paternity Leave Agreement

I am also very pleased to announce the recent agreement between the Government and the NASUWT granting an increase of paid maternity leave to teachers from the present 14 weeks to 18 weeks (excluding holidays) and ten days as paid paternity leave.

Professional Development

A total of 41 teachers have been engaged during the last academic year in the leadership and management courses offered by Sheffield Hallam University, 22 have already completed their postgraduate Certificate; 19 are now working for their diploma; 13 are currently at different stages of their postgraduate certificate level and 8 teachers have already embarked on the Masters degree course. A total of 100 teachers have expressed interest in entering for the certificate course in leadership and management due to start in January 2007; 25 will be selected for entry in January 2007 and a further 25 in January 2008.

Higher Education

The fact that we are prepared to review and, indeed, widen and improve our post-16 educational provision given the important and far-reaching changes that are being planned in England, should not be seen as a sign of dissatisfaction with the achievement of our students locally in public exams today. The fact that every year over 40 per cent of our annual intake gain access to higher education is proof of our success in preparing our pupils throughout their school career for public examinations, and the statistics speak for themselves. In 2005

the GCSE pass rate (from A* to C grades) was 66 per cent; AS level pass rate was 88 per cent; A level pass rate was 96 per cent. The number of students in UK universities and colleges this academic year, as at the end of May, is 495. The cost of tuition fees paid this past financial year by the Government is £919,000 and the total cost of scholarships, both mandatory and discretionary, including maintenance grants and travelling expenses amounted to £3,113,000. The House will be aware that as from September 2004 the Government have been awarding full maintenance grants to all holders of educational awards having abolished the previous system of parental contributions.

As I announced in my Budget Speech last year, the British Government intends to introduce in September this year variable tuition fees to be charged by UK universities of up to £3,000 yearly as against the present standard fee of £1,175. In order to comply with EU legislation, the DfES in the UK is making plans to include EU students (and this will of course include Gibraltar students if required) in the same arrangements as for UK students once these variable fees are introduced in September 2006. These arrangements will afford loans to students repayable once the student has finished the course and is earning £15,000 or the equivalent in his/her country's currency. Responsibility for collecting on these loans has been passed on to a Student Loans Company which has been created for the purpose of administering the loans system. As I also announced last year, our Government are committed to continue to fund all tuition fees itself and not pass the financial burden on to students. However, we have worked out a scheme, details of which have already been made public, to enable our students to obtain the required loans from the Student Loans Company whilst the Government will assume all repayment obligations in due course by individual students.

Education for Citizenship

The subjects of Citizenship and of Personal, Social and Health Education have always been implicit in schools' curricular programmes but now it is a statutory requirement of the National Curriculum at secondary level. The syllabus comprises topics ranging from human rights, respect and understanding of diverse, national, religious and ethnic identities, the work of Parliament and Government, the economy, and the wider issues of global interdependence and the United Nations Local Agenda 21.

Pre-School Education

As from September we will have eight nurseries run by the Government, as opposed to two when we came into office in 1996, catering for 285 children as opposed to 135 in 1996. In recent years we have been able to offer a placement to every child whose parents have requested it. The highest demand, however, continues to be for placements during the morning sessions, and in order to meet this demand, it has been possible this coming academic year to provide 70 more morning placements by providing nursery education at Governor's Meadow School and St Mary's First School and an additional 20 places in St Joseph's First School Nursery.

Special Needs

Our policy is one of equal opportunities. As a matter of general policy, children with special educational needs will be educated in mainstream schools alongside their peers, but always keeping in mind what is realistic and affordable. In particular, the inclusion of such children will not be at the expense of the learning opportunities for other children. Specialist provision, therefore, will continue to be provided at St Martin's School for those pupils for whom mainstream education is not appropriate. Additionally, special units in mainstream schools continue to

operate for those children whose needs cannot be met at St Martin's, or on the other hand in mainstream classes.

Pupil-Teacher Ratios

The total complement of teachers on a permanent and pensionable status in our schools is currently 309 (as opposed to 288 when we came into office in 1996) and a further 26 qualified lecturers in the College, giving a total complement of 335. The average teacher/pupil ratio in our schools is well above levels in the UK. In First Schools the average is 1 to 15.94 (the agreed median with the Union for class sizes at this level is 1 to 20); in Middle Schools the average is 1 to 18.57 (the agreement with the Union for class sizes is 1 to 25); and in Secondary Schools the average is 1 to 15.3.

Information Technology

There is now a requirement for Information and Communications Technology (ICT) to be included in the group of subjects known as the National Curriculum Core (Mathematics, Science, English and ICT). The Government have invested largely during the past financial years to equip our schools and other educational institutions accordingly, but I am pleased to announce that this year we have a bumper provision budgeted under Head 103 (Projects) Subhead 22, of £300,000 for information technology equipment. This will include, as the Chief Minister announced earlier, not only the standard computers but also the latest technology in interactive systems such as the 'interactive whiteboard'. This is a touch-sensitive projection screen that allows one to control a computer by touching the board rather than using a keyboard or a mouse. This equipment allows the teacher in the classroom to create resources which pupils will find very motivating and indeed fun. The potential of this equipment for classroom teaching has proved to be extraordinary and our aim is to equip every classroom in our schools with this equipment.

Extra-Curricular Activities

As I have pointed out earlier, the trend today in good educational practice is to provide outreach programmes to create awareness in pupils of issues and opportunities in the wider community outside the ambit of the school classroom. Indeed, universities in assessing applicants for entry, are increasingly looking for evidence of experience and commitment in activities beyond the strict framework of the school curriculum. All our schools, therefore, are engaged in multiple extra-curricular activities, too extensive and varied to give details here, sporting, social, cultural and of service to the community in many ways. But what I want to highlight here is the impressive effort made by our schools, staff and pupils, in raising funds for charity. I would venture to say that our schools are one of the main sources of funding for charity in Gibraltar. During the current academic year the extraordinary total sum of over £35,000 was collected by our schools through a whole variety of activities, some more eccentric than others, for a whole range of local charities and international aid agencies. I do have to single out the record sum of £14,230 raised by the girls and teachers in Westside School, with £9,100 going for Cancer Research and Cancer Relief. I am sure all of us in the House wish to put on record and express our appreciation to the children and the teachers in all our schools.

Only recently, our school children's brilliant display of environmental awareness and commitment as part of the World Environment Day organised by the Ministry for the Environment, has raised our hopes that perhaps there is still a chance that future generations may after all save the Planet Earth from the ravages brought about by our own generation.

Educational Exchanges

The outreach thrust of our educational approach, which I have explained, must necessarily involve knowledge and understanding of other peoples' cultures and ways of life, close

to us in the neighbouring regions of Spain, Portugal and Morocco, in other European countries and, of course, in the United Kingdom. Our schools' programmes include regular trips to all these countries of a cultural and sporting nature, and of course, social and academic exchanges between our pupils and teachers and their counterparts in the Campo Area. We often host visits from schools in La Linea, Los Barrios and other neighbouring towns, including Ceuta, and in cooperation with the Tourist Board offer them guided tours around the Rock. Similarly, our pupils and teachers are hosted by the Ayuntamientos of neighbouring towns, and particularly popular is the environmental experience in the Parque de los Alcornocales and the hands-on projects in the archaeological school of Chiclana. I should highlight two very interesting initiatives organised by the Socio-Cultural Association of Mar del Sur, whose aim is to encourage cooperation and understanding between the communities on both sides of the frontier. The first is a fortnightly participation by a number of Gibraltar Year 12/Year 13 students (sixth form students) jointly with their counterparts in La Linea in the La Linea municipal TV programme "Los Jovenes Quieren Saber". A panel of students put questions to invited guests at a one hour programme. I myself have endured a multitude of questions from these young people, Gibraltarians and Linenses, wanting to know about everything ranging from the National Curriculum, our system of Government to Gibraltar support for the Barcelona Football Club. As part of this initiative, a short end of year coach trip to Madrid is subsidised by the Association for all participants. The trip includes a visit to the Prado Museum and other important monuments in Madrid, and to the Spanish Parliament among other places. Reciprocally, Spanish students have visited our Parliament and the Clerk has very ably explained the intricacies of our Standing Orders and other legislative processes.

Health and Safety Policy

Following an extensive process of consultation the Department of Education and Training has now issued a written document

setting out its policy on health and safety in schools and distributed this document to all schools and educational and training establishments. The statement has been prepared in pursuance of Management of Health and Safety at Work Regulations 1996. The Department is also working closely with the NASUWT locally surveying health and safety conditions in our schools and we are currently arranging specific training for representatives in each school, with specific responsibilities in health and safety matters relevant to the school environment.

Infrastructural Works

The on-going programme of repairs and maintenance in schools and other educational institutions amounted to £997,831 over the past year. In Bayside School a major refurbishment of two of the laboratories, to ensure total compliance with the latest health and safety standards, and a painting and decorating programme throughout the school. In Westside School the construction of four extra classrooms underneath the large dining hall which was built last year. Bishop Fitzgerald School construction of a new block providing extra toilets, stores and a new staff room. St Anne's School renewal of all vinyl flooring and replacing of windows. St Paul's First School works to improve fire safety conditions and on-going repairs in all other schools. In terms of capital works the following are the priorities that we have envisaged for the current financial year, from a vote of £1 million for refurbishment of educational facilities.

- In Bayside School there will be a major refurbishment of two more laboratories and the technology area;
- Conversion of the old showers block in Bayside School to provide an alternative learning centre within the school premises to help to integrate pupils with behavioural problems;
- Resurfacing of playgrounds in St Paul's First School and Notre Dame First School;

- Provision of classroom facilities in Governor's Meadow School and St Mary's First School to take on nursery education as from September this year;
- This year's heavy rainfalls have exposed structural problems and leaking roofs in some of our schools. A survey has been carried out and all necessary repairs will be carried out before the rainy season begins;
- The Government remain committed to the construction of a new first and middle school as part of the general development of the area around the old Naval Ground. The First School will take around 240 children and the Middle School around 200. The new school will release pressure on Governor's Meadow School and Bishop Fitzgerald School as a result of the increased population in this area of town over recent years;
- Similarly, as part of the general re-development of the old St Bernard's Hospital site, the Government plan to construct a new school to accommodate the present St Bernard's First School.

New Management

Members may be aware that the present Director of Education and Training, Mr Leslie Lester, will be retiring at the end of this calendar year. He has governed our educational system over the last 11 years with vision, a masterly grasp of educational issues (generally recognised by experts from abroad) at a time of educational change and reform, and with administrative balance and meticulous efficiency. He leaves behind an educational system which is second to none and I am sure all Members will join me in thanking and congratulating him for a most successful enterprise over these years and wish him a very happy retirement. His post as Director will be taken up by Mr Ernest Gomez with an accomplished career behind him as a teacher, a Deputy Headteacher and as Principal Education

Adviser over the last year. He is generally acknowledged by the profession as a brilliant communicator and linguist and a versatile academic. Mr Joey Britto will succeed him in the post of Principal Education Adviser having been a member of the Department's Advisory Service for the last ten years. He is highly experienced, with a wide knowledge of educational matters and well-liked and respected by his fellow professionals. The Department's loss will be Westside School's gain with the promotion of Mr George Garcia, who has been a member of the Advisory Team for the last four years, to the post of Headteacher of Westside School upon the retirement of Alan Gordon. We wish Alan a well deserved retirement after a long and successful career in teaching and George every success in Westside.

Conclusion

Whilst we are professionally attentive, as I have explained, to developments in good educational practice particularly in the UK and are always ready for change and reform our own system accordingly, I think we can all be legitimately proud of our educational system as it stands today, and indeed, our current generous and competent provision, and thankful to all those who today as in the past are committed to the education of our people. I think almost by intuition, we have always in Gibraltar sensed that education is the key to our future as a people.

Training

The Government believe that training to ensure the development of skills at all levels and in all spheres of activity, is a crucial means of sustaining economic growth and permanent employment, and at a deeper level, to bring about a sense of purpose in individuals and in our community as a whole. I will now give an update of schemes and courses currently available through the Training Unit of the Department of Education and Training.

Vocational Training Scheme

As at 1st April 2006 there were 145 trainees (84 male and 61 female) participating in our Vocational Training Scheme, which is once again partly funded by the EU's European Social Funds. During the period 1st April 2005 to 31st March 2006, 49 trainees on the Vocational Training Scheme left the Scheme as they had secured employment. The Department of Education and Training is currently holding discussions with the TGWU officer with responsibility for youth affairs, and with the District Officer, with a view to enhancing the allowances payable to these trainees and other apprentices in the Construction Training Centre, Our Lady of Europa Training Centre and the Cammell Laird Training Centre.

Construction Training Centre

A total of 12 new apprentices joined Intake 12 which commenced in November 2005. The overall total of trainees at the Centre as at 1st April 2006 stood at 28, and training activities offered in the traditional construction trades lead to the attainment of National Vocational Qualifications at Level 2 (Qualified Craftsman), and for those who wish to pursue further studies, Level 3 (Advanced Craftsman). The traditional trades I have just referred to are: plumbing; wall and floor tiling; bricklaying; plastering; carpentry and joinery; painting and decorating. NVQs on offer in the various construction trades are accredited by the UK's Joint Awarding Body known as the City & Guilds London Institute and the Construction Industry Training Board (CITB).

Engineering Trades Training Scheme

In September 2005, 12 new apprentices joined the joint Government of Gibraltar and Cammell Laird Engineering Trades Training Scheme. These young men have been following National Vocational Qualification Courses leading to awards at

Levels 2 and 3 in the following trades: welding and fabrication; electrical engineering; mechanical engineering. These NVQ Certificates are awarded by EMTA (the Engineering and Marine Training Authority), under which our Training Centre is fully accredited to deliver their training programmes. Only last month I had the pleasure of presenting deeds of apprenticeship to 12 apprentices in electrical, mechanical and fabrication/welding trades and Level 3 NVQs to seven apprentices in these same trades. During the same ceremony a further 8 apprentices and their parents signed deeds of apprenticeship after completing a one year general course in the Training Centre. We will now be advertising for a new intake due to start in September this year.

Accredited Prior Experience Certification

This is a training scheme for experienced workers to enable them to obtain NVQ Level 2 certification through part-time courses at the Training Centre. A total of 8 employees are currently following these training courses: 6 from Buildings & Works Department (painters, carpenters and plasterers) and 2 from AquaGib (a plumber and a bricklayer).

Certificate in Travel and Tourism

A total of 5 trainees fully completed their studies towards obtaining a BTEC Certificate in Travel and Tourism in January 2006. A further 10 trainees commenced this same course in February 2006, with tuition classes delivered by the Gibraltar College on topics such as Customer Service, Marketing and Destinations in Travel and Tourism.

Diploma in Business Administration

Over the last year 8 young trainees on the Vocational Training Scheme took up the opportunity to follow a programme of studies leading to accredited qualifications issued by the

London Chamber of Commerce and Industry Examinations Board. As in the past, lecturers from the Gibraltar College delivered the theoretical components of this course and participating trainees received related work experience with local companies.

Maritime Sector

The Training Unit is currently discussing with the Gibraltar Maritime Authority and local Port Operators the provision of training leading towards Watch-rating Certificates. I am pleased to inform the House that a member of staff from the Registry of Ships successfully completed a Masters Degree Course (MSc) in Maritime Administration at the World Maritime University in Malmo, Sweden, obtaining excellent results. His personal training has been further enhanced by means of a secondment with MCA (the Maritime and Coastguard Agency) which took place in late 2005.

The new opportunities which I forecasted last year would soon be available to enable young undergraduates to follow accredited courses at the Southampton Institute, as well as offering them practical experience at sea as Deck Cadets, became a reality thanks to a joint sponsorship for these courses being provided by our local Port Operators and the Government. Two 18 year old men commenced their training last September.

Accountancy Training

The Department of Education and Training has this past year, and expects to do so again for the current year, offered subsidies to students undertaking the Certified Accountancy Examinations, known as ACCA. Also during the past year, similar subsidies have been made available to students wishing to follow the Certified Accounting Technicians Course. In respect of both of these courses, evening classes offering tuition in preparation for their respective examinations, have been

offered at Bleak House Training Institute for private and for public sector employees.

Management Training

A new cohort of the Business Management Programme for private sector personnel leading to a Diploma in Management accredited by the Chartered Management Institute commenced in March 2005. Tuition of these Diplomas in Management are delivered and validated by Durham University's Business School. Civil Servants have also been offered the same opportunities to attain Diplomas in Management through courses delivered by Durham University. I am pleased to inform the House that Gibraltar Government employees, from a wide range of departments, were successful in obtaining their Diplomas in Management after completing a tailor-made course of studies known as Professional Development Programme. A total of 20 Civil Servants and 17 private sector employees received their Level 5 Executive Diploma in Management at a presentation ceremony held in January this year. A second presentation ceremony was also held in January, during which 42 middle managers from the Civil Service received their Level 5 Diploma in Management as a direct result of successful completion of their Professional Development Programme. All these Diplomas in Management, as I said, are fully accredited by the Chartered Management Institute. Further courses leading towards Diplomas in Management commenced in September 2005 with a total of 50 Civil Servants having been selected as participants. An advanced programme of studies leading to a Masters Degree in Management commenced in June 2005 and there are now 30 participants in this programme, scheduled to end in October 2006. Participants in this Masters Programme are both from the public and from the private sectors, all of whom have previously attained their Diplomas in Management with Durham University and are now keen to pursue their own personal, professional development.

ICT for Senior Citizens

I am pleased to announce that the Department of Education and Training, in conjunction with the Senior Citizens Association will be running an information and communications technology course for senior citizens this coming autumn. The course is designed to offer training in basic skills, such as word processing and e-mailing. There will be no tuition fees payable by participants. This follows on the popular and very successful training days for older citizens held at Bleak House this year organised by the Citizens Advice Bureau and the Education and Training Department.

ISO Training

Following a request made by the Gibraltar Federation of Small Businesses, subsidies will be offered to local companies to receive relevant training leading to them attaining ISO 9001 accreditation. The GFSB has indicated to Government that 15 companies have signified their firm intention to participate in the ISO Training Programme.

Investors in People

The Government of Gibraltar, through the Department of Education and Training, hold the necessary licence to offer in Gibraltar accreditation with 'Investors in People'. A programme of training sessions, aimed at assisting companies to prepare for formal assessment by Investors in People, is already being delivered in Gibraltar in conjunction with the University of Durham. It is expected that the first awards by Investors in People to Gibraltar companies will be achieved in the course of this year (2006), and a second cohort of participants will also commence their required training during this financial year.

CIVIC AFFAIRS

As from July 2005 the Government assigned to me Ministerial responsibility for Civic Rights and Consumer Affairs. The Government's genuine commitment to transparency and accountability is no more clearly demonstrated than in the creation since we came into office of three major organisations, which although operationally independent of Government control, are Government funded and attended to within my Ministerial portfolio. They are: The Citizens Advice Bureau; The Department of Consumer Affairs; and the Ombudsman.

The Ombudsman

The Ombudsman was established by Law in 1998. Although deservedly and generously funded by Government it is totally independent of Government control, and it has so demonstrated in its excellent performance over the last six years under the leadership of the previous incumbent, Mr Henry Pinna, and currently by Mr Mario Hook. As Minister for Civic Rights, I enjoy a particularly close working relationship with the Ombudsman and I am quite ready at all times to encourage and support the Ombudsman's efforts in bringing to account all areas of Government administration, however uncomfortable this may often prove to be, to those of us on the other side of the fence. However, it is heartening to learn from the Ombudsman's latest Annual Report, that the number of complains coming his way have over the last year considerably decreased from 555 to 412. It is even more heartening to hear the Ombudsman state "that in real terms the decrease in complaints must be attributed to the efforts and improved standards of many departments", and I am very happy to join with the Ombudsman in congratulating all Heads of Departments and their respective Ministers and their staff for this very welcome development.

The Citizens Advice Bureau

The Citizens Advice Bureau was established in Gibraltar in April 2003 and it is run by an independent trust as a registered charity. It provides free, confidential and impartial service and advice to everybody, regardless of race, nationality, disability or sex. The activities of the Bureau over the last three years have increased as the services offered have become better known by the community. Evidence of this is the fact that the number of client contacts has increased from 695 in the year 2004/2005 to 1,841 this past year. Moreover, these services have been extended to the people by way of outreach clinics, such as that installed at the new St Bernard's Hospital, in addition to those already carried out at Senior Citizens Clubs and even at Casemates Square. We were very glad that the Gibraltar Citizens Advice Bureau has been accepted as full members of the Citizens Advice International, which should prove beneficial by enabling us to keep abreast of the progress being made in Europe, as indeed worldwide, in rendering advice to citizens.

Consumer Affairs

Although the Consumer Affairs Department can trace its origins to 1994, it is over the last three years that it has grown from strength to strength both in effectiveness as a consumer protection agency and in its technical know-how and professional expertise. The Department has been greatly assisted in this development by the Trading Standards Institute in UK where we hold full membership together with the Isle of Man and Jersey. The field of consumer protection is becoming today increasingly complex and expansive following on European Union Directives. The Department is active, not only in assisting consumers, but also providing guidelines and advice to the trading and business community in Gibraltar. A wide area is covered by the Department's office in both terms of information, advice and active direct intervention on behalf of individual consumers, such as price display, sales, misleading advertising, weights and measures, unfair contracts, supply of

services, refunds et cetera. But more recently other problems are emerging and, pressing on the Department such as counterfeit goods and scams, the selling of alcohol and tobacco to minors and buying and selling on the internet.

Equal Opportunities

Under the broad canvas of civic rights, I would like to highlight two important and recent pieces of legislation approved by this House, the Equal Opportunities Ordinance 2003 and the Data Protection Ordinance 2004. The House will be aware that the Equal Opportunities Ordinance follows Directives from the European Union and is aimed at overcoming discrimination in different areas, particularly in employment, on the grounds of race, ethnic origins, religion or belief, sex and sexual orientation. The European Directives have allowed a period of grace for the introduction of more complicated specific legislation against discrimination on the grounds of age and disability – which is not to say that currently such discrimination can be tolerated in practice. However, the Legislation Support Unit is now ready to present to Government a draft Bill which we hope to bring to the House as soon as possible.

Data Protection Ordinance

The Data Protection Ordinance 2004 requires persons and organisations who keep personal data, that is, information about living people, to ensure that that information is collected, kept and used in compliance with the safeguards set out in the Ordinance. Following publication of guidance and the holding of seminars for businesses, organisations, Government Departments and the public, the Data Protection Ordinance 2004 has now been commenced as from 13th April 2006 and will be now implemented in stages. The first provisions to have commenced on 13th April 2006 have been the powers of the Data Protection Commissioner. The Data Protection Ordinance 2006 will also come into operation as from 13th April 2006 in

respect of personal data which may be transferred to other European countries under the provisions of the Schengen Convention. The Data Protection Ordinance 2004 has also come into operation in respect of other personal data on 1st June 2006. Persons and organisations which already have paper, that is, non-computerised records containing information about people, will be given slightly longer to ensure that these existing non-computerised records comply with the data protection principles set out in section 6 of the Data Protection Ordinance. However, the Data Protection Ordinance 2004 will be commenced in respect of all personal data, whether kept in computerised form or in paper records, as from 1st September 2006.

Conclusion

In conclusion, if I am allowed a personal note, it is of great satisfaction to me to be engaged politically in areas which in one way or another are related to human aspirations, social justice and human rights, education for life, preparation for work, protection of people as consumers, workers and citizens and I know that all the staff who work with me in these important areas in the life of our community, are motivated by this same spirit and I want to thank them for their support to me personally and their commitment and efforts. Finally, all I have been trying to say is put simply if I am allowed in a quotation (not in Latin this year), simply but profoundly by that great witness and advocate of social justice, human dignity and human rights, Archbishop Desmond Tutu of South Africa:

“We must all strive to create a society where people matter more than things.”

With this pearl of wisdom, I commend to the House Head 1A, Head 1B, Head 101 Subheads 7 and 8 and Head 103 Subhead 22 of the Estimates of Expenditure 2006/2007.

HON F VINET:

Mr Speaker, a significant part of my responsibilities changed after the Ministerial reshuffle the last year, it is my privilege to address the House on those new areas that have since been within my remit, as well as on those that I have continued to be responsible for. These can be summarised as follows: Heritage, Culture, Youth, Sport and Leisure, Public Service Broadcasting, Gibraltar Government Lottery, Electricity Authority, AquaGib and Gibtelecom. It is in this order that I will refer to those responsibilities. My predecessors have reported on the progress that has been made in recent years in the field of heritage research and management. The Government have been supporting heritage initiatives since 1996 and I would like to remind the House that it has only been in recent times that any Government have given proper recognition to the importance of heritage by specifically creating a division dedicated to the subject. In his Budget speech last year, my predecessor the now Minister for Housing, indicated the four corner stones of the Government's heritage strategy: knowledge and information; public awareness and access; stewardship and economic and social benefits. These are the guiding principles and this year I will concentrate on specific examples and show how the huge, significant task of dealing with one of the world's richest and densest heritage sites is being successfully undertaken. I also intend to inform the House of new developments that will be taking place in the forthcoming financial year, some building on existing programmes whilst others being completely separate and new initiatives.

As this House is aware, Government are considering amendments to the present Heritage Ordinance, although as has already been explained, this is not a matter of top legislative priority. In parallel, however, I have discussed with the Chairman of the Gibraltar Heritage Trust, the amplification of the existing Schedules of Ancient Monuments and Buildings. I am presently awaiting proposals from the Trust which the Government will consider in the context of the existing

legislation so that any new sites can be listed more expeditiously and without need to await other amendments. The question of the World Heritage Bid has received wide attention in recent months, including extensive explanations by the Chief Minister and myself in this House. I therefore do not intend to further dwell on this matter today, except to reiterate and then enforce the message that my predecessor put across in last year's Budget speech, one that shows that the Government have been entirely consistent in their policy on this matter. Government hope to this year consider recommendations on the sites to be included in a coherent bid of the highest quality and with the greatest possible chance of success. Hon Members will appreciate the huge volume of day to day work that is involved in issues concerning our heritage, much of it goes on behind the scenes. We have been discussing strategies within the Division and I am pleased to announce two new developments for the first time here. My predecessors have repeatedly highlighted the importance of our prehistoric heritage, often overshadowed by the more recent history. I have personally visited sites such as Gorham's Cave and have seen the amazing collections that are being amassed in the Gibraltar Museum as a result of the excavations carried out in summer. These are truly sites of world importance and we are taking great care and pride in supporting the research on conservation work being carried out. It is a project that we should all be proud of and one in which Gibraltar has clearly been put on the world map. In order to give recognition to this work and to be able to focus and channel efforts, I am pleased to announce the Government is creating an institute of Southern Iberian Quarternary Research, and I remind Hon Members that the Quarternary is the period that scientists define as covering the last two million years of the earth's history. This will be the first institute of its kind in the whole of Southern Iberia and it will be housed as part of the Museum. Already last year we have supported the conversion of rooms into up to date laboratories and stores for the prehistoric collection, so in effect, what we are doing is formalising a reality. A number of leading scientists have agreed to support the new institute by accepting to become Honorary Fellows, and this will of course add to the

institute's prestige. Gradually the institute will improve its facilities further and establish itself as a major research facility in Southern Europe. Already many international scientists come to Gibraltar each year to study the collections at the Museum. The institute will effectively become the research arm of the Museum in this field, and we have identified it as being a major priority within the heritage disciplines under our care. The results of the work that have been undertaken to date are going to be published in two forthcoming monographs by Oxford University Press and by Oxford Books, also of Oxford, and we are very pleased and proud that the work is going to receive such prestigious recognition.

The excavation process has until now followed a pattern of a large number of archaeologists for a few weeks in the year. The programme of investing in our youth is now producing tangible benefits in the form of young, local researchers. The result is that a new strategy will be implemented as from this year, and the excavations will be year round and will be carried out by local archaeologists with occasional support from others from abroad. There will still be a need for specialists from beyond our frontiers who will study the collections and this is something that we welcome, as we see the international dimension of the project as very important, but the House will agree, however, that it is a matter of considerable pride to see how a project that started 15 years ago led by scientists from outside, has now become a locally led project simply with collaboration from outside. I would like to add that this year's Calpe Conference will focus on the migrations of people from Africa in our early prehistory. The title for the Calpe Conference 2006 is 'Straits, Refuges and the Geography of the Palatians', it will be held from 14th to 17th September and we have attracted an impressive list of speakers from far and wide. This gathering will further serve to consolidate Gibraltar's position as leader in this field.

I would like to turn to a second initiative that I am very pleased to be able to report to this House. Since I took over at the Ministry I have been very keen to encourage the link between

heritage and culture, I was made aware of preliminary work that was being carried out jointly by the Gibraltar Museum, the John Mackintosh Hall and the Gibraltar Archives into the social history and identity of Gibraltarians. The Government are especially keen to promote this kind of research and I am, therefore, announcing the creation of a second institute under the umbrella of the above three sections of my Ministry, specifically devoted to the study of the Gibraltarians. This is a major way in which the Government will be making a long lasting contribution to our history. The work will proceed with existing resources and already contacts are being made with a view to establishing links with universities abroad, following the same model established for our prehistory. The Departmental focus on the Quarternary and the Gibraltarians does not mean, of course, neglect of other areas.

We are very conscious of the importance of the entire main heritage. The fortifications are of great significance to us and every effort is being made to continue with this programme of clearing the City Walls. The Orange Bastion project is now under way and the impressive aspect of the King's Bastion, after demolition of the old power station, are tangible examples of this commitment. So is the refurbishment of the Guard House at John Mackintosh Square, already announced this morning by the Chief Minister. Yet another example of recovery and beautification under this Government. The importance of the medieval heritage has been brought home to me in familiarisation visits over the last year, and my predecessor reported on the restoration of baths in the Museum last year, and soon we will be able to visit the restored Tower of Homage. I have seen the results and the monument is going to be a wonderful example of conservation. A number of excavations have been carried out over the last decade and soon these results will be compiled in a book on the medieval archaeology and history of Gibraltar.

The promotion of our heritage continues to be of prime importance, the Heritage Magazine will continue to be published and distributed free of charge, while the Museum series of public lectures are becoming an important part of the Gibraltar

calendar. I am happy to announce that as from this year the Division will be producing for the first time an annual report of its activities. This will be an important document that will bring the public fully up to date with the activities of this part of my Ministry.

In summary, I would say that the last year has been one of consolidation and reflection resulting in the way forward that I have described. The coming year promises to be an exciting one as we move ahead with the new schemes that I have outlined here today. In doing so I hope to continue to strengthen the relationship between Government and the Gibraltar Heritage Trust. The Trust does invaluable work and carries out a very important role in society, and the meetings of the Heritage Action Committee will continue regularly and provide a formal forum for frank, open discussion. I therefore look forward to a bright year for our heritage, one that will become a landmark year in the process of heritage research, conservation and awareness that was started by this Government ten years ago. A Government that takes balanced and informed decisions and whose record clearly shows that they have done more for the preservation and promotion of our heritage than any other Government before.

Mr Speaker, I now turn to culture and perhaps I can offer a smooth transition from heritage to culture by referring to the Trafalgar Bicentenary celebrations, which successfully combined elements of both. The various events organised last year to coincide with and celebrate the bicentenary included open-air concerts, a maritime exhibition, historical talks, swimming events, fishing competitions and guided coach tours to Cape Trafalgar, as well as the unveiling of the statue of Lord Nelson. The Ministry of Culture continues to support and to encourage all those individuals, groups and associations dedicated to the development of quality cultural activities in our community. Government's investment in cultural grants, premises, logistical and advisory support is substantial but worthwhile. I firmly believe that this Government's commitment to culture has helped deliver a greater interest in and frequency

of cultural events. By way of example, the International Art Exhibition was held in February and saw the participation of 148 different artists compared to the already impressive 108 the previous year, from Gibraltar, the UK, Spain, Morocco and Hong Kong. It was especially pleasing to see the number of young artists increase from 5 last year to 15 this year. We are hopeful of even more entries in 2007 as the International Art Exhibition will for the first time be advertised in international arts publications after the summer. Also extremely successful was this year's Spring Festival. For the first time a complete list of events was included in the Gibraltar Government website, while a logo competition helped raise awareness as well as to award different events with a sense of collective identity. Some of those events included classical, jazz and rock concerts, drama, dance shows, the Museum open day, talks, exhibitions and of course the Spring Festival Art Competition which once again proved to be a tremendous success. Equally successful was the final event of the Spring Festival calendar, the Miss Gibraltar Pageant, which was organised by the Ministry of Culture for the second time. A Drama Festival organised by the Ministry of Culture, in association with the Gibraltar Amateur Drama Association, saw a total of 12 different plays, up from 7 the previous year, by a variety of groups. I take this opportunity to thank all those groups, associations and individuals who give of their time in delivering cultural events for the enjoyment of our community. The talent and enthusiasm is as welcome as it is vital and I would urge others to continue to make use of the venues and other facilities on offer.

One of those venues, the Ince's Hall Theatre, has been virtually fully booked during the last 12 months. Those members of the public who have been to the various drama, pantomime and music productions there, will have been able to experience the extensive refurbishment works carried out last summer, which included brand new comfortable seating, a new entrance lobby, new toilets, carpet, lighting and for the first time ever, the installation of air conditioning units. I am happy to inform the House that Phase 2 will concentrate on the stage and the installation of new light and sound equipment and work will start

soon. If I can focus briefly on two other venues managed by the Ministry of Culture, the Central Hall is being used on a regular basis by cultural organisations and it is also being hired out for private functions, while the Casemates Exhibition Galleries are being used mainly for exhibitions and are proving to be a very popular venue. The Casemates Vaults have been almost fully booked throughout the year. The Ministry of Culture continues to be responsible for the financial aspects of the Retreat Centre, yet another success story and another of the important assets that are extensively used for a wealth of different social and cultural activities by an equally diverse range of groups and individuals in our community.

As far as the John Mackintosh Hall is concerned, numbers are very encouraging. There were 987 bookings in 2004, which is already a significant figure, but in 2005 there were 1,156 meetings and exhibitions held at the Hall, including the two major art exhibitions organised by the Ministry of Culture and the Calpe Conference organised by the Heritage Division. Apart from general repairs and maintenance, which included work on the wiring of the lighting and audio system at the John Mackintosh Hall Theatre, there has been an extensive investment totalling £79,000 with repairs to the roof, the construction of a new and much welcomed stage extension and podium, and the purchase of new stage curtains and video projector. In addition, Government this year provided £10,000 for the purchase of books for the John Mackintosh Hall Library. In particular, the requirements of children and students were looked at and I am extremely pleased to say that a wide array of new publications were purchased, totalling just over 700 in number. A total of 491 of these now form part of the Children's Library and I hope this will encourage more youngsters to develop an interest in literature, with all the educational, social and cultural advantages that it entails.

Mr Speaker, the Ministry of Culture was involved in organising the New Year Concert at Casemates Square, which proved to be well attended. We look forward to similar celebrations, including a fireworks display, this year. The Ministry is also

tasked with the organisation of the Fair Week and National Day celebrations. Culture and in particular music, plays an increasingly important role in the run up to and during National Day, including a free concert by local band 'Taxi', a traditional rock concert featuring local talent, which last year was extended to also include jazz, and of course, the classical concert organised on behalf of the Ministry by the Philharmonic Society. I am pleased to inform the House that very exciting plans are already under way to deliver what I hope will be the best Fair Week and National Week yet, with full details to be announced in the coming weeks.

Mr Speaker, I now turn to the Youth Service and in particular to highlighting the good work done by the Youth Service for the community. The Youth Service has a policy of continuous appraisal of the delivery of its work and emphasising to users and the community as a whole the value and true role of Youth Workers. In this respect, the ability to keep in touch with new developments is crucial. A lot of its time will continue to be dedicated to training, in order to improve youth work delivery and ensure that Youth Workers deliver programmes that encourage physical, mental and spiritual development of young people. During the last financial year it was finally possible to operate this service with the established staff complement of four duly qualified full-time Youth Workers. Their work will continue to be supported by parts of our supply Youth Leaders, who will all be locally qualified through training and induction courses. A full-time Youth Worker is now working from each club, thus ensuring more time and easier availability for young people and the neighbourhood as a whole. This augurs well for the future of the service being provided for and in partnership with our young people, although we shall not be complacent and will be continuously reviewing their needs. Youth work is an empowering form of informal, social education and the Youth Service is much more than a mere probation service. Many argue, and I fully agree, that the club facilities are just used to deliver the necessary social education and personal development programmes and encourage active citizenship for our young people. Therefore, a number of projects will again be

carried out which will not necessarily be youth club based, as this encourages non club users to also get involved. Partnerships with educational establishments and other entities dealing with young people continue to be developed. An important effect of this working practice has been the recent creation of the National Youth Council of Gibraltar, following the very successful active citizenship and youth forum programmes. The initiatives shown by these young people, with the support of the Youth Service and the Ministry, needs to be commended. Indeed, we welcome the setting up of the National Youth Council of Gibraltar with whom we have had meetings even prior to its formal launch. I have also met with the Gibraltar Students Association.

Mr Speaker, Hon Members will know that I chair the Arts Advisory Council and the Sports Advisory Council, both of which work extremely well. I am happy to announce the setting up of a Youth Advisory Council, which I will also chair, and which will include representatives of interested bodies, including the National Youth Council of Gibraltar and the Students Association, both of these bodies having been informed of this initiative several months ago. We are close to determining the exact composition of the Youth Advisory Council and its formal launch and first meeting will take place in autumn. It has been possible for students in the UK undertaking youth work degrees to do the field work placements in Gibraltar. This confirms the credibility the Gibraltar Youth Service has gained with training establishments in the UK. Youth Service full-time and part-time staff volunteers have also attended Health and Safety, First Aid, Child Protection and Listening Skills courses, amongst others, as part of a continuing development training programme. It is programmed for 2006/2007 for training to also include other skills areas such as counselling. The House will therefore note that Government are committed to ensure accredited Youth Workers are prepared to deliver competent youth work. Parallel to these initiatives the Youth Service continues to develop opportunities for young people that are educational as well as fun. These have included the following: in 2005/2006 youth educational trips to Bracknell, Sierra Nevada and the Tall Ships

Project in partnership with the Luce Foundation as well as various day trips. The Youth Service continues to be actively involved in the Cheshire Home Project and this was the case particularly this last year. The cavalcade floats involving young people from the Youth Centre, rock bands, dance groups and enthusiasts in the construction of floats. Year 9 pupils from both comprehensive schools were also involved in personal and development programmes carried out by the Youth Service in partnership with the schools. These links with the schools have been successful and as a result are being expanded. Opportunities for young people to visit local places of interest are continuing. Local enthusiasts and professionals have visited Youth Clubs to talk to members about health hazards, local projects for the disabled and women's groups. Local projects, such as the ESG's Clean-up Gibraltar Campaign, were participated in, other projects were organised and included community service and vandalism, healthy eating, cooking, the Make Poverty History appeal, arts and culture and marine life conservation, some of them in partnership with local groups in order to encourage interaction and enhance learning capabilities. Discos are also held regularly at the Youth Centre for young people as part of projects being undertaken by the Youth Service and approved partner groups. Alcohol is no longer sold or allowed to be consumed at any Youth Club. Such projects will continue and indeed, wherever necessary, expanded in 2006/2007 in order to meet the needs and interests of the young people. The following are already planned: a life skills project (which is currently being developed), the National Youth Council of Gibraltar Youth Forum Conference (involving a return trip from Bracknell as a continuation of the conference held in Gibraltar as part of the Active Citizenship Project, and a visit there in 2005). The Ministry and Youth Service have been providing logistical and financial support and we expect this conference to be a success. The first part of the youth exchange with Poole Youth Services. The Youth Service has plans to continue its work in partnership with comprehensive schools in the Personal Social Health Education Programme and is developing other methods of cooperation. Projects in conjunction and partnership with the Luce Foundation and the

Tall Ships Youth Trust will also be taking place, so increasing opportunities to a wide cross section of Gibraltar's youth. A young person will also have the unique opportunity of sailing in Gypsy Moth II as part of another partnership initiative. A series of projects will also be worked on, as in recent years, including working with the Sports Development Unit and other groups involved with young people, as well as contributing to the organisation and running of the Youth Pavilion at the local fair. Entities involved with young people will be encouraged and supported in order to offer the best service and most opportunities possible for our young people. Other projects will be developed after the summer when young people will be able to contribute to the programme with their own ideas. The Duke of Edinburgh's Award also gets support in the delivery of its programme. The Award is a successful youth development programme that attracts young people from a wide diversity of backgrounds and with different levels of ability. Government will also continue to assist the Guides Association and the Scouts with funding to help them with their training and other projects, underlying Government's support to those groups and other organisations who are willing to support the young leaders in an accredited manner. For these purposes increased funding has been provided for youth activities and youth grants. The Youth Service also contributes to the Drugs Advisory Council, the Royal Gibraltar Police Community Consultative Group and works closely with schools, Social Services and other agencies that deal with the welfare and personal development of young people. The service will continue with its efforts to establish greater inter-agency cooperation with schools and local community groups. Refurbishment works were carried out in all the facilities and funding is again being provided for such improvement works to continue, in order to ensure that safe and adequate facilities are available. Government attach great importance to services and facilities that are of direct benefit to young people and therefore intend to continue to support and resource the Youth Service adequately to enable it to achieve its goals. It is evident that a lot of good work with and for young people is also being carried out by volunteers and their efforts will continue to be recognised and supported.

If I can now turn to sports and leisure, at the start of the last financial year the Gibraltar Sport and Leisure Authority commenced operations and subsequently employed extra staff and continues to build on and improve the work carried out in previous years by the Sports Department. This it has done in the provision and management of sports facilities and in the community use of schools schemes, of technical support, assistance and advice to the schools and sports associations, of training, support and sports projects through the Sports Development Unit, of financial assistance through the Gibraltar Sports Advisory Council. Teams from abroad have again visited Gibraltar to play and train on our impressive facilities, that is to say, the ever more impressive facilities and this is greatly assisting development and sport as well as enhancing our profile overseas. The works at Bayside are continuing. Regrettably there have been some further delays in some phases of the project due to issues outside our direct control. It is now programmed that all the new facilities will be completed shortly after summer this year. The Sports Hall, hockey facilities, including ample changing rooms, where particular provision for disabled users as well as the new administration areas have now been in use for some time offering much needed improved facilities. Construction of the next phase, which includes the multi-sports games area and boat house is well advanced. The next and final phase of the project has recently commenced and this will include new tennis and paddle tennis facilities, a golf training area, a gymnasium, an archery range and a 5 a side football synthetic turf pitch. I ought to add, although I could have done so while talking about culture, that the multi-sports games area situated between the Tercentenary Sports Hall and the hockey pitch, has been specifically designed to double up as a concert venue with a capacity of 3,000. The Sport and Leisure Authority continues to provide sports assistance and advice to the schools and associations in the provision of facilities and equipment and in organising events such as the two international darts tournaments, international volley-ball and the hockey under 21 European B Group Championships among others. The Sports Development Unit successfully continued to expand the summer sports

programme for youngsters last summer, including a wider variety of leisure and educational activities. This has truly been a success story which I can reveal will continue to expand this year as even more activities will be available. Full details will be revealed imminently. Also positive have been the physical activity sessions for the over 50's that are jointly organised with the Senior Citizens Association and which provide the young at heart with suitable sports equipment, facilities and training in a safe and fun atmosphere. The number of national coaching foundation courses together with other generic coaching courses run for local coaches was increased in order to meet demand. Assistance and support has also been provided to sports associations in the organisation of accredited coaching qualifications in athletics, basketball, football, shooting, squash, badminton, volley-ball, swimming, rowing, sailing, table tennis, tennis, gymnastics and rhythmic gymnastics. Its uses in delivering these courses have included, in appropriate cases, separate school in-service training days ensuring that many teachers and coaches have been able to achieve some level of accredited qualifications which will assist in the development of sport in Gibraltar. The objectives remain to achieve, eventually, as much self sufficiency as possible in the delivery of coaching and training. The Unit also introduced schemes for outdoor adventurous activities for the older age group, in partnership with Social Services and the Cardiac Rehabilitation Group. A Sports Development Officer is also now a member of the Health Authority's Health Promotions Committee. Two members of staff have also achieved accredited UK tutor status for the 100 per cent Drugs Free Sports Programme following a visit earlier this month from UK sports officials. This programme has recently been launched in Gibraltar as thought for all our associations competing internationally. Gibraltar sports will again participate this year in many official international competitions, including in 2006 hockey, basketball and volley-ball championships and the Athletics Mountain Running Grand Prix. The Gibraltar Sports Advisory Council, and in particular its sub-committees, have been meeting regularly. On the advice of the Council, financial assistance has been provided to sports associations through the three funds available. Last year

Government provided £110,000 to enable participation by a large number of teams from over 20 different sports to compete internationally and locally at different levels of officially recognised competitions. As sports persons will be glad to know, this year that amount increases to £125,000. A further £50,000 was provided by Government to finance Gibraltar's successful participation in the Strait Games and towards the Island Games 2005 and Commonwealth Games 2006. Again, our sports persons will be pleased to learn that Government have this year increased that amount from £50,000 to £70,000. In other words, Government on the advice of the Gibraltar Sports Advisory Council, will be increasing the provision, to enable our sportsmen and women to represent Gibraltar internationally, to £195,000. I would remind hon Members that in 1996 the GSD Government inherited the grant's budget of £49,000 from the previous administration. The amount has therefore quadrupled since this Government came into office. Not only that but the Sports Development Fund of £60,000 has, together with the involvement of the Sports Development Unit and the efforts of the Sports Associations, enabled a large number of sports specific coaching courses and other developmental projects to be held in Gibraltar. The Sports Development Fund will increase to £66,000. This is completely separate and additional to the £195,000 I have previously mentioned. Last year the I&D improvements to sports facilities fund of £200,000 enabled the provision of specific assistance to associations running their own sports facilities, as well as the purchase of essential safety and other equipment. Existing facilities were also refurbished and improved including the resurfacing of Westside School's outdoor volley-ball and tennis multi-sports areas. Substantial funding for sports facilities will again be provided, the main aim will be to adequately resource the Gibraltar Sport and Leisure Authority and to progress with the next phases on the extension to sports facilities projects at Bayside. For these purposes £1,500,000 is being provided in the I&D Fund. The newly resurfaced facilities at Westside have improved the community use of schools scheme. The excellent cooperation that has been built up between the Sport and Leisure Authority, the Education and Training Department and

the schools can only be positive. The sum of £100,000 will be provided to further improve existing sports facilities, including the stadium's old sports hall. A further £50,000 is being provided to refurbish vacant premises for use by associations and clubs, although this is not restricted to sports and youth societies but is available for premises in general. In this connection a study is continuing, in partnership with the Heritage Division, into the feasibility of refurbishing South Jumpers Bastion in similar lines as North Jumpers, and other areas are also going to be earmarked for such purposes. I am also happy to announce that an exciting project to provide rehearsal facilities for local bands and musicians is also being worked on in conjunction with the Rock on the Rock Club. Government see these projects as a means of supporting the very valuable and active volunteer sector of Gibraltar. In partnership with the Social Services Department the new swimming pool suitable for the elderly and disabled and the teaching of non swimmers has now begun operations. The Sport and Leisure Authority has also taken over responsibility for the existing 25 metre pool that had until recently been known as the GASA pool. A further review of its use, in partnership with GASA, was carried out and Government took the wise policy decision that there is no reason why swimming should be the only sport where people have to pay to use facilities built at public expense. As a result, swim joggers, sports persons and all citizens wishing to use the pool will no longer have to pay a fee to do so, as had been the case until May this year. This also means that GASA will be able to continue their work in the promotion and development of swimming without the financial pressure and responsibility they had been shouldering until now. In other words, it is a move that benefits everyone. Funds have also been provided to develop the facilities of the Victoria Stadium, including the resurfacing of pitch No. 2 with new generation synthetic turf similar to the main pitch, as well as improvements to the main pitch changing room facilities.

Leisure facilities are also to receive a new level of support and for this reason the new Authority was designated Gibraltar Sport and Leisure Authority. Actual construction work on the King's

Bastion Leisure Centre will commence very shortly following demolitions. In order to improve the amenities available in Gibraltar, funds have also been provided to enable the Authority to develop other recreational and leisure needs, including playgrounds (for which the Authority will now assume full responsibility) and the paint-balling facility. With regard to playgrounds, a thorough review is presently under way with a view to determining refurbishment to present facilities, but also the provision of new playgrounds in new locations. The House will have recognised the important advances that have been made in sports and leisure locally during the last ten years of GSD Government. Those advances will continue because we fully recognise that sports and leisure make very valuable contributions to Gibraltar's quality of life. We will therefore continue to improve facilities and to support the sports associations and others in their efforts. Government recognise and are appreciative of the very significant work and commitment demonstrated by the large number of volunteers in the sports associations, clubs et cetera. They help to ensure that sports and recreation thrive and develop Gibraltar for the enjoyment and benefit of all.

In turning to my responsibilities for broadcasting, I would like to highlight the very valuable and often under-estimated contribution which the services provided by the Gibraltar Broadcasting Corporation make to the community. Just like any other organisation, GBC come under criticism from time to time. Naturally there are occasions when this may be justified but the fact remains, as I was able to see for myself during a visit to Broadcasting House shortly after the Ministerial reshuffle last year, that overall these are committed, competent, hard working individuals working within the confines of and dealing with the accompanying challenges that come with a relatively small radio and television broadcasting entity. At this time last year, the House was informed of the Corporation's plans to provide live screening of Radio Gibraltar over the internet. I am please to inform the House this service was launched on 23rd December 2005. The service is proving highly popular, especially with students and other Gibraltarians residing abroad. The

continued public support for GBC is crystallised in the traditional annual Open Day. The community's support is overwhelming and last December the splendid sum of £101,000 was raised. As it is commonly known, the funds raised for the Open Day are distributed amongst charitable causes and I am sure the House will join me in applauding the work undertaken by all those involved in ensuring the success of this annual venture. This year Government will continue to support the Corporation with its capital equipment plan and have allocated £200,000 of Improvement and Development Funds for this purpose. Additionally, to assist the Corporation's immediate recurrent expenditure budget, £1,333,000 have been provided for in the Estimates. Great importance is also attached to commercial revenue achieved through the sale of commercial air time and related activities. In furtherance of this aim and within the approved budget, new arrangements have been adopted for the selling and processing of commercial air time. The new arrangements include the employment of a sales assistant who supports the General Manager on sales matters. The arrangements are proving beneficial and sales for the year ended 31st March 2005 showed an increase of 5 per cent when compared to the previous year. At present the sales forecast for the current year is good. In January this year the Corporation saw a change of Chairman. Mr Anthony Lima, who assumed the chairmanship in late 2004, resigned his appointment and Mr Charles Menez was appointed as his successor. I would like to thank Mr Lima for the valuable contribution he made to GBC during his tenure in office. As Members may be aware, a number of European countries have announced their plans to shut down analogue transmissions as part of the migration to digital broadcasting. In view of this, the Corporation continues to prepare for the migration of its broadcast services to digital. GBC is keen to commence these test transmissions as shortly such services will be available in the hinterland. I am assured that planning for this initial phase is at an advanced stage. In the more immediate future the Corporation will be introducing changes to its TV sustaining service with a view to improving the product. The change will lead to a more community-orientated sustaining service. Indeed, I firmly believe that

community broadcasting is what GBC is and should be about, and I welcome, as I am sure the House does, any initiatives to ensure the provision of programmes the Gibraltarian public will identify with.

I now turn to the Government Lottery and the forecast outturn for the Government Lottery for the financial year ended 31st March 2006, as shown in the Draft Estimates of Revenue and Expenditure, has a projected surplus of £33,000. The projected surplus for the financial year ending 31st March 2007 is estimated to be £510,000. The level of returned tickets during the year ended 31st March 2006 is forecast to be around 28 per cent across sales, the same as in the previous year. However, prizes on returned tickets are lower, are 15 per cent across prizes payable, compared to the approved estimate of 32 per cent and the previous year's figure of 23 per cent. There have been a number of changes implemented this year to enhance the sales of lottery tickets. The first of these is that lottery draws were changed from Mondays to Tuesdays with effect from 5th July 2005, to enable the sales of lottery tickets over the weekend and throughout Mondays. Secondly, lottery tickets for the Christmas Draw are now put on sale earlier, and this increased sales from 79.87 per cent for the Christmas 2004 draw to 84.47 per cent for the Christmas 2005 draw, an increase of 4.6 per cent. Finally, the most recent change is the redesign of the lottery tickets themselves which becomes effective as from this summer's Extraordinary Draw to be held on 4th July 2006, tickets for which are already on sale. The new, attractive design entails having full colour photographic images depicting local themes, with every draw carrying a different design and colour scheme for easy identification. The ticket has for the first time also been enhanced with perforations between each share to enable better handling, something that has been long overdue.

I now turn to the three utilities starting with the Gibraltar Electricity Authority. During the last financial year the total units of energy generated by Waterport Power Station and purchased from OESCO reached an all time high of 146.79 million units,

representing an increase of 4.3 per cent over the previous year. Units billed to consumers totalled 141.35 million units, representing an increase of 5.9 per cent. The total amount billed was £15.46 million and the amount collected was £15.19 million, an increase of 26 per cent accounted for by a combination of the increase in units billed and increased tariffs since April 2005. The number of consumers stood at 15,868 as of the end of March 2006. The spiralling fuel crisis meant the overall average price over the last financial year was up by 34 per cent, and the equivalent average increase in the FCA per unit payable to OESCO went up by 82 per cent. OESCO's seventh generator creating 5.1 Megawatts was commissioned during February 2006 bringing the total capacity available to Gibraltar to 42.8 Megawatts. Major objectives were achieved during last year, such as the programme of renewing the ageing transport fleet, with the acquisition of eight new vehicles, the computerisation and provision of e-mail facilities to all desk bound employees and the computerisation of the accounts. Also worth highlighting are the training courses for those employees who are engaged in switching operations on the high voltage network, working in areas where asbestos may be present and working heights and/or confined spaces. A major programme of in-house high voltage works was carried out which culminated in the decommissioning of the King's Bastion distribution centre and the 6,600 volts high voltage network in the old Town area. Works to form high voltage cable network for the Europa area were commenced and are now nearing completion. I would like to record that the Board of the Gibraltar Electricity Authority is now fully constituted under my Chairmanship, there are nine other members assisting in the decision-making process with the Board comprising three members from the private sector, three members from Government Departments and three members being employees of the GEA. The first official meeting took place in November 2005 and meetings are currently held on a monthly basis. To conclude this section I would like to say that the activities of the GEA are not limited to ensuring that a permanent supply of electricity reaches every consumer throughout Gibraltar, its wide scope of responsibilities include public lighting, traffic light

signals, providing the power and illuminations for popular festivities and, of course, providing Government with electrical contracting works in official buildings and housing. Additionally, a new techno-medical division was formed to look after the engineering aspects of the new hospital.

I now turn to AquaGib. During the last financial year a total of 1.21 million cubic metres of potable water were supplied, slightly down on last year's figure of 2.22 million cubic metres. AquaGib pumped a total of 3.37 million cubic metres of sea water to the various sea water reservoirs which represents no change from the previous year. The sewage pumping stations were operated at 100 per cent availability. Throughout the year the quality of potable water supplied by AquaGib complied with the requirements of Directive 98/83/EC. The House may be aware of quite alarming figures released yesterday by a leading UK water company relating to water leakages and given the topical nature of this matter, I thought it would be worthwhile to inform the House of the excellent waste figures for Gibraltar which during the last five years have ranged between 7 per cent and almost 11 per cent. The percentage of water leaks in 2005 was just 9.5 per cent which compares very favourably with the average values for the UK and Spain, which I am informed are normally in the 20 per cent to 30 per cent range. AquaGib's figures are low due to the highest importance the company gives to the control of water losses, operating latest available technology and the monitoring and detection of waste. I therefore take this opportunity to congratulate the company for its safe management of this valuable and vital resource. Finally, the pay disputes which resulted in industrial action in February last year and led to mediation by the Chief Minister, was settled early this year and a formal agreement was signed by AquaGib and the TGWU/ACTSS on 9th May. Apart from agreements on a new pay structure, a number of significant improvements in work practices were agreed. A formal dispute resolution procedure is to be agreed to by the end of the year and a further much welcome step forward is that in the event of an industrial dispute, AquaGib personnel will at all times undertake emergency work to ensure continuity in supplies of potable and

salt water as well as the pumping of sewage. This is therefore a good agreement for all sides including consumers.

Last but by no means least, I address this House as to the other utility company I chair, namely, GibTelecom. As a shareholder of GibTelecom, the Government are pleased to report that the company has continued its effort to streamline the group's operations. By the end of 2005 the company had completed its objective of integrating the businesses within the group and realising the result in synergies. Following the integration of GibTel into GibTelecom in 2004, Gib Connect the other fully-owned subsidiary of GibTelecom, ceased trading as a separate entity and was re-integrated into the parent company with effect from 1st January 2006. Towards the end of last year the company offered a voluntary separation package to those over 45 years of age, an offer which is being taken up by 8 employees, bringing to 33 the total number of employees leaving on early retirement, voluntary separation terms, since 2003. This turnover has created internal job opportunities and facilitates the recruitment of staff bringing new skills and expertise. These changes are contributing towards refocusing the business to meet the technological challenges ahead. The Government welcome GibTelecom's continuing investment in building enhanced telecommunications networks, resilience and monitoring. Over the last 18 months GibTelecom has upgraded its international infrastructure to the internet backbone to now provide four independent and resilient IP links transiting Spain. Traffic can now be seamlessly passed between these GibTelecom links, three of which terminate in Madrid to geographically diverse locations with a fourth in London. In addition last year, the upgrading of the microwave link going south to Morocco Telecom was completed. The total bandwidth capacity of the company is now well in excess of that currently being used, contributing to dedicated internet bandwidth being immediately available on the market in Gibraltar. Earlier this year the company also completed connections to a new fibre link on its northern fibre link from Catalan Bay to the frontier. The company now boasts three diverse resilient fibre routes crossing the border to Spain, as opposed to the one park and

potential single point of failure which existed up to two years ago. In its continuing efforts to enhance services, GibTelecom has also embarked upon establishing a state of the art network operations desk. The company has consolidated various customer help desks and monitoring systems into a single modern network operation centre, located at Mount Pleasant. I understand some initial teething problems have been experienced in establishing this multi-functional operation, but the company are confident these can be overcome and will provide an enhanced and comprehensive 24 by 7 service to the whole of Gibraltar including of course the e-commerce community that is now an important contributor to our overall economy. I am especially pleased with the cooperation of the staff and Union in the difficult task of putting more of the business to work round the clock throughout the year. The turnover of the GibTelecom group in the calendar year 2005 rose to over £26 million, an increase of 8 per cent over the previous year. Dividends received by Government for the financial year 2005/2006 totalled £3.6 million as set out in the Estimates Book. I have to point out that the increase of £1 million over the previous year is the consequence of a change in the accounting rules for recording dividends. The final dividends for GibTelecom's financial year 2005 had to be declared and approved within the financial year in order for it to be booked against that year's accounts. Previously, the final dividend would have been declared after the company's and indeed, Government's financial year ends. Consequently, the dividends for 2005/2006 received by the Government reflect three rather than the usual two dividends. The final dividend for the company's financial year 2004, paid in October 2005, the interim dividend for 2005 paid in December 2005 and additionally the final dividend for 2005 paid in February of this year. The projected dividends for 2006/2007 in the Estimates reflect the growing success of GibTelecom, and I offer my compliments to the management team and their staff for successfully merging together the two companies and reshaping the business over the last two years. Government also welcome the various initiatives offered to customers over the course of the past 12 months, including for example, new

mobile, GPMS and voice mail services but in particular pricing initiatives for mobile and international services. Indeed, I would welcome and encourage further moves by the company to continue to take pricing initiatives over the course of the year ahead. As previously mentioned in the House of Assembly, Verizon is disposing of its shareholding in GibTelecom. Verizon have already sold most of their overseas investments and are now looking to complete their exit in Europe by selling their equity in GibTelecom. The Government have had the opportunity to meet the parties with whom Verizon are presently in discussion earlier this year, but it is not appropriate for Government to comment further at this stage as negotiations are still under way.

Lastly, telecommunications issues form part of the on-going tripartite forum between Gibraltar, Spain and the UK. As mentioned in my Budget speech last year, the constraints on telephone numbers and the impossibility of the company's mobile customers to roam throughout Spain consequent to Spain's non recognition of Gibraltar's 350 code, continues to impact on both GibTelecom and Gibraltar citizens more generally. With regard to GibTelecom's actions before the EU Courts, the Court of First Instance has yet to set a date for the hearings in respect of both the roaming and numbering cases launched at the end of 2003 and during 2005 respectively.

That concludes my address as to the various elements of my responsibility. Before finalising my contribution, however, and in accordance with normal practice, I would like to express my most sincere gratitude to all those ladies and gentlemen who make up the Ministry or who form part of the respective Government Departments, authorities and related bodies, as well as those who serve in the various advisory committees and boards. The fact is that their loyal support is invaluable in ensuring the delivery of the Government's programme and commitments. My thanks also go out to the management and work force of those commercial entities for which I have political responsibility.

HON J J BOSSANO:

Before the Minister sits down I would like to ask him something. Was he suggesting that the actual accounting dates of the company have changed? I did not quite follow what he was explaining.

HON CHIEF MINISTER:

There has been a change in the rules on accounting for dividends and as to when they have to be paid. My understanding of the new rules, correct me if I am wrong, that they have to be declared in the year against which they are going to be booked and it cannot now be declared one year and attributed to a previous year. So there has to be a coincidence of periods.

HON J J BOSSANO:

The year ends in December for GibTelecom, as I understand it. Is that still the case?

HON CHIEF MINISTER:

Yes.

HON S E LINARES:

Mr Speaker, this is the tenth year since this GSD Government came into power and yet we have seen very little progress in many areas. It is important to note that some of the things that this Government have embarked on, according to them, were either ludicrous or mad. Let us take for instance the abolition of the parental contribution. It must be recalled that the GSD Government, when the Alliance announced that they were to

abolish parental contributions, the Minister stated that it was a mad thing to do. At that time he was involved with the Income Tax Office to try to find out who were those parents who were trying to swindle the system. In the year 2000 the Minister revealed that 44 cases had been investigated and that he intended to continue using his powers to the maximum effect to stop the abuse by persons who only defrauded the Exchequer with cooked income tax returns. In the Election 2003, we committed ourselves to the abolition of parental contribution. Now it is not seen as a mad idea but a good idea, which they have implemented. The change of school hours, which was an idea which came from the teaching profession and backed by the Alliance, was also seen as a pie in the sky idea. I remember again in the year 2000, the Minister stating that the change in school hours will only alleviate the problem of delivering and collecting children but not entirely solve it. According to the Minister now, traffic has seen a vast improvement at lunch times. In the same Budget speech the Minister mentioned their manifesto commitment to build a new first and middle school in the area of Westside, I repeat, in the year 2000. It is now 2006 and not a brick has been laid to alleviate the overcrowding in schools such as Governor's Meadow, Bishop Fitzgerald and St Anne's. As things are going, the school will not be built until at least 2010 at the earliest. I have asked question after question in relation to the pupil referral unit and the Minister has constantly been dodging and weaving the issue to the extent that he stated that a pupil referral unit had already been set up, but that it had been done so with a team of highly experienced teachers. The fact of the matter is that we are increasingly finding more and more children being suspended from schools and nowhere to go, more and more problems of a behavioural nature, especially after the change of school hours, and frankly, the best team as it is known, cannot cope and they see children with challenging behaviour very rarely. Definitely not as much as these children need, that is for sure. Therefore, behavioural problems are not tackled adequately in ways which aids the child with the said problem. This brings me to the issue of bullying. Despite the fact that bullying is on the increase, changing the criteria of what is bullying is only an effort to hide

the real facts. This is that young people themselves do not think that the issue of bullying is taken as seriously as it should. This was reflected in the comments made by the National Youth Council's report recently published. I quote. "Youth Forum delegates highlighted the fact that bullying in educational institutions is ever present and that those responsible for bullying are not dealt with in an appropriate manner". They go on to say, "we recommend that a new approach to bullying be implemented". Truancy is another issue that is not taken as seriously as it should. The Government do not seem to understand that it is their responsibility to make parents send their children to school, and that if they do not they will be prosecuted. The fact is that after a lengthy process which takes a lot out on the limited resources available, at the end of the line a fine of the amount of £5 is imposed. At one point the Minister stated that the legislation on truancy had been drafted. Now it seems that there is no legislation or anything that will be presented to this House in the form of a Bill. All three issues mentioned above, that is, the lack of proper pupil referral unit, the problems of bullying compounded with the lack of legislation on truancy, could well be why we are experiencing a sort of breakdown of law and order and an ever increasing rate of juvenile delinquency. Only the day before yesterday we had an incident in Casemates during the England/Sweden game involving juveniles. On this issue, it seems that due to the facts mentioned above, and that community service as a sentence is not properly managed, means that some of our juvenile delinquents are locked up in a Victorian prison and as soon as they are out they are committing offences again. Even in prison they are not allowed to enrol in some sort of training. I am convinced that with the Youth Service under the auspices of the Department of Education, with proper resources and in liaison with the Social Services, they could work out a meaningful programme of community services for many of our young people, which this Government are failing. Both Ministers made their lack of coordination between the Social Services Department and the Department of Education and Training evident with statements in this House. On the one hand we had the Minister for Social Affairs stating, "in relation to the treatment

and training of inmates could undertake modules of a construction-related NVQ's. The idea behind this is to explore whether inmates can obtain some sort of qualification for the voluntary work carried out whilst in prison". She continued by saying, "the Department of Education and Training are also willing to assist those prisoners wishing to enter the Vocational Training Schemes. This will provide offenders up to the age of 25 with the opportunity of seeking employment in completion of their respective sentences, and assist them in their social rehabilitation and transition from prison to life of freedom". Yet on the other hand, in answer to Question No. 179 of 2006, the Minister for Education and Training stated, "inmates from our local prison are unable to participate in vocational training schemes because of the very nature of their internment does not allow them to undergo training through work experience placements". This clearly demonstrates that there is a lack of consultation, communication or coordination amongst Ministers on this issue.

In relation to legislation, we are still awaiting the regulation on nurseries to also be presented to this House. Again, the Minister has been playing a dodging and weaving game, to the point that he said in answer to Question No. 929 of 2002, "I do not think it is proper for me to divulge what is exactly included in the agenda of any particular meeting of the Council of Ministers. What I can assure the hon Member is that the legislation on nurseries is ready to be considered by the Council of Ministers". In the last Question Time only a week ago, the Minister stated, "the number of times this question has been asked in this House leads me to believe that there must be some sort of crisis in private nurseries". Well, I do not think that there is any crisis in private nurseries, he must know something that I do not. He continues, and this is the most interesting part to say the least, "to come up with a piece of ill thought-out legislation, which could potentially affect what is after all a vital service to the working parents, is just not the style of this Government, so I must reiterate it will be ready when it is ready". Is it ready or is it not ready? That is the question. This goes to show clearly that when the GSD Government are caught out, they resort to try

and confuse everyone. The Minister could well have been misleading the House since it is impossible to have a piece of legislation ready, as the Minister stated in Question No. 929 of 2002, and then come to this House four years later and say that it is not his Government's style to come up with a piece of ill thought-out legislation. How should we then take the Minister's assurances? It is also important to note that since I asked Question No. 633 of 2006 at the last Question Time only last week, the Department has issued health and safety guidelines to private nurseries. It is clear that had I not asked this question the private nurseries would never have got these guidelines. Private nurseries received the guidelines days after the question was presented to this House. Following on the theme of health and safety, a particular situation arose as with the question mentioned above. It has been due to persistent questioning from the Opposition that a health and safety policy was drawn up by the Department of Education. This should have been done straight after the Health and Safety Ordinance was passed in this House. The issue of asbestos arose in Governor's Meadow, Bishop Fitzgerald and later in the College of Further Education's Annex. The issue of health and safety in schools cropped up, this despite the fact that Government tried very hard to hide this fact from the staff, which under the Management of Health and Safety at Work Regulations they should have been informed. Some members of staff at these schools are still awaiting the medical tests which they were promised would be conducted.

Due to the unfortunate illness of my colleague, I have been asked to shadow sports as another of my portfolios. Personally I have no problem with this, sports not only compliments my responsibilities but I am also an avid sports person myself. In her contribution on sports the Hon Mari Montegriffo in the year 2003 criticised the GSD Government on their lack of progress at the Sports City. She said, "the Sports City has indeed proved to be a long-drawn affair". The Sports City, it must be recalled, was a commitment by the GSD way back in 1996, that is ten years ago and it is still not complete. In 2004 she again criticised the Minister for Sports for the lack of real progress.

The hon Lady mentioned how Government had estimated certain amounts of monies for the Sports City, yet the Government did not spend the amount estimated. As an example, she said that in the year 2002/2003 Government had budgeted £1.5 million and only spent £342,000, which is only 22.8 per cent. In the year 2003/2004 Government put in £3.4 million and only spent £1.6 million, 47 per cent. The Minister in 2004 stated that the Sports City complex was going to be completed by the autumn of that year and this year he has announced that it will be completed after the summer. Interesting that he has omitted the year, of which summer? He has omitted it, since we have been going on since 1996 I wonder when. The fact of the matter is that we are now in 2006 and it is still not complete, but it has been inaugurated twice. First by Her Royal Highness Princess Anne and then secondly by the all important Minister for Sports. The plaques to announce this were put up quickly and efficiently, something which cannot be said about the whole Sports City complex. In fact, the hockey stands, changing rooms et cetera were to be completed by February 2005. Now we are in June 2006 and it does not seem to be finished yet. We know this because we still have not had the usual PR exercise by this Government, as they do with everything else. One thing that puzzles me is the fact that the hockey pitch has not got floodlights for it to be used by teams during the evenings in winter. The excuse given is that it is close to the runway. Well, who was the bright spark that in the original designs put the hockey pitch in the current position? If it is like everything else, it could well be the Chief Minister, since he is the one who chooses the colour of the curtains in Convent Place as well as the colour of the parasols in Casemates. If it is anything to go by, then God forbid us if the result of what is going to be put in the King's Bastion Leisure Centre, where in answer to questions I have put in this House, the Minister does not yet know what facilities are going to be offered there.

In relation to the Western Beach boat owners fiasco, it is incredible that this Government have spent approximately £4 million and there are still nearly 200 Western Beach boat

owners who are to be moved, and with no prospect of having a permanent berth as they were promised. The Government allowed this situation to occur because of the lack of supervision as to the allocation of berths by those who were charged to manage what is now the Cormorant Camber Boat Owners Club. A total of 104 boats have slipped the net. The reality is that nearly 200 boat owners are still awaiting a permanent berth.

To end my contribution on sports, it is important to note that the GFA are still trying to become members of FIFA, and they have not done so due to Spanish objections and only recently our sportsmen and women of the bowling fraternity, have seen how the Spaniards did not participate due to the inclusion of Gibraltar. So much for good neighbourly relations. Another of my portfolios is that of culture. The two most important issues in relation to culture are, (1) the infamous Theatre Royal; and (2) what could become infamous if this Government do not take a more pro-active stance, the Music Centre. The Theatre Royal has been a disaster area for this Government. The Government spent nearly £4 million to date, last year's rent increased and this year we see an increase of £3,000 to the provisions under the Head 2A Subhead 4(e), namely, the Theatre Royal. Government have spent to date a total of approximately £400,000 only on rent and what we have got to show for this is a derelict building beside a huge hole. The whole planning has been disastrous. People of the cultural world who are in desperate need for funds could have better used all this money, but it must be recalled that it was in 2003 that £8.5 million was approved for the refurbishment of the Theatre Royal. In January 2004, in answer to Question No. 420 of 2004, the Chief Minister was insisting that the project was going ahead at the cost of £8.5 million, though he knew that in the Estimates of 2003/2004 there was £9.8 million. Now the figure could well be double. After a number of questions in the same year, it was revealed that adjacent properties were affected by the previous demolition. In fact, Government spent £116,335 on piling and reinforcing of the existing structure and adjacent properties affected. This fact denied in this House to be the case. This

could well mean that we could still end up with a liability of a magnitude which this Government are not even aware of.

The current Music Centre which is situated at the old BFBS building, is in a pitiful state. Again, in answer to questions in this House, we realise that monies have been allocated for the refurbishment of the said building. On this issue the point is that this Government do not seem to care much as to where the monies given go. It is a pity, a great pity, that again young people and the not so young are in desperate need of a place in which they could learn or play music, and are currently being deprived of this good building.

Training is yet another portfolio which cannot go by without criticism. Despite the fact that the Minister year in and year out in his Budget speeches gives us a lengthy exposé, as he has done so this year again, on all the courses run by the Gibraltar College of Further Education and Bleak House Training Institute and others, many of them conducted by private entities, the reality is that this Government are now finding that trainees, through the TGWU, placing claims of funding and treatment. As a result, and again through questioning, we have found out that trainees on the Vocational Training Scheme and other training institutions, have not had an increase to their allowances since the GSLP introduced the VTS way back in 1992. One cannot understand this since Government are currently obtaining funding from the EU through the ESF. The Minister has in most of his Budget speeches, stated that his Government have increased the maintenance grants for students going to the UK for further education, which is good but he has ignored our vocational trainees.

This brings me to the issue of the 14-19 education. On this issue the Government created the 14-19 Working Group, and then the issue of co-education extended the terms of reference of that committee. Their meetings are few and far between and the result is that this area of education is being left behind. Since the committee was formed a number of years have gone by and there are many young people who may have missed a

golden opportunity. I have argued before that a pro-active stance should be taken by the Minister, who is the Chairperson of that committee, on this issue and we should be looking at other jurisdictions independently from the English and Welsh education system, which is the case at present. The Training Advisory Council, which is yet another committee created by the Minister, recommended a graduate training scheme and the last time I asked this question in the House there were two students enrolled. It was obvious that the Government did not take a pro-active stance to this scheme. Well, the GSLP/Liberals had foresight and we included in our manifesto the extended grants for graduates to either be engaged in work within Government for three years, or be able to do a second or higher degree for another three years. We did not need to have an advisory council to recommend this. In relation to the advisory councils which this Government have created, it is obvious that they have been created for the Minister to be able to hide behind his inefficiencies.

In conclusion this Budget proves, as far as education, training, youth, culture and now sport is concerned, that it is much of the same as previous years with no more new initiatives forthcoming. It shows that the GSD is lacking vision of the right kind, not things like the Theatre Royal disaster. The GSD Government are lacking foresight in issues such as bullying, juvenile delinquency, 14-19 education, training et cetera which I have mentioned above. Thank you for your attention.

The House recessed at 5.25 p.m.

The House resumed at 5.50 p.m.

HON J J NETTO:

This will be my first Budget speech as Environment Minister, a post I have now held for 11 months. Needless to say, this period has been very positive for me due to the enormous

expansion of projects and services that both Technical Services Department and the Department of the Environment are carrying out on behalf of this community. It gives me great pleasure to witness the enthusiasm, commitment and dedication of my staff towards their work and their loyalty towards Government policies. I will address my political responsibilities in the following order, Department of the Environment and then Technical Services Department.

Department of the Environment

This year we have celebrated two important events in the field of environment, the launch of our Environmental Charter and our very successful celebration of World Environment Day. Last year we undertook a process of consultation with NGO's, employers' organisations and officials in various Government Departments in order to identify the areas of concern regarding the environment and obtain as wide a spectrum of views as we were able to on matters pertaining to the environment. This process was initiated as a lead-up to the finalisation and launch of our Environmental Charter. It therefore gives me immense pleasure to state that on 30th May 2006 Gibraltar launched its own Environmental Charter, something that has been widely welcomed by all the non-Governmental organisations involved in this field and, I believe, the public at large. This is yet another realisation of a manifesto commitment. The Charter provides a series of broad guiding principles that form the basis on which Gibraltar will aim to achieve sustainable development. It will provide the footprint by which environmental policies and management will be administered and developed.

The Charter is a bold statement of intent that illustrates the Government's commitment to the environment and the importance that we give to environmental protection, taking account of the objectives of sustainable development, from an ecological, economic and social perspective. However, the Charter is only the beginning of the commitment since it needs to be followed by an Environmental Action and Management

Plan. This Plan will outline the core objectives and provide an indication of the methods to be employed to achieve our aim. The objectives will need to be set at realistic achievable levels, involving a wide range of organisations and encompassing different measures. In the light of the work that needs to be carried out in this respect, Government have created an additional Environment Officer post within the Department of the Environment with the new appointee being principally concerned with the development and introduction of the necessary measures to achieve the objectives of the Plan. One discerning difference between our Charter and those of the other Overseas Territories ones, is that in our case the environment portfolio is a defined domestic matter whilst this is not the case in the other territories

World Environment Day was celebrated this year on 5th June 2006 with a full day of events at John Mackintosh Hall. The celebration of this day is one of the principal vehicles through which the United Nations stimulates worldwide awareness of the environment. Every year the United Nations selects a theme – this year's theme was Deserts and Desertification – locally Biodiversity was chosen as a more relevant theme. The day was divided into two sessions, a morning session specifically dedicated to our schools and younger generations with the afternoon session directed at local industry and businesses. Government give great importance to targeting and educating our younger generation on matters pertaining to the environment, as it is they that will inherit our environment and be the policy makers of tomorrow. This is why a full half-day session was dedicated to them, during which schools of all ages were invited to make presentations on any issue related to our environment and more specifically to environmental protection. It was clear to everyone present that the Department of the Environment and the schools do give prominence to environmental education, it was for me a proud moment to witness the knowledge instilled in our children and a fine example to the rest of the community. The afternoon session was directed at the industry with the launch of a 'green business'

initiative to promote an environmentally conscientious approach to local business activities.

Distinguished speakers from Morocco, Spain, UK and Gibraltar each gave an address on issues related to the main theme of the seminar, namely 'Biodiversity'. This proved to be an extremely interesting and very valuable session with contributions from the various speakers dealing with a variety of distinct, yet interrelated issues, all falling under the general umbrella of Biodiversity. Both initiatives, that of the Charter and our celebration of World Environment Day, has definitively propelled an enormous amount of interest in the community, and triggered off a number of responses from the business sector in environmental initiatives, something which we are now looking into.

During the course of the day's event, Government announced their intention to commission a desktop study in relation to renewable energy sources, and more specifically, how these could best be applied to Gibraltar. This is in pursuance of Gibraltar's obligation under Directive 2001/77/EC of the European Parliament and of the Council of 27th September 2001 on the promotion of electricity produced from renewable energy sources. The purpose of this directive is to: "Promote an increase in the contribution of renewable energy sources to electricity production and to create a basis for a future Community framework thereof"

The EU's Renewable Directive has been in place since 2001, at a time when oil and gas were still at a relatively low price. The Directive aims to increase the EU's share of electricity produced from renewable energy sources, thus contributing to reach the overall target of 12 per cent of energy consumption from renewables by 2010. Although clearly Gibraltar's limited size and resources make it extremely difficult for us to fully comply with this Directive, Government are nevertheless fully committed to considering all options, including wave, current, solar and wind energy generation and it is precisely this that they are endeavouring to do by commissioning the said report. In

respect of this last option, a wind survey is shortly to be undertaken at Windmill Hill with a view to obtaining the necessary core data to be used as part of the assessment.

Allied to the foregoing is the Government's intention to transpose into local legislation the latest EU Directives on energy efficiency in buildings. However, in advance of this, the Development and Planning Commission has for some time now been requiring developers to demonstrate the energy efficiency measures that are being designed into new buildings as the Commission is always cognisant of the effects of development on the environment. These effects can take many forms including aesthetics, traffic generation and consequent impact on quality of life through noise and air pollution, nature conservation interests and the like. Worthy of mention in this respect, is the proposed Mid-Town Development in relation to which we wish to stress that consideration to energy performance issues is featuring very highly in the design of this development. This includes, in addition to thermal insulation, other factors that play an increasingly important role such as heating and air-conditioning installations and the general application of renewable energy sources. This approach brings together energy efficiency as an integral part of the building design to make the most of all the building's elements. By so doing, it reduces the amount of energy required to operate these buildings compared to conventional buildings. This not only reduces the need for fossil fuels and consequential environmental impact but also improves the comfort of building occupants by using pleasing architectural designs to brighten up areas using sunlight rather than electricity. By way of an example, consideration is being given to the development of a 'Sea-Water' air-conditioning facility or derivative that uses natural cold water sources for cooling and heating.

The Chief Minister in his Budget contribution announced a review over the next 12 months of the current Road Tax scheme, and the current import duties tariff for energy saving items. Clearly, the intention of such a review is to be able to reduce emissions in both the transport and household sectors.

As hon Members are aware, transport is one of the largest sources of carbon dioxide emissions and it is therefore important to tackle the emissions from this sector to address both climate change and local air quality issues. Consideration then will be given to the concept of introducing a scheme based on the amount of emissions produced by individual cars, as opposed to the current system based on the weight of the car. Secondly, household items also have an important role to play in tackling climate change as they account for considerable energy consumption and carbon emissions. Therefore, simple energy efficiency measures can reduce both emissions and energy bills. Solar heating too can make a contribution towards improved energy consumption and lower carbon emissions. Thirdly, a review of the import duty scheme in order to encourage the use of bio-fuels would be good news for the environment. So it is with great pleasure that the Chief Minister has assigned to us this extra work and for which we are very pleased and will endeavour to explore all available avenues.

On a more general note and following the trend established in previous years, the EU has continued to give great prominence to matters pertaining to the environment with new or updated Directives having been transposed during the course of the year. However, systems are now in place to expeditiously deal with and manage the requirements of such Directives, with the Department of the Environment having been actively involved in the undertaking of such work. In this respect I wish to report that the two air quality monitoring stations continue to monitor the quality of our air with this having thankfully been classified by our consultants as being of good quality. During the course of the year we have extended the capability of one of these stations to monitor for additional potential pollutants, thus ensuring Gibraltar's compliance with the Fourth Daughter Directive.

The Water Framework Directive was transposed some years ago and work continues in this respect in the preparation and introduction of systems that will allow us to adequately monitor

the quality of all our waters and devise a plan to keep improving it.

In relation to waste, the first part of the waste characterisation study has now been completed and updated information on the types and quantities of waste produced in Gibraltar is now available and will be used to update Gibraltar's Waste Management Plan. This Plan will identify how the disposal of our waste can best be effected in keeping with the requirements of the relevant EU Directives.

The tender for the disposal of ozone depleting substances, principally related to refrigeration equipment, fire extinguishers and other such like equipment, was awarded during the course of the year and the removal of stored equipment has now taken place. Therefore, now exists a system for the disposal of all such items, something that will now take place at regular intervals.

Arrangements for the disposal of waste electrical and electronic equipment are currently being finalised. In this context, and indeed in relation to other waste, Government are looking at rationalising their waste handling facilities with the creation of an Environment Park where all types of domestic waste will be accepted, separated and disposed of accordingly. Various sites for this facility are presently being considered and it is hoped that a final selection will be made during the course of the current year.

A further enhancement to this service to be provided will be the recycling of additional waste items. Government remain fully committed to the principle of recycling with tender documents for the recycling of glass and tins having now been finalised. The introduction of this additional facility will supplement the recycling that is already taking place in relation to waste oils, batteries, metals, refrigerators, end of life vehicles, ink cartridges and some cardboard items. Tenders for the additional recycling are scheduled to be released during the next few months.

In connection with noise abatement, I am very pleased to state that following the commitment previously given, work will this year commence in providing sound insulation to the OESCO power station. £1 million has been provided this year for this purpose with the process of re-engaging the specialist consultant already having been commenced. It is envisaged that during the course of the current year, work will commence and will hopefully be completed on the re-roofing of the station, with other essential works to follow, as may be recommended by the consultants.

Work to beautify the cemetery was commenced during the course of the year. This entails the complete repaving of all the paths with the chosen paving material allowing for the introduction of a more effective maintenance regime. Paths are being paved with removable pavia blocks, aimed at eliminating the unsightly appearance of the cemetery whenever digging is carried out at the edges of plots. Also included in the scheme is the refurbishment of the existing toilets, provision of additional watering points, provision of benches at specific locations and the introduction of focal points that will be further enhanced and beautified. Consideration also continues to be given to possible ways of enhancing the plots themselves with new arrangements shortly to be introduced that should result in the enhanced appearance of such areas.

Preparatory work also commenced during the course of last year in connection with the new crematorium. Demolition of the ex-Governor's Cottage buildings has now been completed with construction works shortly to follow. This is a complicated project that has been scheduled for completion within 18 months.

With regard to the restoration of the Upper Town urban environment, this Government's record in investment and refurbishment works in restoring many of the buildings in this area is unmatched by the joint efforts of the two previous administrations to the GSD record in office. Additionally, the recent sales to empty pre-war properties continues to add value

to the restoration process of the Upper Town. In addition to this, some of my colleagues have already alluded to various initiatives for the old St Bernard's Hospital. Further announcements in due course will encompass the totality of the turn-around of another significant and heritage zone of the Upper Town.

Currently, and in pursuance of our manifesto commitment, design work in connection with the Government's Upper Town Urban Renewal programme has already commenced. Specific areas will systematically be targeted with the first phase concentrating on Castle Street and its immediate adjoining side streets as well as Road to the Lines, leading up to and including the recently uncovered Puerta Granada. Hon Members would have noticed that in the Improvement and Development Fund, Head 103-17, £1 million has been provided by the Chief Minister. Other areas are also currently being considered but these will be announced as and when Government approve schemes for execution.

During the course of last year, Government announced that special attention would be paid to the refurbishment and bringing back into operation all of Gibraltar's public clocks. These have unfortunately not received adequate maintenance for a considerable time and great effort and significant investment is now required to try and bring them all back to an acceptable standard, although this may not be possible in all cases due to the very significant deterioration of some of the clocks' mechanism. A specialist consultant from the UK was engaged to inspect all clocks and to make recommendations for their repair or replacement and subsequent on-going maintenance. Their inspection was undertaken some months ago and we are now in possession of their report, which is presently being considered prior to a final decision being taken on the sequencing for the intended works.

One other project that will be initiated during the course of the year is the removal of stored asbestos roof sheeting from within a disused tunnel at Europa Point. During the refurbishment

works undertaken as part of the conversion of South Barracks into a school, work undertaken by the previous administration, the decision was taken then by the GSLP Government to store the asbestos roof sheeting material from the barracks in a disused tunnel at Europa Point. So much for the Opposition's commitment to the environment. This recently came to light as a result of children playing in the area having broken into the said tunnel and exposed the items being stored within. Assuming that all that has been stored there is the roof sheeting from South Barracks, we are intending to remove the entirety of the stored material for safe disposal to an authorised facility outside Gibraltar, something that should have been done at the time and which would have resulted in less cost than that which we will now have to incur in so doing.

A number of current service contracts have or will shortly be expiring, and the Department of the Environment is presently reviewing the arrangements under these original contracts with a view to renewing and enhancing the service provided under the said contracts. These relate specifically to the Cleansing Contract, Maintenance of Planted Areas and the running of the Gibraltar Botanical Gardens. It is expected that new contracts will be in place prior to the end of this year.

I wish to end this section of my address by thanking the many organisations and groups that carry out important work in the field of environment and for their contribution to the work of this Ministry. Their work assists in raising the profile of such issues, thus increasing public awareness and in so doing ensuring that they become part of the public culture.

Technical Services Department.

The Department has been involved in the design and project management of a large number of major projects during the past financial year. Many of these projects have been advanced through the pre-contract stages and most will therefore reach the construction phase during the coming year

or the next. Having said this, some such projects have already been completed and others commenced on site.

As part of Government's continuing programme of beautification works in the City Centre area, the Engineer Lane project was started. This will see the whole length of Engineer Lane being tackled from its junction with Main Street up to Cornwall's Parade and will also include Bell Lane. Upon completion, this will serve to improve the urban environment to the east of Main Street and consideration is being given by Government to expand this southwards along Cornwall's Lane and to eventually include Governor's Street. A further extension to the City Centre beautification programme will also see the southern end of Main Street being tackled from the area of Southport Gates up to Convent Place.

Another major highways related project that commenced during the past year is the new link road from Reclamation Road to Fish Market Road. This has involved the demolition of buildings both below the Orange Bastion and along the top of Chatham Counterguard and is the first phase of a project that will eventually extend up to the Waterport area in three phases. Upon completion, not only will a major improvement of this whole area have been achieved, but there will also be a degree of heritage related gain in terms of the opening up of the areas of our City walls that were previously inaccessible.

Existing parking arrangements will be reviewed as will traffic flows, all with the aim of maximising the number of car parking spaces that result, as well as to facilitate and fluidise both vehicular and pedestrian movements. This will be particularly noticeable in the areas of Orange Bastion, at Line Wall Road level, Fish Market and at Market Place, where radical changes will be introduced. Construction of a new road linking Castle Road with Willis's Road will start shortly with the contractor having already begun mobilisation. When completed, this road will considerably improve the circulation of traffic in the upper town area.

The first phase of the works to repair and beautify the parapets and footpaths along Europa Road was started. This project in its entirety will tackle the full length of parapet and footpath from Grand Parade up to Loreto Convent and down towards South Barracks. These works are scheduled for completion during the first quarter of 2007.

The past year has seen the completion of several projects relating to cliff stabilisation and rockfall protection works. The major project undertaken was the construction of a bund wall at Catalan Bay, on the site of the old quarry. This will provide protection against any further landslides or rockfalls in that area. Sections of the cliff faces above Windmill Hill Road and Europa Mews have also been stabilised. The coming year will see further work by the Department in this field with projects having already proceeded to tender aimed at tackling the cliff faces above Laguna Estate and along part of Europa Advance Road.

The Highways Section has during the past year continued with its on-going minor road maintenance programme which gathered momentum with the award of a new Term Maintenance Contract in October last year. Apart from maintenance work to footpaths and roads, repairs have been undertaken to a number of retaining walls. The programme to improve disabled access has continued and a number of roads have been resurfaced, including Rosia Lane, Lime Kiln Road, the western end of City Mill Lane and Smith Dorrien Avenue from its junction with Winston Churchill Avenue up to the bridge. Works at Cathedral Square were also completed including the re-siting of the southbound bus stop, which has additionally improved traffic flow in the area. The Department's programme of highways works for the coming year will see further resurfacing of roads which in addition to those major projects previously mentioned, will continue to improve the condition of our infrastructure.

With regard to works relating to the sewer and storm drain systems, the Department has during the past year undertaken the relaying of collapsed drains and reconstruction of manholes

at various locations including, amongst others, Castle Steps, Victualling Office Lane and the Laguna Estate and Devil's Tower Road areas. As part of its programme for the cleaning of sewers and stormwater drains, the Department has desilted and cleaned the public sewerage systems at Bayside Road, Glacis Estate, the northern end of Queensway, Laguna Estate, Varyl Begg Estate and Winston Churchill Avenue. In addition to this, all stormwater pits in the South District have been desilted and flushed. Work was also started on the desilting and cleaning of the sewer running along Cooperage Lane which is shortly due for completion. This followed on from the completion of a similar exercise to the main sewer running along the full length of the northern side of Devil's Tower Road, as well as to part of the main sewer running along the southern end of Main Street. A new sewer will in fact be laid to tackle this recurring problem as part of the project to beautify this section of Main Street.

Technical Services Department will this coming year continue to spearhead the management of Government's programme for the delivery of major projects. Apart from those already mentioned, the Department will handle the three new car parking projects at Willis's Road, New Harbours and Sandpits, all of which are due to start construction shortly. Between them, a total of over 400 car parking spaces will be created, something that will no doubt go some considerable way towards addressing the parking problem in these areas. In addition to these, the feasibility of creating a car park in the Naval Hospital Road is also being studied.

Mr Speaker, in conclusion let me say that when one contemplates the enormous and unprecedented amount of projects and services being handled or the ones in the pipeline, one can honestly say that Gibraltar is well placed to meet the challenges ahead of us in a manner where we continue to aim, in harmony with nature, to design, develop and deliver an environment that benefits our community.

Finally, I would like to pay tribute to all of my staff in the Ministry and its two departments, the Department of Education, the

Environmental NGO's and many other people who throughout the year are stakeholders and promote awareness on the environment. All of this is providing a new ethos which augurs well for the future.

HON L A RANDALL:

I will now address the House on the portfolios that I have the honour to shadow. Mr Speaker, I will start with telecommunications. I am pleased to note that the Telecommunications Ordinance and related Regulations came into effect on 5th June 2006. They repeal the Telecommunications Ordinance 2000 and its subsidiary legislation, although some of their provisions are maintained. This new Ordinance should further facilitate competition in the telecoms industry. The aim of the European Commission in opening the telecoms market to competition was to ensure that consumers got a better deal. That is to say, wider choice and lower charges for the services they contracted. I therefore trust that the Telecommunications Ordinance will have this effect in Gibraltar. I say this because although we have seen a number of voice over internet protocol operators establish themselves in our market, offering charges for non-local telephone calls and fixed to mobile calls, at prices lower than those offered by the incumbent, I have no evidence of there being any level of competition in the fixed market for local calls. Last year I welcomed the introduction of Broadband Gibraltar Limited trading as Sapphire Telecommunications into the market and added that I looked forward to monitoring the contribution that they would make in support of the telecommunications industry. Notwithstanding our telephone numbering constraint, I have found no evidence to speak about of their presence in the area of residential telephone services. I trust that the Regulatory Authority will exercise the power bestowed on it by virtue of regulation 23 of the Communications, Authorisation and Licensing Regulations 2006, to impose penalties if this is due to unjustifiable delay in complying with any of the conditions of their licence. We believe it is important that GibTelecom should

continue to invest in acquiring additional internet protocol dedicated band. Obviously, the company makes this investment because it makes commercial sense and obtains a handsome return on its investments, but the Government as a 50 per cent shareholder must use their influence in the company to ensure the continuation of this policy in the context of the wider picture of the importance that this has on the development of the Gibraltar economy, even if the investments were not proving as lucrative as they undoubtedly are. The major users of this dedicated bandwidth are the gaming companies that have located their presence in Gibraltar. Not only do gaming companies now employ over 1,600 people but they also contributed in the financial year 2005/2006 £1.8 million more in gaming tax and licences than the £4.8 million originally estimated, in other words, £6.6 million. They are now established as a major input of our economy. We must therefore ensure that this continues to be the case by providing them with the quality of networks and services that they require. Although I have first hand knowledge of the difficulties that are inherent in achieving the target of a 100 per cent fail safe network, which in the main is achieved by reducing single points of failure to zero, this must be and I am sure is the company's ultimate aim. In this respect, I have every confidence that GibTelecom employs a team of people that is sufficiently skilled and competent to achieve this, even though one must appreciate that in many instances achieving this target is based on the support afforded by partner network operatives.

The Government continue to own 50 per cent of GibTelecom. Last year the Hon Fabian Vinet revealed that the turnover of the GibTelecom group in the calendar year 2004 rose to over £24 million, an increase of nearly 9 per cent over the previous year. However, what it did not reveal and which has now become evident to me, is that the earnings before tax of 2004 of £7.8 million equated to a profit margin of 32.2 per cent of operating income. Earlier this afternoon we were again informed by the Minister that the turnover for 2005 had increased by 8 per cent to £26 million. If the expenditure has been contained to the same percentage, then the EDT for 2005 should be in the region

of £8.4 million, which should allow the company to declare a dividend in excess of the £4.8 million declared in 2004. I doubt whether there are many businesses in Gibraltar, all of whom are customers of the company, who operate on this kind of profit margins. I have offered these figures to demonstrate the scope that the company has to lower charges further and still produce a healthy return on investments to its shareholders. In my address last year, I strongly encouraged the Hon Fabian Vinet, as Chairman of the company, to use his influence on the Board of the company to ensure that the company reduces at a much faster rate the level of charges it levels for its services. The results for 2004 and 2005 and the level and the small number of reductions in charges that the company have introduced since the last Budget debate, oblige me to encourage the Chairman of the company to do this. In this respect I was pleased to hear the Minister refer favourably to this subject in his contribution.

The European Commission declined to take action on the numbering and roaming complaints filed and GibTelecom accordingly filed legal action before the European Court of First Instance challenging the European Commission's refusal to act. The cases are currently pending before the European Court of First Instance. In the meantime, press reports recently emanating from Spain suggest that the Spanish Government may, after years of refusing to recognise our 350 code and denying the Gibraltarians the facility to use their GibTelecom mobile phones whilst in Spanish territory, be willing at some time in the future to propose a solution to our telephone numbering constraints. Be that as it may, the only solution that the Opposition would support is one whereby Spain recognises all of the geographical area codes that have been assigned to Gibraltar by the International Telecoms Union, the ITU, and which are recognised by every country in the world except Spain. Hence, all that we would require Spain who are members of the ITU to do, is to get in step with the rest of the world.

It is clear from the answers that I have received to questions in this House, that sooner rather than later Verizon will dispose of

its 50 per cent share in the equity of the company. I note from the answer to Question No. 385 of 2006 to that provided to me by the Chief Minister, that he had the opportunity to meet five prospective purchasers of Verizon's shareholding. Furthermore, I understand that he has also met with senior members of the management from Verizon and in doing so they are now able to take account of the Government's view. I hope that the view of the Government concurs with ours in that we would require the successful purchaser to be a company of impeccable international standing and that the Government will not dispose of any part of its 50 per cent shareholding in the company.

I now move on to transport. I do not recall either inside or outside this House, ever having been critical of the service being provided by the Gibraltar Bus Company. What I have said and maintain is that God forbid, if improvements in the level of service over that which was previously provided had not been achieved after putting in £4 million of public money to achieve this. I have also been critical and continue to be critical of the fact that the buses that service the town area are too big. Having cleared this point, I acknowledged that the company presently provides an acceptable level of service. However, I would caution against becoming complacent as I am of the opinion that there is room for improvement. The company's immediate parent undertaking is Gibraltar Investment Holdings Limited but the ultimate controlling party is the Government of Gibraltar. The company commenced operations on 10th April 2004 and in the first year of operation the Gibraltar Bus Company produced a loss of £1.57 million, although the trading loss amounted to £640,000, which is around £53,000 per month. It is evident from the accounts of the company it is being funded from working capital. I would remind the House that originally a token figure of £1,000 was included in the recurrent Government expenditure to provide finance to meet operating losses. I wonder if the fact that this is no longer Government policy is an indication that the Government believe that the Bus Company will eventually reach a break even position.

Mr Speaker, I will now move on to traffic and start with the state of our roads. As drivers of our roads will attest to, their state leaves much to be desired. In last year's Budget the Hon Fabian Vinet informed the House that the financial year ended 31st March 2006 would see an extensive road maintenance programme being undertaken which would include the resurfacing of a number of roads, yet the Estimates show that this was not in fact the case. In 2005/2006 the Government only managed to spend £468,000 on road maintenance and resurfacing, which was little over 30 per cent of the estimated figure of £1.5 million. Two years ago when I addressed this House in respect of the 2004/2005 Budget, I offered the stretch of South Barracks Road from Brympton to La Morna and before the Chief Minister mentions this it is the area of road immediately outside my house and beyond, as an example of one of the stretches of road that was in desperate need of resurfacing and proper maintenance. Two years later this stretch of road has not yet been resurfaced, hence it is not that nothing is being done but that not enough has been done in 2005/2006 in this respect. This year the Government estimate that they will spend £1.3 million which is only £300,000 more than the amount underspent in 2005/2006. A well maintained public road network that is adequately resurfaced contributes very favourably towards improving traffic flow on our roads. I therefore encourage the Hon Mr Netto who is now responsible for this portfolio, to ensure that in 2006/2007 this subject is afforded the attention that it deserves. In his 2004/2005 Budget address, the Hon Fabian Vinet informed the House that another issue that was high on the Government's list of priorities was the further provision of car parks and that several options were under active consideration at increasing parking facilities, in the Upper Town area and also in the South District. Judging by comparing the amount spent against the amount estimated, the level of activity appears to have been almost non-existent. In 2004/2005 less than 10 per cent of the amount estimated of £500,000 was spent, and in 2005/2006 little over 7 per cent of the estimate of £1.25 million was spent. In this year's Budget, the Government estimate that they will spend £7.85 million in providing new parking facilities. I trust that they will fare better

this year than they have in the past. I raise these issues because I strongly believe that an important attribute of good management is to deliver projects on time and within budget. I previously informed the House that during the winter months and just before 9 o'clock in the morning, it took me at least 30 minutes to get from my residence in South Barracks Road to my party's headquarters in Watergardens, and that the problem was exacerbated when it rained as a great number of vehicles converged on our roads at the time. I regret to report that if anything the problem has got worse and in my opinion, will not improve until and unless Dudley Ward Tunnel, which has now been closed for over three years, is re-opened for vehicular traffic. Traffic travelling from the South District should then be encouraged to access the town area and vice versa by using the tunnel. At the last Question Time in this House, I was informed by the Hon Jaime Netto that the Government would use their best endeavours to ensure that the tunnel was re-opened for vehicular traffic before the tenants occupied the housing developments that have recently or will shortly commence their construction process in the South District. I trust that the tunnel will be re-opened in time and within the £5.5 million that is included in this year's estimates for the project, since I would not like to describe the traffic chaos that could arise from the failure to achieve the tunnel. Although I assess that in a small country like ours it is difficult not to experience traffic problems at peak hours, I am of the opinion that the traffic problems that we experience today on our roads could be ameliorated. However, I do not believe that we will achieve significant improvements unless and until we re-open Dudley Ward Tunnel for vehicular traffic, we manage better the traffic coming from the Upper Rock, we set out periphery arrangements across the airport for traffic in and out of Spain and we make better use of the miles of tunnels available. Additionally, there needs to be access to Line Wall Road other than by both entrances. I trust that most, if not all of these suggestions, are included in the Government's traffic plan. In his Budget last year the Hon Fabian Vinet also said that the Government continued to pursue their aims to ensure that the general public is provided with greater information on road works and closures, yet when it comes to the first phase of the

maintenance work being carried out at Smith Dorrien Avenue, which commenced at 8 o'clock on Saturday 22nd April 2006, and which are scheduled to be completed in mid August, the last press release issued by the Government was on 4th May to cover the works up to the 12th May. Why have the Government not continued to keep the public informed? I offer this information as yet another example of Government's propensity to say they will do something and then fail to deliver. In concluding on the subject of traffic, I would like to reiterate that we on the Opposition are opposed to the excessive increases in Ministry of Transport related fees introduced by this Government with effect from 1st April 2005, particularly those related to road tax.

I will now move on to speak about electricity and water. The Government explained last year that the effect of the increases in water charges would be reflected this year because compensation was paid one year in arrears to AquaGib. In the context of the estimated levels of Government revenue and expenditure for this year, the Government have reduced the compensation they pay to AquaGib from £1.56 million in 2005/2006 to £820,000 in 2006/2007, which equates to £740,000. The House may wish to know that based on the figures obtained from the Government at Question Time in the House, the increase for a household that consumed an average of 32 primary units per month, equated to 34.4 per cent. In respect of electricity the average cost for domestic consumers was 25.4 per cent higher in 2005/2006 than in 2004/2005. We continue to be opposed to the increases in water and electricity introduced last year.

I will now turn to the cemetery. We were recently informed in this House that the contractor started in April the well overdue works in connection with the refurbishment and beautification of the North Front Cemetery, and that works have an anticipated completion date of December 2006 at a cost of £635,000. I propose to wait until the works are completed before passing judgement on the value for money and other aspects of the works.

With regard to postal services, we are of the opinion that the level of service being provided is acceptable and much better than the level of service that we were subjected to previously. However, again as with the Bus Service, we should not become complacent and there is still room for improvement.

Turning briefly to the lottery, the lottery is very popular with the people of Gibraltar and we should strive to keep it going in the current or an improved form. Last and by no means least I will turn to HM Prison and I hope that the construction of the new prison will commence this year and that the project will be completed within the budget of £3 million allocated in this year's Estimates. In concluding, I take this opportunity to again thank the people of Gibraltar for the privilege that they have bestowed on me to represent them in this House. I also extend my gratitude to our own members of staff working in the departments for which I shadow, for their dedication and effort that they put into making their departments function efficiently for the benefit of our country.

HON LT-COL E M BRITTO:

Mr Speaker, I rise to address the House in respect of my political responsibilities and this year I will start with the City Fire Brigade.

City Fire Brigade

During the past financial year, the Brigade has been ensuring that most of its personnel have undergone the rigorous training necessary to maintain the Brigade's ability to carry out its operational role. The training has concentrated on the Ambulance First Responders Course in a partnership with the GHA School of Health Studies and also on the personal development of Brigade officers by attending training courses at the Fire Services College in the Command and Control techniques in emergency incidents. A number of officers have

recently qualified after successfully undertaking a Coxswain's Course which will enhance the Brigade's offshore diving capabilities. Other officers have also been abroad in the UK undertaking Dive Technician Courses and Fire Safety Courses. During this financial year, the Brigade has procured another Mercedes Benz Fire Engine vehicle which will replace the last of the existing Land Rover Fleet which has provided good service throughout the last 15 years. The new appliance will arrive shortly and will be used as a front line vehicle in support of other Brigade units. A new compressed air unit has also been acquired replacing the existing one which had been in use since 1985.

During the year, there has been a major refurbishment programme of works carried out within the station to repair and upgrade existing facilities and amenities so necessary to meet the needs of a Brigade which occupies its premises on a 24 by 7 basis.

On the operational side, the Brigade has responded to 1363 calls between January 2005 and the 31st December 2005. These can be classified as: 156 actual fires, 393 emergencies, 391 requests, 139 ambulance attendances, 240 fire turnouts with good intent, 8 bomb alerts with good intent and 12 special services. The Brigade also mobilised the Ambulance Service on 3,357 occasions. Unfortunately, and at great inconvenience and possible danger to the public and to itself, the Brigade was maliciously called out on 24 occasions by false alarms to non existing fires.

Mr Speaker, before I turn to Health I would like to associate myself, on behalf of Government Members, with comments made earlier on in respect to my opposite number in the House, the Hon Mari Montegriffo, who as we all know has been unwell for a while and we regret that she is not here to lend her usual, fiery contribution to this debate, and from the Government side we wish her a prompt recovery and will welcome her when she is back amongst us again. Last year when I addressed the House in respect of our Health Services I reported on the commissioning of the new hospital and the Government's

intention to implement the recommendations of the Healthcare Development Team as well as the further improvements identified by the new management team. The progress that is being made in our Health Services fully justifies the Government's decision to engage the Healthcare Development Team and is a measure of the value of their recommendations. I shall account for progress on these and provide an outline of the GHA's plans for this year so that I can continue to provide the House and the people of Gibraltar with the confidence that our health system is continuing to improve in all those areas identified for such improvement. What I will present is indeed a very positive report because the GHA Board, the Executive Management Team and the staff of the GHA all continue to work tirelessly to improve the quality and performance of our health system and no, they are not finished for there is still more to be done. GHA is committed to continue to do what is necessary to achieve the excellence in health care which this Government promised at the last Election and which it is determined to achieve.

Maternity

Mr Speaker, let me commence my report by concentrating on our young people who were a major focus for GHA last year. GHA reviewed our Midwifery Services and have implemented many changes including the recruitment of four Gibraltarian Midwives. Nathalie Lombard, Nancy Aguilera and Nadine Galliano all successfully graduated as Midwives after completing a three-year training programme in the United Kingdom and were appointed last year following successful interviews. Denise Camilleri, a Registered General Nurse, also completed a midwifery programme and commenced work recently. The GHA Board recently heard an account by one of these midwives of her very positive experiences and of the benefits this is bringing to new mothers locally. They have returned to give us stability in a service which, in the past, has always been mainly dependent on contracted non-local midwives. The implementation of recommendations arising out

of a review of the management practices and work schedules in the Midwifery Service, including the introduction of a Midwifery Supervision programme, has had an enormous positive impact on the morale of the maternity staff. All this, along with the Obstetrics and Neonatology services also provided by GHA paediatricians, serves to provide Gibraltar with a new and increased confidence in the GHA's childbirth services.

Paediatrics

Moving from Maternity to Paediatric Services Mr Speaker, as I indicated last year, Dr Danny Cassaglia, a Gibraltarian, commenced his work in paediatrics as the second Consultant. He and the rest of the team in children's care have continued to improve clinical programming to such an extent that waiting lists have been virtually eliminated in paediatrics. The paediatricians have also worked closely with the doctors in A&E to ensure rapid admission for our children when necessary and with the ENT and General Surgeons to ensure that every child is now scheduled for surgery. The Child Health teams are doing an excellent job of managing children with chronic disease such as diabetes and neurological conditions. Clinics are also provided for asthma and for children with psychiatric conditions. Another very important team is the Child Protection Team which has completed and distributed the Child Protection Policy and has helped considerably to bring this issue to the fore for all professionals involved in helping children.

Primary Care Services

Let me now turn to the Primary Care Centre. Over the past year there have been a number of very important infrastructure and strategic developments whose benefits are slowly beginning to emerge. Without these developments the huge improvements planned for this coming year could not be implemented. Additional clerical staffing, including more telephonists, have been added to help with the many people who attend the

Primary Care Centre. However, the real reform is just around the corner.

- A new fibreoptic data link with microwave backup to provide continuity of service has been established between the Primary Care Centre and the hospital's communications and clinical systems;
- GPs and Primary Care Centre Clinics have been provided with computers to access all GHA clinical and administrative systems;
- The Front Desk Computerised System of appointments scheduling has been extended to St. Bernard's Hospital to facilitate patient referral process across the GHA by facilitating communications, not just by e-mail and by telephone between GP's and Consultants, but also by eventually providing direct appointments from the GP's desk straight into the Consultant's schedule;
- A computerised laboratory information system has been introduced and will soon be accessible from the Primary Care Centre. It is already accessible from the A&E Department. Once the system is fully functional it will mean no more waiting for the paper reports to arrive at the Primary Care Centre before blood results are known. As soon as these blood results are available in the laboratory, they will simultaneously be available on the GP's computer and eventually throughout the whole of the GHA;
- A PACS communication system has been introduced in Radiology and when it is extended to the Primary Care Centre the results of scans and x-rays will also be available to doctors as speedily as the blood tests results in the way I have just described;
- Over 20,000 new health cards with unique identification numbers have been issued;

- A new approach to the appointments system is being piloted to allow people greater flexibility to book advance appointments at the Primary Care Centre.

All this is in preparation for a major reform of the Primary Care System that will lead to:

- (a) improved access to the patient's own GP, Nurse Practitioner or the wide array of services provided within the PCC;
- (b) an effective booking and appointment system linking primary and secondary care, that is, the Primary Care Centre and St Bernard's Hospital; and
- (c) immediate access to Laboratory and Radiology Reports.

I know that people will be impatient to see the practical effects of these changes being implemented and actually working in the places. The GHA and the Government are fully committed to this Primary Care reform and to very significantly improving the clinical outcomes for people with chronic diseases such as diabetes. Change in a centre that caters for about 140,000 visits annually takes time. This financial year will see the results of all the preparatory background work that is being done and has been done over the past year.

Mental Health Services

Mr Speaker, let me now turn my attention to our Mental Health Services and stress that the Government are fully committed to a complete modernisation of Mental Health Services. Following in principle approval by Government for a new mental health facility to replace KGV Hospital, the difficult job of functional programming has now been started by GHA management. Let me explain, that functional programming is the essential preliminary first stage of planning in consultation with the health care professionals and users of the services so that GHA get it

right in terms of all the requirements for a state of the art Mental Health Service and facility that we all desire. In the second stage the GHA team will provide the information needed for Government to approve prior to commissioning architects to design the facility. A contract for construction will then be awarded and actual construction will begin on the new facility. This outlines in just a few words the very complete and ambitious programme of modernisation and of change of the Health System Facilities for the people of Gibraltar which the Government are implementing because of the importance the Government have placed on the development of mental health. At this point, I would also like to commend the huge amount of developmental work being done by the mental health team comprising psychiatrists, a psychologist, nurses, mental welfare officers and an OT to improve the quality of the care and the quality of lives of patients now resident in the KGV Psychiatric Unit. I mean the staff actually working there today in that facility. Over the last year there has been an increase in the number of therapeutic and recreational activities such as therapy groups, cooking clubs at lunchtime, fishing trips and barbecues for patients and families to enable them to enjoy the kind of social events so many of us take for granted.

Public Health

We cannot forget our Public Health System. While I have focussed so far on the care side, GHA cannot and will not forget our Public Health Programme including health promotion and disease prevention. May I remind that a small core of very dedicated individuals provides this Public Health Service. The GHA is planning to conduct a health needs survey in order to develop the strategy for modernisation of the programme in public health similar to what it is doing in other areas of the GHA.

The Government have already made strong commitments to improvements in the environment, and when added to recently announced improvements in smoking policy, the health needs

survey will help focus our efforts in Public Health so that the resources can be employed to meet the strategic public health needs of Gibraltar. An education programme for the reduction of obesity in children will be an important part of that strategy.

St Bernard's Hospital

In addition to planning strategy for Mental Health and Primary Care, the GHA Executive Team has also placed much emphasis over the past year on improvements at St Bernard's Hospital. Very conscious of the criticism from the public, particularly around the attitude of staff to providing care and service, much is being done to improve matters. The Executive Management Team has focused on three main areas. These are:

1. improving clinical performance by concentrating on the immediate needs of patients, that is, access and outcome;
2. improving the operation of the hospital from a service point of view; and
3. building leadership capacity and a succession plan

Compliments and Complaints System

Mr Speaker, turning now to the compliments and complaints received by GHA, I can report that last year GHA received over 400 commendations in the form of, for example, letters or cards of thanks or praise for the work its staff and the GHA as a whole did for its patients. As the House is aware, one of the Healthcare Development Team's recommendations was the establishment of the Complaints Procedure. It began in November 2004 and has been working well. Users of the GHA wishing to express their dissatisfaction with the services offered by the GHA may do so by submitting either a verbal or informal complaint, or a

written, that is, formal complaint. In the case of informal complaints, complainants contact a member of staff or the Head of Department or the service about which they wish to complain and the issue is investigated at a departmental level on an informal basis. The aim of this is to attempt to resolve the issue to the complainant's satisfaction in a quick and direct manner. It is frequently very successful and satisfactory for the complainant. However, if this does not happen, or if the complainant is not satisfied, then the complainant may write a letter of complaint to the GHA Complaints Co-ordinator whose responsibility it is to investigate the complaint. All written complaints are treated as formal complaints. These are acknowledged in writing within two working days and the GHA Chief Executive is required to respond to the complainant in writing with the findings of the investigation within 20 working days. If this process is delayed, for example due to staff leave or to the complexity of the case, the complainant is informed of the delay and advised of progress on a weekly basis until the investigation is complete. If at the end of this process the complainant remains dissatisfied with the Chief Executive's response, he or she may request an independent review of the complaint to the Office of the Ombudsman who will then appoint a Review Panel as provided under the GHA (Complaints Review Panel) Ordinance 2004. It is interesting to note that to date, in the 20 months that the new Complaints Procedure has been operating, only six complainants have been dissatisfied enough with the way their complaint has been handled by GHA to request an Independent Review Panel be appointed. I would like to remind the House that the Ombudsman has recently praised the performance of the GHA with regard to the resolution of the concerns of its patients. When the findings of investigations into complaints identify the need for improvements, further staff training or changes in practice, these are followed up and implemented by the GHA. The Government require GHA to continue to improve its services and so GHA take complaints very seriously and see them as an opportunity for improvement, and steps are taken to communicate the results of complaints to staff members and efforts are made to get staff members involved in the original complaint to draw lessons from the process. I am pleased to

report to the House that the system is working extremely well and that staff members are deriving great benefit from it.

Medical Services

Three groups of doctors, Consultants, General Practitioners and hospital-based doctors provide medical services within the GHA. During the year several changes were made in the anticipation of expansion of services, improved clinical governance and continuing professional development. Three Associate Medical Directors were appointed with responsibility in education, clinical audit and human resource management. An authority structure was also put into place for Medicine, Surgery and Anaesthesia, which has incorporated the A&E Department. Regular weekly education sessions, new policy and guideline development and clinical auditing are already under way. In addition, any clinical practice concerns are rigorously investigated and recommendations for improvements implemented. These activities represent the foundation activities for the New Clinical Governance system. Several improvements have been implemented as a result of these activities. The big story with regard to medical staff has been Government's decision to increase the number of Consultants following GHA staffing recommendations. There will soon be six full-time Anaesthetists, which will enable GHA to provide for an in-house 24-hour anaesthesia service. This will allow for a 24-hour epidural service for maternity resulting in a full spectrum of pain management strategies to be available for women in labour. It will also mean a 24-hour on site support for the ITU and will allow for more immediate response when resuscitation of a patient is needed. The Government have also agreed to implement the GHA's recommendation for two additional Orthopaedic Surgeons. Two fully trained competent surgeons have now been recruited and the first, a Dr Thomas Boerger, will commence on July 1st this year and the second, Dr Angel Ruiz, will commence in September this year. The GHA will then soon be in a position to commence the elimination of the waiting list for Orthopaedic services in clinics and theatres. The waiting

list for knee replacement procedures is already being eliminated and recently the elimination of the waiting list for hip replacement surgery was achieved.

With regard to the General Practitioners, a new contract is on the rocky road of negotiation with the GHA seeking significant reform and improved patient outcomes. The hospital based doctors system is also under review. In this case improvements have already occurred in A&E and Medicine with improvements also expected soon in Orthopaedics and Surgery. The GHA has experienced a considerable improvement in the quality of hospital doctors, thanks in part to the great efforts of the GHA's Human Resources Department.

Laboratory Services

Mr Speaker, there is a quiet revolution going on in the GHA Laboratories and the management and staff of that department have set out on the road to laboratory accreditation. This is a difficult task but one which the team is relishing. There have been many improvements in equipment, information systems and in the range and scope of services provided by the Laboratory. Significant improvements have also taken place in resolving occupational health and safety issues, particularly in Histology and Cytology.

St Bernard's Hospital: Nursing and Patient Service

I am pleased now to be able to give some examples to this House of the impact of the work being carried out in nursing across the GHA. In listening carefully to its staff, the GHA has identified that shift patterns were not conducive to ensuring staff were on duty at the busiest of times. In addition, the split-shift system was also disruptive to the personal lives of staff. The Nursing Directorate piloted new shift patterns in consultation with staff and the pilot showed three results:

1. An improvement in continuity of care;
2. A fall in sickness absence;
3. Significant improvement in the way staff felt about their work.

Following consultation with the unions this will now be implemented within other areas of GHA. The GHA continues to implement the practice of involving and consulting with staff on key issues of policy. In the first quarter of 2005 a series of workshops were held with Sisters and Charge Nurses from across the GHA. The purposes of these workshops were:

1. To ascertain from participants their concerns and priorities facing their professions;
2. To identify the actions that were required in order to set objectives to improve Nursing, Midwifery and Health Visiting practice across the GHA;
3. To develop and enhance team working;
4. To create a strong professional identity for Nurses, Midwives and Health Visitors working in leadership roles throughout the GHA.

The quality of interaction and debate was extremely constructive. The key areas identified for development were:

1. Improving clinical practice;
2. Staffing and staff management;
3. Education and training.

The resulting Nursing strategy identified the need to focus on the fundamentals such as ensuring that those patients in GHA are:

- Nursed and cared for in a manner that respects their individuality;
- Treated with dignity;
- Receiving a nursing care, which is based on the latest research evidence;
- Encouraged and involved, along with their loved ones, as partners in the decisions about their individual care plan.

This work is progressing well under a standard setting and validated approach called 'The Essence of Care' because it focuses on basic nursing care. This campaign in nursing has started with projects which are already reducing the incidence and improving the treatment of pressure sores and improving the nutritional care of patients. The GHA is just starting another aimed at privacy and dignity, which, coming back to what I said before, arose directly out of lessons learned from the Complaints Process.

Nursing Management is addressing a most important issue in the quality of caring by ensuring nurses take and record patient observations regularly and accurately and are able to act promptly on the early warning signs of a deterioration in the patients condition. The development of a Modified Early Warning System (MEWS) and re-design and re-launch of patient observation charts across the GHA has had significant impact in improving on the essential element of patient care. The GHA is putting the building blocks in place for sustainable succession planning in all areas and this includes nursing. This will enable Staff Nurses to take on Sister Charge Nurse posts and for this latter group to develop into future Clinical Nurse Managers. This is already yielding dividends. Ten Staff Nurses from within the GHA have been promoted to Sister Charge Nurses in this last year. One Sister was promoted to Clinical Nurse Manager. Significant investment is being made in the Clinical Nurse Manager roles in order to prepare these individuals for the top nursing posts in the GHA in the future. There is a dramatic

increase in educational opportunities afforded these staff over previous years. The majority of the 11 Senior Nurses have all attended at least one course or conference in the United Kingdom in the last year. Four are currently completing the Management Diploma with Durham University. In addition, our School of Health Studies has supported an extended training programme provided locally and has been instrumental in the developing of a wide range of policies and competency based training packages delivered by GHA's own training staff. That is not all, GHA has provided additional courses in Gibraltar run by experts from abroad, which means that fewer staff have needed to go overseas (at great expense I might add) for training modules such as intensive care courses. The Director of Nursing has also worked with a group of nurses from across the GHA who planned and successfully held two one-day conferences in January this year. These were aimed at sharing good Nursing, Midwifery and Health visiting practice across the GHA and were attended by almost half of the nursing workforce in GHA. I had the pleasure of addressing that Conference and I was struck by the enthusiasm and dedication of participants as well as by the team spirit and high level of morale clearly demonstrated in the Syndicate Sessions which I attended. Nurses from all parts of the GHA presented exciting and innovative projects and I was impressed to see relatively junior nurses taking leading presentational roles. Primary care nurses were particularly well represented. The Practice Nurses talked about the impact they are having on improving services for patients with chronic diseases such as asthma and diabetes and of innovations in child health. We also heard from a nurse who had set up a nurse led cryotherapy service. Therefore, Mr Speaker, it can be seen that significant progress has been made with respect to all the nursing objectives identified a year ago.

When the Practice Development Forum first reviewed these objectives, some staff members expressed the view that these were not achievable within the agreed timeframes because of the challenges they posed. However, thanks to the dedication, hard work, professionalism and enthusiasm of all of those involved, it is my view that remarkable progress has been made.

However, GHA recognises that a significant distance still needs to be travelled and are currently developing objectives for the forthcoming year to ensure momentum is maintained and even greater success is achieved.

St Bernard's Hospital Operational Services Professions Allied to Medicine

A review of the workload and practice of the group of professionals in GHA's Operational Services and the Professions Allied to Medicine is currently being undertaken. The first phase of this review was conducted on the 24th and 25th May and entailed reviewing both the Physiotherapy and Occupational Therapy Departments. The main objectives were:

1. To review the way therapy services are delivered and recommend developmental improvements in order to manage the increase in demand;
2. To assess demand versus output and equitable waiting times;
3. To review skill mix, that is, the right person with the right skills in the right place;
4. To review job profiles; and
5. To ensure continuous personal development is linked to career and the organisation's strategic development plan.

A new ultra-violet phototherapy skin treatment unit was commissioned during the past year. The equipment was purchased as part of the new hospital equipment inventory, and is yet another example of the new treatment procedures becoming available locally. This service will be available as part of the treatment for those patients diagnosed with specific skin conditions. In preparation for its introduction, staff at St. Bernard's hospital underwent training in the UK, on the use of

this new technology. Treatment sessions are carried out by certified Phototherapy staff in association with the visiting Consultant Dermatologist.

Radiology Department

The introduction of C.T. and Mammography services in the Radiology Department has meant that a large number of our patients no longer needed to access such services away from Gibraltar, usually in Spain. This service has been complemented by the employment of two full-time Radiologists, which now enables the GHA to provide 24-hour emergency CT service. Since the introduction in October and November respectively, the requests for such services has increased dramatically with over 1,000 Scans and 500 Mammograms being performed locally to date. This, to put it in context, is well over the some 700 scans that were performed in the whole of last year. CT scanning has improved the diagnosis and treatment of certain conditions, so that patients with need for tertiary referral are now referred onwards already with a specified diagnosis as opposed to before, when they were referred for further investigations. Therefore, now, we are affording patients more rapid access to specialist treatment. New equipment investment in this department has seen the acquisition of a new Ultrasound Machine, and a second Radiology reporting station. On an interesting side note, when Tony Blair recently addressed the annual CBI Dinner, he appeared to be very proudly highlighting what he called an NHS milestone, that almost 50 per cent of patients in UK now have their x-rays taken digitally. I am proud to be able to say to this House that in Gibraltar the figure is 100 per cent of x-rays images are taken digitally. It is not because we have just got the new machine, it is because we have installed enough capacity to cover the whole of Gibraltar, whereas UK has to date only solved enough capacity for 50 per cent of the population.

Technical Services

Mr Speaker, the new St. Bernard's Hospital has now been operational for the past 16 months, with staff now settled into their new environment. For the Operational Services Directorate it has been a challenging period, especially for its Technical Services and Works Department, when taking into account the vast increase in plant and infrastructure. A demanding programme of maintenance of systems and building fabric has been put in place, in order to maintain the hospital building to its high quality design specifications. The organisational structure of Technical Services has been re-organised and sub-divided into three sections, that is, an Electro Medical Section, an Electrical Section and a Mechanical Section. These sections have now prepared a comprehensive programme of maintenance, which include plant, equipment, such as call systems like Cardiac Alarms and Nurse call systems. An on-going programme of certified in-service education on equipment and systems has also been embarked upon, in order to maintain and update skills when necessary.

Reception and Telephony Services

The dedicated 'Front of House Service', that is, the reception and telephony staff, have been well received by staff from GHA and by the general public alike. The service operates on a Monday to Friday basis till 8 p.m. with the Hospital Attendants taking over the service at all other times. The GHA is currently considering extending the service both in the number of daily hours and days on which it is offered. The introduction of the Front Desk Computer Appointments system both in the Primary Care and St. Bernard's Hospital have gone a long way towards the improvement in the delivery of outpatient's appointments. Further work on the availability of primary care appointments is now planned, for example, an increase in the time frame availability of appointments and reminders direct to patients of appointment dates and times in order to reduce the large number of non-attendances which we now suffer. All outpatient

services are now centralised, with patients being able to access follow up appointments following initial consultation.

Medical Records

The exercise of colour and bar coding of clinical records has now been concluded. The next phase in this exercise is the provision of individual bar coding facilities in all wards and departments in order to be able to track movement of clinical records intra-departmentally. Availability of medical records has dramatically improved, with compliance now standing at close to 99 per cent. The third phase of the plan for this department foresees the introduction of a patient electronic record system. The implementation of such an electronic system for the Primary Care Centre has already been approved and work towards implementation has commenced.

Catering Services

The GHA Catering Services have now introduced a patient menu system with patients being offered a choice of four dishes which change on a daily basis. A trial exercise is currently being conducted in several of the wards at St. Bernard's Hospital. Initial indications are that it has been well received by patients. Shortly the system will be introduced on the remainder of the wards via an Intranet link. The GHA will shortly be taking delivery of a new system of food transport which involves heated trolleys, which when fully operational, will do away with the temperature problems which have been experienced and with the previous system, and which has been leading to complaints about the temperature of meals.

Procurement and Supplies

A Procurement and Supplies Department and operational group has been set up in order to develop a rational-based approach

towards the selection, utilisation, appraisal and evaluation of consumables and equipment within the Gibraltar Health Authority. Its main aims are the achievement and demonstration of value for money; a commitment to action and achieving demonstrable results; and the development of a strong multi-disciplinary team, working to clear objectives based on quality and total value for money principles.

Health and Safety

As part of an on-going Health and Safety programme, officers of the Fire Prevention Department of the City Fire Brigade delivered a series of fire evacuation lectures throughout the GHA. The lecture consisted of both theoretical and practical components and over 500 staff members attended and have been awarded individual Diplomas.

Finance

Mr Speaker, I will now turn to the GHA finances. The total amount spent to the end of the last financial year was of the order of £51 million. As can be seen from the Estimates tabled in this House, the allocation for the current financial year has been set at £54.4 million. This level of expenditure must be set against the very significant improvement of services which GHA is experiencing and some examples of which I now give the House. For example, in the last financial year the GHA has:

1. Provided over 1,000 dialysis treatments;
2. Increased its surgical activity by 10 per cent, this is without taking into account the further increase that will derive from the arrival of the two new Orthopaedic Surgeons later this year;
3. It has done over 1,000 CT scans and 500 mammography examinations;

4. It has reduced our emergency transfers (to Cadiz, Malaga and UK) by 60 per cent, despite 60 per cent of emergencies that were previously leaving Gibraltar and are now being treated within the GHA;
5. It has carried out 25 Laparoscopy Cholecystectomy procedures, a procedure introduced to Gibraltar by our new General Surgeon and which had not been carried out prior to last year;
6. It is treating 20 per cent more patients in ITU than previously;
7. It has carried out 54 major knee operations, which is dramatically reducing the waiting list. To illustrate this, five years of knee replacement work has been done in the first six months of this year; and
8. It has already eliminated the waiting list in Dermatology.

Information Management

The Information Management and Technology Department has overcome many challenges in this past year and will continue to face many more as technology continues to advance. The Gibraltar Health Card and the European Health Insurance Card were introduced in September 2005. Frontier territory for the GHA done technologically but it has been done. The database on which the applications are being recorded is now populated with over 20,000 entries. It is set to become GHA's most accurate demographic database and its use is being and will continue to be extended to other applications throughout the GHA. GHA has taken the opportunity to use this as a Central Patient Database. Unique Patient Identifiers (UPI), that is, numbers generated by the system and which are unique to an individual, are being issued in tandem with the cards. The ultimate aim is for the UPI to be generated at the point of first contact with the Authority by a patient wherever throughout the

Authority this occurs. Although the work of the Information Management and Technology Department includes the support of 400 users of PC's, related hardware, software, printers and photocopiers, this is, ironically enough, the simpler side of the workload. The more challenging work is looking after the 12 servers across 7 server rooms, looking after the bedside TV and radio entertainment system, the telephone system, encompassing over 500 extensions across the four GHA sites. In addition, there are all the IT dependent medical equipment (and in these I include the CT scanner, the ultrasound scanners and the laboratory equipment) and their associated networks and infrastructure. All these technologies are supported together by this one small department. To put it into context, GHA's application of technology in computers and telecommunications systems today is equivalent or is indeed greater in size and complexity to that of the rest of the Government's administrative and clerical service put together. This level of technology is unique within the Gibraltar Government departments. I have nothing but admiration and praise for the team that is providing this technical support across the whole of the GHA. There is no doubt in my mind that this small team is performing miracles to support the organisation with its current resources and that the exponential technological growth being thrust upon them will require these resources to be re-assessed. GHA sought and obtained the co-operation of the Government's IT Department and Gibtelecom, to whom I would also like to express my gratitude, to overcome the technical hurdles of merging with the Government fibreoptic communications network. This merger is of technical and economic advantage to both the Authority and to the Government. There is enhanced security, better technical support, expanded services within a very much-reduced time frame, and substantial financial savings recurrent to the GHA and therefore to the Government. The infrastructure enables e-mail traffic and quality internet access via the Government high capacity link to be available to all users seamlessly. For example, the new link to the Primary Care Centre which has been installed has the capability of transferring large files such as CT images. As I have already indicated, technically it gets increasingly more challenging for GHA. The laboratory network

has already been integrated into the GHA Local Area Network (LAN). Simplistically stated, this has provided e-mail and web access to improve communications facilities to the Department. The real and more dramatic effect is that the laboratory data from within the multiple analysers and diagnostic equipment in the laboratories, and believe me there are many of these and they are in themselves computers, this data will become internally available across the whole of the GHA to validated users. Results will be available from any point within the organisation at the point of validation. Once the system is fully operational, it will allow clinicians instant electronic access to laboratory results as soon as these are generated and validated at the laboratory, without any delay and without any risk of loss of data. Within the Critical Care Unit or ITU, a system records data on patients' vital signs and projects the information to the nurse station. This set-up was configured as a stand-alone system when it was installed and is yet to be reviewed and integrated with the rest of the network. E-mail is widely used and has become a crucial communication tool. GHA is developing its website, revamping it completely, and will be reintroducing it in a way that allows for intranet and internet use. GHA is also developing prescribing and dispensing software modules. The software under development links and converges with First DataBank Europe databases and toolkits. The knowledge base provides a wealth of clinical and costing data with applications for integration into clinical systems that will be phased into the project. These are a few words to describe what is a very ambitious project, it will give access to clinicians to all the prescribing and dispensing data that is needed for audit and control, not just for dispensing and for prescribing and it is said to become a revolutionary tool once the system is fully implemented and ready for use. The Government's Procurement Office on behalf of the GHA will shortly be publishing a notice in the Official Journal of the European Union inviting proposals for the electronic modernisation of the GHA. The objective will be the Electronic Health Record and computerised administrative systems, which will assist greatly in planning, efficiency, purchasing and financial management. As can be seen, the GHA is rapidly adapting to the electronic age,

and will continue to strive to do this to continue to improve the quality of its service and health care.

Human Resource Management

Turning now to human resources, the GHA has now developed a range of internal human resource initiatives to more effectively manage and develop its people.

In order to help support our managers, the Human Resources Department has prepared Management Guidance Notes on a range of HR issues. These guidance notes encourage good local personnel practice within the context of General Orders. Training has been given to managers on these over the last few months.

The GHA is also introducing its own Personal Development Review process for clinical staff. This process means that all our clinical staff will meet on a regular basis with their line manager to discuss their progress and most importantly, their individual development needs which will then be met through our new staff development programme. This scheme will be fully implemented by the end of this year.

The GHA is taking its place, together with many other organisations throughout the world, and indeed with some others here in Gibraltar, and is committed to achieving the Investors in People (IIP) standard. In conjunction with the University of Durham this programme defines the levels of practice for training and development of people to achieve business goals. Preparations are now under way.

Discussions have now reached an advanced stage with several providers of management development programmes regarding the possibility of helping the GHA to provide an internal management development programme tailored to meet the needs of managers working in a healthcare environment. This

programme will be supported by key GHA Managers and will commence in the autumn.

Another innovation, which in order to recognise the excellent care and service provided by our staff, the GHA Board recently approved a proposal to develop a staff awards scheme. This scheme will recognise long service, job related academic achievement and there will be five categories of award for individual or team excellence over and above the normal call of duty. These challenges to the HR Department staff have meant that they themselves too within their departments, need specific training to be able to assist others through these HR changes. To this end, and in addition to the training provided internally by the Director of Human Resources, two staff have completed Senior Development Programmes, one other has completed the Middle Manager Development Programme and two members attended the NHS HR Conference in the UK for the first time ever.

Mr Speaker, that concludes my summary of activity within the GHA in the past financial year. Looking into the future and the challenges ahead, the GHA has identified three categories of change that needs to be addressed going forward. First of all, GHA needs to focus on primary care and mental health services and facilities. The objective will be to achieve similar benefits to those derived from moving into the new St Bernard's Hospital and so to increase service quality and co-ordinate hospital and community services to meet the specific needs of the people of Gibraltar. Secondly, GHA must provide as much care within Gibraltar as possible. The objective will be to examine the feasibility of bringing in to Gibraltar some aspects of healthcare, for example, Cancer and Cardiac services, that are now provided too far away from home to provide the family support to the patient that all Gibraltarians so much desire. Thirdly, GHA needs to build the enabling systems, by:

1. Supporting staff - The objective will be ensuring staff have access to training and opportunities for development, management support and succession

planning to deliver high quality care to modern standards. GHA will aim to achieve Investors in People accreditation as I said previously;

2. Developing IT resources - The objective will be ensuring that there is a strategy, a timetable for the implementation of the electronic health record and the administrative systems. It is also about making sure the right investment is made in support staff, change management and equipment;
3. Providing quality, value for money and achieving self-sufficiency – The objective here will be making the most of the new St Bernard's Hospital, meeting modern standards and ensuring robust clinical risk management mechanisms, common standards and accountability as well as by optimising care for those with the most common chronic diseases.

The three fundamental objectives of the GHA are and remain:

1. Improving clinical outcomes;
2. Improving corporate performance;
3. Building leadership capacity.

These are the under thrust and overlie all of the GHA activities. The Government expect the GHA to continue to strive to achieve these objectives in order to provide the standard of health care that Gibraltar expects and is entitled to have.

In conclusion, I would like to take this opportunity to express my appreciation and thanks to the management and staff of the City Fire Brigade, as well as the GHA, for their continuing efforts and for their productivity in bringing to the people of Gibraltar these two such essential services which we all need. I would also like to thank the management team of GHA for the tremendous effort that they are putting into their work and to the Board non-

executive members of GHA who are unpaid, unsung heroes, who have been working not only in my time but in the time of my predecessors in the GSD Government, and who continue in relative anonymity to provide a sterling service of advice, support and simply by their presence to the staff, to the management and indirectly to the Government.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 23rd June 2006 at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 7.50 p.m. on Thursday 22nd June 2006.

FRIDAY 23RD JUNE 2006

The House resumed at 2.35 p.m.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Hareh 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 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 R R Rhoda QC - Attorney General
The Hon Miss M I Montegriffo

IN ATTENDANCE:

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

DOCUMENTS LAID

The Hon the Financial and Development Secretary moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of statements on the Table.

Question put. Agreed to.

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

1. Consolidated Fund Supplementary Funding – Statement No. 9 of 2005/2006;
2. Consolidated Fund Pay Settlements – Statement No. 10 of 2005/2006;
3. Consolidated Fund Reallocations – Statement No. 11 of 2005/2006.

Ordered to lie.

SECOND READING

THE APPROPRIATION BILL 2006 (Continued)

HON J J HOLLIDAY:

My Ministerial responsibilities cover Trade and Industry, Employment, Transport, Communications (which includes the Post Office and the Gibraltar Regulatory Authority), the Philatelic Bureau, Tourism, Transport, the Port, and the Maritime Administration. I wish to consider each of these areas of responsibility in turn. However, before I do so, I would like to express my personal satisfaction at being part of the Government that is responsible for an economy which is strong, prosperous and growing. The results of all the economic indicators, as described by the Chief Minister yesterday, confirm this beyond doubt.

The Department of Trade and Industry is in the process of being restructured and will be known as the Department of Commerce and Employment. Under this title, InvestGibraltar, Trade Licensing and the Employment Service will be brought together,

thus creating a one-stop shop that will be more efficient in promoting dialogue with and assisting local businesses and potential investors. InvestGibraltar will continue its present main function, which it is doing so successfully, to encourage and assist investment. This new department, will then be in a better position to enhance the good working relationship with the private sector and employer organisations. In fact, as the Chief Minister said during his address yesterday, the Government looks forward to working closely with the new President and Board of the Chamber of Commerce and the new Chairman and Board of the Gibraltar Federation of Small Businesses to address matters of common interest.

On EU funding, we are now approaching the end of the 2000/2006 programmes. They have been good for Gibraltar. There have been 94 EU projects funded to date, the majority of which have been projects proposed by small and medium sized enterprises. The private sector has so far invested £2.1 million, the EU has contributed £4.5 million, and the Government £7.1 million. Under the programmes to date, three new tourist amenities have been created, two tourist sites improved, there have been two beautification projects, 104 full-time and 18 part-time jobs have been created, 54 jobs have been safeguarded, 23 new start-ups have been assisted and 44 SME's have been helped. The improvement of public transport has also benefited from this programme. This is an impressive tally. The programmes have helped to further the EU's Lisbon and Gothenburg agendas, which promote the creation of sustainable employment, which is also a priority for the Government.

A significant proportion of EU funding is dedicated to public sector projects. Some of them are on-going. The Orange Bastion project forms part of the inner city regeneration programme, taking in Chatham Counterguard, Fish Market Road, the Public Market and the beautification of the area directly in front of and outside Casemates Gates. Also, Phase 2 of the Northern Defences development will continue this year. Among the works being carried out here will be the removal of an unsafe wall, with the concurrence of the Heritage Trust, thus

creating an open recreational area within the Upper Town with a pedestrian link down to Casemates. This is a project of major heritage significance, which the Heritage Trust is keen to see completed. Third, is the final phase of the Main Street Beautification Programme will also commence this year. The area affected will be the stretch of Main Street south of the Supreme Court building up to Referendum Arch. This project will enhance the Main Street Shopping Experience, leading visitors along the entire length of the Street. I know that traders in this part of Main Street will welcome this project.

We are now on the threshold of a new EU programming period that will cover 2007 to 2013. The EU has set priorities in relation to the structural funds generally and Gibraltar projects that fall in line with these priorities will be eligible for funding. However, the EU is redirecting funds towards the Accession States. We shall continue to manage and operate our own programme as has been the case until now. The Government would like to see more private sector companies making use of EU funds. Therefore, the new restructured department of Commerce and Employment will have a more proactive EU Secretariat to advise the private sector on eligibility to EU funds.

Gibraltar is riding a wave of investor confidence, but of course, in a recent interview on property development in Gibraltar, the Opposition Member for Trade said "Enough is enough" and I ask myself "Enough of what?" Enough I assume of investor confidence and prosperity in Gibraltar, which he would rather not see, so as not to have to recognise the success of this Government in this sector. There are significant projects now under construction including Ocean Village, Euro Plaza, Little Genoa, Peak House, Tradewinds and The Island at Queensway Quay. There are even more projects about to commence. They include The Anchorage, King's Wharf, the Mid-town development, North Gorge, Buena Vista, two further phases of Ocean Village and, of course, there is the Eastside Project. The development of these luxury properties are important to Gibraltar, as they provide economic activity and revenue to the Government which in turn can be invested in enhancing public

services. The Government are also heartened by the demand from persons wishing to purchase properties in these new developments. In addition, the private sector is investing significantly in upgrading properties in the Town area.

I know the Opposition find it difficult to accept that the Government attach great importance to the planning process, even though they make every effort to discredit it. For the record, let me inform the House that the Development and Planning Commission now meets more regularly than ever before and the procedure is more efficient. Now the public is encouraged to submit comments on planning applications, there is an appeals procedure against decisions of the Planning Commission, and there are voting members representing GONHS and the Heritage Trust on the Commission. How can one forget that there was no public planning consultation process when the GSLP were in office? Neither was there an Appeals Procedure nor voting members representing GONHS or the Heritage Trust at that time. The Opposition should not be concerned about the planning process as decisions are taken within the framework, which I have just described and with each application considered on its merits.

A matter that has now come to the fore of late is that of high-rise buildings. The Government are not opposed to the development of tall buildings outside the Town area. The Development and Planning Commission will examine applications for each building on a case-by-case basis. This leads me to the preparation and publication of the new Development Plan. I will shortly be announcing that the plan is ready for consideration by the Development and Planning Commission. This extensive document that has been prepared by the Planning Division at DTI, has taken time. The fact that the new plan has not yet been published does not mean that we do not have a development plan, the last published plan continues to be the Development Plan for Gibraltar.

I would now like to report on the Eastside Project. Contrary to all the politically-loaded rumours that the Project was being

abandoned by the developers, I regret to disappoint those that would prefer this project not to come to fruition so as not to recognise the success of this Government in bringing this massive investment to Gibraltar. All is well. As recently announced in the House, the premium that has been paid on account of land to date is £22.7 million. The Environmental Impact Assessment is now almost completed. Once it is submitted to the Development and Planning Commission, it will consider the project and the application for outline-planning. Then, the approved project will start to move in 2007.

I now turn to my responsibility for Employment. The task of the Employment Service is to provide opportunities and assistance to all registered persons to find secure, fair and suitable employment and thereby serve the needs of services and industries that contribute to our economy. Now, allow me to focus on our employment situation. The number of employee jobs recorded in the Employment Survey for October 2005 stood at 16,874 representing an increase of 5.5 per cent over the figure recorded in October 2004 which was 15,994. This represents the highest number of jobs ever recorded and is a sign of our healthy and strong economy. There was an increase in the private sector of 6.5 per cent (from 12,030 in October 2004 to 12,812 in October 2005). The yearly average of unemployed fell again, with the average for 2005 being 325 compared to 332 in 2004. The 2005 average represents 1.9 per cent unemployment, which in economic terms represents full employment.

Gibraltar continues to enjoy a very positive trend in employment opportunities and extraordinary economic growth. Nevertheless, one of the key aims of the Government through the Employment Service, is to make every possible effort to incorporate into the labour market the longer term unemployed persons, that is people who have been registered as unemployed in excess of six months. There are some persons in this category who are being given specific attention. To this effect, employers who are willing to offer a permanent position of employment to a long term unemployed person can take advantage of a wage

subsidy, payable by way of part-payment of such an employee's wages or salary for a period of 52 weeks. This scheme that has now been in operation for some years, is readily available from the Employment Service, who will be able to advise on conditions and eligibility. However, I would like to take this opportunity to remind employers of the scheme and to appeal to them to work closely with the Employment Service to assist those unemployed in this category. Further, realising the sometimes special circumstances and difficulties that may come to be associated with long-term unemployment, the Employment Service is also able to offer long-term unemployed persons the opportunity to try and improve their employment prospects through the services of the employment counsellors at the Job Club. Though primarily intended to assist long-term registered unemployed persons back into the labour market, the Job Club also assists other vulnerable and/or disadvantaged groups such as ex-offenders, recovering addicts and work returners who may be experiencing added difficulties in finding suitable employment. The Conditions of Employment Board has recently been revived and new Board members have been appointed. There have been developments with CATA, the Association for the construction industry, aimed at providing a forum for considering industry pay.

With regard to communications, I have responsibility for certain aspects of the Regulatory Authority, for the Royal Gibraltar Post Office, and by extension, the Philatelic Bureau. I will start by addressing the matters that fall within the remit of the Gibraltar Regulatory Authority.

The GRA is an independent authority, which regulates the following areas for which the Minister for Communications has responsibility:

- Firstly, the international co-ordination of satellite networks and licensing; and

- Secondly, communications, which includes telecommunications, radio communications and licensing of the radio spectrum.

There are currently six companies operating under General Authorisations and two companies operating under Individual Licences. The GRA is in discussion with two companies that have expressed an interest in providing mobile services in and from Gibraltar. The major development in this field was the enactment of the new Communications Ordinance passed by this House on 8th May and which came into effect on 5th June. The Ordinance and its accompanying regulations replace the Telecommunications Ordinance and implemented six EU Directives to establish a new regulatory framework for electronic communications. The GRA continues to provide support to the satellite operator, SES Satellites (Gibraltar) Limited, in relation to the co-ordination of networks and the follow-up required by the International Telecommunications Union. This has increased following the setting up in the UK of OFCOM, the new merged regulator. Most of the work previously carried out in the UK by the Radiocommunications Agency is now carried out by the GRA locally. Part of this work is to track the ITU process and closely monitor progress on all satellite co-ordination matters. The issuing of a number of classes of radiocommunications licences, e.g. Ship's Station Licence, Dealer's Licence, Private Mobile Radio Licence and Teleport Facility Licence and collection of fees is delegated to the GRA by the Minister for Communications. In the last financial year, the GRA collected £403,000 in licence fees on behalf of the Government.

The Royal Gibraltar Post Office continues to maintain the level of efficiency achieved in the recent past. In the last financial year, the results achieved in the Next Day Service Model surpassed the previous year's, with a total of 98 per cent of all walks being delivered by the next day. I take this opportunity to congratulate the RGPO management and staff for achieving this high level of performance. Since the introduction of this Service, what was previously a scenario of falling income for the RGPO has not been halted and also reversed. This last financial year,

the RGPO has achieved the best ever results with income of close to £2 million. The results achieved reflect the introduction of the new Postage Paid Impression and Franking Machines and more importantly much greater listening to and co-operation with the local business community, who now enjoy greater reliance on the Post Office for both their outbound and inbound mail.

The Post Office is making a concerted but careful drive to promote e-commerce. The fruits of this drive are beginning to show in increasing e-commerce sales. The promotion and ease of e-commerce will not only increase Post Office revenue but will also benefit the local trader with increased sales and profits and create lucrative spin-offs to other local suppliers, service providers and logistics companies. There are two dimensions to the Government's e-policy. On the one hand, the Government are pressing ahead with their e-Government policy under which Government forms will be downloaded from the internet. The next stage will be the acceptance by Government online of completed forms to be followed shortly thereafter by payment online. Progress on these issues continues satisfactorily. The other dimension is that of e-Business House. Essentially this is the provision of a facility in Gibraltar for businesses that wish to execute orders received electronically from outside Gibraltar. There is a great opportunity for Gibraltar businesses that wish to export and set up a global shop on the internet. The number of companies both inside and from outside Gibraltar in e-business continues to grow and the Government will nurture the new opportunities that this is creating. There will be a seminar on e-business shortly aimed at the Gibraltar business community, so as to acquaint the private sector with these opportunities even though some companies are already embarked on this form of trading. I am confident that there will be continued growth in the Post Office and that overall income in the current financial year will exceed that achieved last year. In order to improve efficiency in the delivery of mail and in order to minimise delay outside Gibraltar in handling our correspondence, the Post Office has been preparing options for the Government to consider leading to the introduction of Gibraltar postcodes. I

expect to make an announcement in this regard towards the end of the year.

Turning now to the Gibraltar Philatelic Bureau, of which I am the Chairman, I am pleased to say that 2005 has been another record year for the sale of Gibraltar postage stamps. The licence fee paid by the Bureau to the Government was £401,422, representing a staggering 72.3 per cent increase over last year. Worldwide interest in Gibraltar stamps continues to grow as the Bureau continues to develop its reputation for producing quality stamps and for innovation. The Bureau opened over 1,500 new accounts last year. Based on last year's performance, I expect 2006 to be another good year for the Bureau, and therefore for the Government in this area.

2005 was another good year for Gibraltar's tourism industry, with 2006 promising to continue giving good results. I know the Opposition may find this disappointing, but that is the reality. The number of arrivals by air last year was 173,500, an increase of 10 per cent over the previous year, the highest on record. We currently have 28 flights per week to the UK, the same frequency as the summer of last year, with 10 flights a week to Gatwick, 7 to Heathrow, 7 to Luton and 4 to Manchester. It was well publicised earlier this year that Monarch's scheduled service to Manchester will cease to operate on 19th July. Although Monarch tried to blame the Government for its decision to stop this service, the Government had to put the record straight and informed the public that this was purely a commercial decision taken by Monarch Airlines which had nothing to do with the Government. Monarch's decision was based on the increase in landing costs charged by the MOD as operators of the airfield. Government are aware that both the airlines that operate services to Gibraltar from the UK are in discussion with the MOD with a view to achieving a more cost-effective cost base for use of the airport. The Government are continuing their efforts to attract more carriers from other UK destinations to Gibraltar and in this respect I am hopeful that an announcement may be made shortly.

As far as the cruising sector is concerned, there were 171 cruise ship calls in 2005, which represented a rise of 16 per cent in cruise passengers. The number of cruise ship calls expected in 2006 is currently 211 with approximately 233,000 passengers plus crew. These bookings represent over 45,000 cruise passengers more than last year, which in itself was a record year. Cruise bookings for 2007 are healthy as the cruise sector continues to grow. To date, there are already 138 cruise calls booked with a total passenger capacity of 221,000. 2007 will see the arrival of the first Disney Cruise Line ship to operate in the Mediterranean. The Government is also in discussions with easyCruise who are considering scheduling Gibraltar as a regular port of call on a new itinerary. I hope to be able to make an announcement in this respect very shortly. The importance of Gibraltar as a cruise destination continues to grow even though the Opposition wants to create an impression of "doom and gloom". This success is recognised by our peers in MedCruise, the Association of Mediterranean Cruise Ports. Last month Gibraltar hosted the 28th MedCruise General Assembly, which attracted a record attendance of 31 member ports. The guest speakers who attended the Assembly were decision-makers of some of the world's most successful cruise lines.

A major improvement for our yacht visitors was the introduction of new reporting facilities, last December. There had been many complaints that our yacht reporting regime was unfriendly to visitors. The Government therefore took the initiative to place responsibility for yacht reporting on our marinas and at the same time increased the security systems in place. Obviously yacht numbers have declined since the Sheppard's Marina and Queensway Quay berths for visiting yachts became unavailable as a result of the Ocean Village and Island project works. The Government look forward to the completion of the works at Ocean Village Marina, Marina Bay and Queensway Quay, which will further raise the profile of yachting in Gibraltar.

Visitor arrivals from Spain increased by 1.7 per cent in 2005, giving a total of 7.43 million. I am delighted to report this increase, which has happened in spite of the fact that the

number of visitors to Spain declined in the past year. It is therefore obvious that if there had not been a decline in visitor numbers to Spain, the increase in visitor numbers to Gibraltar would have been even greater. It should be borne in mind that some of our day visitors will have arrived by coach to La Linea and walked into Gibraltar. So the Government do not attach importance to any drop in coach arrivals at the Gibraltar Coach Terminal as do the Opposition. The important factor is that visitor arrivals should continue to increase be it by air, sea or land.

Our success in tourism can be largely attributed to our investment in our tourism product and marketing. Our marketing strategy is continually reviewed to reflect changing trends in the way visitors are booking their holidays. Our partners in the industry advise us that more and more bookings are being made directly by visitors, particularly on the internet rather than through travel agencies. This year, the Gibraltar Tourist Board has further reinforced its marketing strategy to keep at par with these changing trends. These strategies were adopted by the Gibraltar Tourist Board three years ago in anticipation of changing trends. This year, there will be even more emphasis on web-based advertising. For the first time we will be running an advertising campaign on TV in the UK. We shall target the consumer rather than the trade, in a series of holiday shows and consumer travel fairs in the UK. At the same time we shall continue with proven advertising media, such as national and regional publications and specialist magazines. Efforts in marketing Gibraltar as a destination for weddings will increase, as we plan that the capacity for conducting civil weddings will be increased in the short term.

The Government's programme of investment in improvement to the tourist sites on the Upper Rock is well under way. The refurbishment of the Medieval Castle is almost complete. These works have included the restoration of the interior of this important heritage site, bringing it back to what it was like in the 14th Century. A major survey of all toilet facilities on the Upper Rock has been finalised and works are scheduled to start on the

refurbishment of existing facilities and the construction of new ones at the end of the current tourist season. All signage within the Upper Rock is currently being updated and improved. This should facilitate circulation within the area. Works at St Michael's Cave will include the repair and refurbishment of the upper entrance canopy and of the footbridge at the main entrance. There are also plans to upgrade the seating within the Cave. A feasibility study is being carried out into the development of Tovey's Battery within the Upper Rock as an additional site for the Apes' Den.

The Government will shortly be making public their plans to invest in the complete refurbishment of Camp Bay and Little Bay. It is well known that this area of Gibraltar is used as an all-year-round recreational facility, so I am happy to report that the plans that have been drawn up take into account the various activities that take place in the area in both summer and winter. It is envisaged that works on the refurbishment of this popular facility will commence in the autumn of this year and will be done outside the summer months to minimise inconvenience.

I will also be announcing plans for the beautification of Europa Point to start this financial year. This project suffered a delay as it was necessary to take account of the proposed Waste Water Treatment Plant at Europa before the beautification project could be given the final go-ahead. The emphasis in this project is to develop leisure facilities for Gibraltarians and to maximise the use of the area as an open space for families.

With regard to hotel occupancy, last year saw an increase in occupancy figures. The occupancy rate was 68.6 per cent compared to 43.3 per cent in 1996. This was achieved notwithstanding the fact that at least four of the local hotels were undergoing refurbishment at some stage during the year with a resultant 4.5 per cent decrease in the total number of beds available. They were therefore unable to offer their full room stock for sale over the period. Refurbishment programmes have now been completed. I look forward to reporting on further increases in hotel occupancy during 2006. Grading of our hotels

is now being carried out by the AA, who have already completed their initial assessment. The Government are pleased to have contracted another international organisation to replace the RAC to endorse the quality of our hotels. It will further raise the profile of our leading hotels.

There were occasions during last year when the hotel stock could not supply the demand that existed from tour operator clients. This was due to the fact that hotels prefer to hold rooms available for high yield customers in favour of contract-rate holidaymakers. But with the advent of an expanded hotel stock in the near future, I am confident that Gibraltar will be able to supply the demand we have created for overnight stays. The Caleta and The O'Callaghan Elliott, two of our four-star hotels, will be expanding with works scheduled to start shortly. A new hotel will be built on the site of the Rotunda building on Winston Churchill Avenue, another as part of the Eastside Project and work will commence shortly on an apart-hotel in the area of Buena Vista Barracks. There are others which I will be announcing at the appropriate time. These hotel projects are a further example of the level of investor confidence that exists in Gibraltar.

The Spanish short-stay and day-trip markets continue to be important for Gibraltar. With this in mind, there will be advertising campaigns designed for both markets. Our advertising for the day-trip market will focus mainly on Gibraltar's excellent shopping facilities, with a series of roadside billboard adverts placed along the approach roads to Gibraltar. These billboards will be aimed at those who are taking their summer holidays on the Costa del Sol and will promote Gibraltar as a quality shopping destination. Our office in Madrid recently moved to new prestige premises in the heart of Madrid. The staff at the office will continue generating interest in Gibraltar as a destination for short-stay visitors and for group and incentive travel.

Mr Speaker, I now turn to the Department of Transport. There are two dimensions to the department, the day-to-day

operational side and the legislative aspects which include the transposition of EU legislation. The department provides an excellent one-stop shop for vehicle registration, roadworthiness tests and licensing matters. The abolition of road tax with effect from the expiry of the current discs for any vehicle registered solely in the name of a person aged 70 or over and driven principally by that person, as announced by the Chief Minister yesterday, is an initiative that will be welcomed by this sector of our community.

An innovation this year has been the appointment of the Department of Transport as the Information Centre for the purpose of Motor Insurance Claims under the framework of the EU Insurance Directive. This requires the Department to freely exchange and obtain information from other Information Centres in Europe on Gibraltar registered vehicles involved in accidents outside Gibraltar and foreign-registered vehicles involved in accidents in Gibraltar. This extends the existing arrangements with the Motor Insurers Bureau in the UK for providing insurance cover in the case of persons whose cars are damaged by uninsured drivers or drivers who cannot be traced.

The Department continues to actively participate in the setting up of a pan-European driver licence exchange of information network (RESPER). This will ensure that any application for a driving licence in any EU State will cause a European-wide search of all national databases for confirmation that the applicant does not already hold a driving licence.

During the course of last year a new procedure for the removal of abandoned/derelict motor vehicles from our roads has been introduced. I am pleased to say that this system is working very successfully. Between December 2005 and May 2006, 137 vehicles have been disposed of. The Government are committed to continue with this programme. It is my intention that all derelict vehicles should be removed from our streets thus allowing for better use of our parking spaces. This does not mean that the Government will not look at other ways in which to improve the parking situation. Several options are presently

under active consideration and some are being progressed, for example the construction of new car parks.

The Government have been consulted on the setting up of an association of European Vehicle and Driver Registration Authorities. So far 16 countries including Gibraltar have indicated willingness to form part of this association. Registration and licensing authorities across Europe are facing a number of common challenges, problems and new demands in carrying out their functions. The Government intend to continue at the forefront of developments in this area.

I will now turn to the Gibraltar Bus Company, which the Opposition only yesterday was telling us that even though the services provided is “acceptable”, the buses were still too big. I have decided not to comment on this occasion and leave the public to judge for themselves. The reality is that in 2005, the bus company carried over 1.4 million passengers. The company has been in operation for just over two years and bus usage has gone up in the last 12 months by 10.2 per cent. The Government are most satisfied with these results, but wish to encourage even more use of the bus service in order to decongest our roads. I am sure that the announcement made yesterday by the Chief Minister allowing free travel to persons over the age of 70 wishing to use the buses operated by the Gibraltar Bus Company, on all routes except Route 9, will ensure that more of our senior citizens use this service. In order to supplement its income, the Bus Company has embarked on an advertising initiative that will allow businesses to advertise on the buses. At the same time, bus passes for various categories of users will be introduced shortly. These will include a range of different weekly passes and season tickets. The Government are confident that this will further increase bus usage. This year will also see the start of an upgrading and refurbishment programme for all our bus shelters.

The Gibraltar Port Authority celebrates its 200th anniversary this year. Much fuss has been made by certain sectors of Port staff about not wanting the Port to become an Authority. The fact is

that those staff members did not want to be transferred to an Authority if this was outside the Civil Service. The Government accepted the staff's position but nevertheless brought about a major restructure of the department. This has included the decommissioning of the port lookout and the upgrading of vessel tracking facilities with the latest radar equipment, including a new VTS (Vessel Tracking System) and AIS (Automatic Identification System) for ships. We have taken on five new staff as Port Operator-Room Operatives, who will soon commence a ten-week period of study in a maritime college in the UK.

New legislation came into effect on 1st June. This created the Gibraltar Port Authority as a legal entity. A Board, chaired by myself, has been set up. The duties of the Board will include the licensing and control of operators that use the Port. This new licensing regime, which is encapsulated in law, has been welcomed by the private sector, as it aims to prevent unlicensed, illegal or substandard companies from operating or trading in the Port. New criteria will need to be met by any firm wishing to enter or operate within the Port. During 2005, initial contact was made with the Algeciras Port Authority. This contact will be nurtured further during the current year, particularly in respect of environmental protection of the Bay and closer cooperation between both Port Authorities.

Our bunkering operations continue to break new records. Last year, almost 4.1 million tonnes of bunkers were delivered, an increase of 12.3 per cent over 2004. Supply figures for the first four months of 2006 are already showing an increase over the same period last year of 13 per cent. The Government have held successful talks with the bunkering operators in an effort to reduce the impact of hydrogen sulphide emissions. This was in response to issues raised by the Environmental Safety Group and GONHS and it is another example of this Government's commitment to protect the environment. I am glad to report that the problem has now been eradicated.

Last year, Cammell Laird announced a change of ultimate ownership and a substantial new investment programme, which will see the Gibraltar Yard further diversify into and becoming a major centre for the repair, refit and maintenance of high value Superyachts. The Yard will retain its present commercial shipping operations, will employ more people, train more young adults and make substantial investments in state-of-the-art, environmentally approved facilities. This investment will provide a global leader in Superyacht refit and repair facilities, operating to the highest environmental standards and creating a world-class workforce of artisans and engineers. This new strategy falls well in line with the developments that are being made in the marinas and which include improved facilities for attracting Superyachts. As Minister with responsibility for Cammell Laird, I am confident that this new strategy will guarantee the future viability of the Yard, will secure existing jobs and provide additional jobs too. The apprenticeship and training that will be put in place will provide the local people with the opportunity to acquire valuable skills. One other beneficiary of this diversification of strategy will be the environment as new practices are put in place. Grit blasting will soon be a practice of the past in the ship repair yard.

I am pleased to announce growth in the activities of the Ship Registry. The Registry will shortly be reaching a milestone of 200 ships on its books. Last October, the Registry achieved ISO 9001 accreditation further reinforcing the quality standards that the industry has come to expect from Gibraltar. Last month, Gibraltar achieved Paris MOU White List status in respect of Port State Control. This list of Ship Registry is produced annually and classifies them according to the number of detentions of ships that have taken place within its geographical area. The quality of the Gibraltar register has been improving year on year. It is therefore gratifying to find that Gibraltar has been steadily climbing through the Grey List and has finally made it onto the White List. The rating obtained by Gibraltar is higher than some reputable European registers. The message that is being portrayed by the Registry of Ships is one of growth, quality and of fostering closer links with those on the register. At

the same time the Registry is removing ships from our register that are not of a satisfactory standard. The Registry continues to work under the motto "Clean Waters – Safe Seas". One major piece of legislation that will shortly come into place is the transposition into Gibraltar law of MARPOL, the convention that deals with maritime pollution. The legislation should be in place in the course of this year.

Mr Speaker, in conclusion, the last 12 months have seen a considerable amount of activity that has resulted in improved standards, investor confidence, a vision for the future of Gibraltar and sound governance. The spending plans for my Ministry for this financial year will further enhance these policy aims. The Government are pleased with what has been achieved to date, but are not complacent and will work hard during the coming months in order to deliver on its many priorities.

HON F R PICARDO:

Mr Speaker, there was undeniably a time when the Chief Minister led a party that was able to capture the imagination of the electorate to a sufficient extent, on three occasions, that they entrusted him with the administration of our country's affairs. In dealing this year with the spending proposed in the Estimates for the areas of responsibility with which the Leader of the Opposition has entrusted me, I will address the serious issues of concern that ordinary people tell us they feel are being neglected by this Government. In fact, my impression of the overwhelming feeling of ordinary people is that they believe that all the party opposite truly represent is big business. All the party opposite really care about are the big developments of the big developers and in fact, that there is no real evidence of concern at the centre of power today for the things that would improve the lot of the ordinary working Gibraltarian, because on the downhill slope of what I understand he likes to refer to as "his premiership", there is nothing for the Chief Minister to be gained in helping the ordinary Gibraltarian. Ordinary people

believe, in my view, that all the party opposite have become is a government of the privileged, with a token sprinkling of ex-trade unionists to adorn the odd party brochure. That will not be affected by the reductions in tax and other goodies announced yesterday, which really amount to no more than the Chief Minister's apology in cash for his party's neglect of ordinary Gibraltarians to date. They can see through him now. For example, what apart from forgiving them their TV licences has the Chief Minister done yesterday, for pensioners who rely only on frozen social insurance pensions and the charitable giving of community care? What about widows whose plight the Gibraltar Pensioners Association have been urging the Government to address? They do not have their husband's occupational pension now to enjoy the benefit of the GSD's adoption of the GSLP's tax cut on occupational pensions. Government Ministers should know that if they are going to come back at us by saying that what was abolished in the time of the GSLP Government, they will have to deal with the fact that what was abolished at the request of the Union during the time of the GSLP. So what a pity, I hear the Chief Minister use un-parliamentary language already. The word he used was the word he used in a leaflet at the last election, which I will be coming to.

What a pity that the Chief Minister has only adopted half our commitments on road tax. He has abolished it only for over 70's. When we are elected, we are committed to abolishing it across the board for all. The fact is that the extent of the result of the last election is really only becoming now known. Gibraltar obviously got that party to deliver this manifesto. Now, what he cannot see is the GSLP manifesto for 2003. Somebody on that side obviously did see it because they went through it and stole the best bits. Now, in this House this debate is wider than just an analysis of the Estimates, so that each year in the Second Reading we undertake an in-depth view of the state of our nation.

Erskine May's Parliamentary Practice reflects that – referring to the Budget debate as being a “general debate which is on the

broadest lines....”. It is a good thing too, as these Estimates before the House now are really now quite useless as to income, given that the Chief Minister told us that none of his measures are reflected in the book. Perhaps, the measures were an after thought brought on by crumbling support after their publication. This year, in what is fast shaping up as a pre-election Budget, there has been an obvious attempt to draw in as much cash into the public coffers as possible. That speaks volumes and says two things in particular. First, that the Government have been desperately squeezing the pips to make this third Budget of this legislature more flush with cash than it would otherwise have been. Perhaps more worrying, is the fact that it appears that the Government are not adverse to putting themselves into a position when they are taking money from developers before the formal planning process is complete. How long before we start to brazenly sell planning consents and be done with the formalities of the planning process altogether? Well, with not an affordable home delivered in the past ten years, but with most prime sites granted for luxury developments and hundreds, if not well over a thousand, luxury homes released in the past ten years, the legacy of the Government is fast taking shape and it is not as rosy as they might have wished, or as they might have people believe.

For reasons I will go into in more detail now, let us look at the Health Service, where users are complaining about bed shortages in peak months while at the same time nurses are complaining about under-staffing, lack of resources and imported management and low morale. Whilst both public and staff complain, Government have traditionally referred us to the GHA as a centre of excellence. Public and staff are demonstrating also in the Social Services Agency. The Government response is to tell them that they have never had it so good. Clearly something is wrong. There is a reality gap here. All this whilst at the same time we as taxpayers pay a rent equivalent to a number of extra nurses, for the pleasure of enjoying a lease over a rat-infested mid-town crater where the Theatre Royal once stood. What we were once told would be a centrepiece of culture is now abandoned in favour of a bowling

alley and cinema complex, which may bring in more votes. Clearly the legacy thing is not going as planned, never mind that Ministers are raiding the Improvement and Development Fund to try to buy their way out of the political dead end into which their attitudes have painted them. Things have become quite so dire that were characterised as “bribes” when they appeared in our manifesto of 2003, is the “sharing of the cake” in the list of the Chief Minister’s Budget goodies this year. Such is the hypocrisy of politics, I fear. I see that the Chief Minister is making notes, so his statements last night that he was thinking of not responding are obviously not to be relied upon.

So, it is clear that many points of our agenda at the last election have found favour with the Government. Indeed, they have adopted our policies. From reduction of costs to the elderly, to the renewable energy review and the tax incentives for energy efficiency, all of those have been foreshadowed by the Opposition at the time or since the last election. There is no copyright on those ideas and I am pleased that we, and no doubt others who the Government will listen to more, have been able to persuade the Government to follow our agenda. For it is clear that all of these matters were very much our agenda and not even on the Chief Minister’s radar. In fact, his criticism of our plan at the last election was simply that it was not affordable as it was dependent on doubling the rate of economic growth. In fact, he was wrong, as was repeatedly stated by the Leader of the Opposition, the plan required only double digit, that is, 10 per cent or more economic growth, which has been achieved. He believed it could not be planned for but now that it has been achieved, he will apply in large measure our spending plan to that surplus. To that extent, the coincidence of policy between both sides of the House is welcome, as is the necessary consequent recognition that it is the Opposition that is winning the battle of ideas. Let us try also to be crystal clear that our predictions at the last election as to the potential in our economy for growth were correct and that those of the Government were entirely wrong. What the Chief Minister was wont to call voodoo economics was actually accurate economic prediction. Now, neither he nor I are economists, but it is also increasingly clear

that when actual economic performance consistently differs so greatly from predicted performance, it must be true that the Chief Minister’s only economic route plan is providence and his only spending plan is set out in the manifesto commitments and statements of the Opposition. How can I be so confident on the fact that Ministers cannot bring credit for the economic performance that enables these goodies, simply because I have kept a copy of one of the leaflets which the Ministers distributed during the last election in the week before polls opened. In a leaflet with the title “GSLP lies”, which incidentally betrays the sorts of names we call ourselves outside this House, and sometimes even inside this House I heard the Chief Minister say something similar to that a few moments ago with his microphone off, the GSD made a statement which can now be shown to be entirely wrong and which goes to the heart of whether what has been presented as magnificent results by Ministers, are at all planned as Mr Caruana has tried to pretend in his address, or in fact, totally fortuitous. Limb 2 of this leaflet sets out what they were wont to call “GSLP lies”. The statement of the GSLP, which it alleged was false, was “the GSLP can afford their promises”, referring to the manifesto commitments entered into on behalf of the Opposition, GSLP/Liberals at the time of the last election. The comment that follows is this. This is a GSD comment, “this is completely untrue. Their programme costs £23 million a year. The Government surplus is only £6 million a year. Even Mr Bossano admits that it is dependent on doubling the rate of economic growth. This is completely unattainable”, says the leaflet. Well, the costing of our programme at £23 million is a matter for them, but so much for it all being unattainable and so much for the Chief Minister’s ability to accurately understand economic trends. The programme we proposed was based on double digit growth, which is not the doubling of growth and which has been proved to be attainable. So that, our programme was not just affordable, it was the right programme based on the right understanding of the economic trends and now our people should have been enjoying the benefits of our manifesto, which were echoed in yesterday’s Budget, since July 2004. Having set these Estimates into that

context, I turn now to my responsibilities in respect of the environment.

This has clearly been a year of activity by the Government but of little real action in relation to this important area of policy. I adopt some of the words of Dr Linares yesterday when I say to this House that if we are to save planet earth from the ravages of our generation, the Government's attitude has to change. Indeed, we have seen how the GSD administration have made a mockery of the principle of consultation in perhaps the most self-evident manner, from their handling of the Environmental Charter. What has clearly been an exercise in what we used to call carbon-copying, or these days 'copying and pasting', the Environmental Charters of the other Overseas Territories was presented, for the unwary at least, in the guise of a careful planning and drafting exercise, coupled with wide consultation with environmental interest – or some of them at least. In fact, what the GSD administration produced for us a month ago in 2006, contained only two words different to the identical charters produced by all the Overseas Territories in 2001. In fact, anybody who doubts that can go to the website of the Foreign and Commonwealth Office where they are all copied and pasted. In fact, in those five years of apparent consultation, the policy makers of the GSD, and there have been three or four of them in that time, I think, have made the ground breaking decision to change the word "sensibly" to "wisely" in point 2 of the Charter and add the word 'living' before 'environment' in point 8. That may be either very wise or very sensible but it is really quite unforgivable for Gibraltar to have trailed all the other Overseas Territories for no reason whatsoever. I had foreshadowed, in my first press release as an Elected Member in this House, that the failure of the GSD administration to produce an Environmental Charter had a real economic price to it and not just an esoteric value. I know that Ministers are laughing when I confront them with these facts, perhaps that is what they do when their Civil Servants confront them with the reality of the situation before they tinker with figures. It was clear to me that Gibraltar NGO's were unable to access the £3 million fund set up under the Overseas Territories Environment

Programme until we had our own Environmental Charter. I was assured by Ministers that I was wrong. Alas, I may have been wrong according to them, but there were no funds from the Overseas Territories Environment Programme forthcoming for our environmental NGO's before the Charter. In fact, there is no need for a law degree or a philosophy degree to understand that the programme in question is designed specifically "to support the implementation of the Environmental Charters" in the Overseas Territories, that is a quote from the programme. Without such a Charter, we were limited to participation and assistance in respect of the implementation of a sustainable environment management practice. To be fair, the GSD were not the only administration of an Overseas Territory to see their territory excluded from the application of the OTEP fund. There was another one, namely the uninhabited territory known as the British Antarctic Territory. Well, I guess this helps to show that the GSD administration's management of our environment is at least as effective as that of the penguins who are the only permanent inhabitants of that Antarctic territory. I shall at least acknowledge, that last year in this debate I urged the Government to publish the Charter once and for all, having promised it in their manifestos since 2000. The Chief Minister said yesterday when referring to that, when he was telling the House that the Charter had been published, "of course I am fulfilling a manifesto commitment", as if in this year 3 of this Parliament he is fulfilling the commitment in his manifesto of 2003 alone. Of course it was there, but it was also in the manifesto of 2000 and nothing was done for those three and a half odd years. They finally published the Environmental Charter in May and it is a good thing for all of us.

As if it were not enough to see our environmental affairs handled in penguin-like fashion, we have to contend with the contradictions that so often flow from that department. We were told at the last Question Time in this House, and yesterday in his address by the Minister, Mr Netto, that there was not yet a figure for the cost of the noise insulation of OESCO. In fact, a figure is provided in the estimates of approximately £1.6 million, £1 million provided for this year and £600,000 as the balance to

complete. The Minister told the House yesterday in respect of that figure that he was seeking some appropriation for the project to start this year to re-engage consultants, but with no details of how much the cost of insulation will finally be. As a result, the balance to complete, which is all we can rely on the figures for the moment, is apparently £1.6 million but that figure is very likely to be a shot in the dark. Anyway, much as in relation to those other parts of our manifesto they copied, where Ministers do have our support, is in their support for and implementation for our ideas. For example, in having adopted at the suit of the environmental NGO's their requests for a review of Gibraltar's renewable energy options, the GSD administration have finally aligned themselves with the position we set out before the election in our extensive commitment to the ESG on the issues they asked us to address. We must add to that, that the Chief Minister told us that this was happening also as a result of an EU obligation to undertake such an audit. So, either they trumpet their renewable energy audit as a home-grown GSD protection of the environment measure, or they are being forced to do it by the EU, but they cannot have it both ways. Unless, it is the Chief Minister who initiates legislation in Brussels. There is no copyright in the renewable energy review, and if there was I could not claim it. These things have been happening in both developed and developing economies in the world for some time now, but Ministers will know that they failed to commit themselves to undertake such a review at the time of the last election, and from what they appeared to have said yesterday, they are driven in this direction by the EU Directives I have just referred to and which the Chief Minister referred the House to yesterday. I sincerely welcome their decision to do so now but it is important to set that decision into its appropriate and proper political context. I further commend them, as I have done publicly already, to adopt more of the ideas set out by the NGO's and by ourselves in this important area of responsibility. I assure Ministers that I will always welcome any moves they make in that wise and/or sensible direction, although I will not hesitate also to set them into their appropriate political context. In particular, I would commend to the GSD administration that they follow our commitment to commission a study into the

environmental pollution in the Bay. That, would be money well spent.

In relation to spending under Head 4A, I note that sums we are to vote for disposal of refuse and fly ash and for street cleaning, now amount to almost £5 million. It will be interesting to see in the Committee Stage, what commercial pockets that money is going to and what the restructuring in this coming year and the creation of the environmental park, how that will affect the figure. Perhaps in that context we shall see finally some progress on recycling in that new environmental park that is to be established. It is also important, however, that the Minister for the Environment should note that some things that may, from his lofty post, seem trivial but are actually very important and affect the everyday lives of fellow Gibraltarians, as do the big decisions that he has to take. That is, if he is actually allowed to take any. Whether the issues relate to the siting or sealing of rubbish dumps or the mismanagement of our ape population, these are the issues that also affect and matter to those who are afflicted by them on a day to day basis. Let us not forget that in the expenditure anticipated to be met by the taxpayer under Head 4A, we have to factor in the payment of £360,000 in respect of Cammell Laird's accumulation of grit, which it will be recalled we have repeatedly referred to in this House as the "grit mountain". Although the removal of the pollutants in that mountain of grit is to be welcomed, I remain to be persuaded of the taxpayers' obligation to pay it. I commend also, at last, the decision to announce yesterday tax incentives for energy efficiency and recycling, as I called on Government to do in my press statements on the environment at the beginning of this month. No details have been provided but I await them eagerly, especially in relation to road tax where I urge the Minister to consider incentivising ownership of hybrid vehicles.

The recruitment of a new Environmental Officer was announced yesterday. It was not clear to me where that recruitment has occurred, whether it has been into the Environmental Agency or the Minister's Department. If it is in the latter, I cannot see it in the estimates in the establishment under Head 4, where

numbers remain the same. I similarly commend to the GSD administration that they should undertake an environmental corporate audit of the Government service. I recognise also the invitation of the Minister to the seminar organised by his Department. I was unable to attend because I was in the United States with the Leader of the Opposition, but we were very ably represented by my Colleague, the Hon Charles Bruzon. I am quite happy to clarify that was entirely not my idea or anybody's that I know. I do not know whether it was the Minister's idea or whether it was proposed to him, although I bet it was proposed to him.

I want to say a few words about the Upper Town urban renewal programme. I live in the upper town and, to date, despite the fanfare of their announcement of it, the programme has yielded no appreciable change in the area. In fact, I hesitate to say with a heavy heart, that the area has seen almost no investment at all in the past ten years and, to be fair, perhaps even longer than that. The effect of that is that in parts it is unfortunately reminiscent of a slum. There are pockets where conscientious tenants have to be applauded for the manner in which they have made their homes beacons for others. I think it is now incumbent on any administration, of any political colour, to press the accelerator on upper town urban renewal to turn that area around, as has been done so successfully elsewhere in Europe. As environmental awareness grows across the planet, we have seen how the Minister responsible for that portfolio has adopted a more high profile approach to the issue and that is to be welcomed. Yet, there is no evidence of a real commitment to do the things that are necessary in order to start to make Gibraltar, not just a state that is following the lead of others in adopting the measures that will make a difference, but a state that is at the forefront of teaching the whole world the lessons of how it is possible to combine the comforts of modern living with a more responsible approach to the consumption of energy in a small country like our own. That will be our position in Government.

I will now turn to the issue of health, the GHA and the address of the Hon Lt-Col Britto. It is right that I start this part of my

address by reference to the Leader of the Opposition's, your own and Colonel Britto's kind words about the Shadow Minister for Health and Sport, Miss Montegriffo. It is impossible for me to have the depth of understanding of this portfolio that she does and I sincerely hope that she will soon be back amongst us to give Ministers "what for" and to liven these benches up a little bit more in her usual style. I am sure, it is Mr Randall and I who flank her here in this House, who miss her asides the most. Anyway, as can be imagined, there was a short straw doing the rounds of GSLP headquarters and the man who drew it is about to be heard.

There are some obvious and self-evident failures in the GSD's administration and policy in respect of the GHA which do not require a medical qualification or 22 years of experience in this portfolio to identify and which clearly are not being addressed. I want to start by echoing some of the sentiments that Miss Montegriffo initially addressed to the House last year. She reminded us that it was the gallant gentleman's chant when he was in Opposition, that just because more money was being spent in a department it did not mean that services were improving. Miss Montegriffo was right to start there and I take my cue from her as she has been proved entirely right by the great disappointment that our community rightly feels about the vast sums spent and being spent, on a primary care and hospital service, all of which have produced in some distinct areas greater problems than they have resolved. It could not be clearer than it is now when we hear announcements that the Primary Care Centre is again to be revamped to resolve problems with appointments et cetera. Well, we all thought that that had already been done according to the Minister for Health. Of course, it had been done, but it had not worked, so it will have to be done again. In fact, dissatisfaction, public dissatisfaction with the state of our health service is rampant. The number of complaints we receive as an Opposition is staggering. How has this been allowed to occur? Well, an analysis of the complaints suggest that there are two core issues at St Bernard's that remain central to the problems referred to us.

The first from the staff side, is that staff at all levels feel overstretched and demoralised. The reasons why this is the case are capable of analysis and I shall undertake that analysis in the course of this address. The second core complaint from the point of view of the users of the health service, is that waiting times for appointments and elective surgery are still quite unsatisfactory in some areas. Cancellations occur without notice totally disrupting the arrangements made by a patient. Meals for in-patients arrive cold and the complaint of the public is that the Health Authority, even though it is headed by a military man and by a bevy of expensive, imported experts, cannot get its act together.

Turning in detail to the complaints of the staff, the present administration have to understand that they made their political beds and they have to lie in them. Their own 1997 Nursing Review recommended that there should be 392 nurses in the GHA. Miss Montegriffo rightly reminded the House last year, that the Hon Mr Azopardi, when he sat on the Government benches, committed the Government to implement this recommendation within two years, that is, by 1999. Well, as at May last year the total number of nurses is 349. This year in answer to Question No. 120 of 2006, we were told the figure was up to 360 nurses – still 32 short. That is almost 10 per cent. The shortfall of 32 nurses is evidence that there is an understaffing based on the GSD's own figures of what the complement of the nurses for the GHA should be. So, when the Union representatives of nurses say publicly that the GHA is understaffed, they are right by the GSD administration's own figures. So, when a poll of GHA staff, carried out by the most consistently accurate polling institution in Gibraltar, into the views of the GHA staff commissioned by the Union, the result cannot be dismissed as they were recently by the Minister as lacking in credibility. "So what?" may be the attitude of Ministers, we have a beautiful new hospital and everything looks great. This administration must wake up to the reality of low staff morale as a consequence of understaffing. Whilst the Minister meets in his penthouse suite of offices with his highly

paid imported executives, he is missing the wood for the trees. When he appeared on Viewpoint with me some months ago, the Minister told me and Gibraltar that he is "on the ground" and that there is no problem of low morale or understaffing. Well, I commend to him a detailed analysis of the intervention on the same programme by Mr Netto (not the Minister) who is truly on the ground and which reflects the exact opposite of what he says. Indeed, when we are dealing with low morale and its effects, it is not just understaffing that affects this issue.

How would any of us feel if we lacked some of the basic tools necessary to do our jobs? Demoralised is the answer. That is what has happened in the last year in the GHA. As we learnt in answer to Question No. 125 of 2006, nurses have found themselves in some wards with out of date drugs to supply to patients and with equipment also out of date or un-serviced. Nurses have found themselves without surgical gloves, whilst to boot, the cost of management has risen massively.

HON LT-COL E M BRITTO:

On a point of order, the hon Member should phrase his words more carefully. By saying that nurses have found themselves he is implying that there are no up to date drugs available. What happened was that through the inefficiency of those same people that he is trying to defend, drugs were in the wards which were beyond their date of issue and which had not been returned to the pharmacy stocks. It is not because no drugs were available, it is because the people on the ground had not done their job properly. That is what he should be saying.

HON F R PICARDO:

The only people that I am defending are the people of Gibraltar who are as concerned about this issue now as they were before he rose to give that attempted explanation. To make matters worse some nurses find themselves working shoulder to

shoulder with contract nurses, where agencies who supplied them are paid in the region of £50 an hour per nurse. How can our nurses be anything other than demoralised?

Let me give voice in this House to the words of some nurses and GHA staff members who have made their views extremely clear in the survey in question. These are their words, they are in this publication in Panorama where the whole survey was published and I am not paraphrasing I am using the words of the nurses published in the local press. "Management should listen to the staff and come themselves to work on the wards and see for themselves what the staff is saying is right. Patients are at risk due to the low nursing staff and nothing is being done to change this. Staff morale is at the lowest and everyone is stressed at work." Another quote, "more local trained staff should be employed and this should stop low staffing levels and stop high paid contract workers coming over." "I have been working for GHA for over 20 years and the morale of all the staff is very low, I have never seen it like that before. More specialised training for local staff and less contract workers. Managerial posts to be advertised. Posts given to contract workers and this is causing low morale with Gibraltar staff." These are not my words, they are the words of the nurses and the Minister told Gibraltar and me on the Viewpoint programme that low morale was not the position at the hospital. Another quote from another nurse who is truly on the ground and not in the penthouse, "low morale, stressed out, no safe practice". Another quote, "we need more staff at ward level rather than more and more managers. There should be a job audit of everybody who is not working on the front line. Patients – that should be the real skills mix audit." Another quote, "they need (management) to appreciate local talent. We held the fort long enough and safely, we do not need to be treated as natives and incompetents. If a post requires certain qualifications, train Gibraltarians do not dismiss us." Another quote, "a need for more staffing levels, less TV monitors and more medical equipment. All beds have TV's but there is only one B/P machine, two glaucomatous, one electronic thermometer for 30 patients. All beds need to be provided with suction and oxygen

equipment, which currently is not the case. Transfer of medically discharged patients to ECS, they are currently occupying acute beds and more trained staff." Not me, a quote from a nurse. Another quote from a nurse, "the GHA has copied the NHS system wholesale. The GHA is top heavy with far too many overpaid management types competing for influence and posts in higher management. Patient care is a distant second in their list of priorities." Another quote not from me but from a nurse. "The bed situation is currently in a bad situation placing staff in a stressful and potentially dangerous situation. Hospital environment is very pleasant, however, basic hospital equipment and medical supplies are lacking severely. Example, not enough commodes....."

HON CHIEF MINISTER:

Yes, all the comments have a very similar term of phrase, has he noticed?

HON F R PICARDO:

Perhaps the Chief Minister is doubting the veracity of the poll and returns on comments. If he is.....

HON CHIEF MINISTER:

If he is, he certainly doubts the integrity of the system of polling employed for the conduct of that poll. We certainly do that and we have said so publicly, so we are saying it now for the third time not for the first.

HON F R PICARDO:

I asked the Chief Minister to realise that I have given way three times already in the course of this debate, he does not like to

give way when he is speaking. Whether they sound the same or they do not sound the same, these are the comments of the nurses. I continue with those comments. "Hospital environment is very pleasant. However, basic hospital equipment and medical supplies are lacking severely. Example, not enough commodes, stools (I pause there to say that I think that reference is to the sitting variety of stools and not any other even though it is in a medical context), trolleys, gloves, vomit bowls, trays, mediswabs et cetera." Another comment from a nurse.... "less managers and less policy making and more action. That is, get on with the job. No money? Perhaps if they did not pay astronomical salaries and perks to managers there would be more money for patient care and proper staffing. This hospital is run by Government, glorified managers and lawyers. Patient care does not come into the equation." Another quote, "patients are in danger due to lack of staff". That is from a nurse. Another quote, "management frequently make nursing staff in the day unit operate outside the published guideline for day care surgery and do not fall within the criteria for day care surgery even when the managers are informed that they are outside the criteria, they insist the cases go ahead. There is constant conflict for the nurses because we cannot comply to our professional codes of conduct." That comment is particularly worrying. A comment from a nurse, not from the Opposition, from a nurse that there is a constant conflict for the nurses because we (the nurses) cannot comply to our professional body's code of conduct. Another comment from a nurse, "toilet flushes should not be finger crippling. Windows should be able to open.". Another comment from a nurse, "the new management are not suitable for the job as I have been demonstrated by the hospital situation". That is a direct quote, I think it means as has been demonstrated by the hospital situation. Another quote by a nurse, "we desperately need investment into community care to prevent bed blocking shortages. Families need support in the community to enable them to care for elderly unwell family members, day hospital, day care, domiciliary care, home helps, meals on wheels et cetera". Another comment from a nurse, "we need more trained staff, not at management level but at ward level. Wards are

being manned with three or four bedside nurses caring for 30 patients". Another comment from a nurse, "staffing levels are dangerously low. Current staff are working to the limit. This means that they are working for two, sometimes more people, every day. Eventually, burn out is the result or illness, like stress, depression, et cetera with the result of high absenteeism and sick certificates". Another comment from the nurses, "to improve our patient care we need to bring the staff morale higher. To do this, we should employ more staff to help in our current situation of being understaffed".

It is incredible that the Minister told me and Gibraltar on Viewpoint when we appeared together at the beginning of this year, that staff morale at GHA was not a problem. When people on the ground were asked for their views and their verdict, they delivered it against him. In fact, those comments help to illustrate, from those who are really on the ground, that after reviews costing millions, the issues that are the root cause of all problems remain and are gaining ground. The new hospital has not been the solution but rather the cause of new problems. Although the Hon Miss Montegriffo is not here, I must say that the views she had repeatedly expressed in this respect have unfortunately for our community been proved to be entirely correct. It is unfortunate that this should be the case, because we must all wish to see those who need care receiving it, where humanly possible, without fault. Yet, it really is now almost a hit and miss service that is provided by the GHA. Of course, some people receive fantastic care at the GHA. That is not the issue. The issue is that large numbers do not. They feel compelled to complain either through the GHA's own procedures or informally to the Opposition. Our complaint is that we do not see the Minister doing anything to deal with the problems. All we hear from them is that nothing major is wrong. In fact yesterday, the Minister changed the tone of his address to tinge them with an element of reality when he recognised that there is still a lot to do in GHA. He told Gibraltar not to be impatient. It is a novel attitude in two respects. First, in that recognition that things are not actually as rosy as they originally pretended. Gone are the days of description of the GHA as a centre of excellence and of

the presentation of the new St Bernard's as the best medical facility in Europe. Secondly, it is novel in that Ministers with responsibility who have supervised capital investment of over £50 million and recurrent annual expenditure also of over £50 million, are elected and paid to deliver results. The Minister has decided that he is not elected or paid to do that. He has become an apologist for the failings of his expensive management team. He is their point man and his message to the community is clear, patients must be patient. It may sound very reasonable in this rarefied environment but how reasonable does it feel if one is waiting 18 hours for a bed in deepest February in the presence of a pool of vomit that remains uncleaned for eight hours? The community's message to the Minister is even clearer. We have been patient too long – get your act together and stop hiding your head in the ground. Indeed, even in bleakest February, the Minister insisted that there were no bed shortages at St Bernard's.

This year I will not rehearse the arguments so ably already placed on record by Miss Montegriffo as to how many beds there were at the old St Bernard's. Let us put aside that dispute for the moment. We maintain, in the Opposition, that it is one figure, Ministers insist on another figure, so be it. What is relevant is that whatever the number of available beds may be, it is not enough for the needs of our community in the winter months, whatever the experts may have said. Let us not blame elderly citizens of our community who have no alternative but to be in hospital. As even the Minister's goalkeeper, Dr McCutcheon has said, "no one should be designated a bed blocker". So it really is a question of bed management and of numbers of beds. Unfortunately, when I myself asked the Minister in supplementary questions to Question Nos. 95 to 98 of 2006, what plan he had to avoid bed shortages next year, he was unable to point to any rational plan of action for the year 2006/2007. Nothing we have seen in the Estimates suggests that there is such a plan. So, things are not going well in GHA, in fact, it is a service beset by dispute even at a professional level.

Let us see, for example, the position of doctors at the Primary Care Centre. The British Medical Association GP section representatives have been negotiating with the GHA for over two years regarding terms and conditions of employment. According to the BMA, "a fair and realistic pay claim has been put forward in those negotiations which management has rejected". It is deeply troubling that the GHA's CEO, Dr McCutcheon, denies any analogue of salary with other doctors employed by the GHA. Until 2004, GP salaries were analogued to consultants but they have not been so since then. No official reason has been given for this and GP's salaries are now substantially lower than consultants. GP's employed by the GHA are also on much less pay than their counterparts, which contravenes any principle of parity. That is the position of the BMA. Due to the GHA's intransigence, the BMA insists that negotiations between them and GHA have now ceased. The BMA's GP Section members are now in dispute with GHA management until some realistic proposal is received. I have not got any notice that that position has changed since the BMA issued a press statement to that effect. Well, we will see how that dispute develops.

Let us now look at one straight comparable to enable us to assess the impact and management of the lavish spending that there has been for patients in order to cut through the hype. Let us look at waiting lists for 19 months ago, in December 2004. That was before the new hospital finally opened and the waiting times at old St Bernard's for elective surgery were the issue. Well, let us look at a number of areas of elective surgery at old St Bernard's, where all the problems had been left behind. There was then a waiting list, according to Government figures, of 129 people awaiting General Surgery. Today, in the data provided in answer to Question No. 101 of 2006 by the Minister, at new St Bernard's over £150 million later, £50 million for the hospital, £50 million for 2004/2005 and £50 million for 2005/2006, that waiting list has gone up to 296. The waiting list has more than doubled. In fact, the increase is 129 per cent. Maybe Dr Linares was right, the GHA might have been a centre of excellence under him, when he was Minister for Health, but it is not a centre of excellence today under the Hon Mr Britto. At

old St Bernard's 19 months ago, in December 2004, the waiting list for ophthalmology was 20. Today, those same £150 million later, in answer to Question No. 101 of 2006 we have been told by Government, their data, that the figure has risen to 48. Again more than double. In fact, it is a rise of 140 per cent. That is the real impact of new St Bernard's when we judge it on the Government's own figures. Even in gynaecology, at old St Bernard's in 2004 the waiting list was 44. Now, at new St Bernard's, the waiting list is up to 53. Well, there seems to be little to be said for the hon Gentleman's military discipline. In fact, his management troops seem to be marching in the wrong direction and increasing some of the waiting lists. Indeed, the figures are so dire that I am tempted to tell him that GHA management appears to be failing in its purpose in these areas. In other Parliaments, the GHA might now be described as a department or authority that is not fit for the purpose. Perhaps, once the Chief Minister has discharged his ire on this side of the House later on in this Session in reply, he may want to train some of his friendly fire towards the gallant Colonel. Perhaps in the form of a political court martial to hold him to account for such a dismal performance in these areas of elective surgery. The Minister told us yesterday about new shift patterns being introduced, but he did not tell us what they are. No doubt greater details will soon emerge. He referred to two radiographers, but from the press it would appear that at present we only have one. Indeed, on both dialysis and CT.....

HON LT-COL E M BRITTO:

On a point of order. The hon Member is mistaken. When a member of the medical staff becomes unavailable for whatever reason he becomes unavailable, once the position has been approved, he is replaced by a locum. There continues to be two radiologists in GHA.

HON F R PICARDO:

I stand corrected and I am pleased to hear it. As indeed I will on a number of other issues, once the Government have managed to concoct some new figures by calculating them in a different way. Indeed, on both dialysis and CT scanning the GSD had been reluctant to commit to these facilities before and during the last election campaign, although we had manifesto commitments on both. I am delighted that they followed us there too. Yesterday, the Minister referred us to new hostess trolleys being purchased to ensure that meals are no longer delivered cold. Incredible, given that they spent the year before the move saying that meals would be hot when they arrived from a kitchen half a mile away, the year after the move saying they were arriving hot and we misleading Gibraltar by saying the opposite and only started to modify their position in face of continued public criticism recently. The Minister then spent half an hour providing us with an oral schematic diagram of the new IT system in place at St Bernard's. Very interesting, but what we will have to see is what effect that will have on improving patient care. We shall just have to be patient, I guess.

Certainly, what is true is that leaving aside management, which is where we do differ, there will be unanimity in this House that the staff of GHA at every level are principally hardworking men and women with a true vocation for what they do. It is unacceptable for patients or relatives of patients to assault or threaten members of staff and also cause alarm or fear to other patients. We wholeheartedly agree and endorse the GHA's zero tolerance policy in this respect.

Finally, to mental services where I can say little because the service continues to suffer from all the problems my Colleague referred to last year and requires the major investment and relocation we committed ourselves to in our manifesto and which, it appears, the Ministers also now accept. We shall say more when detailed plans are announced. We shall say this now, though on 29th March GHA issued a press release critical of KGV staff. Knowing that a root and branch regeneration of

the physical and strategic aspects of mental care is required, as the Minister accepted and stated yesterday, that was a cheap shot from the GHA towards its own. I want to end my address on this subject by reference to the Minister's statement that the Government require GHA to continue to improve its service. Very sincerely, let us be clear, the community requires Government to improve GHA and to start delivering value for money, which it is certainly not doing yet.

I turn now to my responsibilities shadowing the Chief Minister on financial services. In respect of this portfolio, we are now at the stage that so many wished we could have avoided. The 1st July 2006 is now barely a week away. After that date, we will be unable to issue Exempt Certificates under the Companies (Taxations and Concessions) Ordinance. Existing certificates will lapse, without a change of control or activity trigger being discharged, either by 1st July 2007 or the same date in 2010. Ask anyone who works in the provision of financial services and they will all tell that we are now in a much more difficult position than any of us would have wished to be in when dealing with the EU State Aid investigation. There is little room for manoeuvre now until the case on material and regional selectivity is finally disposed of. The present arrangements, relying on the rulings by the Commissioner of Income Tax and a headline rate of tax of 35 per cent, is not an easily marketable product. The real question continues to be to ask why we find ourselves in this situation. We are here because the Chief Minister made the decision to opt for a zero per cent corporate tax product. He has said, repeatedly, that he did not do so only at the suit of the Finance Centre Council and the industry generally, all bar a few dissenting voices, he said, insisted they could only survive with a zero per cent rate of corporate tax. That is his position.

In fact, the Chief Minister has said that now so often that it has become transparent, to me at least, that he is simply trying to lay a trail to cover his tracks. The fact is that my information is that only a minority were pushing for zero per cent over low tax. Be that as it may, even if the majority of those who have had the Chief Minister's ear, and that does not include me of course,

were of the view that there was only mileage in the zero per cent option, the fact is that political responsibility rests with the Chief Minister for a reform package, the decisions for which were his own. So, we find that opting for a zero per cent of corporate tax has led us to litigation and not to a new corporate product. My view, and to an extent I entirely accept that this is presently just crystal ball gazing, is that if we had opted for a low rate of tax and not the complex pay roll tax and zero per cent corporate tax reform agenda, we would not have faced the renewed wrath of the Commission's State Aid investigation, but we might. But it is too late now for crystal ball gazing or for other options.

In this financial year, professionals in the Finance Centre are left to operate with a headline rate of corporate tax of 35 per cent and a complex set of rules on profit. Let us be clear, although I do not consider that the gaming industry can adequately be described as a subsidiary of the financial services industry, industries like online gaming and insurance are clearly, at least in part, reliant on the continuation of a tax regime that is advantageous. For that reason, we must certainly ensue that there is a long term solution to the uncertainty that presently reigns on corporation taxes. Although both gaming and insurance industries certainly value many other non-tax advantageous reasons for doing business in our jurisdiction, not least the benefits of the infrastructure laid down between 1988 and 1996, we cannot underestimate the effect of failing to positively resolve the issue of corporation tax. The GSD Government do not share much or any information with the Opposition on this issue. We know nothing of any contingency planning, if any, but we have developed our own view of the options available from our own contacts with the industry. The House should be aware, that already on 31st May 2005, the Finance Centre Council has written to the Chief Minister pushing for a new tax reform package to be drafted and ready so that even in the event that we do prevail in the litigation on State Aid, the Chief Minister's zero per cent package should be dumped, in favour instead of a corporate tax regime based on the concept of a low corporate rate of tax across the board.

Although it appears that there is not yet a consensus in the Finance Centre Council of what that rate of tax should be, there is already a clear consensus that the Chief Minister's much celebrated zero tax package is out of favour with the Finance Centre. Nonetheless, I want to be clear in my analysis that this obstacle the Finance Centre faces is not of Government's making. My view is simply that the GSD administration have not been able to effectively navigate their way around these obstacles. Similarly, in the same way that the Government are not responsible for the main obstacle in the way of the development of the Finance Centre, it is also true that the Government are not the engine of this sector either. The engine is in the professionals whose hard work, imagination and ingenuity keeps Gibraltar attractive to clients despite the obstacles placed in our way by our detractors. Indeed, the major initiatives which create expectation in this area are perhaps necessarily led by the private sector, the stock exchange and the flotation of gaming entities being only the first that spring to mind. Let us not find ourselves so fixated on the State Aid obstacle that we forget the other issues that are lesser but still relevant obstacles and hurdles to our progress.

I have mentioned before and will not tire of mentioning the need to have changes made and quickly, to our law on the purchase by a company of its own shares. Whether it be partners, associates or members of my firm, or of any other that are proposing this change to Government, the change is needed, its absence is affecting our ability to attract new business and we can ill afford that. I appreciate that this is a sensitive issue that cannot be resolved in ten minutes, but it is at least two years since I first raised it in this House and yet no action is taken either way. That, does evidence the problem that too often important issues that require decisions are being allowed to languish on the desk of Mr Caruana in his guise as Minister for Financial Services. If he cannot cope he should pass the portfolio on, unless he feels that none of his Ministers can handle it. In any event, we do, however, have to ensure that we do not play into the hands of those who would criticise us, either because of the nature and range of our products, or because of

our regulatory environment. In particular, we should therefore be alive also to the rights of clients of Gibraltar licensed entities. For example, the absence of a financial services ombudsman has recently been quoted in the Spanish and UK press as evidence of 'a lack of regulation' or the absence of a 'safety net' for investors placing funds with institutions in Gibraltar. I therefore commend again to the Government consideration of the establishment of a financial services ombudsman. Such a body would also be in a better position to deal with issues affecting Gibraltarian investors, such as those who have lost out dramatically in the TEP Plans that have so disastrously failed. These are our own people and we must not forget the problems they still face today, even after the House voted unanimously to extend the legal assistance provisions, as we did, to ensure they were able to take action as a group.

It is true that the growth in financial services has continued unabated since the end of last year. It is no secret that the last deal done in Gibraltar financial services last year was also one which included a company established and trading in and from Gibraltar and now listed on the London Stock Exchange. The big appreciable difference is that previously most of our business was based on exempt companies which had little or no presence in Gibraltar. Thank goodness then, that the GSLP had the vision to start the business of on-line gaming in Gibraltar by the introduction of Ladbrokes before 1996. What is not so good is that there is still uncertainty as to what will happen in the court case against the EU Commission. There is no clear date for a decision. There is no clear outcome, although we all agree that it should be against the Commission's attitude to regional and material selectivity. But it is clear that the future is in exploiting our unique status within the EU to become a low tax and no VAT and no capital gains tax and stamp duty jurisdiction. That, will bring real growth as we attract businesses to establish themselves in Gibraltar in the real sense, in areas of our economy beyond internet gambling. But I wager that my ideas will fall on deaf ears and that my accusations will be roundly rejected. What a pity that whilst the Chief Minister does that, we remain embroiled in serious litigation with the EU Commission,

which I believe we would have been able to avoid if we had come in below their radar on low tax instead of the Chief Minister's preferred zero tax option.

I will comment favourably on the proposed establishment of a stock exchange, which this House is fully aware my firm is involved in. Does the Chief Minister want me to give way?

CHIEF MINISTER:

No, because if we do then one would say I asked for it and I have not asked the hon Member to give way on any occasion, not three or four. The hon Member has sat down on three or four occasions.

HON F R PICARDO:

The Chief Minister is as generous as ever. I will comment favourably on the proposed establishment of a stock exchange, which this House is fully aware my firm is involved in. I think all of us will welcome that development. I do want to remind the House that a similar venture was mooted some time ago when the GSLP was in office and that those promoting that venture received then, as those promoting this venture will receive now, all our support and backing. Of those from outside Gibraltar who are involved, it is fair to say that they are showing great confidence in making such an investment and that Gibraltar as a whole will surely not let them down. The confidence shown cannot be put down by the Chief Minister to his stewardship of the administration of our Government, given that such commitments, such as the commitment to start and run a stock exchange, are long term commitments and must necessarily factor into the equation changes, or potential changes, in administration. If elected into government at the next election, we will not be found wanting in continuing to support this venture as the GSLP did in the earlier attempt to establish a stock exchange on the Rock.

I do not want to leave my address on financial services without saying that the success of the Finance Centre and those who work within it has to be juxtaposed with those in our community with very low wages indeed. Indeed, that issue affects and distorts calculations of statistics on average earnings, where we now find some people in the gaming industry based in Gibraltar are earning in the millions. Well done to them, but that must at least serve as food for thought and we should reflect on that, simply not just to think of those who are doing so well but also of the 335 unemployed Gibraltarians who should be the principal concern of both myself and the Minister for Employment.

Of the media which I turn to now, I think it is fair to say that the most high profile issue that arises strictly out of these Estimates in the funding we vote is in respect of GBC. I will tread there in my capacity as Shadow Minister for the Media and Media Relations. With a vote of £1,333,333 and now the loss of the licence fee, I fear that GBC is no longer what it once was. We shall no doubt investigate further the cost of the licence fee at the Committee Stage, but I fear we are seeing a part of the amount voted in this House to the service of GBC, thrown away on the importation of programmes that are no longer relevant or value for money. My view is that our community turns to GBC for community programming and, predominantly, news and current affairs and that should be the exclusive staple output of that broadcaster. I also believe that all resources should be applied to this area. I was therefore pleased to hear that my namesake, who I shadow on this portfolio, indicated our views are identical and that this is the direction that he also sees for GBC. As I have said before, I believe that there are good professionals at GBC who we all want to see adequately resourced to discharge their functions in our community. Let us not see on our screens money wasted on repeats or even first runs of imported material, because I think everyone will likely agree that it is the GBC back catalogue we would all prefer to see on our screens and not 40 year old repeats of Bonanza. A digital output of community programmes must be the goal and I am pleased that we appear to agree. I would also ask, as I have

done in my past two previous interventions in this House on this debate, that we as a Parliament should very seriously consider the broadcasting of the proceedings of this House. Indeed, when I say broadcasting I mean video broadcasting. In order to stimulate debate on the issue I am considering moving a motion at the next meeting of this House on the issue. Even if only for a few news report snippets or some appropriate 'specials', or live daytime transmissions when the House sits. My views are firmly in favour of clearing out the cobwebs and allowing in the cameras. I am speaking for myself in this respect. Indeed, it is now over 20 years since video killed the radio star, everywhere except in this House. Indeed, I think it is fair to say that we are now probably the only European democracy that bars television cameras from showing our constituents our faces whilst we argue or agree. Voters are limited to judging our temperaments from interviews but are prevented from seeing our interactions in this heart of our democracy. No wonder we are left alone to our debate. Let us face it, these days if it is not worth televising it cannot be worth seeing live. Indeed, even for this debate, even for the 'plato fuerte' of the Chief Minister's Budget address and the Leader of the Opposition's reply, we have been joined almost by no member of the public. I believe that we as a Parliament must reach out collectively to our community and we cannot do that without allowing the cameras into our Chamber.

I am sure we all agree that young people, from their teens to their twenties, should get involved in the politics of our country on whatever side they decide to become involved. We would encourage them more effectively and efficiently with cameras allowed into this House. I want to pause there to say, that as I said in my first Budget intervention when I took up this mantle, the Minister no longer sitting opposite us, Mr Azopardi, mentioned this, I think, in his last Budget address. Still with the media, I think it is fair to say that our print media is healthy. Few communities of our size enjoy the benefits of two established daily newspapers and two established weekly newspapers and now also a nascent internet news provider service. As established and younger journalists chronicle our community's daily panorama, I think it appropriate to pause for a moment to

mention the passing of one of their number during the past year, Mr Campello, who was always very forthright in his views. What is certainly important, is that all the print media should, in my view, operate on the basis of a level playing field without any party enjoying any advantage over the other.

Now, as I have done since I was elected and in this House, I want to review issues affecting law and order. Since I was elected, I have been pressing for a Rehabilitation of Offenders Ordinance. I brought a motion to the House for it. I was told Government were considering preparing their own draft, but to date, two years later, nothing has happened. Issues like those resolved by the Rehabilitation of Offenders Ordinance, would help to really make inroads into the numbers of unemployed Gibraltarians. A number of these, 335 unemployed Gibraltarians, are in my view caught in the trap that minor convictions many years ago, which they are required to disclose in job application forms, prevent them from obtaining employment. That leads back in some cases to the vicious circle of drug abuse or petty criminality which perpetuates itself. We see the cost of that in part in these Estimates in the rising cost of legal aid and assistance. In many cases, the Department of Social Services has to become involved and the cost in cash to our exchequer rises as the human cost of those whose lives are affected also rises. In dealing with this issue, I pause to reflect on one of those charges in Head 2 on the Consolidated Fund charges, legal aid and assistance. Finally, it appears that this is no longer growing as aggressively as it should. From a high actual of £1,182,000 in the financial year 2004/2005, it was estimated to be down to £1 million in 2005/2006 and may come in close to £850,000. Because this has happened before, the new Matrimonial Rules we have discussed in this House, I am concerned that we should not underestimate the effect on these figures of what I understand is now a substantial backlog that has arisen in respect of payments and taxations of legal assistance bills in the past months, which may be reflected in those figures.

On an issue more related to legal aid than to legal assistance, I trust we shall soon see progress also in the legislation to bring about transposition of part of the Police and Criminal Evidence Act into our laws. I have not been able to identify any amounts budgeted for it in this year, but the Chief Minister told us at the last Question Time that the costs were not yet clear, but I hope that does not mean we will see no progress at all in the next 12 months. Also in respect of this Head, I want to raise the issue of child welfare reports for the Supreme and Magistrates' Courts. The House will recall that exchanges between the Minister for Social Services and myself on this issue in successive Question and Answer sessions, has sometimes led us to get a little bit agitated. We all agree, no doubt, that whether it is 15 or 23 months, delays of that order in respect of preparation of child welfare reports relating to access or other child related issues, are unacceptable, unless there is a good reason for them. The Minister told the House she fully expects the new recruitments she has made and this year's appropriation to clear the backlog in question. I trust the appropriation we make for her department this year enables this to be achieved in the time scale that she laid out in Question Time over two weeks ago. I believe that there will be a positive effect if this does come to pass on the overall legal assistance bill in respect of child welfare reports and on the legal aid bill in respect of probation reports. Principally, because the lawyers who charge the legal assistance or legal aid will likely have to attend court less often if the relevant reports are completed more quickly.

I turn now to my intervention on employment, in respect of which I shadow the Deputy Chief Minister since the GSD portfolios were reshuffled after the last Budget session of this House. I want to preface my intervention by saying that since he has taken over the portfolio on employment, my opposite number has continued to provide written answers to my written statistical questions, which now appear in a Hansard of written questions and answers at the back of the Hansard of oral questions. It is always, I am very pleased to be able to tell the House, a pleasure to deal with him in this House. But I want to tell him that the Opposition are never disappointed when Gibraltar does

well, as he has said repeatedly in his address. That does not mean that we do not analyse every figure and simply rely on the figures that he provides as illustrations that things are going well. We are paid to analyse those figures. I fear, however, that the Minister has been over-burdened by his leader and that his responsibility for employment is the one that is suffering. Again, the figures speak for themselves in the detailed analysis of frontier workers continued effect on the job market for Gibraltarians, which the Leader of the Opposition set out so ably in his intervention yesterday and which I fully adopt. For reasons I have already outlined in referring to the Rehabilitation of Offenders Ordinance, it appears that there is no real plan to deal with the problems of the long term unemployed because the Job Club is clearly not doing enough. As the Chief Minister's own speeches reveal, there is no concern that some industrial jobs are going to frontier workers in preference to Gibraltarians. We take a different view.

Many of the costs we see rising in respect of social services are related to the inability of long term unemployed Gibraltarians not being able to obtain employment when competing with cross frontier workers. That is not any longer just a reference necessarily to Spaniards but also to illegal, unregistered workers from the new EU States. What hon Members cannot escape is that whilst employment is up by 892 jobs this year, the number of Gibraltarians unemployed is up 10 per cent on the average this time last year. That is the headline issue on employment as far as I am concerned this year. Last year we were told in this House in this debate, then by the Hon Dr Linares who was then the Minister responsible for Employment, that the average number of unemployed for the year to date then was 300. The year before the figure had been 332. We are told the final average for last year was 325, this year it is up, we are told, to 335 now. That is, a 10 per cent increase on the average this time last year. The figure of 335 is the figure provided by the Minister in respect of the first quarter unemployment figures for this year. It is one of the written questions I have just referred to. Evidence that the Job Club may only be helping to stop the numbers rising but it is not helping to reduce them. So,

Ministers have to reflect on the fact that they are creating more jobs but that the numbers of Gibraltarians unemployed is up. So they should apply more concern to the issue of foreign labour taking local jobs.

That brings me to the whole issue of unregistered labour. It is not yet clear to the community on what basis some employers found to be employing unregistered labour have incurred a penalty and others have been let off, despite the Principal Auditor's view that there is no discretion in the law to let anyone off. Let me say that these are the Principal Auditor's views on the law, not necessarily mine and that they are in the Principal Auditor's Report. My greatest concern in respect of this area of my responsibility, relates to the issue of the ISP and the MOD privatisations, which the Minister for Employment has not mentioned. For the reasons I set out last year, and in respect of which I think there is unanimity in this House, the privatisation of jobs in the MOD can have a seismic effect on Gibraltar generally, not just on those who stand to lose out. As the Unions have chosen to go down the road of an 'in house option', we near the date when all bids have to be in. I am sure we all agree that the MOD should give every favourable consideration to that option. In the motion on this issue in this House, we made clear the position of the people of Gibraltar as to the terms jointly as a Parliament we make clear to the people of Gibraltar, as to the terms on which the MOD do business here. Let no one in Whitehall be left with the impression that time has blunted the effect of their proposed actions or the resolve of the men and women in the MOD, their Unions or of this House together to defend the jobs at risk. The MOD will face a united Gibraltar on this issue and when we are united, as we showed them when we saw off Hain, Straw, Pique and Aznar, we are unbeatable.

Last year in respect of employment I referred also to the proposed legislation on bullying at work and the extension of the law on equal opportunities to the elderly and disabled. It is unfortunate that we have seen no progress on these issues of real importance to those who may suffer age or disability discrimination or bullying at work. Last year we were told by the

then Minister for Employment and Civic Affairs, that the extension of the equal opportunities legislation to age and disability discrimination was being drafted. This year we are told it has already been drafted. Well, it is a Bill that has obviously taken a year to draft, let us see how long it is when it comes to the House, but it has not yet seen the light of day. I look forward to seeing the draft when it is published. Perhaps, when dealing with bullying at work, I would allow myself an ungenerous aside, it may be that we are going to see no draft of the Bullying at Work Bill because the Chief Minister might feel that such an Ordinance might cramp his style. That is a good place to move on to industrial relations and style of Government.

In fact, that is probably the best way to start addressing my shadow responsibilities in respect of this portfolio. I must say that I fear the issue of the Chief Minister's style in his handling of industrial relations is not going to go away. This year No. 6 Convent Place has issued a number of press statements in respect of trade union claims that are designed, obviously, to antagonise and not to resolve the issues in question. The statements have even asserted that particular trade union officials have based public statements on untruths. Unfortunately, either Mr Caruana or his spin doctor seem to have run out of lyrics for their press releases and are now scraping the bottom of the barrel. But not just against one union but even against the Disability Society, who are accused by the Minister for Social Services (although the language does not actually ring true of the Hon Lady) of making statements which are demonstrably false. It seems that that statement which emanated from her department must have been 'otherwise negatively influenced'. Well, I think it does nothing for industrial relations, community relations or democracy to respect each other's view in the way that the Chief Minister does. More respect is necessary. We who have chosen to become involved in politics may be said to be volunteers to suffer the slight of our political opponents. We give each other as good as we get, but why do the GSD believe they have a monopoly on the truth? Why is everyone else's statement 'false', 'demonstrably untrue', 'a distortion', 'a misrepresentation' or otherwise similarly

tarnished? Whilst the GSD, and in fact before I end the list of adjectives and phrases they have used up to now, I should say and everything else which the Chief Minister is going to say to me in his reply and all the new ways he is going to invent of saying the same thing. Well, why is it that it is the GSD statement that sets out 'the reality of the situation', 'the facts of the matter' or 'the true facts'? It is almost as if there were a GSD public relations handbook that one is given when one joins that party. Every statement must be predicated with 'the fact of the matter is' or 'the reality of the situation is'. Every opponent is saying things which are 'demonstrably untrue'. I will not refer to newspeak because we referred to that in other Budget debates already, but that is what it sounds like. Perhaps, the reality is that it is the administration that is now stretching the limits of its own credibility. Perhaps, the distortions are contained in the statements that emanate from No. 6 Convent Place in defence of the indefensible. Certainly, it does not cost money to bring a different attitude to industrial or community relations. Unfortunately, it would appear that these are issues of style in the top echelons of the GSD that cannot be cured.

I want to conclude by recalling that throughout his speech the Chief Minister has claimed credit for every increase since 1996. Well, the population of Gibraltar has increased since 1996, does he also claim credit for each child birth? Does he also accept that he is responsible, by that standard, for other issues and increases, all of which I set out last year in my Budget address and which are not so positive and as rosy as he might want to recall? We are representing a reality with which he and his party have lost touch. Perhaps understandably after 10 years and, as he put it yesterday so dramatically, eleven successive Budgets. Let them continue to ignore public opinion, at the next election the public may ignore them. This is likely, in my view, the last Budget before a general election and I want to take this opportunity to thank all those members of the Government service in the departments that I shadow, for the hard work that they give Gibraltar. All my criticisms are political and directed at those who hold political responsibility. Perhaps the mirth in the benches opposite is such that the message did not get across.

All my criticisms are political and directed politically at Ministers on the other side of the House. Despite those criticisms, Gibraltar cannot be without an appropriation so we will be supporting the Bill. Before I sit I want to remind the Chief Minister, as I told him when I began, I was pleased to hear the Minister say that Government were going to repair and sequence the clocks in Gibraltar, because there was undeniably a time when the Chief Minister led a party that captured the imagination of the electorate to a sufficient extent that they were entrusted with the administration of our country's affairs. However great the give-aways engineered in these Estimates, that time has passed, their time is up, our time has come, it is time for change.

HON DR J J GARCIA:

Mr Speaker, there are a couple of issues that I would like to address before moving on to the Estimates of revenue and expenditure, as they affect the departments that I shadow in this House. The first point I would like to highlight relates to the attitude of the United Kingdom to the future of Gibraltar. As the House knows, the Opposition have long made the point that any referendum which is organised to accept or reject the new Constitution must be regarded as an act of self-determination by the United Kingdom. However, the point I want to raise is a wider issue than this. The UK have made it clear that it is their policy that the people of Gibraltar have the right to self-determination, but that the exercise of that right is constrained by the Treaty of Utrecht. To them, this means that Gibraltar cannot be independent without Spain's consent. We totally reject that our right to self-determination is constrained in this way, but given that nobody is asking for independence at this moment in time, it is an academic point today. Therefore, British Government policy, we have been told, is that Gibraltar can opt for anything except independence. If this is true, then why is it that they have shown themselves to be so petrified about any change in the international status of Gibraltar, including that change, put forward in our own constitutional proposals, when

these same proposals have never involved independence? The reaction of the Foreign Office can only cast doubt as to whether what they say is their policy is really their policy or whether it is not. There is an obvious contradiction between what they say is their policy on the one hand and the extent to which they are prepared to act in accordance with that policy on the other. The policy of the Spanish Government, for their part, is that Gibraltar can only be a colony or become part of Spain. For the record, let me say that we reject this view also. The actions of the Spanish Government, however, are consistent with what their policy is supposed to be. The point I want to make is this. In theory the British and the Spanish positions are not the same. The UK is saying the only option closed to Gibraltar is independence and Spain is saying we can only be a colony or Spanish. In practice, however, the actions and behaviour of the United Kingdom are not consistent with what their policy is supposed to be. In fact, their behaviour is more consistent with the policy of Spain than with their own policy as spelt out in the 1999 White Paper on the Overseas Territories. This is an area of concern and we will have to wait and see how it develops.

The second issue I want to take the opportunity to raise is the continuing legal challenge mounted by the Spanish Government in the European courts against the manner in which Gibraltar has been enfranchised for European elections. We are in no doubt that the motivation behind this challenge is political and not legal. If Spain is so concerned that Commonwealth nationals can vote in European elections, she could have raised the issue before the 1989 European elections which took place three years after they joined Europe. The timing, after the vote was extended to Gibraltar in 2003, gives the game away. I move on now to issues relating to my portfolio of trade, industry, heritage and tourism.

I will start with the Gibraltar Development Plan. Any analysis of planning and development issues in Gibraltar must of necessity commence with an updated Gibraltar Development Plan, or to be more precise in this case, with the lack of one. In his Budget address last year, the Minister for Trade and Industry said,

“during the course of this year the draft Development Plan will be published and the public will be invited to comment on this important document.” The Minister made this statement last year and was referring to the year 2005. As the House knows, that year has come to a close and the draft Development Plan has still not been published. Why does Gibraltar need a new Development Plan? The answer is very simple. The present plan dates back to 1991 and is hopelessly out of date. This has been acknowledged by the Minister himself in this House. He has also suggested that one of the reasons why it is taking so long for the new plan to see the light of day is because this time it is being produced in-house by the department. This, however, does not explain the constant delays that have been experienced, even from the deadlines which the Government themselves have set. Earlier this month, the Minister confirmed to me in this House that the plan was not ready to be presented to the Development and Planning Commission in April or May as he had hoped in answer to previous questions on the subject. Indeed, the Government have also confirmed that once it is presented to and discussed by the Development and Planning Commission, it then goes forward to be considered by Ministers as a whole and a public consultation exercise will then follow. The Minister has announced this afternoon that he will shortly be making a further announcement in which the dates when the Plan will be presented to the Planning Commission will be disclosed.

In the circumstances, by the time the Plan has seen the light of day, Gibraltar will have become a concrete jungle. There will probably be more luxury housing developments all over the place and new developments on stream for which planning permission will have been given under the existing rules. The Government have put the cart before the horse. The normal practice is to have a modern and up to date development plan first, followed by developments later on to fit round that plan. In Gibraltar over the last few years it has happened the other way round. People have a right to know what the policy of the Government is in relation to land use. They have a right to know whether an area is classified as industrial, commercial, green or

residential. If an area of Gibraltar is classified as residential, is it planned to be low density or high density? These are the kind of questions that a development plan could answer for the general public. Indeed, it would even be a help to developers themselves to know what the Government's vision of a future Gibraltar actually is. The impression that has been created at the moment is of a free for all in development terms. High rise buildings are going up on every available site, regardless of whether the building which is going to be constructed is in keeping with the surrounding area or not.

In his Budget address of last year, the Minister for Trade and Industry gave an insight into Government policy in relation to certain types of developments. He said the following, "the policy of the Government will continue to be to maximise the price that they can obtain from the sale of important former MOD properties for the good of Gibraltar; to make available to Gibraltarian purchasers as many properties as possible, and to encourage home ownership amongst Gibraltarians and assist first time buyers." Given the prices at which many of the flats in new developments are being sold, it is highly questionable whether the Government have been successful to any significant degree, in any of the policy objectives which the Minister referred to last year. The prices in most new developments are prohibitive and even those projects that are being flaunted as affordable are out of reach for many people. Indeed, it is even questionable whether the Government have maximised the price that they will obtain from the sale of what was previously MOD property. The two ex-football pitches in the centre of town, known as the Naval grounds number one and two, now form part of the Mid-Town project. This huge prime site was handed over to a developer without going out to tender, in exchange for works for the Government valued at £10 million. Given the state of the property market, it is clear to the Opposition that the project has been under sold and that the Government could have obtained a far better deal for the land in the region of double the value. So much then for Government policy of maximising the price of former MOD assets. Indeed, to add insult to injury, it has emerged subsequently that because

the facilities in the leisure centre have been improved, these will be more expensive than originally envisaged and the balance between the original value and the new value will be met by the Government.

Environmental and heritage organisations have also rightly complained against the planning policy of the Government in relation to specific developments. In some cases because the scale of the development is too large, and in other cases, particularly in one well publicised case, because of the negative heritage consequences of the project. The Minister for Heritage yesterday said that the Government had been supporting heritage initiatives since 1996. He said that this past year has been a year of consolidation and reflection. I put it to him that it was nothing of the kind. It was a year of destruction. I am referring, as the House probably knows, to the Rosia Tanks issue. What is done cannot now be undone and the Government will have to shoulder whatever consequences come from their decision to destroy the Rosia tanks. It would have been possible to have created a heritage experience which could have taken in the Rosia Tanks, Rosia Bay and Parson's Lodge. This would have been in keeping with the surrounding area. It is profoundly regrettable that the single, most publicised heritage event of the last financial year has been such a negative event. It is even more regrettable in such circumstances, that in his contribution on heritage matters the Minister ignored the subject completely. This cannot be airbrushed away as if it had not happened. The attitude of the Government has been arrogant and high-handed, as evidenced by the way in which they dealt with the controversy from beginning to end. As we all know, the plain fact is that there was no need to locate the Nelson's View development on the Rosia Tanks site. This development could quite simply have been located somewhere else once the heritage value of the site, which had previously been MOD property, had been properly assessed. The Government seemed to argue at one point that there was nowhere else. This is manifestly not so. For a start, there is the site that is going to be allocated to the developers of the Eastside project for the construction of up to

200 affordable homes. This site could have been used. This would have allowed more time for a detailed heritage assessment of the Rosia Tanks site. There are also large plots of land released by the Ministry of Defence in the aerial farm next to Eastern beach. Indeed, enormous plots of land were awarded to the very same developer of Nelson's View up at Buena Vista, for the construction of a hotel and luxury housing consisting of villas and town houses. That site, or part of it, could also have been used.

The whole Rosia Tanks episode has exposed the haphazard decision-making process of the Government and the consequent lack of planning that exists. This runs deeper than the absence of a development plan. The plain fact is that the proliferation of luxury developments aimed at the higher end of the market, and the lack of developments aimed at the lower end of the market for nearly a decade, has pushed the Government to make decisions under pressure which are illogical and badly thought out. The Government landed themselves in a mess of their own making as a result of their lack of proper planning. The South District has traditionally been considered a low density area. When the Government put out to tender the Grand Magazine site in 2002, the tender documents stated that the Government considered that the area was already overdeveloped as a residential area and that therefore the maximum height for the project for that area should be four storeys. The tender conditions also stipulated that the area was underdeveloped as a local and tourist asset. It added that the area was of high historical and heritage value and that it included some of the most important constructions of this nature in Gibraltar. Despite these conditions, which must have reflected Government policy as it was in 2002, the project known as The Anchorage will not stretch up to 8 storeys high in some areas, double the height of what was originally envisaged. Therefore, the planning decision to give permission to OEM to destroy the Rosia Tanks, flies in the face of Government policy for the Rosia area as spelt out in the tender documents for Grand Magazine, which has now become The Anchorage. Also more shocking was the view put by the Minister for Heritage in

this House that the Government put no heritage value on the Rosia Tanks site and did not agree with the views expressed by the Heritage Trust, even though international and local heritage experts were at one on the issue.

The Government have, during this Budget debate, attempted to defend their policy to give planning permission to so many luxury developments. In a sense they are defending the wrong argument. The argument is not simply that there are too many luxury developments, the argument is that for a decade there has been no balance between the construction of luxury homes and the construction of low cost accommodation for our people. The Minister referred to an article which he quoted from where I was quoted as saying, "enough is enough" and he asked, presumably, a rhetorical question "enough of what?". When I said "enough is enough", this is one of the things that I meant and others will become clearer as I go through my contribution on planning. It is obvious that with every luxury development that goes up on a specific site, there will be less sites available for loss cost or genuinely affordable housing. Sites at Quay 27 King's Wharf, at Mid-Town, at The Anchorage, at Buena Vista, at Ocean Village I and II and at The Tradewinds are all driven by entities whose main concern as businesses is to make as much profit as possible. These developments are not led by the social needs of Gibraltar or the wider requirements of our community. They are led by the demand for higher and higher profits given the current state of the property market. It is simplistic for the Government to argue, as they have done, that the development bonanza reflects investor confidence in Gibraltar. What it reflects is that developers and speculators can make a fast buck, given the state to which the property market in Gibraltar has been driven by the policy of the Government.

I move on now to issues relating to commercial affairs. The first is the question of the on-going review into trade licensing and bonded stores. I recall these two issues being under review since I first joined this House seven years ago, and for this reason it is not a surprise to find out that the respective reviews still continue. It has become part of an established tradition

now. In his Budget address last year, the Minister for Trade and Industry told the House that the “long-awaited review of trade licensing legislation has now drawn to a close and the draft will shortly be considered by Ministers”. He also told the House that progress was “being made on reviewing the bonded stores regime”. The Minister said that he expected both the trade licensing and the new bonded stores regimes to be implemented during the course of this financial year. As the House knows, none of these were implemented during the last financial year at all. There are traders who do not have a bonded store facility who are concerned at the unfair competition that comes their way from those traders who do, and who can sell a product for export at a lower price. When I raised these concerns in the House last year, the Government indicated that the result of the review may not be the issue of more licences and that the review was about the extent to which the present system is capable of causing loss of revenue to the Government. The Chief Minister indicated that the system was “open to abuse” because the Government do not devote the necessary resources to policing it. Be that as it may, while the lengthy review goes on, there are traders who want to compete on a level playing field and are unable to do so because the Government do not issue more licences. When I asked the Government again in October last year, I was told that the review was still in progress and that it was impossible to say when it would be complete.

Another issue which the Opposition raise regularly and where action is needed is the lack of legislation to outlaw the misuse of computers. My understanding of the policy of the Government is that they do not have a policy as to whether to introduce this legislation or not introduce this legislation. Once again, the Opposition would like to see some urgency on this matter. At the moment the hacking of computers from Gibraltar or in Gibraltar is not a specific crime. The United Kingdom has had the Computer Misuse Act since 1990. It introduced three new offences. The first was unauthorised access to computer material, the second offence was unauthorised access with intent to facilitate the commission of a crime and the third

offence was the unauthorised modification of computer material, for example, by introducing a virus. It is quite incredible that Gibraltar should continue to lag behind in this field, particularly when new technology and internet access are now a way of life for more and more businesses locally. It is also important to remember that some of the Government’s own computers were exposed to being hacked a few years ago when Trojan viruses were found in them. One would have thought that in such circumstances the Government would have given the matter more urgency than they have done. It is in the pipeline, they told me once. The problem is that the pipeline gets longer and longer. The Chief Minister told me in March that he hoped that the necessary legislation would emerge in the course of this year. We can only wait and see.

Before touching in more detail the subject of tourism, I want to delve into the actual tourism statistics themselves. The way in which the figures are compiled is something that has been debated in this House on a number of occasions. Indeed, on some of those occasions both sides of the House have shared the view that these figures often leave much to be desired. The House will recall how one year the figure for Moroccan tourists staying at hotels and spending money in the local economy shot through the roof. It was subsequently discovered by the Opposition, and later accepted by the Government, that there was a discrepancy and this was because Moroccan workers travelling to and from Gibraltar were for some reason included as tourists in that particular year. This meant that the movement of such workers to and from Gibraltar each week was included as visitor arrivals, with a proportion staying in hotels and contributing so much to the economy. It turned out to be an error which was subsequently corrected. Last year I raised the issue of the way in which the cruise passenger figures are calculated. The logical assumption would be that this is done by counting those passengers who disembark, something which is probably done for security reasons anyway. This is not so. The figure for cruise passenger arrivals is calculated by taking into account all the passengers on board the vessel, as opposed to those who actually disembark. The tourism expenditure figures

for cruise passengers in 2005 was put at £39.61 per passenger, making a total of £7.4 million. We know that the figure cannot be accurate because it includes people that did not get off the ship. These people are counted as if they had visited Gibraltar and as if they had spent money here.

A similar situation arises in the case of visitor arrivals by land. The Government have often boasted that this figure stands at 7.4 million. We have often pointed out that they already inherited 6.5 million of these in 1996, the year in which they came into office. A footnote at the bottom of the relevant page in the Tourism Expenditure Survey points out that persons entering Gibraltar via the land frontier includes non-Gibraltarian frontier workers. What this means in practice is that increased arrivals by land, in this context, could be nothing more than an increase in the number of frontier workers of different nationalities, not only Spanish, living in Spain and working in Gibraltar. For example, 3,000 of these non-Gibraltarian workers crossing into Gibraltar once every weekday would translate into 720,000 persons in the visitor arrivals by land table. If they cross more than once then the figure would be even greater. The point I wish to make, given that to my knowledge the figures have always been calculated in this way, is that care needs to be taken when they are used by the Government to make claims about the success of their tourism policy. The 7.4 million persons who come by land that we have now established, includes non-Gibraltarian frontier workers, are then entered into the calculation of tourism expenditure in the following way. Those excursionists from Spain interviewed at the coach park are deemed to spend £31.65 per person per day. Those persons who are interviewed at the frontier are deemed to spend £25.59 per day. This is used to arrive at the global figure of £169 million spent in Gibraltar in 2005 by excursionists from Spain. The obvious problem with the figures, is that non-Gibraltarian frontier workers are not just included in the visitor arrivals category, they are also carried forward and included in the visitor expenditure category as well. So to use our estimated number of 720,000 crossings by non-Gibraltarian frontier workers, and multiplying that figure by an expenditure of

£25.59, we arrive at the figure of £18.4 million. This amount was not spent by tourists visiting Gibraltar. It is the example I have chosen to use based on 3,000 frontier workers, who it must be said are more likely than most to earn money in Gibraltar and spend it in Spain instead. Moreover, the point has already been made that the official figure for frontier workers is about 4,000, but in reality there are probably many more. As a matter of interest, the 4,000 frontier workers figure would translate into over 1 million visitor arrivals by land.

The Government have often stated that the importance of tourist arrivals lies in the money that they spend. That is to say, it is the amount of money and not the number of people that should be the defining criteria. In such a case it is important to highlight the fact that in so far as it can be taken as a reliable indicator of anything, the survey shows that tourism expenditure in 2005 was down from what it had been in 2004. It was down from £229 million to £220 million, which is a drop of around 9 per cent. At the same time as expenditure by tourists and I use the word "tourists" in inverted commas, has dropped, the expenditure by Government to attract them to Gibraltar has actually increased. I am referring only to the marketing budget of the Government, which went over budget in the last financial year which has just ended. They had estimated a marketing spend of £750,000 and have ended up with a marketing spend which is a forecast outturn of £830,000. There is a further £850,000 estimated for the new financial year 2006/2007. Last year, the Minister for Tourism made it a point of highlighting the then estimated reduction in the marketing budget. It is clear from the resulting overspending that he spoke too soon. All this means that from the financial years 1997/1998 until 2005/2006 the marketing spend on tourism alone has been about £8 million. The growth in visitor arrivals secured by the £8 million has been 18 per cent. It is a fact that the growth rate from 1988 to 1996 was no less than 70 per cent, with a considerably smaller amount of money being spent.

In his address last year the Minister said, "in so far as the Spanish market is concerned, the Gibraltar Tourist Board will be

monitoring the success of the package holidays launched by a Spanish operator featuring rail travel from Madrid to Algeciras and onward connection to Gibraltar with accommodation at one of our three major hotels.” The Minister was referring to the Iberrail brochure, the success of which he said the Tourist Board would be monitoring. So in October last year, a few months later, I asked him what steps the Government had taken to monitor how many visitors had come to Gibraltar as a result of inclusion in the Iberrail brochure. This monitoring is what he himself said was going to happen. The Minister’s answer was as follows, I quote, “it is difficult to quantify how many persons come to Gibraltar as a result of the inclusion of Gibraltar in the Iberrail brochure. Feedback from hotels indicate that there have been some bookings to date but the exact number is not known, as hotels are unaware if guests have responded to the Iberrail brochure or not.” So, the position as explained by the Minister to this House at Budget time last year, was that the success of the package was going to be monitored and yet in October of that same year, only a few months later, we were told that it was not possible to monitor it at all. I use this as an example to illustrate what is happening with the tourism marketing activities in general. We simply do not know which marketing activity is being successful and which marketing activity is not.

One area of concern which is clearly linked to marketing activities in Spain is the number of coach visitor arrivals. The Opposition have raised the issue both inside and outside the House of Assembly on a number of occasions. The Government must acknowledge that the problem exists, given that it is based on the figures for coaches and coach passengers that they make available to the Opposition. Those figures show that the number of tourist coaches coming to Gibraltar in recent years has fallen by about 1,000 coaches a year. There were 14,763 coaches in 2000 and only 9,805 in 2005. This last figure is lower than the number of coach arrivals in 1996. It is therefore an area of concern to the Opposition. It is obvious that the decline in coaches has been accompanied by an equal decline in the number of coach passengers coming to Gibraltar. The figures supplied by the Government to the Opposition show a decline of 34 per cent in the number of persons in coaches

from 2000 to 2005 and a drop of 33 per cent in the number of coaches. Over the years the Government have explained this away with a number of reasons which, on examination, have been shown to be flawed. The reasons given have been as follows:

1. A drop in the number of tourists going to Spain;
2. September 11th;
3. The poor condition of the Spanish road network leading to Gibraltar;
4. That coaches were counted at the coach park and a number of coaches were coming into Gibraltar, dropping people off and then going back; and
5. The latest one, that many coaches were dropping off passengers on the Spanish side.

The litany of excuses suggests that the Government do not have a clue why less and less people choose to come to Gibraltar by coach. For the record, let me say that coach arrivals have fallen even when tourism to Spain and to the Costa del Sol has grown. Secondly, that September 11th was in 2001, which is nearly five years ago and as I said earlier, Costa tourism has grown. Thirdly, that the Spanish road network, which was originally blamed for the drop, has improved dramatically over the past few years and yet the drop has continued. Fourthly, that coaches and coach passengers for the purposes of frontier statistics, are counted at the frontier and not at the coach park. Finally, that whilst some coaches may drop people off on the Spanish side, some do come into Gibraltar to refuel and collect passengers on their way out, as they do not have to join the main queue to leave Gibraltar. This means they are counted on the way in. It could well be that the vast amounts of money that is being spent marketing Gibraltar in Spain and the funds that are being devoted to pay for the office in Madrid are being misdirected and are missing this sector of the tourism market.

The drop in coaches has continued into 2006. The latest figures show that from January to April 2006 we are already 155 coaches down, when compared to the same period in 2005.

Moving on now to cruise liners, I do not propose to enter into the same comparisons with other nearby ports this year, except to say that there are many ports growing at a faster rate than Gibraltar. Some of those ports, like Malta and Malaga, started at virtually the same position as Gibraltar, so it is not the case of an inflated growth figure as a result of their start from a low base. The base was very similar. What I do want to stress this year are two issues. The first is that when the GSD came into office in 1996 Gibraltar received 139 cruise calls. Ten years later and many hundreds of thousands of pounds later, we had 171. Since 2003, the number of calls at Gibraltar has stagnated and this can only be because many liners are choosing alternative ports. We want Gibraltar to do better and we believe that Gibraltar can do better. The second point relates to the figure for cruise passengers. We now know that this is not an actual count of persons who disembark, but the figure of persons carried by the vessel and used to calculate the passenger tax. So, who knows what the real number of cruise passenger visitors actually is? Certainly not the Government, as they have already indicated in answer to questions in this House. The number of yachts and the number of yacht passengers calling at Gibraltar has fallen in 2005 from what it was in 2004. Indeed, the figures available to the Opposition suggest that the number of yacht arrivals in 2005 is the lowest since it peaked at over 5,000 yachts in 1996.

Moving on now to air arrivals. I cannot speak on air arrivals without regretting the loss of the Manchester flights operated by Monarch Airlines. This is the second time that the route has been discontinued since 1996. That said, there is an element of concern that the Opposition would like to highlight in relation to air visitor arrivals. The trend at present is that although more people are flying to Gibraltar, more than half of them go to Spain and do not stay here. The latest figures show that about 57 per cent of people who fly to Gibraltar do so in transit to Spain.

These figures, which are the official figures supplied by the Government, place a huge question mark over the success of the policy of the Government to ensure that tourists who fly to Gibraltar then stay in Gibraltar at our hotels. This is all more evident in the context of a drop in hotel arrivals this year.

The bottom line is that when it comes down to expenditure and pounds and pence, when arrival figures in particular tourism sectors go down, the Government argue that the real value in visitor arrivals lies in the money that they leave in the economy. However, we have already seen that there is a drop in the latest figures of £20 million. It is also important to look at these figures in the context of their historic development over the years and establish a pattern and compare the rates of growth. In 1988 tourism expenditure was calculated to be £43 million. In 1996 it was £181 million. This represents a growth of 319 per cent in the eight years from 1988 to 1996. Tourist expenditure for 2004, the end of the next eight year period, was £229 million. This represents a growth rate of 27 per cent from the 1996 figure. What this all means in real monetary terms, is that tourism expenditure grew nearly 12 times as much from 1988 to 1996 as it did from 1996 to 2004. Therefore, if success in tourism is measured in these terms by the Government themselves, it is obvious that they have been 12 times less successful in their own eight year period.

In conclusion, I would like to take this opportunity to thank the outgoing Clerk of the House, Dennis Reyes, and the staff of the House of Assembly for their assistance and support. I would also like to welcome the new Clerk, Melvyn Farrell, to the House.

HON CHIEF MINISTER:

Mr Speaker, I had thought until this afternoon that this year I would not enjoy myself in responding as much as I did last year, but I am happy to say that the situation has been rescued this afternoon and that I can look forward to enjoying my reply as

much as I did last year. But alas, it will have to wait until Monday.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 26th June 2006 at 11.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 5.20 p.m. on Friday 23rd June 2006.

MONDAY 26TH JUNE 2006

The House resumed at 11.05 a.m.

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 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 R R Rhoda QC - Attorney General
The Hon Miss M I Montegriffo

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk of the House of Assembly (Ag)
D J Reyes Esq, ED - Clerk of the House of Assembly

SECOND READING

THE APPROPRIATION ORDINANCE 2006 (CONTINUED)

HON CHIEF MINISTER:

Mr Speaker, before I commence my response can I welcome the new Clerk to the House (Designate), Melvyn Farrell, who

takes the chair for the first time on this occasion, a warm welcome to him from the Government benches.

Given yet another year of record economic performance, given another year of record public finances, given the huge tax cuts that we have once again been able to introduce this year, the tenth successive year of tax cuts under a GSD Government, given that once again the GSD's vision and plans are bringing prosperity to Gibraltar and that everybody can see this, both with their eyes and indeed feel it in their pockets it is, I suppose, understandable that the hon Members have once again had such a torrid time trying to compile their Budget addresses. Between them, again, they have practically nothing true or accurate to say. The role of the Opposition appears to have become limited to rumour mongering, to becoming advocates of every disgruntled dissident, or worse still, to becoming advocates for every claimant against the Government whether it is right or wrong, whether the claim is reasonable or unreasonable and ignoring the Government's need to conduct negotiations and to arrive at a fair and reasonable settlement of claims in the interests of the taxpayers, employees and service users alike. They have become distorters and misrepresentors of reality and truth in the hope of raising enough dust in a cloud that the realities of the situation will become sufficiently clouded for those that cannot be expected to follow the technicalities and the ins and outs of economic debate, who might therefore be led to believe that the economic situation is different to what it actually is, or that it is due to factors other than the factors that it is due to. What is clear after ten long years in opposition, is that the Opposition still have no alternative vision, they still have no alternative vision for how Gibraltar's affairs should be conducted differently and the reason is clear. That is, that the course embarked upon by this Government and the manner of our execution of it leaves them with little to want or to choose to do differently. One of the Opposition Members said, copying I think a slogan that we used very successfully in 1996, more successfully I suspect than they will use it in 2008, "our time has come". It was the limpest, least confident rallying cry that I have heard in a long time. Obviously, he does not believe it himself.

The hon Members' speeches were full of the sort of contradictions which I think demonstrate the point that I have just made. "It is a pre-election Budget", cried one of them, "but it does not address the concerns of the people" proclaimed another. Well, which of the two is it? Even in a pre-election Budget it can only be because it addresses things that people want to see addressed. If it does not address the things that people want to see addressed, how can it be a pre-election Budget? Which of the two is it, or is it one depending on the distortion that they want to articulate at one moment and a different one, depending on the different distortion that serves their argumentative needs at a particular point in time? "Public services are dreadful", they say in a common theme of further contradiction. "Everything is dreadful", but of course, public servants are great and committed and expert individuals. It is as if everything that goes wrong in the Government, which is everything as far as they are concerned, is down to the eight people sitting around this table, at least the eight Elected Members sitting around this table, who go about their business from Monday to Friday to make sure that the excellent public servants, and I agree that they are excellent the vast majority of them, nevertheless are tripped up on every occasion to deliver bad public services. Do the hon Members expect people to believe that? They have a serious credibility problem of their own persistent and systemic making. They are still trying to take credit for everything that is good, even though they have been out of office now for over ten years, but of course they blame the Government for everything that is bad. Everything that goes well is not the Government's doing. So the Finance Centre is not the Government that is the engine, it is the private sector. If there is money in the kitty it is because the Government have sold the family silver and if the revenues go up it is because they have had a binge on arrears and everything that goes well is nothing whatsoever to do with the most successful economic performance in the political history of Gibraltar presided over by this Government. But of course, any little thing that goes badly, including a seagull getting stuck in a water pipe in the new hospital, that is the fault of the Elected Government. Hon Members have got a serious political credibility problem. How

can they expect other people to believe what they should not even be believing themselves? The latest one, “the Government are copying our policies”. Well, there is no danger of anybody thinking that the Government are copying their policies. For one reason if none other, we are annual tax cutters and they were serial annual tax raisers and people know that and remember that. We committed to a new hospital, talking about people thinking that others copy their policies. We, after they had been in Government for eight years and never once expressed the remotest interest in building a new hospital. We published our manifesto declaring our intention to build a new hospital and they rush back to their printers to reprint their manifesto in a different colour ink, to include it in the manifesto and they have the gall to suggest that we copy their policies. They have a credibility problem, wholesale on a major scale. Hon Members need to treat the public’s intelligence with a little more respect if they wish to enhance their credibility. I have no doubt that there are things that the Government have not yet done and there are things which the Government have done which may still need further work or improving. That would at least be an honest political debate, but the suggestion that nothing that the Government do is right and what they have to accept is good because it is there staring them in the face and not even they can distort their way around it, that is not the Government’s credit that is somebody else’s credit. Hon Members need to remember that people in Gibraltar have (1) memories (which are not short enough for the needs of Opposition Members); (2) they have eyes; and (3) they have ears. Hon Members’ systemic distortions of reality are not going to serve them in the end.

The Leader of the Opposition in a Budget address and I can understand his difficulty, in a Budget address which is really a repetition of last year’s speech and much of the years before that, plus a rehash of the extraordinary speech that he gave to the Federation of Small Businesses at their last annual dinner, made a series of extraordinary statements. Of course, the hon Member’s economic policy is a terrible failure because they give themselves glowing comments about the economy regardless of

whether it is in surplus or in deficit, as if the economy or public finances was jumping in and out of deficits every other term. I can understand that the Leader of the Opposition, faced with our huge economic success, really has had his economic discourse reduced to yet again harping on about 2003/2004 – that was two years ago. Can he think of nothing to criticise in the Government’s economic performance in respect of the last two years? This is the third major speech that he delivers based on one deficit (which I will analyse for him in a moment), and even then he distorts the picture. Look, just for the record, our record is the following. That in the ten years we have presided over public finances, nine have seen very substantial overall surpluses of Government revenue over expenditure. One in 2003/2004, which he continues to milk in 2006 and 2007, one out of ten produced a deficit. In 1996/1997 the surplus was £12.9 million, talking about the overall surpluses of revenue over expenditure. In 1996/1997 it was £12.9 million; in 1997/1998 it was £11.5 million; in 1998/1999 it was £17.6 million; in 1999/2000 it was £15.9 million; in 2000/2001 it was £11.7 million; in 2001/2002 it was £10.1 million – surpluses all of them – in 2002/2003 it was £7.3 million; in 2003/2004 thank goodness, or the hon Member might not bother to make a public speech at all, there was a deficit of £7.8 million. In 2004/2005 the surplus was £9 million and in 2005/2006 it was £22.3 million. That is the reality of our stewardship of public finances. We have generated in ten years surpluses totalling £118.3 million against one deficit of £7.8 million, comprising by the way mostly of a £5 million grant to Community Care, £7 million of GHA expenditure because it was the beginning of the new hospital expenditure borne by the Consolidated Fund and Gibraltar Electricity Authority expenditure. Be all that as it may it does not matter what it consists of. That is the Government’s economic performance and we have done it despite cutting taxes every year. Not like he used to do, a rainy day fund. No taxes for anybody because we think they are going to go and spend it in Spain, so me Uncle Joe, I know better, let me hoard your money, let me tax more than I need to tax, let me put it in my rainy day fund in case it is spent in Spain of which I do not approve. That was his economic policy. We have generated

budget surpluses bigger than his and we have done it whilst cutting taxes every year against his annual every year tax increases. That is the comparison of our economic performance. He says it is impossible to discover the objectives and targets in advance. Well, only for him it is impossible because in his search for non-arguments, for non-arguments that go to the reality of economic performance, he has caused such a twisted state of confusion in his mind about the relevance of estimates against outturns and outturns against actuals and against Estimates one year and Estimates three years later that he has actually led himself to believe that the accuracy with which the Government estimate their revenue and expenditure is the measure of whether they have objectives or targets. Well, what a damaging conversion. It was not that long ago when he was in office that at Budget time this House only used to have 50 per cent of public finances in front of it. It is just as well we did not apply the same rules to him then as he applies to us now as to what is the measure of our targets and our objectives. Or does he not remember when he used to come to this House at Budget time with little more than 55 per cent of revenue and expenditure visible to public scrutiny? What was the accuracy then of his Budget Estimates in the measure of economic performance or economic targets, or economic vision or whether they had been achieved or not? Everyone knows what the Government's policy has been because everybody has felt the benefit of them. Since he says that he cannot discover what they are, even though I carefully explain them to him every year and then he goes to the Federation of Small Businesses dinner or to wherever it is that he went to say that I do not know the difference between economic and fiscal policy, as if one was not part of the other, but everybody knows what it is. Through our successful understanding, which he lacked, through our successful understanding of what it takes to create and sustain an environment in which private sector business can establish, develop and prosper to bring about economic growth. As a result of that, which we have done in large measure properly measured now by the way not like before, as a result of that economic growth to create more jobs and more Government revenue. Both of which we have done in record measures.

More jobs for our people and for the benefit of the economy as a whole and more Government revenue, leading to (which we have also done in record measures) more investment in public services, helped fund the Government's capital investment programme, cut taxes and maintained prudent public finances, which we have done with nine out of ten surpluses, the latest being a record, record reserves and a very low public debt. It seems to me simple enough for the hon Member to understand and not to have to say that he finds it impossible to discover the objectives and targets of the Government in advance. Every year I explained it to him in advance, what the Government's economic policies are for the year. Unlike we, when we were in Opposition, he now has even the opportunity to see in advance what the Government's public finances might be during the year. No one who is both sincere and has an understanding of economic matters could possibly seek to argue that the Government are not presiding over the most successful times for the economy of Gibraltar that Gibraltar has ever in its history known.

The Leader of the Opposition says that he does not know, in a speech that was really 95 per cent clichés and throw away remarks that he thought might impress sort of ill informed listeners, I do not know whether to commiserate or congratulate the Member, because of course, if he says that the elimination of the surpluses is by design, then I suppose when he eliminates the surplus he probably thinks it is a reason for congratulations. So he does not know whether to commiserate or congratulate. Well, he can make that remark if he wants on the basis of yet another distortion of what I have said to him every year. But let me explain it to him again so that perhaps, well it is not a question of him not understanding it. The Government through their successful economic policy, amongst many other economic indicators, seek to generate budget surpluses which, whereas he used to seek to store them up like a squirrel, we give away or try to give away, how? (1) By improving and investing and expanding public services, which is one way of redistributing wealth, since it tends to be those in our community who are least economically affluent who most rely on free public

services; (2) to cut taxes – another way of giving surpluses generated by Government's economic policy success back to the people; and (3) by using surplus revenue as capital in the investments that we make in public infrastructure projects. Well look, it does not require an economic brain surgeon to work out that if one gives away surpluses they reduce. Put another way, if we were like he was, if we never cut taxes in fact increased them, if we never improved investment in most public services and if we undertook as little publicly funded infrastructure investment as he undertook, then what would happen is that our budget surpluses would be not just disappearing, they would be even higher. But of course what happens? Because the economy has continued to grow year in year out, as we give away our budget surpluses in those ways, so economic growth delivers and replaces the lost revenue and the spent revenue in that way so that we now have more budget surpluses to give away. He can put this down, if he wants to for his own politically opportunistic purposes, to a Government that does not know at the beginning of the year whether it can make its books meet or not. But there are the figures, ten years of pretty consistent budget overall surpluses, there are the figures, there are the figures of tax cuts, there are the figures of investments and there are the figures of increases in public expenditure. Because, he says, the Government have clamped down on departmental spending and because the increases in expenditure are really inflationary only and departments are told to hold expenditure to the previous year, all this entitles people to believe that the Government have problems balancing their books. Of course he cannot say, as he has spent the last two years now, short of money, given that we demonstrated that that particular argument was yet another distortion, short of money one year's budget surplus in ten, that is what we now have shown, that he has been telling the people is short of money but now, of course, he cannot say that any more so now he uses the equally meaningless phrase "problems balancing their books". As if balancing the books meant that the actual year's performance has to match the estimate and to the extent that the estimate is not meant that is balancing the books. Well, only in his extraordinary economic debating style. For most people

balancing the books means, does one get as much revenue as one spends, that is what most people mean by balancing the books. If I spend money and receive money are they in balance? Despite the fact that we give it away every year, not only still balance the books but indeed, generate record surpluses, which of course will enable us to continue our ten year old record of cutting taxes and things of that sort.

Of course, now he says that we are clamping down, it is not that long ago that people remember him saying that public spending was rising too fast – another contradiction in the hon Member's debate. Well, are we clamping down or is expenditure rising too fast? I can understand the argument expenditure is rising but rising faster than revenue, and therefore expenditure is rising too fast compared to the revenue, I can understand that argument, but I cannot understand the statements that expenditure is rising too fast (too fast for record levels of revenue) but is still clamping down on departmental spending. Another huge contradiction in the hon Member's economic political debate which destroys their credibility in the public's eyes. Let us examine this so-called clamp down in public expenditure that he is happy to tell people this Government does. In 1998/1999 departmental expenditure over 1997/1998 was up by 4.3 per cent when the General Index of Retail Prices only rose by 0.81 per cent. More than four times the rate of inflation Government spending rose by. In 1999/2000 public expenditure rose by 7 per cent over the year 1998/1999. A year that inflation in Gibraltar was only 1.2 per cent, public expenditure rose by 7 per cent. In the year 2000/2001 public expenditure rose by 9.7 per cent over 1999/2000, a year in which inflation in Gibraltar was 1.9 per cent. In 2001/2002 public expenditure rose by 9.5 per cent over the previous year, a year in which inflation in Gibraltar was 0.6 per cent. In 2002/2003 public expenditure rose by 5.1 per cent, a year in which inflation in Gibraltar was 2.7 per cent. In 2003/2004 public expenditure in Gibraltar rose by 12.7 per cent and this is just recurrent expenditure I am excluding capital expenditure, by 12.7 per cent in 2003/2004, a year in which inflation in Gibraltar was 2.2 per cent. In 2004/2005 public expenditure rose by 3.5

per cent, a year in which inflation was 2.8 per cent. In 2005/2006 public expenditure rose by 7 per cent over the previous year, a year in which we expect the inflation rate will stay around the 2.8 per cent mark. In a nutshell, in the last eight years public expenditure has risen from £126.9 million per year in 1997/1998 to £223.4 million per year in 2005/2006, that is an increase of £96.5 million comparing the last year to the first one or 76 per cent. So, public expenditure has risen by 76 per cent over a period of time in which the inflation rate in Gibraltar has been 15.78 per cent. Even if one says the General Index of Retail Prices in Gibraltar is not an accurate measure of the real inflation and one wants to double the 15.78 per cent figure by which the RPI has increased, and it is doubled to 30 per cent, public expenditure has still risen by more than half in percentage terms than the inflation rate. How can he therefore think that he can sustain his remark that the Government have clamped down on departmental expenditure, when the last ten years and each of them has seen unprecedented growth by the Government in public expenditure as we have invested in public services to make up for the lean, destitute years that we inherited from them.

The Government's revenue record and PAYE is because they have gone on an arrears blitz. Well, it has got nothing to do with the Government having gone on an arrears blitz. By the way, on the one hand the Principal Auditor is, in my view, rightly critical of the level of arrears of Government revenue as there is out there. On the other, the Chamber of Commerce say that the Government is lax in its collection of arrears of revenue, but the hon Member still feels free to come to tell this House and the whole community that our record budget surplus is down to a blitz on arrears. Another contradiction in the hon Member's debate. The Government's revenue rises is not the result of an arrears blitz. That is not the explanation as it is not the explanation for the Government's surplus that we have raised everything that moves, or the business that we have increased charges for Government services. Look, we have increased some of the licensing and fees charged to businesses under the Licensing and Fees Ordinance, but by much less than they

increased it at the time that they were generating surpluses as well. We have introduced one increase in electricity and water tariffs in the ten and a bit years that we have been in office, which does not even reflect an 18 month increase in electricity fuel costs to the Authority. That does not explain the increase in revenue. What explains the increase in revenue is the extra 3,700 odd jobs that we have created in the economy since we arrived in office, that is what creates the surplus in Government revenue and he can twist and he can turn and he can duck and he can dive as much as he wants – that is the reality. What has added to the Government's surplus is the huge increase in company profitability that there has been on the back of the Government's hugely successful stewardship of the economy. Only somebody as politically ungenerous as him could try to argue that a record recurrent revenue surplus of £22.3 million is down to an arrears blitz, when everybody else says that we are derelict in our collection of arrears. The Opposition Members lack credibility. He said, "it is difficult to understand why Government revenue does not grow at the same rate as the economy". Why does Government revenue grow at the same rate as the economy? Why are they not on similar trend lines, economic growth, Government revenue and Government expenditure? Well, I have got news for him, they are growing on similar trend lines, they are growing in pace with one another, but of course he just makes throwaway remarks pretending that he is some sort of economic guru and I am sure he has not even bothered to sit down and do a simple piece of addition and subtraction and multiplication. Well, I will read them out to him, I will save him the calculations, because I have gone to the trouble.

In 1997/1998 Government revenue stood at £138.4 million and GDP stood at £364 million and therefore revenue was 38 per cent of GDP. In 1998/1999 revenue was £150 million and GDP was at £393 million, also 38 per cent. In 1999/2000 Government revenue was £157.6 million and GDP was £409 million, also 38.5 per cent. In 2000/2001 Government revenue stood at £167.2 million and GDP stood at £433 million, also 38.6 per cent. In 2001/2002 Government revenue stood at £180.3

million and GDP stood at £470 million, also 38.4 per cent. In 2002/2003 Government revenue stood at £186.2 million, GDP stood at £507 million, 37 per cent. In 2003/2004 Government revenue stood at £193.8 million and GDP stood at £556 million, 35 per cent. On the basis of estimates, because the figures are not yet known, but on the basis of his estimate of what he thinks GDP is going to grow in 2005, it will also be 35 per cent. Far from it being difficult to understand why Government revenue has not grown at the same rate as the economy, what the hon Member should be saying in that it is extraordinary that Government revenue growth has almost precisely tracked and matched growth in GDP.

Now let us do the same calculation with the other item – expenditure – that, he said, was also not on similar trend lines. In 1997/1998 Government overall expenditure was £126.9 million, GDP was £364 million, public expenditure was 35 per cent of GDP. In 1998/1999, the following year Government expenditure was £132.4 million, GDP was £393 million, also 34 per cent. In 1999/2000 expenditure was £141.7 million, GDP £409 million, 35 per cent. In 2000/2001 expenditure was £155.5 million, GDP was £433 million, 36 per cent. In 2001/2002 Government expenditure was £170.2 million, GDP was £470 million, again 36 per cent. In 2002/2003 Government expenditure was £178.9 million, GDP was £507 million, 35 per cent. In 2003/2004 Government expenditure was £201.6 million, GDP was £560 million, again 36 per cent. He should not be telling people that these things are not growing on similar trend lines, what he ought to be saying is that they are, because they are, because the figures say that they are. Of course, in terms of Government revenue as a percentage of GDP, if we had not been giving away so much money in tax cuts, if we had been doing as he used to do which is never cut taxes in fact increase them every year, in effect, if we had done as they did our revenue would have grown faster than GDP. Hence why the Government are justified in giving away part of the Government's revenue as a means of sharing out the fruits of economic success to people through tax cuts. So, frankly, whereas he says that it is difficult to understand why

Government revenue does not grow at the same rate as the economy, which it does, frankly, the only difficult thing to understand is why someone who pretends such competence as an economist can get his statements and his economic analysis so wrong. Is it that he is not as competent as he pretends, or is it that his statements are calculated to distort and mislead his audiences? Which of the two is it? Because wrong they certainly are.

The Leader of the Opposition and the Hon Charles Bruzon said that the lower paid have had to become frontier workers, that people are being driven away to live in Spain because they cannot afford housing and that even so-called affordable housing are too expensive for many people on low incomes. Well, I have got a few things to say to that. The first is, that the evidence does not support their politically motivated exaggerated claims that there are Gibraltarians in droves living in Spain. There are certainly some and the Government are doing all that they can to help those if they genuinely wish to come back. But of course, something which I know the hon Members find almost impossible to stomach, is that there are many Gibraltarians who for reasons of life, style, choice and preference want to live in Spain. Of course, the hon Member who is not willing to cut peoples' taxes because he does not trust them as to how they are going to spend it, does not trust Gibraltarians either to exercise a choice of where they wish to live, because he wants to micro-manage what every Gibraltarian thinks, where every Gibraltarian spends his money and where every Gibraltarian lives and that is part of what this community drove away like old cobwebs in 1996 and are hardly likely to vote for it back.

It is instructional to remind Opposition Members what they used to think about affordable housing when they were on this side of the House. I know it is a long time ago in their memories but still, that is the beauty of Hansard, that it is there for posterity. The Hon Lt-Col Ernest Britto, then in Opposition, asked in Question No. 136 of 1988 on 15th November 1988, this was when his socialist credentials were still at their most untainted,

he had not yet decided to do to the Trade Unions and to the workers what he proceeded to do in the next eight years. This was the answer given by the Hon Mr Baldachinno, the question was "will the Minister for Housing explain what he means by the term low cost houses?", very astute question. The answer was, "the term low cost applies to all unit types being built, which are sold or offered at prices suitably below known market levels for the respective types." It could have been said by any free market economist that I know. Supplementaries, Colonel Britto: "do I understand that to mean that when we call it low cost we are going to establish a cost that is lower than what it actually costs to build?". Mr Baldachino: "Mr Speaker, it means what it says", that actually is a monument to the sort of answers we used to get. Then, the now no longer with us in this House, the Hon Peter Montegriffo, rose to his feet: "Mr Speaker, then if I understand the Government's position, the definition of low cost is related to what the market....". Mr Speaker at the time, who used to feel free to participate in debates, "Yes market levels", that was the Speaker's intervention to the Government's political predicament for the moment. The Hon Peter Montegriffo: "as opposed to what people can afford?". Mr Baldachino: "Well Mr Speaker, it cannot be any other way if people cannot afford it they cannot afford it". I can almost hear Maria Antoinette say, "if they have not got bread let them eat cake". That was their attitude on affordable housing when they were there. Mr Montegriffo: "So the market in two year's time is such that a two bedroom flat costs £100,000, that is the basis that one works from to determine low cost. One does not say an average Gibraltarian family can afford £30,000 and that is low cost." At that point the Chief Minister, who now accuses me of rising to my feet whenever one of my political colleagues gets into difficulty, rose to his feet because one of his political colleagues was in difficulty: "Mr Speaker, the hon Member opposite is talking complete and utter nonsense." What has changed in all these years? Everybody talks complete and utter nonsense except him, because he knows very well that the market is determined by supply and demand, as we do. He knows that there are more flats now in the pipeline affecting the supply than there ever has been before in Gibraltar's history. Now the

situation is that in determining what is the relative cost of a property, the only way in which to relate it is whether it is at the top end of the market, or at the middle of the market or at the bottom of the market. The bottom of the market, at any given time, may be beyond the reach of everybody in Gibraltar, or well within the reach of everybody in Gibraltar, because that depends on peoples' incomes and not on the commodity. Absolutely, entirely correct and the position remains the same. Therefore, when the hon Member criticises Government low cost housing schemes which are putting properties on the market at 100 per cent before the 50/50 Scheme bites, at 100 per cent for much, much less than the market price, the hon Member cannot stand up and try to attack that on the basis that there are still people who cannot afford it. Look, that was true as I have just read, and they thought it was true when they were in Government. Now, given that they knew that it was true when they were in Government, given that in 1988 at the beginning of their eight years in office they were already telling this House that there were people in Gibraltar who could not afford to purchase, how many rental houses did they build for such people? They knew, by their own admission, as far back as 1988 that they knew that there were people who could not afford the houses in the pipeline. I have no doubt that if they had been in office when the MOD surrendered Edinburgh House, they would have sold it like they sold everything else that moved and not do as we did which is keep it for rental by those very people who could not afford to buy. Well, the hon Members now have a situation where the Government, who has done at least with half of the houses they are building, done what they might have done, which is to take on the role of developer to ensure that they could be sold as cheaply as possible, is now putting houses on the market for figures which are very often less than half of their real market value and of top of that are offering the co-ownership scheme to the majority of the buyers there.

The Leader of the Opposition thought, riding on a wave of alleged discontent as reflected by the public demonstration that took place recently outside the House, that he thought that this year the Social Services Agency was fertile political ground for

him. All the letters in the Chronicle and all the demonstrations – how could they let the opportunity pass? Well, first of all let me deal with the factual inaccuracies of the hon Member's statements. It is not true, as the Leader of the Opposition has said both in this House and to the public at large in an interview on GBC television, that the Government have, despite having £22.3 million surplus and whilst at the very time that the Chief Minister was sitting in the Treasury counting out the coins, this scrooge Government was withholding 100 per cent of voted funds resulting in underexpenditure against voted funds, despite user protests at the lack of funds. It is not true. It is true that there has been an underexpenditure against the funds available to the department. It is not true that the reason for that is that because the Government withheld the funds or directed them not to spend it, no such direction was issued and management was perfectly free to spend it. He knows this, because it has already been explained to him in the House. So the two ears and the mouth that the Hon Mr Bruzon reminded us all we had all been naturally endowed with, are no good on that side of the House, at least ears are no good, the mouths are. He has been told repeatedly in this House that the reason for the underexpenditure is that the management has had trouble recruiting people to deliver during the last year the Respite Service, because there was neither additional staff when they tried to recruit nor did existing staff want to work the overtime hours required to provide the service. They know it, the Disability Society knows it, everybody knows it – that is the reason why the money stayed there unspent and nothing to do with, not only complete misinformed speculation, speculation in the face of an explanation to the contrary. Nothing to do with the Government withholding the money despite the fact that it has been voted by the House, withdrawing the money in order that our budget surplus instead of being £22.2 million reached the dizzy heights of £22.3 million. What an absurd level to reduce the political debate to on the Estimates of the Government.

I understand that the hon Member may have been misled by the note at the foot of Appendix F into believing that there has been

a fall in staff at the Social Services Agency and that another reason for criticising the Government, at a time that the Government are awash with money, here we are cutting back on staff that provides services to the most vulnerable members in our community. They have fallen from 153 to 146 as at 1st April 1996 and the source for that remark are indeed those two figures appearing at the foot of Appendix F. In fact, it has risen to 168 from 153 and not fallen. The figure of 146 is net of vacancies that occur in that department and have arisen and are in the process of being filled in the ordinary course of business. It is a department with quite a lot of staff turnover, precisely because of the nature of the work. Staffing levels in the Social Services Agency have risen hugely over the ten years and have risen over the last 12 months too. All that said, does the Leader of the Opposition not acknowledge or realise that he is an wholly, unlikely and unconvincing advocate for the disabled in Gibraltar? Here is the man who when he was Chief Minister of Gibraltar and had the opportunity, I suppose he would claim that his socialist credentials made him particularly inclined to use his political power and his economic largesse and his budget surplus in favour of the most vulnerable. No, instead during all the eight years that he was in Government, he froze the cash allowances, the disability allowances payable to the disabled. In other words, he expected disabled people to have the same amount of revenue in 1996 as they had in 1988. He froze the disabled tax allowance. There were no staff increases in Social Services, let alone Dr Giraldi Home. There was no investment. He was content to let the Church charity run Dr Giraldi Home on a shoestring. In contrast, we have increased the allowances now by 90 per cent, in almost as many years, we have increased their tax allowances, we have introduced a disabled individual's tax allowance of now £2,500 per annum, we have taken over direct responsibility for the Dr Giraldi Home and all the services of the Agency, we have doubled expenditure on Social Services and we have nearly doubled staffing levels. In all the years that the Leader of the Opposition operated budget surpluses, he dedicated not a single extra penny of the wealth that he was creating to improving the lot of the disabled in Gibraltar. Not one. That is the credentials of the man who now

presents himself to this community as the champion of the disabled fraternity here. The hon Members simply lack credibility. Indeed, not only did he not invest any money in their interests, he saved money at their expense. Here was the squirrel par excellence at the expense of the most vulnerable members of the community, because every time he did not increase their allowance, every time he did not raise their tax allowance, it was more money in his hands at their expense. That is the inescapable reality. That is what he should be telling his friends in the Disability Committee next time he hugs and kisses them down there in demonstrations outside the House of Assembly. We, on the other hand, have shared the wealth that we have created with the most vulnerable, especially with the disabled. Or who was it that introduced the Respite Service? Now he tries to make us look like scrooge because for reasons of recruitment the service that we have introduced has had one bad year when he did not have it at all. When he was in office he could not care less that the parents of disabled people never had respite from their duties. Now he wants to nit pick about whether it is up or down by one or two or this or that. Simply another monument to the hon Member's lack of political realities and credibility. These are the inescapable realities. However many political friends he may have in the Committee of the Disability Society, these are the inescapable realities which will haunt him all the time. Therefore, I can only but condemn him for manipulating them now in this way for his own political ends when his record in Government shows that he did not care less for them when he had the opportunity to do so.

Let us be clear about the Social Services budget. Lest anyone listening to the Leader of the Opposition's ramblings might have been led to believe that the Government were penny pinching, that the Government were penny pinching on the Social Services budget. Going back just to 2005, the Social Services budget increased by 6 per cent. In 2006 it increased by 8.57 per cent, double or triple the rate of inflation. Between 1997/1998 and 2005/2006 we have doubled expenditure on Social Services because we said we would invest in public services, particularly those that benefited the most needy and we would reverse eight

years of lack of investment and commitment to those public services by the hon Members opposite and now we have delivered. Now they are not credible advocates to criticise this Government's economic policy to snap at the ankle and to take little points around the edges. They did nothing and we have had to put right what they did not do, as well as do our ten year's work of progress in respect of our own ten years in Government. Those are the inescapable realities. There is no hiding place for the hon Member from them, none.

The hon Member raised the question of the training vote and wondered why at the time that the Government were awash in cash, we had underspent by £300,000 in the delivery of this service. Well, I do not know whether he is to know, perhaps not, although I think (I may be mistaken here) we may have given him an indication of this in the House before now. That is not under expenditure, most of it is accounted for by the fact that we have withheld payments from Cammell Laird because they were not for services delivered, so there has been no reduction in the service, because they were not producing for us the documentation necessary to enable us to recoup the monies from the European Social Fund. In other words, they were not producing the right invoices and therefore we said we would not pay them until we were provided with the invoices that will allow us to recoup the ESF share. Nothing to do with underexpenditure in service delivery.

Extra revenue are proceeds of land sales and I see from a letter in today's press and a press release issued yesterday that all manner of people are now jumping in to comment about political matters about which they clearly understand what they could write on the back of a thrupenny stamp. Let it be clear so that no one out there, either by anybody in this House or by even less informed commentators outside of this House, could possibly be under any misapprehension. The capital sums that the Government receive for the sale of land, for the sale of development rights, for the Eastside development project, are not included in the £22.3 million surplus revenue over expenditure generated last year. That capital sits in a capital

fund which is wholly different to the recurrent revenue and expenditure amount. I know that he knows that but he also makes ambiguous remarks which others might misunderstand him to mean that that is what he is saying. But there are others outside of this House who clearly do not understand that and who make the remark glibly, hoping to persuade people how prepared they are for Government but actually demonstrating the complete opposite. Well, the hon Member says that the Government's reserves are due to the fact that we are selling off the family silver. Look, I suppose as part of his political debate he can now describe the selling off the family silver, that when he used to do it he used to call "selling ex-MOD properties" which he used to do, "selling development lands and rights" which he used to do and "selling Government properties to sitting tenants" which he used to do. Can I help it if because of our stewardship of Gibraltar's affairs, international investor confidence has risen to the level where I can do it more effectively than he could. Well, it is rather churlish of him to denigrate the practice that he used to do simply because I can do it more effectively, simply because the economy and the community is now performing better. That is what he is doing. He may have started off the rubble tip that is now the Eastside reclamation and of course he did. But let me tell him, he is living in cloud cuckoo land if he thinks that any international investor would have invested £1.5 billion, with 'B' for British pounds, in his GSLP Gibraltar of 1996.

The Budget, the one that he had just described as a pre-election Budget, when he was half an hour into his speech he forgot presumably that he had said that and he said, "ah, but the Budget does nothing for local needs". Not even housing, never mind that the Government are funding the Waterport Terraces construction, never mind that the Government are funding the 50/50 scheme for the Waterport Terraces houses, never mind that the Government are funding the 50/50 schemes for the other South District properties, the ones being done in partnership with the Government by OEM, never mind that the Government have been and continue to be embarked on the most well-funded programme of refurbishment of council

estates, including lift installation and roof replacement, never mind that this Government care about the living environment in Government housing estates, unlike the previous alleged socialist Government never invested a bean, he still feels free to tell the people of Gibraltar that there is nothing in this Budget for them in relation to housing. Of course, in relation to jobs, he tells them that there is nothing in this Budget for them either. Never mind that there are more jobs than ever in the economy, never mind that more Gibraltarians are in employment than ever before, never mind that pay is higher than it has ever been before, never mind that taxes are lower than they have ever been before and never mind that employee rights are now better protected than ever before. Never mind all of that, he still feels in liberal exercise of his rights to lack of political credibility, he feels perfectly free to proclaim that this Budget does nothing for Gibraltarians in jobs. Indeed, he felt free confidently to proclaim that students, by which I suppose he meant returning graduates, had no future prospects. Here we are with half the world proclaiming the huge economic success of Gibraltar, and the Leader of the Opposition, the so-called economic guru, stands up to proclaim that there is no prospects for our future in Gibraltar, ignoring the extra jobs that have been created and everything else that I have just said. Well, almost everybody knows that the prospects for returning graduates have never been better. There has never been in Gibraltar's economy more appropriate, adequate, well-paid jobs for graduates to return to than there are now, and we do not think it either dignified, appropriate or necessary to offer them artificial, unnecessary, undignified, demeaning and demoralised jobs in the public sector for three years, at the end of which I suppose they are dumped back into the labour market. That is their vision for our youth in Gibraltar, instead of getting them to recognise the huge opportunities that are being created in the modern economy that we have generated. It is pitiful, it is verily pitiful. The only reduced prospects that there are for our youths and our students in Gibraltar, the only reduced prospects relate to the fast launch activity and the tobacco trade, that is the only prospect that we have reduced and we are proud of it. The Leader of the Opposition's remarks simply betray his lack of real arguments

and with it comes a huge, huge loss of credibility. I had almost forgotten – not content with holding himself up as the natural knight in shining armour, riding on his white steed to the rescue of the disabled community of Gibraltar, he is now converting himself into the champion of small businesses. These are the small businesses that when he was the leader of the trade unions in Gibraltar he used to oppress with strike after strike, with power cut after power cut and with rubbish strikes. Never mind all that, let us judge him on his years as Chief Minister not on his years as Leader of the Opposition. My heart bled listening to the Leader of the Opposition extolling the needs of small business in Gibraltar. Could the leopard have finally changed his spots I kept on asking myself. Of course, I smacked myself on the head, woke up and remembered that this particular leopard is proud of the fact that his spots never change. This is another constituency for which he is simply not a credible advocate. He has never cared a damn for the interests of small business. If he had, why did he increase their social insurance employers' contribution every year, except one election year, by 10 per cent? Did he not realise then the huge damage, the huge millstone around the neck of small businesses that this represents? Or is it that he did not care then and now he is pretending to care? Which is it? If he so cared about small businesses, why was it his position in Government that the poor shop keepers along Main Street had to pay for half the cost of beautifying Main Street and that his Government was not paying any? The EU half and the shop keepers out of their own pockets the other half. Did he think that this was helping the small businesses that were under so much pressure from Spain and from everybody else, or is it that he did not care then and he is now pretending to care? I suppose some of his colleagues have said, "Joe, we have got to make ourselves a bit more attractive to the business community, let us just say the right things. Never mind what we did when we were in Government, let us just pretend to be all things to all men. That is the way to get back into office, that is the way to unseat the dreadful Caruana and his Government." If he so cares about small businesses, why did he introduce the weekly training levy? £2.00 per week per employee, why did he think

small businesses had the money left over to give to him to increase his little rainy day fund, or is it that he did not care then and now he pretends to do so? Why did he introduce annual registration? Why did he never use, as we have done, import duty reductions as a tool to help them, to make them as price competitive as one can? He never did that when he had the power to do it. Now he sounds like the Director General of the Federation of Small Businesses. Well, it is not even credible as a damascene conversion. Not even if St Paul had suffered the same conversion I would not have believed this. Why did he never reduce their rates? If he was so concerned about the needs of small businesses, why did he never reduce their rates as we have done? He never did anything for them – nothing, except have a distorted level playing field where only a few companies got the contracts and the rest of them did not get a look in. That is the only thing he did for the private sector. His pleas on their behalf now are therefore simply not credible and simply add further to his lack of political credibility.

The Hon Mr Linares, politically switched on and astute as always, thought that he would put the political boot in by proclaiming that after ten years of GSD Government very little progress had been made. Has he been away on holiday for ten years or what? Not even he can believe that, but if he does he is the only one in Gibraltar who believes that ten years of GSD Government have brought very little progress for Gibraltar. That is another reason why the Opposition lack political credibility. It transpires, according to the Hon Mr Steven Linares, that the youth re-offend because they serve their sentences in a Victorian prison. Well, it is the same Victorian prison as they used to serve their sentences in between 1988 and 1996 and they did not say they had plans to build a new one. We are having a new one because Gibraltar was sensible enough to elect a GSD Government, because if they had not, presumably, our youth would still be re-offending because they would still have no prospect of serving their sentences in anything other than a Victorian prison. Desperate for anything to criticise the Government with, the Hon Mr Linares says that there were two openings of the Sports City. I mean the Government were so

proud, we are very proud of it by the way, I think it well merits two, three or four openings. It is not true that we have done two openings of the Sports City. Not that that matters to the hon Member whether it is true or not. But just for the record it is not. There was one opening by the Princess Royal of the new Sports Hall and there was another opening by the Minister of the hockey pitch and the administration block, which were not ready for opening at that time. That is not two openings of the same facility – that is separate openings by different people of separate parts of the same, huge facility. See the facility is so huge that it needs to be brought on line and opened in phases. Such is this Government's commitment to investment in sport and leisure in Gibraltar.

How can we get the boat owners, well of course I am very pleased with the Government because the spanking new marina that we built for them in Coaling Island, how can we put the boot in? I mean, damn the new hospital, the new buses, the new sports facilities, these things they are good news electorally for the Government. How can we tarnish them all one at a time? Now how do we do that to the small boat owners club? I know, I will tell them that there are still 200 boat owners awaiting for a berth. Well, if there are 200 boat owners still awaiting a berth, it is 186 fewer than were waiting under the eight years of GSLP Government, because it took a GSD Government to save the small boat owning fraternity in Gibraltar from the trick that was perpetrated on them by the GSLP administrator who moved them from the Camber to make way for the luxury development that they put up in its place, Queensway Quay, booted out all the Gibraltar small boat owners to have a prime waterfront site for our luxury apartments (the sort of things that they criticise now) but they moved them under the promise that it was temporary. Of course, we now know that temporary in GSLP jargon means at least eight years. It would have been probably more because I do not remember seeing very much about this in their manifesto. Well, the boating fraternity, I regret to tell the hon Member opposite, is delighted, absolutely delighted with the spanking, modern, well-equipped, safe, well-run, new facility that this caring Government have built for them, retrieving lost

ground that the local population had lost under the GSLP Government in favour of luxury developments. Then, of course, he said, "I have only made two or three points, that is far enough. I know, I will read last year's speech to see if I get some inspiration. No, better still, I will repeat some of last year's points." So he said, well the Theatre Royal is a dreadful black hole and we spent £400,000 on it to date. Well, look, I have not kept a tally of exactly how many pounds we have spent on the Theatre Royal, but since he makes the same point as he made in his speech last year, I will give him the same answer as I gave him last year. That is, that however much money we spend on any alleged black hole in, near, around, under or next to the Theatre Royal, is but a smidgeon, but a fraction of the money that we have had to spend and are still spending to repair their disastrous Harbour Views, to repair their disastrous Brympton, to repair their disastrous Gib V and to make good their disastrous new incinerator contract. They would not have money with what we have spent in the black hole of the Theatre Royal, they would not have money for peanuts compared to what we have had to spend making good their dreadful mal-administration of major capital projects of importance to the people of Gibraltar. I am sorry to repeat the argument but if he repeats the point I have to repeat the argument, the explanation cannot change every year. Then in a remark that struck me as curious, he said "the Government have got to be pro-active in education". I said, "ah, this is interesting, I wonder what pro-activity in education means" and all sorts of thoughts conjured up in my mind. Alas, he put me out of my misery almost immediately, by saying, "no, they must divert from England and Wales and look at other jurisdictions". Well, would he like to speculate what jurisdiction he has in mind? Given that the majority of our children go to UK universities, what is he suggesting, that we plug into the Spanish education system, or the French, the Polish, the Russian, the Chinese? What system of education in the name of pro-activity would he abandon the system of England and Wales for? Is this the man that says to the people of Gibraltar "vote for me and I will educate your children for the next four years". Of course, it does not surprise me that a person who thinks that could go on to say that the

Government have no vision in education. No vision that he can see, I am not surprised if that is the direction he looks in for visions. His vision, as I have just said, for our youth, is to create artificial jobs for them. As if young people that have sweated it out in university for three years actually want to be patronised in this way. What these guys want is real jobs, productive, valued, important, necessary, well-paid satisfying jobs – that is what they want and that is what they have got now in record numbers.

Mr Speaker, the Hon Mr Picardo started off by saying that the Government have shown they have no concern for ordinary working Gibraltarians. I said to myself, “my goodness gracious me. No concern for ordinary working Gibraltarians”. Who have slashed their taxes every year that they have been in office and who raised them effectively every year by not even increasing personal allowances to reflect inflation? Who? Who cares for ordinary working Gibraltarians? Who saved ordinary working Gibraltarians from the GSLP’s annual 10 per cent rises in employee social insurance contributions? Who cares and who does not care for ordinary working Gibraltarians? Who has given ordinary working Gibraltarians more job opportunities than they have ever enjoyed before? Who has introduced occupational pensions for hundreds of Government company employees that they were quite happy to see reach retirement age with no provision at all for their occupational pensions? Who cares for ordinary working Gibraltarians and who has demonstrated that they do not? Who gave hundreds of Government and Government related company employees proper contracts reflecting decent terms of conditions and pay and who left them there with threats if they joined trade unions year out? Who cares for ordinary working Gibraltarians and who demonstrated that they were not because they were more concerned to cover their tracks lest anybody should follow them up from the union movement into politics? Who cares more for ordinary workers? Who has set up structures for affordable pensions in the private sector, and who demonstrated in eight years, despite their alleged socialist credentials, that they did not care by making no arrangements facilitating affordable occupational pensions in the private sector? Who increased the

statutory minimum wage from £3.20 to £4.50 an hour? Who equalised industrial and non-industrial pension rights in the Government? Who extended statutory redundancy rights to all workers? Or when they were in Government did they not care that some workers did not have statutory redundancy rights? Despite their trade union backgrounds and despite their alleged socialist credentials and despite thinking that it is they and not us who care for ordinary working Gibraltarians. Who extended insolvency fund cover to all workers, not just to a small group of them? Or did they not care, despite all those things, that most private sector employees in Gibraltar could actually become redundant from bankrupt companies and get nothing? Who has done that for ordinary working Gibraltarians if not the GSD? Who re-opened a proper, properly resourced construction training centre so that we could once again start establishing and producing skilled craftsmen in Gibraltar, which they, despite their alleged socialist and trade union credentials saw fit to condemn to the dustbins of history? Who opened the electrical and mechanical training centre with the ship yard? Who provided hundreds of workers throughout the public and private sector with distance learning opportunities, training opportunities, diploma opportunities and business management opportunities that have been availed of by hundreds of people? Who, who have shown that they care for ordinary working Gibraltarians and who demonstrated during the eight years that they could not care less? It is not true, however many times the Leader of the Opposition may tell Mr Picardo, that the Widows and Orphans Pension Scheme was withdrawn by the Government at the request of the union. It is not true and I am sorry to have to tell the Hon Mr Picardo, that it is a huge indictment of the Gibraltar Socialist Labour Party and of their political and ideological sincerity, that the party that they regard as right wing, anti-worker and reactionary, has been hugely more beneficial for workers in Gibraltar, has been hugely more pro-worker rights and has a hugely better record in doing things of benefit to the working class in Gibraltar than they ever did or even thought of doing had it all been the case. Then the Hon Mr Picardo, standing in for the much more amusing Miss Montegriffo, to whom from this seat I send her on behalf of

myself and the Government our sincerest and fondest wishes for her speedy recovery, however many lunches, like the one recently, the Leader of the Opposition and the Hon Mr Picardo have with Mr Michael Netto and Mr Charles Sisarello, the reality of the GHA will not change. They can go to lunches and they can take notes from peoples' subjective agendas but it does not alter the realities. However many alleged quotes from individuals, disgruntled health workers he may quote from a dubious and suspect so-called survey; the self evident reality of the GHA does not thereby get created or established. It is not true that staff morale is low. What is true, is that by their persistent, systemic and constant denigration of the huge effort that the vast majority of health workers are making in dragging our health service into the 21st Western European century, what is true is that he is demotivating them through his unjustified attacks on the quality of the service and the effort they are making on behalf of the people of Gibraltar. That is what is true. The vast majority of staff are committed to the radical changes and transformation that are taking place in the health service, because they know it is good for the patients, it is good for our families, it is good for them as staff and as potential patients and as people who have families too. They know it is good for them all and therefore the vast majority of them are putting their shoulder to the wheel and contributing with their commitment, with their skill, to the exercise - the huge transformation that is taking place. In another example, their political philosophy appears to be "my opponent's opponents are my friends". So if it is the GP's that have a negotiation with the Government, they rush in "poor GP's and dreadful Government. The reasonable and fair claim of the GP's". Does he even know what the claim of the GP's are before he leapt to his feet to describe them as reasonable? Is he aware that the claim that he describes as fair and reasonable amounts to nearly 50 per cent pay rise? Is he aware of that? The Government are certainly willing to negotiate with the GP's with a view to improving their package, which we agree needs improving but if anybody thinks that it is their unreasonable expectations and nothing else that will buy industrial peace, they are mistaken. Just as the hon Members are mistaken from the Opposition benches to fuel such attitudes

and such approaches – irresponsible on their part. For a Government that never gave anybody a pay rise, never promoted anybody because they did not want to pay them an extra three and six, to now come supporting people's 50 per cent pay rise, can only be described as political opportunism of the cheapest variety. Mr Speaker, the Hon Mr Picardo, quoting all it takes for him to get to his feet in this House to say things as matters of fact, are that one nurse said so (allegedly said so) in this dubious survey. On the basis of that one remark that staff is too low, he comes to this House to say that staff is too low. Well look, I am glad he did, because it gives me the opportunity to remind the people of Gibraltar just what we have done by way of staffing to improve the quality, extent and safety of the health services that they now enjoy thanks to their good sense in voting in this Government in 1996. The number of nurses has increased from 292 to 362, 70 extra nurses amounting to 24 per cent increase over the number of nurses that they thought it was safe to deliver health service to this community with. So, if there are people now saying and he willing to adopt their statements, that the staff shortages is putting patient care at risk, well, patient care must have been at 24 per cent more risk when they were in office, given that there were 24 per cent fewer nurses. That is the consequence of his slavish subscription to the ill-informed remark of every disgruntled person that puts pen to paper. The number of doctors employed in the health service has increased from 30½ in 1996 to 48½ now – an increase of 18 doctors or 59 per cent. That includes four extra consultants, nine extra hospital doctors and five extra GP's for the Primary Care Centre, which by the way, amounts to a 40 per cent increase in the doctors at the Health Centre. This is the Government that he comes to lecture about staff being too low in the Health Authority. Dentists, which used to be two, are now three. Professions allied to medicine, therapists and people of that sort, have grown from 25 in 1996 to 40 in 2005 – an increase of 15 or 60 per cent. There are now services being delivered in the Health Service which they did not even dream of introducing when they were in office. The number of domestics, to ensure that our hospital is much cleaner than it was when they were in office, has increased from 58 to 78 – an increase of

20 or 34 per cent. The number of technical staff has increased from three to ten – an increase of 7 or 233 per cent. The number of laboratory staff, upon which doctors' abilities to make rapid and accurate diagnosis depends, has increased from 12 to 18 – an increase of 6 or 50 per cent. Overall, the number of people employed by the Health Authority has risen to well over 726 from a figure of around 500. The hon Member can come to this House for the purpose of misleading it and the public at large and say that staff is too low, but.....

HON F R PICARDO:

Point of order. I think that in this House we have an established practice that when we say that a Member has misled the House, we have to show exactly how the Member has purported to mislead the House other than by simply putting different political interpretations on figures. One of the things is to do that and the other thing is to put an allegation of misleading the House. I do not intend to ask the Chief Minister to give way any more during the course of this debate but if he makes an allegation as precise as an attempt to mislead the House, then that has to be justified in a particular way and in the proper manner, and I would ask Mr Speaker to require him to do that other than just with politics.

MR SPEAKER:

I understand the Chief Minister has been quoting certain figures and I imagine that is what he is basing his allegation on. It may not be acceptable.....

HON F R PICARDO:

It is not a question of being acceptable, it is just that misleading the House is a particular thing and having different interpretation as to figures is a different thing. But it is a matter for the hon

Gentleman, he does his politics that way most of the time so if he is going to be allowed to get away with it, so be it.

MR SPEAKER:

That is the way the Chief Minister has chosen to support his allegation. I have to accept that.

HON CHIEF MINISTER:

It is indeed the way that I conduct my politics, with accurate figures on my lips, unlike the way that they conduct their politics which is with inaccurate figures, unproven, unsubstantiated, speculative, inaccurate remarks. That is the difference and I am proud of it – that is exactly how we conduct our politics.

The hon Member then went on. By the way, when he calculates the number of staff that we are short in respect of the alleged non-compliance with the 1997 Review, can he please in future remember to add the 15 posts that were transferred to Mount Alvernia, to the Elderly Care Agency, when the geriatric wards were transferred up there. "There is a shortage of money", he said. Of course, if the hon Member wants really to apply Standing Orders, then he must also remember that he cannot just bring to this House quotes from the streets, unless he is willing to make himself responsible for their factual content. So when he stands in this House regurgitating comments from so-called surveys, and putting them up as fact, he is making himself responsible for the accuracy of that statement. Well look, I do not know of any other Government in Europe that in ten years have much more than doubled the expenditure on health. When we arrived in office it was around £21 million, it is now £52 million. The hon Member can stand there on behalf of a nurse, who presumably made the remark, one nurse, and on the basis that she made that remark come to this House and accuse the Government of starving the health service of cash, but he has to do it in the face of inescapable fact. Namely, that we have much

more than doubled expenditure on the health service, that we have hugely increased the amount of staff in the health service, and as he will now hear, that we have hugely increased almost everything else in the health service too. I am glad when the Opposition make such silly remarks about the Government's performance on health because it provides me with this opportunity that I would otherwise be too embarrassed to repeat year in, year out, of all the excellent things that we have been able to achieve. Relying on the judgement of one nurse, he comes to this House to say that there is a shortage of equipment and that they lack the tools to do the job. Is he aware of the millions and millions of pounds of equipment with which the new hospital is now brimming, which before was a figment of somebody's imagination in some glossy medical equipment catalogue? Does he have any clue? I just sometimes wonder if he has ever visited the new hospital. Is he aware of the millions of pounds that have been spent on equipment of which this community simply did not enjoy the benefit, and now he comes to this House, obviously trying to persuade people not even to think about voting for the Government next time round, because the hospital is actually under-funded, under-staffed, under-equipped and one's health is therefore in danger. It is a pathetic political debate. If he wants a list of the things that we have not yet done and that we still need to do and will do, I will give it to him and he can attack us on those, but why attack us on things that nobody accepts or even believes is true, even if he does, which I doubt.

The waiting lists. The waiting lists have not grown, even in the two disciplines that he has mentioned and has deduced from the information that he has had in this House in answers to questions. What has happened is that when this non-socialist, right-wing, reactionary Government that does not care about ordinary working Gibraltarians, abolished the rampant private practice that we inherited from them, we discovered that there were private consultants who were running their own lists and that the lists kept by the hospital management was not the true extent of people waiting for operations. It was not until we demanded from the consultants, some of them, their own lists,

the ones that they kept in their own private computers at home, that we were able to establish the true extent of the people in Gibraltar that were waiting for operations, and then we put them all on the Government GHA Management list, and that is why the list has gone up and not down in the specialities where that was happening. But I will tell the hon Member something about the Government's performance since he is so interested in waiting lists, most people in Gibraltar, ask people who have been waiting and have been used to waiting for cataract operations and for hip operations and for knee replacement operations, ask them whether they think the Government have failed them miserably and whether they have rampant complaints about the waiting lists or any other aspects of the Health Service. In child Ear, Nose and Throat there was, around December 2004, around a 12 month waiting list – there is now no waiting list – it has been eliminated completely. In adult ENT, there used to be in around December 2004 a two year waiting list – it is now down to 14 weeks and it is now down to just 14 weeks and even that is about to be eliminated. In knee surgery, where there has traditionally been lists of years and years and years, five years as recently as December 2004 – it is now down to one year and that will be eliminated completely by the end of July this year. Hip replacement operations, for which people used to wait up to two years, they now wait nothing at all. The waiting list was eliminated back in May. See, this is the achievements in dragging our Health Service into the 21st century that they are so keen to berate and to pretend does not exist. Their difficulty is that nobody believes them. Sure one can tell them that the food sometimes arrives a little bit colder than we would like, it does. Yes, one can tell them that the waiting lists are still a bit longer on this than on that, and it is. But in order to point out what still has not been achieved most people are not impressed by anyone trying to do it by pretending that nothing has been achieved at all, and that is why they lack political credibility in this debate. When the hon Member says, "of course, more money does not mean a service improvement", of course, it did not use to when they were in Government but it does mean a service improvement since we have been in Government and I thank him for the opportunity now to read to

him the list of service improvements that there has been since 1996. Some of them, I must admit, I cannot even pronounce let alone what they are but it is a very impressive list of unpronounceable Latin names.

Let us start with the major infrastructure improvement, of which it is easy to forget, because of course people were so used to under-investment in their days in Government that when they see non-stop capital investment they get drunk on it and they just do not see it happening any more, they forget about it. Let us not forget that we have given the people of Gibraltar a new Primary Care Centre, which whatever may be the systemic improvements soon to be introduced, is a hugely more spacious and more appropriate primary care centre than they had. Let us not forget that we now have a fully Government-funded, dedicated, trained, professional emergency ambulance service. Let us not forget that we now have a brand new hospital. Let us not forget that we now have, again, after they had closed it down, a School of Health Studies. Let us not forget that we now have a Health Service which is now dripping with information technology based services, in their days I am not sure even the typists had a word processor. Let us move on to services then. Since 1996 we have introduced a dermatology service that has eliminated what used to be a two year waiting list. We have introduced spinal surgery. We have introduced keyhole surgery facilities. We have introduced geriatric specialist medicine, which did not exist. We have introduced a fourth clinic; a memory clinic; a child diabetes care clinic. We have introduced photo-therapy, which is special light treatment for those with serious skin conditions, including psoriasis. We have introduced dialysis in Gibraltar. We have introduced a gynaecology cancer clinic. We have introduced a rheumatology clinic. We have substantially upgraded, indeed introduced, psychology services. We have introduced palliative care services; on site intensive care consultancy; full-time audiology services; nephrology clinics (including dialysis assessments); gastro-enterology clinics; respiratory medicine; cardiac rehabilitation facilities; full occupational services (including full assessment of activities of daily living); breast clinics; digital electro-cardiograms, EEG;

interventional radiology; Ultra sound; CT Scanning; mammography services; day surgery. We have introduced a centralised appointments system; reception and telephony services; cafeteria services; an unrecognisably improved mortuary service; optometry services; othoptic services; pre-assessment clinics; 24 hour round the clock medical cover in the Accident and Emergency Department; hospice services at home; nurse practitioner services; diabetic screening and primary care diabetic clinic; health promotion; nurse-led cryotherapy clinics (a clinic to treat skin lesions including warts and the like); cervical cancer screening; asthma clinics. The list is endless, or does the hon Member think that the hundreds of extra people that have been employed, the ones that he thinks are excellent, committed and productive, do they think that they have been sitting around the hospital playing snakes and ladders? So why does he say, why does he declare that there has been no improvement in the service? The Health Service in Gibraltar has never been better, wider, deeper, more professionally managed and more safely run for its patients, ever than it is today. When he tells patients that they are at risk because of lack of staff numbers, could he next time he does them add, "oh and by the way, you are even more at risk under us given that we had hundreds of fewer nurses, doctors and others". Then the hon Member with an inevitable bout of pseudo-nationalism, "senior management posts are now for outsiders", well I have got news for him, we will always put the patients' interests, the interests of the health care that we are able to give families in Gibraltar, before notions of employing locals first. If the hon Member thinks that we are going to remove the excellent management team that we now have in place to replace with the first local only because he is a local, he had better think again. We now know that is what people can expect if they should ever succumb to the temptation to vote them into office again. I wish to congratulate, for transforming our Health Service, for bringing its safety, its practices, into the 21st century in a relatively short period of time, I wish to publicly and put on record in this House mine and the Government's profound gratitude and congratulations to Chief Executive David McCutcheon, Deputy Chief Executive Joe Catania, Human

Resources Manager Chris Wilson, Nursing and Patient Services Director Karen Norman and all their management team that assist them – they are doing a great job and the people of Gibraltar and future generations will have much to thank them for. Of course, those who now complain that they regret that there are not local people in some of these posts, my answer to them is this, perhaps there would have been more local people, qualified and experienced to occupy these posts, if they had not closed the School of Nursing to save a handful of pound notes. That is the reality of the matter. That is the political reality and the factual reality of the matter. How can the hon Member, knowing what he knows about the facts, stand up in this House and tell us and the listeners on the radio that there is no money, no equipment, no medicine, no professional management and no patient care? It is truly a gob-smacking, pathetic, political debate. As is his statement that there is rampant public dissatisfaction, public opinion is thankfully more generous than he is. Public opinion may think, as indeed the Government do, that there is still more to do but unlike the Opposition, public opinion recognises that huge strides have been made, just as we promised they would be. The Opposition's pretence to the contrary, the Opposition's pretence that nothing has been achieved with the huge sums of money that we have invested, with the huge number of services that we have added, with the huge increase in staff delivering patient services, with the number of safety protocols there have been, the fact that they state the opposite of the reality simply adds to their lack of political credibility. The hon Member then treated us all to another reading of the excellent GSD leaflet at the last elections entitled, "the GSLP promises are completely unaffordable and irresponsible", and they were then and they still remain completely unaffordable and irresponsible, because what is typical of the hon Members to distort the starting premise in the discussion and then build a case on it. The Government never said that none of their promises were affordable and the Government never said of one in particular, that one is unaffordable, what the Government said then, repeats now, because it continues to be as true now as it was then, is that they were all not affordable. Let me quote from the leaflet: "the

Government's budget surplus is presently about £7 million a year, the annual cost of Mr Bossano's promises both spending increases and revenue losses are conservatively costed, at least £23 million per annum." This even excludes his capital project commitments including housing on top of everything else. He has promised on the hustings to make another £23 million in unnecessary payments to Community Care. This wipes out part of all Government reserves, leaving Government with practically no financial safety net and leaving no money to fund capital projects including housing, and that remains the case. If the hon Member thinks that because the surplus is today £23.3 million, that he could have afforded to implement all of his manifesto commitments, one of which accounted for £23.3 million, let alone all the others, then he knows even less about public finance and economy than I think he does. GSLP's promises were, are, and will remain unaffordable, with 5 per cent, 6 per cent, 7 per cent or even 10 per cent economic growth. The people of Gibraltar were sensible enough to realise this, or does he think that if in addition to all the tax cuts that we have introduced, if they had introduced all their spending too, does he think the surplus today would have been £23 million, is that what he thinks? He cannot possibly think that.

On the environment, which is it that we do not consult, as he said in his opening line, mockery of the principle of consultation, or that we copy the agendas of the NGO's because I do not see how it can be both. If we go and talk to the NGO's, do things that they have been asking the Government to do for some time, which is it? Are we stealing ideas from the NGO's or are we destroying the process of consultation? It cannot be both. What more consultation could there be than discussing things with NGO's and doing things of which they approve and which they have been advocating? He might think that that is copying them, they cannot be destroying the process of consultation. So he has got to decide whether the Government consult or do not consult and then stick to it, but it cannot be one in the first sentence of his speech and the very opposite position just five minutes later. Look, there is no point in the hon Member coming into this House to point out the fact that the Government

Environmental Charter is almost the same as the one that the UK Government signed with the Overseas Territories Consultative Council, because that is what we said we would do and that is what we said we had done when we launched it. Of course, as he does not bother to read or hear anything that he says, he comes along to say "yes, they have copied the Environmental Charter, how I have caught them out". Well he does not have to catch us out because that is what we said we had done when we launched it, and he is wrong to think that there are no differences. He is not politically experienced enough to even have spotted the differences. Does he not realise, as I said in the House of Assembly at the time, so not only does he not understand, he does not even listen to what he has been told in the past. Does he not understand that the UK Government went to the Overseas Territories and said, "we want you to enter into a Charter, not with your electorates but with us, the British Government, and then we will check whether you are complying with it or not from London." I said, "most certainly not. The environment is a defined domestic matter and in relation to the Gibraltar Environmental Charter the Government of Gibraltar account only to the people of Gibraltar and not to the Department of the Environment in the UK. Because we and our forefathers have not been struggling for economic advancement to now put the monitoring of our economic performance in the hands of unaccountable, faceless bureaucrats in London." The British Government accepted that from us and only from us and said "okay, we accept that that is true in the case of Gibraltar. Off you go and do it by yourselves and we will not be a party to it, and we will not have a direct contractual relationship with your Gibraltar Environmental NGO's", which is what they have now got with every other Overseas Territory. A colonially retrograde step if ever I have seen one. That is the difference. But he is so desperate to criticise the Government on the basis of minimum research, that he does not even see what is happening in front of his very eyes. It is not true, as I have said in this House before, it is not true that our NGO's have been unable to access FCO funds until we got our Charter. Local NGO's have got funds from the UK's programme even though we did not have a Charter. It is

not true that our NGO's were ineligible for funding from the UK because we have not done the Charter, or does he not know that the UK Minister said publicly at the time that Gibraltar NGO's would be entitled to funding from the UK environment fund even though they did not yet have their Charter, and even though it was going to be a free-standing unilateral charter and not one in which the UK Government had an overseer role. Those are the realities.

So it is not us that make a mockery of anything, it is the hon Gentleman that makes a mockery with facts and with the realities of what has happened, as he does in relation to financial services. I do not know what it is, whether it is that the hon Member simply does not know what is happening or whether because he has never been a very well-known practitioner in international financial services, he is just not tuned in to the issues. Well of course we are in a worse position than we would have liked to have been in, we would have liked to have been allowed to do exactly as we pleased, as they were able to do, but along came the European Commission and upset our applecart, so of course we are in a worse position than "we might have wished to be in". So what? We did not find ourselves in this position because the Chief Minister opted for a zero product, trying as he could, sailing as close to the line as he could, but aiming to leave listeners with the impression that this stubborn, ill-informed, incompetent Chief Minister took us by the nose to zero tax in the face of advice to the contrary by everybody in the Finance Centre Council, well it is not true, like most else that he has said, it is not true. All but one organisation represented on the Finance Centre Council urged the Government at the time that was indifferent, indifferent we were, as to whether it should be no tax or low tax, we accepted the advice of all but one representative on the Finance Centre Council to opt for no tax. It was members of the firm of which he is a partner that helped the Government design the damned scheme. So when he says that only a minority were pushing for zero tax, it is not true. So there is no point in the hon Member saying that the Chief Minister bears political responsibility, of course I bear political responsibility. I bear political responsibility

which I am perfectly happy to carry on my shoulder for everything that happens in Gibraltar. Ultimately, I am responsible but when I consult with the most affected sector of the community, and they give the Government advice which the Government follow, it is not acceptable for the hon Member to come to this House to distort and misrepresent on the basis of pure hearsay or speculation, because he was not at the meetings by his own admission, to suppose and assert that it was all a stubborn Chief Minister in the face of advice to the contrary. It was not. The Government had no view, no preference, as to whether it should be zero tax or no tax and it is not true that had we all opted together for low tax, back then, we would have “passed under the radar screens of the European Commission”. Or does he not know that the European Commission has a bee in its bonnet and has deployed against, not just Gibraltar, but almost every other independent taxing authority in the EU the principle of regional selectivity, and that low tax as much challenges the European Union’s view on regional selectivity as no tax – they are both better and different to the United Kingdom’s national system and therefore both constitute regional selectivity? Does he not also know that it was the European Commission that insisted that the Government notifies it, whichever scheme it chose for, precisely so it could react in the same way in either case? These are the realities of the situation, which the hon Member is trying to make people believe what? That he is more competent and more experienced in steering the Finance Centre through these landmines than I am? Well he can try for as long as he likes, nobody believes it, not even the partners in his firm that advise the Government, and me at the time, believe him. Why has the Finance Centre, everywhere, not just in Gibraltar but certainly in Gibraltar, is breathing a sigh of relief at the agility that the Government and the Finance Centre have had together in mapping out ways forward through the minefield? He described that “professionals are left to operate with high headline corporate and complicated rules”. Well look, they might be too complicated for him but the rest of the experts in the Finance Centre industry think that they are a hugely enlightened product, if anything, better than the previous exempt status product. That

is what they all think, but if they are too complicated for him I have got user guides that I can let him have so that he can understand them better. Then he can advise his clients and continue to make huge sums of money on the basis of the complicated rules that we have introduced, like all his partners are doing. Presumably, he shares in their profits. Yes, that is the reality of the situation. Far from being unable to effectively navigate its way around the obstacles that the EU have created for us, most if not all of the financial services industry, except those that sit on the GSLP Executive, actually think the opposite. They actually think that we have been hugely successful, precisely in effectively navigating our way around these obstacles. But as their political speeches are, I suppose that one has to listen to them like that of children’s stories about always the opposite, if they say it is day it is night, if they say it is this it is that, one plays that game where somebody says something and it has got to be interpreted as the opposite of what they say. That is how we have to listen to their Budget addresses. Of course, even though the Government today is responsible for none of the achievements and none of the things that are good, we must all bend our knees and give thanks, I think his words were ‘thank God’, that the GSLP had the vision to start the on-line gaming with Ladbrokes and the rubbish dump on the East side. So, they can trace merit all the way back ten years but the Government are responsible for nothing that has happened during the last ten years. It is a pitiful, political discourse.

Then the hon Member says that foreign labour is taking local jobs. Well I do not know what local jobs, most locals are already in employment, I demonstrated that with statistics. Does that stop the hon Member from making politically catchy statements in the hope that some people will believe them? It does not stop them, but let me remind them again, I know they do not like being reminded of the past which they are hoping the electorate will forget, but let me remind them of their past. In 1993 in Question No. 13 of that year, again the very politically astute, Hon Col Britto, asked “what steps can Government take to give unemployed Gibraltarians priority access in practical terms to the labour market without infringing EC laws?”. Answer the Hon

and late Minister for Labour and Social Security, “Mr Speaker, for the benefit of the hon Member I will quote from EC Regulation No. 1612/68 which deals with the freedom of movement for workers within the community.” I will not bore the House, he then read the whole of Article 1, the one that establishes the freedom of movement of labour rights for community nationals, and then went on to add, “as can be seen from these Regulations, it is not possible to have a scheme which is deliberately designed to give Gibraltarians priority. The only action that can be taken is being taken, and that is to require that vacancies be registered and that the opportunity is given to Gibraltarians to apply before the vacancy is filled.” That is what we are doing – as much and as little as they did because they said that that was as much as could be done. So when the hon Member, in his attempt at closing on a high, finishes his address by saying, “the GSD’s time is up. It is time for a change”, why should the electorate vote out a Government that has given them annual tax cuts, in favour of a party that gave them annual tax rises? Why has their time come? Why should the electorate vote out a Government that has expanded, improved and invested in public services in favour of a party that starved the public services of money, investment and people, and condemned our health and social services to the bottom of the European pile? Why should the electorate vote out a Government that has transformed the health service, in favour of a party that would sack professional managers and employ locals in their place just because they are locals, regardless of the consequences to our families? Why would the electorate sack a Government that has brought Gibraltar international repute? That has brought Gibraltar political respect and that has brought Gibraltar political success, not just in terms of the Constitution and in terms of the tri-lateral and in terms of seeing that there has not been a meeting of the Brussels Agreement for years now, with or without us, in favour of a party that took Gibraltar to the brink of self destruction in almost all of those areas? Why does he think that our time is up and that their time is come? Why does he think that our time is up and that the electorate should vote out a party that has brought them more and better quality jobs, and better protective worker rights, to

electing a party that did not create a single additional job in eight years, rode roughshod over workers and ignored trade unions and employee training and promotion opportunities? Why does he think that their time has come? Why should the electorate vote out a Government that has physically transformed Gibraltar for the better, to put in a party that wanted private citizens to pay for the Main Street beautification? Why should the electorate vote for a party that has transformed almost every Government housing estate in Gibraltar, in favour of a party that invested practically nothing in housing estate refurbishment during the years that they were in office? I believe that the electorate will stick with the party of public services, of better public services. I believe that the electorate will stick with the party of lower taxation. I believe that the electorate will stick with the party that cares for the elderly and has proved it. I believe that the electorate will stick by the party that invests in public housing. I believe that the electorate will stick with the party that is successfully building a prosperous Gibraltar for our children and for our grandchildren. I believe that the electorate will stick with the party that can be trusted to conduct our foreign affairs sensibly and responsibly. I believe the electorate will stick with the party that has returned the pride to Gibraltar, as we said we would, after the GSLP had destroyed it. I believe that the electorate will stick with a successful party for a successful Government for a successful Gibraltar. Why would the electorate give that up to go back to the GSLP? To go back to the bad old days. The chief leopard, the GSLP chief leopard, and that chief leopard takes pride in reminding us all that he does not change his spots. So there, same leopard, same spots, 1988, 1996 or 2008.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I have nothing to add.

Question put.

Agreed to.

The Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

Question put.

Agreed to.

The House recessed at 1.20 p.m.

The House resumed at 4.20 p.m.

MR SPEAKER:

When the House adjourned earlier this afternoon, the Hon Fabian Picardo invited me to revisit my ruling on the point of order he had raised during the Chief Minister's speech. In response to Mr Picardo's contention that the Chief Minister ought not to make an allegation that a Member had misled the House, unless he was in a position to substantiate that allegation, I ruled that that was what the Chief Minister had been seeking to do by citing the facts and figures that he did. I am grateful to Mr Picardo for drawing to my attention the passage at pages 440 and 441 of Erskine May's Parliamentary Practice 23rd Edition, which reads: "expressions which are unparliamentary and call for prompt interference include, (in paragraph 3) charges of uttering a deliberate falsehood." The footnote to which, refers to a number of rulings in the past by Speakers of the House of Commons and reads: "the suggestion that a Member is deliberately misleading the House is not parliamentary and the proper course if such an allegation has been made is to table the appropriate motion." My earlier ruling therefore stands corrected.

HON CHIEF MINISTER:

I would be very happy to bring a motion.

HON F R PICARDO:

Under the circumstances, I assume that the Chief Minister is withdrawing his allegation.

HON CHIEF MINISTER:

The Chief Minister always accepts and bows to the Speaker's ruling until such time as I can make it again in the motion.

HON F R PICARDO:

As ungenerously withdrawn as ever, Mr Speaker.

MR SPEAKER:

I think I have the last word.

COMMITTEE STAGE

HON CHIEF MINISTER:

I have the honour to move that the House should resolve itself into Committee to consider the Appropriation Bill 2006, clause by clause.

THE APPROPRIATION BILL 2006

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

Clause 2 – Consolidated Fund Expenditure

HEAD 1 – EDUCATION AND TRAINING

HEAD 1-A EDUCATION

Subhead 1 – Personal Emoluments

HON J J BOSSANO:

Can I make a point on this Head, which is in fact intended to be a general point? In the light of the statement made by the Chief Minister that the footnote in the Social Services Agency did not indicate the number of posts but the number of persons in post, that is to say, that the 146 in the Social Services.....

HON CHIEF MINISTER:

Net of vacancies.

HON J J BOSSANO:

What is the position with regard to the ones on the establishment under personal emoluments in the departments?

HON CHIEF MINISTER:

In the case of non-industrials, the vacancies are shown where they exist, they are reflected in the establishment details there.

In the case of industrials, the same applies. In other words, the approved establishment is shown, not the number of bodies in post.

HON J J BOSSANO:

Could I ask, does the figure for the personal emoluments in industrial wages cover all the posts in the establishment or the people who are actually working?

HON CHIEF MINISTER:

The general rule is that there is full funding provided in the case of industrials and the emoluments vote, subject to a provision for the fact that because people come and people go in any 12 month period, there is a retirement and a recruitment process with an overlap, there is a discount against full cost made for the period of time that the Treasury guesses allows the staff churn when the department is not going to have full people. Now, there is I think one exception to that, that is that I do not think, I do not believe that the Buildings and Works industrial vote accommodates the full figure of 213 shown as being the industrial staff of the Buildings and Works establishment.

HON J J BOSSANO:

So is that case based on the people in post? Is the actual money provided?

HON CHIEF MINISTER:

I am told by my colleague that the money provided is for 182.

MR CHAIRMAN:

So do I take Head 1A Education stands part of the Bill?

HON J J BOSSANO:

In Subhead 7 on the Scholarships, does the figure we have got there of £3.150 million take account of the new arrangements on fees?

HON DR B A LINARES:

It comes in for the new intake in September, so there will be no tuition fees paid up front.

HON J J BOSSANO:

My question is, has the fact that it does not come in for the new entrants in September been reflected in the amount that is put there, or was that figure done before?

HON CHIEF MINISTER:

I am told that the answer is no, that even though the figure estimated is higher to accommodate the grants and the cost of the grants, that there is no provision made for tuition costs, tuition fees for the new intake.

HON J J BOSSANO:

So it is already reflected?

HON CHIEF MINISTER:

Yes, there is no provision made and it is implicit, from what I am being told, that that figure would be higher if there had been.

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

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

Subhead 3 – Office Expenses

HON FINANCIAL AND DEVELOPMENT SECRETARY:

If I may just point out, I did say at the Second Reading there were odd gremlins that had crept into the book, this is a case in point where office cleaning it is a different contractor to the one that is named there as a consequence of tendering since the book, and that happens in a number of places. In the final book we will make those adjustments, so in this case as an example, instead of Mediterranean Cleaning it is Trafalgar Cleaning.

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

Subhead 4 – School Expenses

HON L A RANDALL:

In Subhead (4)(f) the figure of £36,000 under Forecast Outturn, may I receive confirmation whether this includes the reimbursement of £26,700 in respect of free bus service for school children paid to the Gibraltar Bus Company?

HON DR B A LINARES:

It does indeed. Government are paying to the Bus Company for the free transport for children to school.

Subhead 4 – was agreed to and stood part of the Bill.

Subheads 5 to 10 – were agreed to and stood part of the Bill.

HEAD 1-B TRAINING

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

HEAD 2 – HERITAGE, CULTURE, YOUTH AND SPORT

Head 2-A HERITAGE AND CULTURE

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

Subhead 2 – Industrial Wages

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Chairman, there is again a small change to the book here in the sense that on page 22, the industrial staff total for Youth and Sport should read “7” and not “4” for 2006/2007.

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

Subheads 3 to 6 – were agreed to and stood part of the Bill.

HEAD 2-B YOUTH AND SPORT

Subheads 1 to 8 – were agreed to and stood part of the Bill.

HEAD 2-C BROADCASTING

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

Subhead 3 – Contributions to Gibraltar Broadcasting Corporation.

HON F R PICARDO:

The amount set out there for this year £1,333,000, that obviously does not take into consideration the fact that the licence fee is going to disappear. What is the calculation of the amount that we will actually be providing GBC be?

HON CHIEF MINISTER:

Their present yield from TV licence fees collection is about £240,000 or £250,000 a year, so that subvention will have to be increased by such an amount.

HON F R PICARDO:

The report that I have available, which is I think the last one available to all of us, is the 2003 report, where the licence fee was already in the region of £225,000, I think it is likely to be in the region of an extra £250,000, but I note also that there is a further amount which is a contribution in lieu of TV licence fee increases, which was for that year £88,000 in 2003, so are we looking at a cumulative amount of about an extra £250,000 for GBC because of the lost licence fee and an extra £90,000 or are they inclusive?

HON CHIEF MINISTER:

It looks like that.

HON F R PICARDO:

So it is an extra in the order of £330,000?

HON CHIEF MINISTER:

Correct.

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

HEAD 3 – HOUSING

HEAD 3-A HOUSING ADMINISTRATION

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HEAD 3-B HOUSING – BUILDING AND WORKS

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 4 – ENVIRONMENT, ROADS AND UTILITIES

HEAD 4-A ENVIRONMENT

Subhead 1 – Personal Emoluments

HON F R PICARDO:

Can I just ask the Minister, when I was addressing the question in my submission of the new officer that had been recruited, he told us in the course of his speech that there was to be a new environmental officer or monitoring officer, and during the course of my speech I said I could not identify a new post here in the Estimates in the establishment part. He indicated that perhaps it was possible for him to help me during the course of this part of the debate to see where that new officer is going to be.

HON J J NETTO:

Yes, I do recall that the Shadow Spokesman did mention the new post which we advertised. If he goes to page 33 and he looks under the Department of the Environment, what he will see is that it is just one post for Higher Professional Technical Officer. That is the post of the person who is already there but is not the new post which we advertised. The post which we advertised must have been about a month or two months ago and my understanding is that the interviews will be shortly, in a couple of weeks perhaps, and depending on whoever is successful that will make it from one to two. It is not reflected there.

HON J J BOSSANO:

But is the money there in personal emoluments?

HON CHIEF MINISTER:

If it is not reflected in the establishment, it would be most unusual for the finance to be provided but I will check on it. There is no provision. This is one of those that came very close to the line where the political sanction for the increased establishment came after the production of the departmental bid had been submitted and it has never been picked up, it has never been corrected. So this time next year, the establishment will be there and it will have to be funded from supplementary funding in the meantime.

HON F R PICARDO:

Is there a reason why then when we received the amended pages of this book that we could not have received an amendment also of page 33?

HON CHIEF MINISTER:

Well, there would have been no reason had the thing been spotted. All those pages that they all received by way of amendments, reflected one issue and that was all the consequences throughout the book of one issue. Had somebody spotted something that had already been approved, to the point that it was actually in the process of execution, namely a decision to recruit, had somebody realised that it had not been reflected in the department's bid and therefore had not got into the budget, it could have been corrected. But until the hon Member has mentioned it now no one had realised it.

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

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

Subhead 5 – Natural Environment and Animal Welfare

HON F R PICARDO:

In respect of 5(b)(ii) there is a reference there to a footnote, footnote 2. I confess I could not find it on this page, I do not know if I have been cross-referred somewhere else. I cannot find a cross-reference.

HON CHIEF MINISTER:

There should not be a Roman (ii) there. There is nothing in the ape management contract that requires a footnote.

HON F R PICARDO:

There is another point in respect of 5(d), of that the amount in respect of air quality monitoring is increasing to £153,000. From last year's Third Reading or Committee Stage and from answers

to questions, I had understood that the air quality monitoring contract went all the way forward until four or five years from now when we ended our agreement with those who set up the stations. It now appears to be going up, has there been a re-negotiation or was that already provided for in the contract? I confess I have not seen the contract so I do not know whether it requires that further amount, or one of the things the hon Gentleman told us in the last Question Time, was that there was going to be another area of monitoring. Is this the increased cost?

HON J J NETTO:

Yes, it is the implementation of the Fourth Daughter Directive in terms of the new pollutants that we have to monitor. So in effect, the contract now provides for more services.

HON F R PICARDO:

Is there any reason why the original contract did not provide for that, because the Fourth Daughter Directive sounds to me, I confess I have not looked at it, as something that was likely on the cards for some time and probably at the time that the agreement with the company, whose name escapes me, was done?

HON CHIEF MINISTER:

It was not a Community obligation to monitor at that stage for those substances, and they come on stream when they come on stream and they get added to the contract as they come on stream.

HON F R PICARDO:

In terms of (g), which is Ape Management Expenses, I see that the amount is increasing. The estimate and the outturn for this year appear to have been correct but the estimate for next year is much higher, it is £106,000. Is that dependant on an increase or as a result of an increase in the ape population, or is there another reason?

HON CHIEF MINISTER:

Yes, the contract is subject to an RPI increase and, in addition, the Department will now also take on the responsibility for payment of apes' water supply which previously used to be paid for by the Tourist Board. An estimate of £11,000 as provided by the Tourist Board from previous years, there should be a corresponding reduction in their submission. So it is RPI increase on the contract plus the fact that this Subhead has now taken over responsibility for the water bill for the apes contract.

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

Subhead 6 – was agreed to and stood part of the Bill.

Subhead 7 – Refuse Services

HON F R PICARDO:

Can the hon Gentleman tell me where here, if it is here, the £360,000 for the removal of the grit mountain features or whether in fact that is now coming out of perhaps the Port or DTI budget because it is the Minister for the Port and DTI who answers me that question?

HON CHIEF MINISTER:

I am speaking from memory, but it is corroborated to an extent by the very point that the hon Member is making. I think this expense is not being borne by the Consolidated Fund. I think it is being borne by one of the companies, I can provide him with the information later as to which company. It is clearly not here.

HON F R PICARDO:

Is there a specific reason why it would be funded by one of the corporations rather than by the Consolidated Fund?

HON CHIEF MINISTER:

Yes, I think the reason will probably turn out to be quite tenuous. Something like the company that owns the lease of the yard or something like that, no particular operational reason.

HON F R PICARDO:

In terms of the disposal of refuse amount and the disposal of fly ash and other items, can the hon Gentleman tell us exactly which companies are the ones that receive these two amounts. Is it one or two companies or are there a number of different entities depending on the acitivity?

HON CHIEF MINISTER:

I think that this is the ultimate disposers of it, this is the company to which the fly ash is delivered, I think. He should not assume that that is all transportational costs, these are disposal. So I think fly ash gets delivered to Los Barrios or whether some of it goes to Huelva.

HON J J NETTO:

The thing is that the hon Member might be right in being confused with the terminology 'fly ash', because fly ash disposal as such was something that was done when the incinerator was actually working, but the incinerator has obviously not been functioning to my mind since the year 2000 or thereabouts. My understanding is that the company does today provide a number of services. In other words, they dispose of things like wardrobes, pieces of wood, and that gets collected and sent over perhaps to Los Barrios stream for recycling. Then they produce also other facilities like ozone depletion substances, like fridges, fire extinguishers and things of the like. That would go to a different stream, not necessarily to Los Barrios.

HON CHIEF MINISTER:

I should say that it is a rather misnomer of a subhead now because there is no longer any fly ash and the cost all relates to the other items. So that really should now read disposal of other items.

HON F R PICARDO:

Should we amend this, it makes sense to do so? From what I am being told, should I take it that in fact there are two contracts, a contract with the entity that actually disposes of things in Spain or elsewhere, and a contract for transportation from here to there, or is it one contract for transportation and destruction?

HON J J NETTO:

One contract.

HON F R PICARDO:

What company is that with?

HON J J NETTO:

Monteverde Transport.

HON F R PICARDO:

Is that in respect of both disposal of refuse and disposal of other items?

HON J J NETTO:

What other items is the hon Member referring to?

HON CHIEF MINISTER:

The contract, however, includes the disposal fees of the entity to which the stuff is delivered at the other end, but now he was asking something else.

HON F R PICARDO:

Well, I accept it might take into account the cost to the contract party of the actual disposal. That, it appears I am being told in respect of Subhead (iii) which is disposal now of other items. Is that also the case in respect of disposal of refuse or only in respect of disposal of other items?

HON CHIEF MINISTER:

The item 'disposal of refuse' actually includes both disposal of refuse and separately disposal of clinical waste, together amounting to £1.8 million. I think the answer is the same, that it is the contractor that transports also has to pay, I do not think we pay the Los Barrios tip separately. We do not, we contract with the company who then contracts with the Los Barrios tip and his contract includes both his own fees and the Los Barrios ones.

HON F R PICARDO:

So it is disposal of refuse, disposal of clinical waste, and disposal of what we used to call fly ash and other items, and are they all with the same company or separate companies?

HON CHIEF MINISTER:

The disposal of clinical waste part is Environmental Waste Management Services Ltd.

HON F R PICARDO:

What is the value of that aspect of the £1.8 million?

HON CHIEF MINISTER:

£433,000.

HON F R PICARDO:

The balance is the other contract which is normal refuse, and what company is that, also Monteverde?

HON CHIEF MINISTER:

Yes.

Subhead 7 – was agreed to and stood part of the Bill.

HEAD 4-B TECHNICAL SERVICES

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HEAD 4-C UTILITIES

Subheads 1 to 5 – were agreed to and stood part of the Bill.

Subhead 6 – Salt Water System

HON L A RANDALL:

Is the increase of £322,000 due to an increase in the contract building or are they going to provide additional services?

HON F VINET:

There is an element of RPI increase built in into the contract but also I believe there are pay settlements. As a result of the industrial dispute last year it has also had an impact on that. So it is a combination of the two factors. I am being reminded as well that an additional pumping station is covered by this.

HON CHIEF MINISTER:

As part of the MOD lands agreement, we took over some MOD pumping stations in Queensway, and they have now been added to the salt water contract for AquaGib.

Subhead 6 – was agreed to and stood part of the Bill.

HEAD 5 – SOCIAL AND CIVIC AFFAIRS

HEAD 5-A SOCIAL AND CIVIC AFFAIRS

Subhead 1 – Personal Emoluments

HON F R PICARDO:

The two new recruits that are going to deal with child welfare reports are not reflected here, is that right? They are reflected in Appendix F in respect of the Agency.

HON MRS Y DEL AGUA:

No, they are reflected here. They are Government posts, Civil Service posts.

HON F R PICARDO:

Can the Minister show me where in the establishment?

HON MRS Y DEL AGUA:

Under social worker.

HON F R PICARDO:

Those are the two that there are.

HON MRS Y DEL AGUA:

Yes, an increase from 9 to 11.

HON F R PICARDO:

That means that although there is an increase from 9 to 11, there is a job lost elsewhere with the Community Service Officer going.

HON MRS Y DEL AGUA:

No, the Community Service Officer was shown last year under the Civil Service complement, because in fact, when that position arose it was opened up internally and outside and the successful applicant happened to be a Civil Servant who was seconded, he was transferred from somewhere else. The vacancy arose again and this has now been filled by somebody who is not a Civil Servant, it was an Agency post, so it will be shown under the Subhead for Social Services now.

HON F R PICARDO:

What happened to that Community Service Officer? Has he been promoted or.....?

HON MRS Y DEL AGUA:

No, the post still exists but it is not a Civil Service post it is an Agency post. The previous one was replaced, he retired or he left or he moved somewhere else. To another department I think it was because he was a Civil Servant. He moved to another department, yes that is correct.

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

Subheads 2 to 9 – were agreed to and stood part of the Bill.

Subhead 10 – Contribution to Social Services Agency

HON J J BOSSANO:

On the contribution to the Social Services Agency, is the amount providing for the posts that I was told earlier were there but not shown in the footnote? That is to say, I was told that although the footnote says that there are 146 non-industrials, there are supposed to be 168. In the personal emoluments in Appendix F, does the contribution that is provided for in this Head cover enough money in the personal emoluments to pay for all 168?

HON CHIEF MINISTER:

Subject only to the business about provisions on timing. There is provision. It is 156 employees would cost £2.13 million and there is a provision of £2.3 million.

HON J J BOSSANO:

In the other contribution in 9, which is the Elderly Care Agency, where we have got £186,000 is that the correct figure or is there any difference? In Appendix E, the Elderly Care Agency, I am just wondering whether the qualification that the hon Member has entered about the 146 is only applicable here or it is something we need to take into account in some of the other ones.

HON CHIEF MINISTER:

I understand that in the case of the appendices the footnote reflects the equivalent posts in all cases, as opposed to the establishment for the Civil Service which applies for the first year.

Subhead 10 – was agreed to and stood part of the Bill.

Subhead 11 – was agreed to and stood part of the Bill.

HEAD 5-B PRISON

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

Does the subhead for operational expenses take into consideration any new expenses or further expenses which there may be anticipated to be by the extension of the amendment of the Prison Ordinance of almost compulsory drug and alcohol testing? Or perhaps it is envisaged that it is not going to cost that much more.

HON MRS Y DEL AGUA:

I do not think there is provision for that, I am almost certain there is not.

HON F R PICARDO:

It is not envisaged to cost more or it has not been provided for because the Bill has not been passed yet?

HON MRS Y DEL AGUA:

A combination of both.

Subhead 4 – was agreed to and stood part of the Bill.

Subhead 5 – Expenses on Prisoners

HON L A RANDALL:

Can Government explain the almost double increase in respect of the maintenance of prisons, which has gone up from an outturn of £60,000 to an estimate of £115,000?

HON CHIEF MINISTER:

The dreadful GHA has raised the price of meals it charges from its new kitchen, which is something reflecting the true cost.

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

HEAD 6 – TRADE, INDUSTRY, EMPLOYMENT AND COMMUNICATIONS

HEAD 6-A TRADE AND INDUSTRY

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

Subhead 4 – Operational Expenses

HON L A RANDALL:

Again on this one, under Subhead 4(b), the increase of £46,000 what is it?

HON J J HOLLIDAY:

The increase is due to the fact that under this Subhead the ex-St Bernard's Hospital site, the security for that site is charged to that Subhead.

HON F R PICARDO:

Is the restructure that is going to take place of this department accounted for or not yet?

HON J J HOLLIDAY:

No, it is not accounted for.

Subhead 4 – was agreed to and stood part of the Bill.

Subheads 5 and 6 – were agreed to and stood part of the Bill.

HEAD 6-B TOURISM

Subheads 1 to 7 – were agreed to and stood part of the Bill.

HEAD 6-C PORT

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Contracted Services

HON F R PICARDO:

In terms of Subhead 5(a), is that the amount of the retainer of Oil Spill Response Ltd? Or does the actual and the estimate reflect anticipated occasions when it has actuarially been considered they may be required?

HON J J HOLLIDAY:

This is the basic fee for the contract that we hold with Oil Spill Response Ltd.

HON F R PICARDO:

I would have been able to deduce that myself, except that the estimate for last year was £84,000 and the estimate for this year is £38,000 so it does not look like it is a contract fee that we pay every year with perhaps an extra amount there we have to pay when they are required to come out. That is why I am a bit perplexed.

HON CHIEF MINISTER:

The contract fee is £38,000 and the previous year's estimate of expenditure was in respect of expenses that were carried forward that were due for payment in respect of spills and such.

HON F R PICARDO:

Those amounts, according to the answers received, are usually recovered with a penalty as well against the party unless we have not been able to identify the polluter.

HON CHIEF MINISTER:

Exactly.

HON F R PICARDO:

In terms of waste discharge with Slop Oil Reception and Treatment Ltd, is that a contractual amount because I see it also fluctuates?

HON CHIEF MINISTER:

I think this is a contract fee based on the number of ships that come in. I think the Government collects the slop part fee and then has to pay the company under the contract per movement. Can you confirm that?

HON J J HOLLIDAY:

That is correct and in fact is based on an average of about £16,000 per month based on the number of ships that we estimate have called in during the last year and what we are expecting this year. It works out roughly at that figure every month.

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

Subheads 6 to 8 – were agreed to and stood part of the Bill.

HEAD 6-D MARITIME ADMINISTRATION

Subheads 1 to 5 – were agreed to and stood part of the Bill.

HEAD 6-E AIRPORT

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

HEAD 6-F EMPLOYMENT

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

In respect of 4(e) Industrial Tribunal Expenses, can the hon Gentleman give an indication of what these expenses are, I can

only think of transcript costs and perhaps overtime of the secretary to the Industrial Tribunal when a hearing spills over after 5 o'clock?

HON CHIEF MINISTER:

It is mainly payments to the Chairman, who is usually a lawyer from the private sector who charges a fee but there may be some secretarial support included there too.

HON F R PICARDO:

Was the hon Gentleman going to tell me?

HON CHIEF MINISTER:

I do not think we have the breakdown between the two but it is those items.

HON F R PICARDO:

It is those two items?

HON CHIEF MINISTER:

We do not have an analysis but those are the only expenses because the salaries of the secretary, for example, are borne in the Civil Service because they are civil servants. So the only expenses are, I do not know they might pay for rental or hiring, is there a hiring fee in the John Mackintosh Hall for the room? I see, it is done in the office. So it is that, the fee of the Chairman.

Subhead 4 – was agreed to and stood part of the Bill.

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

HEAD 6-G TRANSPORT – TRAFFIC

Subheads 1 to 7 – were agreed to and stood part of the Bill.

HEAD 6-H POSTAL SERVICES

Subheads 1 to 7 – were agreed to and stood part of the Bill.

HEAD 7 HEALTH AND CIVIL PROTECTION

HEAD 7-A HEALTH AND CIVIL CONTINGENCY

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

Subhead 3 – Contribution to Gibraltar Health Authority

HON F R PICARDO:

In respect of the exceptional item set out under (b), can the hon Gentleman give details of the £935,000?

HON LT-COL E M BRITTO:

That is mainly made up by waiting list initiatives of £790,000 and £145,000 of prior years payments to the Fire Brigade for the Ambulance Service.

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

Subhead 4 – Civil Contingency Planning

HON F R PICARDO:

The footnote tells us that the forecast outturn has been increased and the estimate for next year has been increased in respect of avian flu, something all of us hope we do not have to pay for. Is the increase an increase on £40,000? In other words, if there are no avian flu problems next year, is the actual likely to be £40,000, £125,000 or £22,000?

HON LT-COL E M BRITTO:

No, I think the hon Member has the thrust of the footnote wrong. That £420,000 is made up of £380,000 which is for Tamiflu. That is where it has been charged, that is a firm order, some of it has been received and the rest is due to be received later this year and that we need to pay for whether it is used or not used.

HON F R PICARDO:

In fact, then it is £40,000 that we are.....

HON LT-COL E M BRITTO:

The balance is £40,000 which is nothing to do with Tamiflu which is Civil Contingency Planning.

HON F R PICARDO:

In terms of the £125,000 where we have seen an increase, if it is £380,000 plus £40,000 next year that gives us the £420,000, what is it that gives us the £125,000 actual this year from the estimate of £40,000? Is that the cost of having planned all this?

HON LT-COL E M BRITTO:

I am told that there is £85,000 in that £125,000 which has not been actually paid before the end of the financial year, and is included in the £420,000. So that £125,000 should really read only £40,000.

HON F R PICARDO:

In that case, are we over-providing for Tamiflu?

HON CHIEF MINISTER:

In the event, when this book was put together it was known that a bill of £85,000 was due for payment but actually it had not been paid by 31st March. Therefore, technically, it cannot be booked as expenditure in 2005/2006, but it is in the £420,000. So the figure of £125,000 when the accounts eventually appear will be £85,000 less. In other words, it was not expenditure of £125,000 because that figure was struck on the assumption that the invoice would be paid before 31st March and it was not.

HON F R PICARDO:

So, is the £420,000 subject to the addition of £85,000?

HON CHIEF MINISTER:

Yes, I am told now that that would be put from supplementary funding, yes. So £420,000 plus £85,000 will be the expenditure estimated for 2006/2007.

HON F R PICARDO:

Turning to the aspect that excludes the £85,000 of Tamiflu, are we looking at the forecast outturn actually being £40,000, identically what was estimated, or the forecast outturn being slightly below or slightly above?

HON CHIEF MINISTER:

I am told that £36,000 was spent out of the £40,000 estimate.

HON F R PICARDO:

That was the cost of planning for avian flu or just other expenses related?

HON CHIEF MINISTER:

No, this is not planning this is the salary of the Civil Contingency Planning Coordinator, the ex Chief Fire Officer, Leslie Edmonds, who gets a stipend.

HON F R PICARDO:

The total of the £36,000 makes up that salary?

HON CHIEF MINISTER:

We do not have the information to hand, but it is the Civil Contingency Coordinator's salary and he may have in addition some operational expenses. He may buy manuals and minor bits, equipment and things of that sort, it is not necessarily all in salary.

HON F R PICARDO:

Would the cost of the contract for the extermination of pigeons be one of his disbursements or is that booked elsewhere?

HON CHIEF MINISTER:

I am told that is in the Environment vote not here.

HON F R PICARDO:

The post that the Chief Minister refers to is not a post listed in the green pages at the back, I must continue to look for it.

HON CHIEF MINISTER:

No it is not, it is an informal post, it does not exist as an established post yet, but it will when somebody is recruited full time. Eventually somebody will be recruited full time, Mr Edmonds is not full time.

HON F R PICARDO:

Is he paid through one of the corporations or is there a contract? He cannot be paid out of the corporation, of course. How is he paid, is he paid on a contract for services?

HON CHIEF MINISTER:

I think he is just paid almost as a consultant from here, yes.

HON L A RANDALL:

Can Government explain how they have accounted in the Estimates for the £800,000 donation from the Juanita Trust and the equipment that was purchased for the hospital, and the equipment that was purchased with that money?

HON CHIEF MINISTER:

I do not think it is shown and it is a good point. Well, it would not be shown in the Consolidated Fund because it is not revenue of the Government but it might ought to be shown, if it could be put that way, in Appendix G under the income of the Authority. Of course, then there would be an equivalent item of expenditure underneath as it was spent in buying some item of equipment, but it could easily be reflected there and it is not. I will ask the Financial Secretary to look into that.

HON J J BOSSANO:

Has the money actually been received by the Health Authority?

HON CHIEF MINISTER:

Yes, it has been received and the equipment has been purchased.

HON J J BOSSANO:

Would that be after the 1st April so it would be in the current financial year?

HON CHIEF MINISTER:

Yes. It is neutral in terms of the effect on the bottom line but it is not reflected, I think it should be. I think the best we can do is agree that it will be reflected in the accounts for the GHA for last year and we put a footnote in the Estimates in the final version of the book on the approved Estimates. We will put a note to the effect that it came in and went out and is not reflected here.

HON J J BOSSANO:

It will be reflected then when the final 2006/2007 Accounts are closed, is that correct?

HON CHIEF MINISTER:

No, 2005/2006 Accounts.

HON J J BOSSANO:

It came in before the end of March?

HON CHIEF MINISTER:

Yes, it came in before March. Sorry, I thought it was what you asked before, in the previous financial year.

HON J J BOSSANO:

Well, I misunderstood the answer, I thought the Chief Minister was saying that it came in this current year.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 7-B FIRE SERVICE

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

Under (b), we have been voting a nominal amount for oil pollution control to the Fire Service. I assume on the basis that they used to be the ones that used to take care of pollution before we did the contract with Oil Spillage and that they still would be one of the parties that might have to be relied on in the event that there is a spill that gets out of control. Is that the reason for that £1,000?

HON CHIEF MINISTER:

It is a token, in other words, the Subhead exists in case we have to fund it from supplementary funding.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 7-C POLICE

Subhead 1 – Personal Emoluments

HON J J BOSSANO:

Can I just ask on the personal emoluments of the Police, the additional 23 posts are they expected to come in fairly soon or are they going to be spread throughout the year?

HON CHIEF MINISTER:

I think that is an operational decision for the Commissioner but I think the recruitment is going to be done in two batches, because there has to be some continuity in the station. In other words, one could not get out all the policemen who are presently doing administrative jobs out into the street all at once and get a whole new crop of inexperienced, untrained civilians, so there has to be a period of time during which the glass is half full and half empty of new and old. So the old ones that are left can pass on the knowledge to the new ones, so I think the Commissioner is planning to do it in two phases but both during this financial year.

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

Subheads 2 to 3 – were agreed to and stood part of the Bill.

Subhead 4 – Operational Expenses

HON F R PICARDO:

One of the things I raised in my speech and was not replied to, perhaps because it was less colourful than the other bits that were replied to, was the issue of whether this Subhead enjoyed extra funding in respect of the potential costs of the implementation of PACE. I said I could not identify any such extra funding, am I right?

HON CHIEF MINISTER:

Any PACE related costs will be funded additionally.

HON F R PICARDO:

In terms of (g), which deals with professional fees, are those legal fees or other fees which the Police have to pay, laboratory expenses that sort of thing?

HON CHIEF MINISTER:

I am almost certain it is for things like expert witnesses and things of that sort, but I will just see if I can confirm that. Actually, it is neither, it is the police surgeon fees and the Animal Welfare Centre that the Police pay. I cannot recall from memory why the Police have a contract with the Animal Welfare Centre. I think it is for taking into custody unlawfully imported animals that the Police confiscate or something of the sort. There is some reason why the Police need access to or whether it is a dog catcher or something like that. There is a service that the Animal Welfare Centre provide to the Police and that accounts for £10,000 of that.

Subhead 4 – was agreed to and stood part of the Bill.

Subhead 5 – Training Courses and Conferences

HON F R PICARDO:

I do not know whether it is 5 but it is the italicised wording under 5 that I want to refer to. Simply to ask whether we can have some detail of what the ex-gratia payment amounts to and the compensation and legal costs are in relation to?

HON CHIEF MINISTER:

Yes, I do not think it is normal practice to reveal, I will tell the hon Member privately if he does not mind.

HON F R PICARDO:

I do not mind, but if it relates to legal proceedings the chances are that although it might be considered sensitive by the Police, they might not like the fact that they have had to pay those costs. It is very likely that it is public, if it has been a Supreme Court matter or Magistrates' Court matter.

HON CHIEF MINISTER:

No, it would not be.

HON F R PICARDO:

I do not mind being told privately but it may be that these things are already public, and if they are public we can talk about them.

HON CHIEF MINISTER:

I am being strongly advised not to put the information in the public domain. I am not quite sure why but I feel it safe to take the advice.

HON F R PICARDO:

I will take up the Chief Minister's offer to be told later.

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

HEAD 8 ADMINISTRATION AND FINANCE

HEAD 8-A NO. 6 CONVENT PLACE

Subheads 1 to 7 – were agreed to and stood part of the Bill.

Subhead 8 – Legislation Support Unit

HON F R PICARDO:

I have waited for that Subhead, but it may be that I should have brought this up in 1 Personal Emoluments. It deals with the establishment of the Legislation Support Unit. I see that this year there are going to be four Law Draftsmen instead of two and one Higher Executive Officer is disappearing. Can I ask what is the difference between a Law Drafter and a Law Draftsman?

HON CHIEF MINISTER:

I can only assume that the Law Drafter is somebody that was recruited under that title, in their job description. I do not think there is any practical difference.

HON F R PICARDO:

It is not a question of somebody's job description being titled, we have got one. We are going to have two new Law Draftsmen but we are going to keep our Law Drafter, whatever that animal may be.

HON CHIEF MINISTER:

I am saying that the Law Drafter, the reason why it is there must be that at some stage in the past somebody has been recruited under that title and now it has to be reflected there. They are probably doing the same work as the law draftsman.

HON F R PICARDO:

In fact, the green paper Law Draftsman/Drafter tells us they are paid the same thing.

HON CHIEF MINISTER:

It is the same thing, exactly. They are on the same scale. It is exactly what I have said.

HON F R PICARDO:

Is there a particular reason why the private sector cost of legal drafting is going to cost us more than 100 per cent the estimate?

HON CHIEF MINISTER:

Yes, I think this is mainly the new Telecoms Directive Bills and Regulations (they have not seen the Regulations but the Bills certainly) that we passed in the House. That is exactly what it is, in fact, the lion's share almost all the difference, the whole of the difference in fact is accounted for by the cost of that particular drafting bill.

HON F R PICARDO:

Is that because it was not budgeted for or it was more complex than anticipated?

HON CHIEF MINISTER:

I do not think this is budgeted, I think this is a provision. I do not think the estimate, when it gets put in, gets put in with anything

particular in mind. In fact, the supplementary was covered by the last supplementary warrant.....

HON F R PICARDO:

In terms of consolidation, why have we spent nothing this year in the exercise of consolidation?

HON CHIEF MINISTER:

I think because the consolidation has been completed in respect of the electronic version but there has not been a lot done in terms of the printed version, and the electronic version does not incur costs because it is done in-house. So, they have switched their efforts from keeping the printed version up to date to keeping the CD version up to date.

HON F R PICARDO:

Does the fact that we are voting £5,000 this year suggest that we are going to see action on the printed version or not?

HON CHIEF MINISTER:

I would have to check that, I think it is important that they keep the printed version up to date and I think I heard somebody say that they wanted to do it, but whether that is the reason why it is there or simply that they want the same estimate, (departments are very reluctant to give up votes once they win them). I think that is the reason but whether they have the purposeful intent to get on with it in the current financial year I do not know, but I would hope so.

Subhead 8 – was agreed to and stood part of the Bill.

Subhead 9 – was agreed to and stood part of the Bill.

Subhead 10 – Information Technology and Logistics Unit

HON F R PICARDO:

There is an increased cost there of £80,000 in terms of telecommunications services. Is that the cost of ADSL for the relevant Government Departments?

HON CHIEF MINISTER:

Yes, actually mostly, indeed all, is accounted for by the increased fibre optics circuits rental as the Government's intranet expands.

Subhead 10 – was agreed to and stood part of the Bill.

Subheads 11 to 24 – were agreed to and stood part of the Bill.

HEAD 8-B HUMAN RESOURCES

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

These medical examinations are these the costs of medical boards established by the Government?

HON CHIEF MINISTER:

It is not the cost of the Medical Advisory Board and it is not the cost of the.....

HON F R PICARDO:

No, that is human resources, in an employment sense where a Civil Servant requires medical treatment.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 8-C CIVIL STATUS AND REGISTRATION OFFICE

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

Why are we anticipating such an increased cost in respect of the EU format passports?

HON CHIEF MINISTER:

I think it is because we have to buy a new stock of passports and they are very expensive, and we buy from time to time but let me just check that. Yes, it is precisely that, to buy a stock of biometric passports.

HON F R PICARDO:

That, I assume, are costs that will be recovered when people take their passports, is that right?

HON CHIEF MINISTER:

Yes, whether it is recovered in full I do not know whether the passport fees are a proper fee or a full recovery cost based fee or not, but there will be some recovery against that.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 8-D FINANCIAL AND DEVELOPMENT SECRETARY

Subheads 1 to 4 – were agreed to and stood part of the Bill.

HEAD 8-E TREASURY

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Insurance, Premiums and Claims

HON F R PICARDO:

What exactly is the insurance referred to there? Is that the insurance of the Government buildings and Government as an employer et cetera? Is there one provider of that contract?

HON CHIEF MINISTER:

I think not, I think these are placed in the market. The contracts are broken up, vehicles, public liability, building insurance, I think that might be it. Yes, it also includes the group life cover that we have got for the Civil Service and all of that. It covers property insurance, motor vehicle insurance, airport safety zone insurance, airport liability, including terrorism cover, port third party liability, group business travel, marine launches, employers liability, public products, medical malpractice in respect of fire only, group life assurance schemes for Civil Servants and marine surveyor's insurance.

HON F R PICARDO:

Not in one contract?

HON CHIEF MINISTER:

Not in one contract.

HON F R PICARDO:

Medical malpractice is the GHA insurance or not?

HON CHIEF MINISTER:

No, the GHA is not included but under Appendix G one must have an item 'insurance'.

HON F R PICARDO:

What is the medical malpractice insurance which is provided for?

HON CHIEF MINISTER:

Well, I think it is in respect of the Fire Department. I think it is in respect of the ambulance, the Fire Brigade provides the emergency ambulance cover and this is in case they cause any damage to a patient.

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

Subhead 6 – Official Receiver Expenses

HON F R PICARDO:

Does this Subhead include expenses which the Official Receiver may have to pay privately-funded accountants for liquidations?

HON CHIEF MINISTER:

That is what it is.

Subhead 6 – was agreed to and stood part of the Bill.

Subhead 7 - Tribunals

HON F R PICARDO:

Why is the Gibraltar Health Authority tribunal charged here? Is this the second Appeal Tribunal which is independently funded?

HON CHIEF MINISTER:

It is the external one which is not, because it is external to the GHA it was thought better not to provide for it financially within the GHA.

Subhead 7 – was agreed to and stood part of the Bill.

Subhead 8 – was agreed to and stood part of the Bill.

Subhead 9 – Contracted Services

HON L A RANDALL:

Can Government explain the increase in property services of Land Property Services Limited of £465,000 for the year?

HON CHIEF MINISTER:

Of the £1.8 million estimated, £1.777 million is the estimated cost of the new contract on the new basis. The difference, I think is just a rounding up, it is just a product of rounding up.

HON L A RANDALL:

Will Land Property Services Limited be providing additional services or are we paying more for the same services?

HON CHIEF MINISTER:

Well, the basis of the contract is now different. They are now on a cost plus incentive scheme basis, so it is not that they are providing the services, or the ones that we have been discussing over the years every time the hon Members ask us about this contract. They are doing, for example, they get more for some services not because the rate has improved but because of the volume being done. For example, a lot of properties are being sold now, so the part of their contract that relates to commission on sales for acting as Government agents, provides a higher stream for them. So, to the extent that there is more activity, it is more a case of there being more of established activities than of there being new services altogether.

HON F R PICARDO:

Just a small point in relation to 7(c). It is not called the Gibraltar Health Authority Tribunal is it? It is the Complaints Appeal Tribunal or something like that?

HON CHIEF MINISTER:

I think it is the Independent Review Panel.

HON F R PICARDO:

That is right, should we not have that somehow reflected there?

HON CHIEF MINISTER:

GHA, Complaints - Independent Review Panel would be a better name.

HON F R PICARDO:

Yes.

Subhead 9 – was agreed to and stood part of the Bill.

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

HEAD 8-F CUSTOMS

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

What exactly do we mean by official visits? That does not include Customs Officers travelling for courses et cetera, so what exactly does it mean?

HON CHIEF MINISTER:

I suspect it means when they host visitors from UK Customs or French Customs, I think that is what it means.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 8-G INCOME TAX

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

The Income Tax Office has an in-house counsel, what is the professional fees element of this Subhead?

HON CHIEF MINISTER:

I think they have recourse to outside advice. What I do not know whether it is from lawyers or accountants locally, in particular cases. Well, actually, it is fees to Companies House of £650 per month, must be for searches and things.

HON F R PICARDO:

I think that is the cost of being on-line with them or something.

HON CHIEF MINISTER:

That is Companies House and then a £200 fee for searches at Land Property.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 8-H FINANCE CENTRE

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

Subhead 3 – Office Expenses

HON F R PICARDO:

Is Subhead (e) going to disappear when the Department of Trade and Industry moves from Europort or is the office of the Finance Centre Director going to stay down there?

HON CHIEF MINISTER:

It is envisaged that it will stay there in the floor that it is on but that will not necessarily be the case forever. In other words, one possibility is that that will move out of there too.

HON F R PICARDO:

Not during this financial year?

HON CHIEF MINISTER:

It is not absolutely impossible but unlikely to happen this financial year.

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

Subhead 4 – was agreed to and stood part of the Bill.

Subhead 5 – Gibraltar Development Corporation Staff Services

HON F R PICARDO:

There is a reduction in the amount that will be paid this year in terms of GDC Staff Services, and an increase in terms of salaries. Does that correspond to somebody having been taken into the Civil Service because the amounts seem very similar?

HON CHIEF MINISTER:

No, it reflects the fact that in 2005/2006 the year with which it has been compared, there was a payment of a gratuity on termination of contract, and the contract will be renewed but at the end of the contract he was entitled to a gratuity in lieu of pension.

HON F R PICARDO:

Does that relate to the Category 3 individual, the Finance Centre Director?

HON CHIEF MINISTER:

Yes.

HON F R PICARDO:

Has the renewal been on the same terms as the original contract?

HON CHIEF MINISTER:

There is a paper on my desk about it but I cannot recall what it says. I would rather not say. There have been some changes

in terms but it is not huge and I cannot really remember. He can ask me next Question Time.

HON F R PICARDO:

Can the Chief Minister recall whether the change includes a change in the income tax treatment of that individual or not?

HON CHIEF MINISTER:

I do not think so.

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

Subhead 6 – was agreed to and stood part of the Bill.

HEAD 9 LAW OFFICERS AND JUDICIARY

HEAD 9-A LAW OFFICERS

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

I do not think that in terms of 4(b) the breakdown that we receive for Government private sector legal fees actually reflects this private sector prosecution fee subhead. Is it possible to have some sort of breakdown of what that figure is expected to deal with? I see that this year the outturn is very low, it is only £5,000 compared to the estimate of last year. Is something already in the pipeline?

HON CHIEF MINISTER:

I think it is just provision which they use depending on their Crown Counsel availability, I think this is a provision which they use or do not use depending on the Attorney General's operational requirements. I do not think there is anything to be read. I would not know which cases the £5,000 relates to.

HON F R PICARDO:

Not as part of Subhead 4, but the italicised text under that, we have got compensation and legal costs of £51,000 provided for there which was not estimated for. Can we have some detail of what that is?

HON CHIEF MINISTER:

There is a variety of smaller cases in there but there is one that accounts for about £30,000 odd which is the compensation paid in an industrial tribunal to, I think, from the name I think it is a teacher. No, that was a case of compensation paid for, I think, it was the length of time it took a Tribunal to make a ruling. The original claim was not against the Crown. That plus £30,000, and then there is the rest of a variety of small ones.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 9-B SUPREME COURT

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

Subhead 4 – Operational Expenses

HON F R PICARDO:

What has it cost us £14,000 to keep custody of this year?

HON CHIEF MINISTER:

It is something that the Court impounded and it cost that to look after it. I will have to find out what it was.

HON F R PICARDO:

I think it is relevant because if it is a car it is likely that the cost of keeping it in custody would have been more than the car.

HON CHIEF MINISTER:

We cannot tell the Judge to order this or that, if we do not want to pay the customer.

HON F R PICARDO:

I would not, for one moment, ask the Chief Minister to interfere with the independent administration of justice in that way or any other. I am just trying to get to the bottom of it.

HON CHIEF MINISTER:

We do not have here details of the nature of the exact property that was impounded.

HON F R PICARDO:

I am happy to put a question if that makes it easier so that details can be obtained.

HON CHIEF MINISTER:

Well, only if he wants the Executive to account in Parliament for the actions of the judiciary, which is a novelty. I am quite happy to ask for the information and produce it to him in answer to a question if he asks it.

HON F R PICARDO:

I do not want to ask the Executive to account in Parliament for anything other than what the Executive is asking us to vote for.

Subhead 4 – was agreed to and stood part of the Bill.

HEAD 9-C MAGISTRATES' AND CORONER'S COURT

Subhead 1 – Personal Emoluments

HON F R PICARDO:

What is the temporary assistance, is that secretarial cover?

HON CHIEF MINISTER:

I am told it is the fee of the stand-in Stipendiary Magistrate. I think Mr Justice Pizzarello stood in at some point when Mr Dudley was acting.

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

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

HEAD 10 HOUSE OF ASSEMBLY

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Elected Members

HON F R PICARDO:

I think this is the only place that I can actually ask this. Can the Chief Minister tell us what is exactly at the moment the salary of the Chief Minister and of Ministers, because I assume it is provided for under 5?

HON CHIEF MINISTER:

I can only speak of my own, I think it is £90,000 and a couple of hundred pounds being the Ministerial salary and the House salary together, what I do not know is the break up between the two of them. So, subtract from £90,000 two or three hundred, whatever it is here as an MP, and I think that is what the balances are in my Chief Ministerial salary as opposed to my Members' salary.

HON F R PICARDO:

And for Ministers? Does the Chief Minister know that? Perhaps he could be assisted by the others.

HON CHIEF MINISTER:

Ministers get £43,200.

HON F R PICARDO:

And the Member's salary, so what we get is the Member's salary and then Ministers get that amount plus what we get.

HON CHIEF MINISTER:

Yes, Opposition Members get paid £23,242 to ask us difficult questions in this Chamber and Ministers get paid an additional £43,200 for running Gibraltar. It seems terribly unfair to me, don't you think?

HON F R PICARDO:

How much does the Chief Minister get in addition to Ministers?

HON CHIEF MINISTER:

If the rest get £43,000 and I get £63,000 then I get £20,000 more.

HON F R PICARDO:

He did not tell me the £63,000 that is what I could not work out. The one post I have not asked about is the one I have left to ask about. Is Mr Speaker remunerated there as well, and if so, in what amount, with respect?

HON CHIEF MINISTER:

Mr Speaker gets remunerated even more generously. He gets the Member's salary plus £10,800, for deciding whether the hon Members' questions are within or without the rules, and then the Leader of the Opposition gets the Member's salary plus a Leader of the Opposition salary of £15,882. So, I do not think the Opposition is doing too badly either. He is on £38,000, £39,000, not a bad job. I will have to think about that.

HON F R PICARDO:

Given the hon Gentleman might soon be receiving that salary, I am quite happy to suspend Standing Orders and vote that we all reduce salaries by half.

HON CHIEF MINISTER:

Nothing is impossible, it may be more or less likely but not impossible.

HON F R PICARDO:

Is there a separate allowance for the Leader of the House?

HON CHIEF MINISTER:

No, but it is a very good idea. It is a very good suggestion from the Opposition benches. Let the record show that it was the Hon Mr Linares who suggested that the Chief Minister should be paid a separate fee for being Leader of the House.

HON F R PICARDO:

The record should show that we asked whether there was and not suggested that it should be paid.

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

HEAD 11 AUDIT OFFICE

Subheads 1 to 4 – were agreed to and stood part of the Bill.

Subhead 5 – Professional Fees

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Since we issued the book, there is a preference on the part of the Audit Office and the Principal Auditor to have this just as Professional Audit Fees and not have the (a) or (b) categorisation and the Government would be quite happy with that. It would read Professional Audit Fees in the form of £48,000.

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

HEAD 12 – SUPPLEMENTARY PROVISIONS

Subheads 1(a) and 1(b) – were agreed to and stood part of the Bill.

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

Clause 3

HEAD 13 NON-RECURRENT EXPENDITURE – RESERVE

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

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

Clause 4

IMPROVEMENT AND DEVELOPMENT FUND

HEAD 101 DEPARTMENTAL

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

Subhead 4 – Prison Equipment and Refurbishment

HON F R PICARDO:

This does not take into consideration, I suppose it is the continued expense of the existing prison whilst we move, yes.

Subhead 4 – was agreed to and stood part of the Bill.

Subheads 5 to 15 – were agreed to and stood part of the Bill.

Subhead 16 – Environment Projects

HON F R PICARDO:

Does that amount include any cost related to the environment park?

HON J J NETTO:

No.

HON F R PICARDO:

In that case, what will that amount be spent on, is there an idea that can be given?

HON J J NETTO:

Well, some of those projects have been announced either at Budget time or in Questions and Answers sessions, but it will include amongst other things: bin holding facilities; replacement of refuse bins; replacement of street furniture; some work in the Alameda Gardens; the asbestos removal from Europa Point, which I mentioned in my speech; the repairs to the public clocks; some of the commitments we have in terms of some consultants. Then we have other projects as well like the

removal of accumulation of tyres; the provision of water for the apes, quite a number of projects as the hon Member can see.

HON F R PICARDO:

The provision of water for the apes, we have just been told is being charged somewhere else. It is the extra £11,000 we saw in that contract.

HON CHIEF MINISTER:

That would be in the Tourist Board.

HON F R PICARDO:

Yes, but we have just been told by the Minister that this £500,000 includes the provision of water for the apes.

HON CHIEF MINISTER:

This we can break down basically in three areas, waste collection and street furniture, which is the refuse bins and repairs to street furniture, repairs to the Harbour Views Promenade. Botanic Gardens Project is the second category, some EU co-funded projects in the Alameda Gardens. Thirdly, implementation of EU Directives, environmental Directives, there is a provision for that. Fourthly, miscellaneous projects, which is the category into which the clocks and the removal of the asbestos at Europa comes in.

HON F R PICARDO:

I think we all agree that we cannot fund something like water for apes, which is a recurrent expenditure, from here.

HON J J NETTO:

This is not necessarily for recurrent expenditure in the provision of water for the apes, but rather perhaps, some specific infrastructure works for the provision of water, not recurrent expenditure.

Subhead 16 – was agreed to and stood part of the Bill.

Subhead 17 – Rock Safety, Coastal Protection and Retaining Walls

HON F R PICARDO:

Does this Subhead include the Dudley Ward Tunnel works?

HON CHIEF MINISTER:

No it does not. That would be under roads, this is a general provision for rock safety, coastal protection and retaining walls. The main projects provided for there this year are Laguna Estate cliff stabilisation, and the stabilisation of the cliffs above the Pastoral Centre at Europa Point.

HON F R PICARDO:

Is that not being undertaken by the Housing Department? Is the Laguna Estate project not being undertaken by the Housing?

HON C BELTRAN:

Not the cliff itself.

HON J J NETTO:

There will be also another payment for the Harbour Views Promenade as well.

Subhead 17 – was agreed to and stood part of the Bill.

Subhead 18 – was agreed to and stood part of the Bill.

Subhead 19 – Demolition Works

HON F R PICARDO:

What demolition works are envisaged here? The actual this year is only £34,000, it is envisaged to go up to almost £200,000.

HON J J NETTO:

Well, there is the Governor's Cottage, what is going to be the crematorium which has already been completed, I understand. The second is the Sunflower Shop at Europa Point.

HON F R PICARDO:

They have already been completed but in the couple of months since the financial year started.....

HON J J NETTO:

No, the Governor's Cottage demolition has taken place recently, I understand.

HON CHIEF MINISTER:

Yes, the hon Member should bear in mind also that this reflects when the bills are paid not necessarily when the work is done. It is not impossible, therefore, that it could be work that was done before the end of March.

Subhead 19 – was agreed to and stood part of the Bill.

Subheads 20 to 36 – were agreed to and stood part of the Bill.

HEAD 102 CENTRAL PUBLIC ADMINISTRATION AND ESSENTIAL SERVICES

Subheads 1 to 10 – were agreed to and stood part of the Bill.

Subhead 11 – Gibraltar Broadcasting Corporation Equipment

HON F R PICARDO:

Is this an amount in respect of the digital service or going digital?

HON CHIEF MINISTER:

No, it is a general provision for equipment, they may or may not spend some of it on equipment which is relevant to digital but it would be nowhere near enough. The digitalisation programme is in a different ballpark altogether.

HON F R PICARDO:

When is that expected to be completed?

HON CHIEF MINISTER:

I think there is a deadline, 2010 or 2012 or something like that but I think they are hoping to start work on it soon. There may be something substantial in next financial year's I&DF.

Subhead 11 – was agreed to and stood part of the Bill.

Subhead 12 – was agreed to and stood part of the Bill.

HEAD 103 PROJECTS

Subhead 1 – Bayside Sports and Leisure Facilities

HON J J BOSSANO:

Can I ask what is the significance of the new presentation where previously it was done differently and this year we have got a section called 'projects' for Head 103, but I notice that some of the things that we have already voted in the previous Head 102 were also called 'projects'? What makes the project be in one as opposed to the other?

HON CHIEF MINISTER:

No, the reorganisation was intended to separate what was in effect, if I could just borrow the phrase, recurrent departmental capital expenditure. For example, the Technical Services always get a provision for retaining walls and things of that sort and rockfalls, so it is an attempt to separate what is I&DF expenditure but in effect of a departmental recurrent type of expenditure, and separating that from specific Government projects on the other. So he will see that in this Head 103 there are now things that are projects as opposed to recurrent items. If he looks at most of the other things, they are recurrent items, they appear every year in some measure or other because every Government department has a requirement for capital for

capital projects, which are not so much for individual projects but for the I&DF type expenditure that the department incurs in it. Head 103 is specific projects – the Leisure Centre, the swimming pool, the resurfacing of the No. 2 Hockey Pitch, for example, there is provision for under sports and leisure. Under beautification projects there are a series of specific projects.

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

Subheads 2 to 5 – were agreed to and stood part of the Bill.

Subhead 6 – Engineer Lane/Bell Lane

HON F R PICARDO:

Bell Lane has already had a full Main Street refurbishing and repavement. Why is it still being referred to there?

HON CHIEF MINISTER:

That is because it is going to be resurfaced in the same style as Main Street and Engineer Lane and all that area.

HON F R PICARDO:

It has been done already. Bell Lane, from the top down, already enjoys the York paving, or whatever it is called, down to Main Street.

HON CHIEF MINISTER:

That was done quite a lot of years ago and it is looking very grubby. That is going to be relaid.

Subhead 6 – was agreed to and stood part of the Bill.

Subheads 7 to 15 – were agreed to and stood part of the Bill.

Subhead 16 – Sound Insulation of OESCO Station

HON F R PICARDO:

I make the point here that I tried to make in my speech. We are spending £1 million this year on that aspect of these works, we have got a balance to complete, this book must stand for something, we have got a balance to complete here where we are told that is going to be an extra £600,000. A total for the sound insulation works at OESCO power station, for anybody reading the book as it is intended to be, is £1.6 million. The hon Gentleman tells us in his speech that he does not yet know how much it is going to cost, and that this appropriation is really just the cost of re-engaging consultants to start the project and that we will know the cost in the future.

HON CHIEF MINISTER:

I think it is true to say that we do not know how much it is going to cost, but we are advised that it will be a figure of this order and that is why it has been provided. But there is not yet a contract, it has not gone out to tender, we have not had quotes, this is our own in-house calculation by our technical people and what they think it will cost. It is a ballpark figure of this order but it is not because we know that this is what it is going to cost. It may be less, it may be more.

Subhead 16 – was agreed to and stood part of the Bill.

Subhead 17 – Upper Town Urban Renewal

HON F R PICARDO:

We see that last year there was an estimate of £500,000, none of which really in practice was spent. This year there is an estimate of double that, of £1 million. We have heard a lot of imprecise description of what the Upper Town Urban Renewal scheme involves, and now that we are down to brass tacks and figures, do we know exactly what is going to happen in respect of that project?

HON CHIEF MINISTER:

Government will shortly be making a statement explaining in more detail what the Urban Renewal project will consist of in the next two years. In respect of this £1 million, it is a provision but there are already projects at an advanced stage of design that will consume that money. I think they have been mentioned, one is the Puerta de Granada, Castle Steps and some other areas of actual street beautification. They are projects that, whether we will get through the design, procurement and execution phase in time for £1 million to actually flow out of the door by March remains to be seen. That is when the things start getting backed up, at the execution stage, but there are projects to that value now authorised and in the hands of technical people for execution and implementation.

Subhead 17 – was agreed to and stood part of the Bill.

Subheads 18 to 24 – were agreed to and stood part of the Bill.

HON F R PICARDO:

Is this an appropriate point to note that the Theatre Royal project has disappeared completely from the pink pages, and to ask whether it is now formally abandoned?

HON CHIEF MINISTER:

No, it is not formally abandoned. Hon Members will see at page 103 what the old headings would have looked like, what the summary would have been of expenditure under the old headings as all of that expenditure was clustered before in the previous layout.

Clause 4 – was agreed to and stood part of the Bill.

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

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Appropriation Bill 2006, has been considered in Committee and agreed to, and I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 13th July 2006 at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 6.45 p.m. on Monday 26th June 2006.

THURSDAY 13TH JULY 2006

The House resumed at 2.35 p.m.

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 E G Montado, CBE - Financial and Development
Secretary (Ag)
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 Miss M I Montegriffo

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk of the House of Assembly (Ag)

SUSPENSION OF STANDING ORDERS

The Hon the Chief Minister moved under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of a report and statements on the Table.

Question put. Agreed to.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Gibraltar Regulatory Authority Annual Report 2005-2006.

Ordered to lie.

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

1. Consolidated Fund Supplementary Funding – Statement No. 12 of 2005/2006;
2. Consolidated Fund Pay Settlements – Statement No. 13 of 2005/2006;
3. Consolidated Fund Reallocations – Statement No. 14 of 2005/2006.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Intellectual Property (Copyright and Related Rights) Ordinance 2005 in order to transpose into the law of Gibraltar Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, 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, this Bill implements, as we have heard, Directive 2001/84 which relates to the resale right for the benefit of the author of an original work of art. In a nutshell, this Directive provides that if an author sells a work the first time, so that he parts with ownership of it, and the new owners subsequently resell it at any time during the period when the original artist's copyright persists, then even though he sold it the first time the artist nevertheless is entitled to a share of the proceeds of sale on each time that his work is subsequently resold by the then owner for the time being. The share of the proceeds of sale that he is entitled to is to be calculated in accordance with the Schedule of the Ordinance, which basically provides for different percentages depending upon the value. The Directive came into force on 13th October 2001 and requires a new intellectual property right, artists' resale right, or as it is called in French, droit de suite, to be introduced into Gibraltar this year. The right entitles authors and their successors in title to a percentage of the sale price, net of tax whenever original works of art in which copyright subsists, are resold in transactions involving art market professionals. This Bill inserts a new Part 4 into the 2005 Ordinance. The existing Part 4 is renumbered Part 5 and the existing sections 254 to 263 are renumbered 270 to 279 respectively. Two new schedules are also inserted after the existing Schedule 3. New section 255 creates a new intellectual property right, known as resale right, to be enjoyed by the creator of a work of art and that artist's successors in title, for as long as copyright continues to subsist in the work. The right consists in the entitlement to claim a royalty on the resale of the work following its first transfer by the artist himself or herself. The amount of the royalty is based on the sale price denominated in euros, and new Schedule 4 to the Bill sets out how the amount is to be calculated. So, just for example, if the value of the work exceeds 500,000 euros, the

artist is entitled to a quarter per cent; if it worth between 350,000 euros to 500,000 euros, half a per cent; between 200,000 euros and 350,000 euros, one per cent; and the scale rises as the percentage rises as the value of the art work falls. New section 256(1) defines the work of art covered by the Bill. New section 256(2) lays down the conditions under which a work is to be regarded as a work covered by the Bill. New section 257 makes provisions for works, the joint product of two or more artists. New section 258 lays down a rebuttable presumption that a signatory of the work is its creator. So, the works covered is defined in section 256(1) and it is any work of graphic or plastic art, such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware or a photograph. However, a work is not to be regarded as a work for the purpose of art unless the copy is one of a limited number. However, a copy of a work is not to be regarded as an art work unless it is in effect one of a limited number edition, a limited edition issued under the artist's authority. So that is the scope in terms of the forms of art work to which this relates. As section 258 makes clear, if there is a presumption which is rebuttable, in other words, it is not definitive, it can be disproved by evidence, that whoever has signed an art work is the author of it for the purposes of these entitlement provisions. New section 259 ensures that resale right may not be assigned or charged but does not prevent the transfer of a resale right where it has been transmitted to a qualifying body, that is a qualifying charitable body, provided that the transfer is to another such body. The relevant bodies that qualify for these purposes are defined in section 259(4) and (5). New section 260 prevents resale rights from being waived, and precludes any agreement to share or repay resale royalties. However, this does not prevent a collecting society from collecting resale rights on the holder's behalf in return for a percentage of the royalty. Indeed, as hon Members will see from the following section, these rights can only be exercised through a collecting society. They cannot be enforced directly so the artist has got to put his collection of these royalties in the hands of a so-called royalty society or a collecting society, but rather as happens with our pensions legislation, it is inalienable.

In other words, this right to share in royalties on future resale, according to the Directive, cannot be sold, cannot be contracted away, cannot be waived, cannot be mortgaged, cannot be charged. That is designed, I suspect, to prevent the market in effect persuading the artist to give up these rights by some indirect contractual means. New section 261 enables a resale right to be transmitted on the death of its holder, to a natural person or to a qualifying charitable body. Section 22 lays down certain nationality requirements for the persons who can benefit from this right. So it is not just any artist, basically, it is an artist of EU, EEA nationality or of a nationality listed in Schedule 5 of the Bill, which adds another 20 or 20 odd countries in addition to the EU and EEA countries. It is artists of those nationalities that benefit from this right to participate in the resale price of any future sale of their own work. Section 263 enables any person to hold and to exercise resale right in the capacity of a trustee for another person entitled to the right, and enables legal title to the right to be transferred to such a trustee or a beneficiary. New section 264 defines when a sale is to be regarded as a resale for the purposes of the Bill and therefore attracting the right to share in the royalty. In other words, there is a definition of what constitutes a resale for the purposes of this Bill. Section 265 deals with who is responsible for ensuring that these payments are made, and the liability is imposed jointly and severally on the seller and the relevant person. The relevant person is the agent of the seller, or where there is no agent, the agent of the buyer, or where there are no agents the buyer himself. In any case, there has to be an art professional involved in the transaction. So if the hon Member or I sell an art work, that does not incur this rate. Either the buyer or the seller, or because they act through an agency which is a professional seller of art, there has to be some commercial dimension to the transaction, either through the use of a gallery or a formal art broker or something like that, or because the buyer or the seller are traders in works of art. A new section 266 imposes the requirement of compulsory collective management, that is the point I have just made before, but the right may only be exercised through an artists' collecting society. Section 267, the new section, enables the holder of a resale right to obtain the

information necessary to enforce their rights. Section 268 contains transitional provisions and section 268(2) to (5) provides for the case where the artist died before the Bill comes into force. Finally, new section 269 exercises the options under Article 8.2 of the Directive, which is available to Member States to exercise, namely, where Member States did not prior to this Directive have such a right in their own legislation, there is an optional transitional period. In other words, the rights do not come into effect until sales after 1st January 2010. In other words, there is a commencement transitional period which is available in Member States where there is not such a right already in the law but there are already some European countries that had similar regimes or regimes in this area before the Directive came into force as a matter of national domestic law, and they cannot avail themselves of the transitional provision but our Bill does avail ourselves of this transitional provision. I commend the Bill to the House, which as I said at the outset is in transposition of an EU Directive obligation.

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

HON DR J J GARCIA:

Just to say that the Opposition will be supporting the Bill. It flows from an EU obligation, as the Chief Minister has already said, Directive 2001/84/EC and it amends the Intellectual Property (Copyright and Related Rights) Ordinance which we also supported at the time. So we will be voting in favour of the Bill.

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put.

Agreed to.

THE POLICE ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to make provision for the establishment and functions of the Gibraltar Police Authority and the organisation, discipline, powers and duties of the Royal Gibraltar Police, and for matters incidental thereto and connected therewith, be read a first time.

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, those of the Opposition Members who were part of the Constitutional Reform Committee will recall that, I think, at the last or penultimate internal round between us at No. 6, I pointed out to them, in fact I think I actually provided them with a copy of the Heads of Agreement although I cannot be absolutely certain of that, that the references in the new Constitution to the Police Authority were being kept but the detail was not being written into the Constitution on the basis that there was an agreement in place, before the UK approved the new Constitution, setting out the arrangements that the new legislation in relation to the Police Authority would reflect. This

Bill does that. In effect it does that and a bit more. It establishes the Gibraltar Police Authority, it makes perfectly clear in statutory terms which of the Police powers that the Governor had before he keeps; which of the Police powers that the Governor had before are now going to be endowed in the Gibraltar Police Authority; and what are the functions of the Authority. It also establishes a new, independent of the Police and under the auspices of the Police Authority, complaints procedure set out in very substantial detail. Both models, that is to say, the Police Authority model and the complaints procedure model, follow very closely the model in the UK for both police authorities and the complaints procedure. Indeed, a comparison of the legislation in the UK and in Gibraltar will throw up a very substantial similarity. Particularly in relation to the complaints procedure, although the principles and some of the drafting in relation to the Police Authority, has been also taken from, in some cases and based on in others, from the UK provision, but the basic model is the same. Hon Members will see that the Bill also repeals and re-enacts the vast bulk of the existing provisions of the Police Ordinance. In other words, rather than add very substantial amendment to the existing Police Ordinance, the Bill ends up in the result where we have one Police Ordinance including the new bits, the old bits and amends some of the old bits as well. I will take the hon Members through those in some detail given the importance of the subject matter. In effect, Part 1 of the Bill deals with the establishment, composition, appointment, procedures, roles and functions of the Gibraltar Police Authority. Part 2 deals with the Governor's and the Government's responsibility for policing issues. Part 3 deals with the new Police complaints procedure. Then, Parts 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 are what used to be the old Bill, the old Police Ordinance, the existing Police Ordinance, to which there has been some minor amendments which I will take the hon Members through.

Therefore, dealing first of all, hon Members will see also by the way before I get stuck in to the substantive provisions that I have given notice of amendment in two regards, the secretarial one of which is that, again, hon Members may recall that when

we were in the Constitutional Reform negotiations it was going to be called the 'Senior Appointments Commission' and then the name was changed to 'Specified Appointments Commission'. So, section 3 of the Bill establishes by statute the Gibraltar Police Authority. It defines that as its name and it establishes as a body corporate with perpetual succession. Section 4 then deals with the composition of the Authority. The Authority shall consist of seven members comprising a Chairman, who would be appointed by the Governor acting on the advice of, and hon Members will be familiar with what the phrase "acting on the advice of" means. It means implementing in effect the advice that he is given by the Specified Appointments Commission from amongst persons proposed by the Governor or the Chief Minister. One member appointed by each of the Governor and the Chief Minister, and four members appointed by the Governor acting on the advice of the Public Service Commission from a list of persons that shall have been approved by the Governor and the Chief Minister. So that is what the Authority will compose of. Then there are provisions about the fact that each member shall hold office for three years, Members of this House, except Mr Speaker, are disqualified from being members of the Police Authority, and then there are provisions for resignation, vacation in the event of bankruptcy, the usual provisions that one finds in a Bill when people have to cease to be members for a reason of some circumstance that has affected their lives, incapacitated by physical or mental illness, convicted of an offence, made bankrupt, et cetera. Section 5 then establishes what are the responsibilities and powers of the Police Authority. The responsibilities and powers of the Authority are as follows. (1) To secure the maintenance of an efficient and effective Police force for Gibraltar, within the financial resources available to it. In other words, provided to it by this House and on a value for money basis. (2) To ensure high standards of integrity, probity and independence of policing in Gibraltar. (3) To provide information on police issues to the community. (4) To establish, operate and supervise the process for investigating complaints against police officers under this Ordinance. (5) To provide a mechanism for enhanced police accountability through a process of consultation with the

community. (6) To ensure value for money in policing. (7) To draw up and publish an annual policing plan and an annual report in accordance with section 8 and 10 respectively. (8) To submit to the Minister for Public Finance, in accordance with the form, procedures and time tables established by the Government generally in relation to the preparation of its budget, an annual budget bid for the Police force. (9) To hold the Commissioner to account for matters which are the responsibility of the Authority. Then, section 6 deals with the procedures for the meetings of the Authority and the requirements for quorum, and the circumstances in which the person chairing the meeting shall and shall not have a casting vote. Section 7 provides the members, as is usual in such occasions, from personal liability for anything done or omitted to be done in good faith under the provisions of this Ordinance. Section 8 deals with the production by the Police Authority of the Annual Policing Plan. This is one of the main pillars of its functions. The Authority shall, in respect of each financial year, after consulting (a) the Governor; (b) the Chief Minister; and (c) the Commissioner of Police, prepare a plan for policing in Gibraltar to be known as the Annual Policing Plan for that year. In other words, what are the priorities for policing? What are the social problems that the community wants the Police to concentrate on? What does the Police hope to achieve? What measurable targets can be established to ensure that the Police achieves the sort of effective policing to which the community attaches importance? The Annual Policing Plan must have regard to and, as far as is practicable and proper, accommodate the priorities of the Governor in those areas of policing for which he is responsible; and (b) the priority of the Government in relation to policing as indicated to the Authority by the Chief Minister. In other words, there is an end to the situation that has prevailed until now and which is really quite unique for an elected Government almost anywhere in the democratic world, whereby the Government cannot say to the Police, "look, there is a terrible problem with parking, or there is a terrible problem with litter, or there is a terrible problem with burglary, this is a huge concern, we think that in next year's policing plan you should focus resources on that issue, which is an issue which is

concerning to the community". Then section 9, requires the Annual Policing Plan, once the Authority has decided what the Annual Policing Plan should be, it has to send a copy to the Chief Minister so that he can lay it in this House at the very next sitting after it has been received by the Chief Minister, and then the Authority may publish it 48 hours after it has been given to the Members of this House. Then the Authority also has the task of doing annually a report on the extent to which the previous year's policing plan had or had not been met. That is, basically, the main provisions of Part 1.

Part 2 sets out the Governor's and the Government's respective responsibilities for policing. The Governor's responsibilities are those responsibilities that he retains which are responsibilities that he has today. They are basically, firstly, the Governor will continue to have overall responsibility for the integrity, probity and independence of policing in Gibraltar, and for the policing aspects of national security including internal security. The Governor's powers shall be to hold the Authority to account for any matter to which section 11, which is the one giving police direct responsibilities relates, to hold the Authority to account for the professional standards of the force, and to call for and hold meetings with the Chairman, the Commissioner, the Chairman being the Chairman of the Authority, the Commissioner and other Senior Officers of the force, to discuss matters under his responsibility or in respect of which he has powers under this Ordinance. Then the Governor has a series of powers also to intervene in circumstances where the Authority has not discharged its own powers and responsibilities under the Ordinance. So under section 13, the following powers are exercisable by the Governor where the Authority has failed to discharge or perform its responsibilities imposed on the Authority under this Ordinance. So for example, he has a power to require the Authority to provide a report on any policing matter. To direct the Authority to submit the force to an inspection by an appropriate inspectorate. To direct that an enquiry into policing in Gibraltar be made. Where an inspection or enquiry under this section identifies any shortcomings, to direct that within the financial resources available to it, the force

take appropriate remedial action. Also, he has the power where in his opinion the integrity, probity or independence of the Police has been compromised or is at risk, to direct the force to take appropriate action to remedy the situation or avoid that risk. He has the power to suspend from duty or call for the resignation of the Commissioner. The Government's responsibilities are in effect limited to providing, through this House, the financial resources for the police as has always been the case. So section 14 defines the Government's responsibilities in relation to policing as being that the Minister with responsibility for Public Finance shall, as has always been the case, decide and seek the appropriation of the House of Assembly for the grant of both the current and capital expenditure to be made for the force and for policing in Gibraltar in respect of any financial year. The powers, as opposed to the responsibilities, the powers of the Government in respect of policing are to require factual or assessment reports from the force, or the Authority on any policing matter, provided that the Police and the Authority can withhold from any such report that it gives to the Government, any fact disclosure of which is likely to prejudice the effective operation of the force or the confidentiality of any information which the force is bound to maintain. So, for example, the Government has the power to say to the Police, "look, we hear that there is a problem with burglaries in Gibraltar, will you please give me a report of how much burglary is taking place, how many instances of burglaries, so that the Government can decide whether there is a need for legislation, whether there is a need for more resources", that is the sort of area covered by this. The Government also has the power to hold the force and the Authority to account for the cost-effectiveness and efficiency of the force within its allocated budget. To hold the force or the Authority to account for those parts of the Annual Policing Plan which does not relate to national security. In other words, to make sure to say to the force, "well what are you doing to deliver that or that part of the policing plan which the Police Authority has established for Gibraltar for that year", and also to call for meetings for anything which is the Government's responsibility or in respect of which the Government has power. What is important to note, is that under no circumstances does anybody,

whether it is the Governor, the Government or indeed the Police Authority, none of those three have powers to intervene or interfere in the operational control and functions of the RGP which remain, by the terms of this Ordinance, specifically vested in the Commissioner of Police and in nobody else. So none of this affects day to day operational or operational aspects of the RGP which continue to remain the Commissioner of Police's and is not within the power or responsibility of any of the Governor, the Government, or indeed for that matter, the Police Authority.

Part 3 establishes a complaints process which is a huge improvement in terms of its detail, its sophistication and its independence from the system that we have traditionally enjoyed. I think it is appropriate to recognise the good work done for many years by members of the Police Complaints Board which has operated in very difficult circumstances, in effect purporting to preside over externally to what was a purely internal, for all intents and purposes, Police Complaints Procedure. It has worked well, in changing it we wish to make no specific criticism of anything in relation to the previous regime, but I think it is fair to say that increasingly, across all democratic societies, people have higher and higher expectations of the degree of independence that they expect when organisations exercising powers over them are themselves being investigated for misbehaviour. That does not exempt the Government, the Government has subjected itself first to that regime before subjecting anybody else. That is what the Public Service Ombudsman is, indeed an external organisation completely independent of the Government, to which citizens who may have been affected by an exercise of power by the Government, can go to have their grievances independently investigated by somebody with statutory authority and power, to help them get to the bottom of any complaint. This regime in a sense is the same in relation to policing. It is very, very much the system of investigation of police complaints that exists in the United Kingdom and I think the public at large will be gratified and pleased that we have brought in Gibraltar, that this House will have brought Gibraltar's procedures, rights

and systems for investigating complaints against our Police force, up to date with the sort of regimes, not just as to independence but as to the detail of it and as to the mechanisms of it, that other countries in Europe have enjoyed for some time. Section 16, which is the first section in Part 3 which is the part that deals with police complaints, puts the whole responsibility for police complaints and the working of the police complaints regime, squarely in the hands of the Police Authority and not in the hands of the Police itself. Section 17 sets out the people and matters to which police complaints regime apply. Then sections 18 and onwards deals with the duties of the Commissioner, and therefore the Police itself, in making sure that the Authority is able to discharge its functions by providing information, providing documentation, indeed allowing the Authority access to Police premises when it is investigating a particular complaint. The latter point arises in section 20. Section 21 has very clear and detailed provisions relating to keeping the complainant informed about the conduct of a complaint that he has made. Keeping the complainant informed, that is by the Authority, of how the conduct of his complaint is going and, indeed, section 22 goes on to make provisions about the obligations to provide information to complainants. Section 23 gives a power to the Authority to issue guidance to the Police about how they need to behave in the context of a complaint. In other words, what they should do, what they should have by way of systems for keeping evidence, for keeping logs, for keeping this, for keeping that, to make sure that if there is ever a complaint, the Review Board will have access to the sort of information that it will want to know about an incident, to be able effectively to investigate the complaint. So this is for the first time, there will be an outside body saying to the Police, "you have got to internally conduct your affairs in the following way, so that if anybody every complains against you and I want to investigate that complaint, that information will be available", and nobody is going to run round and say to me "we have not got a log of this, we do not keep a register of that, we do not know what time they were arrested, we do not know who was the supervising officer, we do not know whether they were fed, all these sorts of things because we do not keep any information".

So basically, the Authority as the custodian of the complaints regime, will have this power to issue guidance to the Police about how they should carry on their affairs so that if the conduct of their affairs ever has to be investigated pursuant to a complaint, the right information will be available to the complaints procedure. Section 24 provides for a wide ranging power to make regulations for detailed issues connected with the complaints procedure. Section 26 provides a mechanism whereby this procedure can be extended by the Governor to other forms of police service in Gibraltar, which in effect means the Gibraltar Services Police, which of course is a department of the Ministry of Defence. Because they have policing powers, it is right that citizens that are subject to the GSP's policing powers and authorities, should have the same right of complaint and of investigation of those complaints against the GSP as citizens have against the RGP. That is what section 26 relates to. Section 27 provides an interpretation and definitions section in relation to Part 3, namely the part dealing with the complaints procedure.

Part 4 of the Bill is in effect the old Police Ordinance, almost all of which remains unchanged, and I will point out to the hon Members the elements the areas in which there is in effect change, although I am sure they will have spotted the changes for themselves. I will just quickly take them through it and certainly the principal ones, so that they can see the extent to which the existing regime. So everything we have discussed so far adds a new Police Authority regime and a new Complaints Procedure. None of that is in the existing Police Ordinance, so all that I have covered so far is new material. Now we are into the realms of amending existing provisions in the existing Police Ordinance. Well, section 28 of the new Bill simply deals with reflecting the fact that it is no longer a Gibraltar Police Force, it is now known as the Royal Gibraltar Police. So that is reflecting the change in nomenclature in the legislation. Section 30 introduces a small change, a change to the section relating to the composition of the force. Whereas it presently reads, "the force shall consist of such number of the following ranks as the Governor may direct in order of seniority as shown", it now will

read if this Bill is passed, "the force shall consist of such numbers of the following ranks as the Authority, with the approval of the Government, may decide". So, what we have then is a list of the same ranks as there are at the moment, with the exception of the rank of Chief Superintendent, which the hon Members will find in the current Police Ordinance but will not find in the new amendment because the rank of Chief Superintendent has not existed for many years now in the force. Sub-section (2) presently reads, "police officers holding the same rank shall unless the Governor otherwise directs, stand in order of precedence", and will now read, "police officers holding the same rank shall, unless the Commissioner with the approval of the Authority otherwise directs, stand in order of precedence and command according to the seniority of reaching the rank". Sub-sections (3) and (4) again replaces the reference to "Governor" by reference to the "Authority". Sub-section (3), which is the sub-section dealing with amending the ranks, in addition requires the Government's approval, because of course, in the case of amending the list of ranks there could be a financial consequence. There could be a financial implication and therefore, although the decision can only be made by the Authority, they would need the Government's, as in effect they would need today, the Government's approval. Section 31 deals with cadets. Police cadets can presently be recruited by the Commissioner with the prior approval of the Governor, and that now reads, 'prior approval of the Government and the Authority to enlist fit and proper persons to act to be police cadets, to undergo training et cetera'. So the changes in sections 31 are in effect to substitute the reference to 'Governor' for a reference to 'Government and Authority'. Section 32 is a new section relating to the appointment of the Commissioner of Police. In a sense it reflects the new Police Authority provisions. So, whereas at the moment, the Commissioner of Police is in effect a Governor's appointment, as indeed are all officers under the Crown, the new provision is that the Governor acting on the advice of the Authority, and subject to any provision of the Constitution, shall appoint the Commissioner. The Commissioner shall be appointed on such terms as the Authority may advise and shall be set out in the instrument of

appointment. There is a small change in section 33 where the words "and control" are added. So section 33 is the section to which I alluded earlier, where I told the House that there was no change to the fact that the Commissioner remains in sole operational control of the force, and this is the section that achieves it. So it continues to read as it does at the moment but the words "and control" are new. So when hon Members hear what I say, the only new words are the "and control" part which I will now read. "The Commissioner of Police shall, subject to the provisions of this Ordinance, have command, superintendence, direction and control of the force, and shall be responsible for the efficient administration and government of the force and for the proper expenditure of all public monies appropriated for the service thereof". All of that is as per the Ordinance except that we have added the 'and control' to command, superintendence and direction, which is the three phrases that existed before. The only addition is that in discharging his functions in subsection (2), the Commissioner shall have regard to the Annual Policing Plan. Section 34, which deals with the removal of the Commissioner, is new and also reflects the new Authority structure. That section says that the Authority, acting after consultation with the Governor and the Chief Minister, and with the agreement of either of them, may call upon the Commissioner to retire in the interests of efficiency, effective probity, integrity or independence of policing in Gibraltar. In other words, neither the Governor nor the Chief Minister can remove the Commissioner. Only the Authority can remove the Commissioner and not even by themselves. They need to persuade either the Governor or the Chief Minister that the Commissioner should be removed. In other words, of the three players, Authority, Governor and Government, at least two of them must believe that the Commissioner should be removed, and one of them must be the Authority. Obviously there are provisions there before he can be removed, the Commissioner must be given opportunity to make representations et cetera. Section 35, which is the existing provision whereby the Commissioner, with the approval of the Governor, now it would read "with the approval of the Authority", may make such appointments, promotions and reductions in ranks and grades

as he thinks fit. Hon Members may be aware that the Police is the only area in the public sector where in effect, the management of the force do their own promoting, their own promotions. Usually, in the rest of the Public Service, there is a different type of procedure but this has always been the position in the Police. We are not proposing to change it, at the moment it requires the Governor's approval and in future it will require the Authority's approval. Section 36 is new, there may be a Deputy Commissioner and that is because it is not envisaged that the post of Deputy Commissioner will necessarily continue once the incumbent has retired from it. Instead, the preferred option, which is partly and partially implemented already, is that there should be three Superintendents from which the future Commissioner will be selected. Amongst others, the attraction of that system, is that it avoids potential embarrassment and difficulty when the incumbent Deputy Commissioner is not successful in seeking promotion to the role of Commissioner. It is better and easier and gives a wider field and opportunity when there are two or three people aspiring from the same rank to the job above, rather than have people leap frog over and above. That is the proposal that in fact emerged from the Police and which the Government were very happy to support. There is a new provision in section 37 relating to the ability to appoint somebody as an acting Commissioner when there is not a Deputy Commissioner. So if there is a Deputy Commissioner, obviously the Deputy Commissioner acts in the Commissioner's absence, but section 37, headed "Acting Commissioner", is introduced for the possibility, for the eventuality that there may in the future not be a Deputy Commissioner and somebody therefore, other than the Deputy Commissioner which would not exist, would have to be appointed to act as Commissioner during the Commissioner's absence. There is a minor amendment in section 47, engaging in trade or business. At the moment, officers cannot engage in trade or business without the prior consent of the Deputy Governor. That would read in future, "Government and the Authority". Both the Government and the Authority would have to approve the conduct to private trade or business by members of the force. Continuity is established, both in relation to the RGP itself and to the Police

Association, by using the phrase "there shall continue to be established a body to be known as the Gibraltar Police Association". For example, in section 49 and in section 28 there shall continue to be established in Gibraltar a Police force. Indeed, in section 28, that section is in the current Police Ordinance so that is obviously the historical formula for signalling continuity. There is, I suppose, one other amendment worth pointing out to the hon Members. That is that the part of the present Bill dealing with the Police Reward Fund has been deleted and that will be replaced by a Police Reward Fund established by subsidiary regulations made under this new Bill. The detail of that should not be in primary legislation which is then very difficult to modify, or harder to modify.

There are several other occasions, which I am sure the hon Members will have seen for themselves, of where references to the Governor have been changed either to a reference to the Commissioner, to a reference to the Authority or to a reference to the Government, or to a reference to the Government and the Authority in some cases. There is an amendment in old section 51, new section 78, updating the provisions relating to the GSP which used to be articulated in terms of the Upper Rock Area and such other areas of Gibraltar as the Governor may from time to time direct. That is to do with the area of jurisdiction of the GSP and it now reads, "such officers as are appointed to carry out duties in relation to such areas of Gibraltar as are in the possession and control of the Ministry of Defence, or for the security of which the Ministry of Defence has, with the agreement of the Government, assumed responsibility". Old section 52A, which related to charges for the Ambulance Service, have been deleted because the Police no longer provide the ambulance service. Section 80 repeals the existing Ordinance as it is replaced by this, but leaves in place with continuity therefore, all subsidiary legislation made under the current Police Ordinance. So the Police Regulations et cetera, all that remains valid even though they were made under the old Ordinance to be repealed. There is a rather odd looking section there at the end, section 83, which is simply to reflect the fact that the Ordinance necessarily is preceding the Constitution. It

has to be said that this legislation would not have been impossible even without the new Constitution. There is nothing in this legislation which is inimical with the existing Constitution. It obviously sits much better under a Constitution that provides for a Police Authority, so the Police Authority once the new Constitution is adopted, the Police Authority is a constitutionally envisaged entity. It is a constitutional entity established rather like the Public Service Commission, it is referred to in the Constitution and then established by legislation. The same will happen here, but if for example, the new Constitution were not to be promulgated, then this Ordinance is still perfectly constitutional and perfectly free standing. Except, that there is a reference in it to the Specified Appointments Commission, who shall have involvement in advising the Governor on the appointment of the Chairman, and of course, that has not yet been created and will not be created until after the new Constitution has been adopted. So this Ordinance therefore says in section 83, "during any period that there is not in existence a Specified Appointments Commission, the powers and functions bestowed thereon by this Ordinance shall be exercised by the Governor and the Chief Minister jointly". In other words, the first Chairman of the Authority, not the members of it, the first Chairman of the Authority will end up being appointed by the Governor, following a process of joint consultation between the Governor and the Chief Minister. Namely, at this moment in time, me. We have not yet done that, I understand the Governor has certain proposals that he wants to put to me, and that will be done under this. So the idea is that we pass this Bill, if we pass it, and that a Chairman of the Board and the Board of the Authority is appointed and they will preside over the transitional first year of operation, as we move from the old system to the new system.

Mr Speaker, this Bill, which I hope the House will welcome and support, brings the regime applicable to the control of policing in Gibraltar much closer to what it is in almost the whole of the rest of Europe, and indeed very similar to the situation as it is in the United Kingdom. Indeed in the United Kingdom, the Home Secretary who is an elected Minister of the political Government

of the day, has all the powers that this Bill gives to the Governor. So we have not given to the elected Government in Gibraltar a whole raft of powers which in the United Kingdom it is thought appropriate for a political Minister to have. We have not asked for that, in recognition that in a small community it is perhaps even more necessary than it is everywhere, that there should be distance between the operational control of the Police and the citizen that is being policed. However, all of that said, it would be a mistake for people to regard colonial mechanisms in relation to the Police as analogous to independence mechanisms. In other words, it is important that there should be independence of policing. It is important that that independence of policing be enshrined in our Constitution and in our law, but it can be done in the same way as other civilised, democratic societies achieve the same goal, and we must not think that the only way to achieve it is in the colonial fashion in which it has hitherto been achieved. I think people who blur the distinction, which is not to say that everyone has to agree with the Bill, but people who try to pick an argument with this Bill on the basis of failing to distinguish between a modern way of achieving control and a colonial way of achieving control, are not doing this community any favours. Of course, one may think that this is not a colonial way of achieving control and still disagree with it for other reasons. That is a different matter, but in terms of mechanisms for achieving independence of policing, it has to be recognised that there are colonial and non-colonial mechanisms, and simply the fact that we choose to move away from our existing colonial mechanisms, is not a legitimate argument of criticism by itself against the provisions of this Bill, which by the way, have been the subject of agreement between the UK Government and the Gibraltar Government and therefore is a regime which Her Majesty's Government in the United Kingdom consider to be entirely proper for the regulation of policing in Gibraltar, for which the Governor retains ultimate responsibility in the areas of national security on the one hand, and ensuring the independence and probity of policing on the other. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, let me start at the end of the Chief Minister's speech, by assuring him that no one on this side of the House will be seeking to see any of the trappings of colonialism in any way enshrined in the new Bill that is before the House today. That does not mean that the Bill will enjoy unanimous support, or does not necessarily mean that the Bill will enjoy unanimous support in the House. The spirit of the agreement by the Opposition in the Constitutional Reform Committee for the creation of the new Police Authority, which we now see in this Bill and is envisaged in section 48 of the proposed new Constitution, was not for the control of the Police to move from the Governor to an Authority that is controlled by the Government and by the Governor, or the appointments of which are controlled by the Government and the Governor. A Police Authority, if it is to have any legitimacy in our community, must be truly independent and we do not believe that this status is necessarily achieved for this proposed Police Authority by this Bill. There needs to be, in our view, real consultation on a Bill like this, and that does not mean Governor, London, Chief Minister and Commissioner. That is not real, substantial consultation with the whole of the community, because this Bill and this Authority are not just for this Government and for this administration. They are for this community and, we would hope, this would be a Bill that would become an Ordinance that would endure for many years and not be one that is going to be subject to partisan exchanges and changes when there are partisan changes in the Government administration.

This Bill changes very substantially, and in many ways let me say very positively, the way that the Police is controlled in Gibraltar. But there has been, for example, absolutely no consultation with the Opposition or, I believe, at least there has been no evidence which has come to our attention or which the

Chief Minister has referred to, with the community at large in the preparation of the detail of this Bill. Indeed, many years ago, the Defence of Civil Rights Association, DOCRA, started the call for there to be an independent Police Authority so that complaints against the Police could be dealt with independently. Well, the Chief Minister might tell us this Bill does that, but the question is not just does this Bill does that but has he spoken to parties like that, that have been at the forefront of the call in our community for a body of that sort? A Bill like this needs very wide consultation and the consultation must be wider than the one the Chief Minister has alluded to in his address. So that the Police can see themselves, and the community can see the force as a truly independent one, acting always without fear or favour and not one controlled by an Authority, predominantly appointed by the Governor and/or Government on the basis of their names being put forward by them. This must not allow the Chief Minister to get up now and suggest that I, for one moment, am suggesting that the Police does not already act truly independently and without fear or favour. But when we are creating a new Bill we are creating a new regime and we have to see what it is that is going to happen under the new regime. Moreover, in my view, there is absolutely no urgency whatsoever for this Bill to be passed, and parts of it depend entirely on the new Constitution, if not for their operation at least because of the manner in which they are drafted, one particular section is the section that refers to the Specified Appointments Commission, which the Chief Minister has referred us to already. That body does not exist in law until such time as the new Constitution is passed, and yet we see reference to it in the Bill and a transitional provisions section at the end of the Bill, to enable the Bill to function without the passing of the new legislation. Indeed, one of the things that the new Constitution does, and I think it is something that enjoys support on both sides of the House, is that it allows much more time for the consideration by the Opposition and the public at large, of Bills that are published by the Government. This Bill seeks to create a body envisaged in the new Constitution but does so with a Bill published for a shorter period than the Bill would have to be

published under the new Constitution before it can come to this House. So why the rush?

I want to refer in particular to section 4 of the Bill as it is presently drafted. Section 4 is the section that deals with the composition of the Authority. The composition is achieved, as set out in 4(1)(a), (b) and (c), with different names coming from different parties and appointed by the Governor, always it is the Governor and the Chief Minister that produce the nominees on the list. That produces an Authority centrally appointed by the Governor and the Chief Minister. The period of appointment is three years. I think it should be five for individuals who are involved in quasi-judicial functions like the individuals in the Authority may find themselves, but so be it, they are appointed for three years. Yet, when we come to sub-section (4), the Chief Minister has taken us through the circumstances in which an individual may be removed from the Authority. Those, at (a) to (e), are really the standard circumstances in which an individual is removed from any body, quasi-judicial or otherwise, when he is no longer able to discharge his functions. They are of that nature. The other one, is he would become a Member of this House, fair enough, that serves us in keeping with the model of who can be a member of the Authority, but the Chief Minister did not refer us to sub-paragraph (g). Now, sub-paragraph (g) enables the Chief Minister and the Governor to call for a person to no longer be a member of the Authority. I think that is highly unusual and I think that sub-paragraph should not be there. If somebody has been appointed to the Authority, and if that person is not absent from three consecutive meetings of the Authority, he is not made a bankrupt or makes an arrangement with his creditors, he is not convicted of an offence other than a traffic offence, some recognition there that it is impossible to park in Gibraltar sometimes without committing an offence, is not incapacitated by physical or mental illness, is not otherwise unable or unfit to discharge the functions of a member of the Authority for a period of three months, and is not elected to this House, why would the Governor and the Chief Minister want to remove him from the Authority? I think that is a power that is open to abuse, and that is not to say that this Chief Minister will

abuse it. There is no need for that power to be there, in my view, and it is improper for it to be there. That is just one example of a sub-paragraph that I think, with wider consultation, could have been avoided. Perhaps, even with consultation, the Government would have insisted on that paragraph.

If the Chief Minister tells us in his reply to my address, that he intends to take the Committee Stage and Third Reading of this Bill in the House today, then I am afraid it is not going to enjoy cross party support. If he allows us more time to consider this Bill, if he allows for further consultation on the terms of this Bill, which need not be passed today, in any event it can be seen that the provision as to commencement is one that does not envisage that the Bill, when passed, immediately comes into effect, it is one that will come into effect on such days as may by notice be given in the Gazette, with different parts coming into effect on different days, then it may be possible for us to support the Bill in this Second Reading. It would be possible for us to support the Bill in this Second Reading, but if we carry on with this Bill today, if the Chief Minister forces it through as it is, then I am afraid it will not enjoy cross-party support, and I think it would be hugely detrimental to our community for a Bill such as this not to pass with unanimity in this House. It is not impossible for us to achieve unanimity in this House on this Bill, and I dare say that we would be short-changing our community if the Chief Minister were to insist on this Bill today without a further opportunity for consultation.

HON CHIEF MINISTER:

Well, I know that the Opposition Members mistrust and distrust everything that the Government does and starts from the premise that everything that the Government does is an abuse of power. All power is capable of being abused, there is a presumption in civilised societies, which are governed by the rule of law, there is a presumption that powers are not going to be abused by those to whom they are given, and if they are, the Courts have independence of function in order to call them to

heel. I have never heard it argued that powers should not be given at all in case they are abused. On that basis countries are ungovernable, including in relation to policing. It is a non-argument. It is an absolute, intellectually, politically speaking, a non-argument. Of course, governments have much more serious powers than the power of appointing a member of the Police Authority, who ultimately themselves do not control the Police, anybody hearing the hon Member could be mistaken for believing that the Chief Minister of the day, let us not speak about the previous one or this one, that some future Chief Minister of the day is going to wake up one morning and in order to reach out and presumably abuse chosen citizens, is going to appoint his crony to the Police Authority, for what purpose? The Police Authority has no operational control of the Police, there is no means of abusing police powers through the power of appointment. The hon Member's address appears to ignore the time that I have taken to explain to him what are the functions of the Police Authority, and what are not the functions of the Police Authority. He appears to ignore not just the provision in the Bill but, indeed, the statements that I have made today in this House about how we have strengthened the independence of the Commissioner and the sole control of the Commissioner in respect to all operational matters of the Police, and instead bases his argument, ignoring all of that, on the false premise and complete misconception that because the Governor and the Government appoint the Police Authority, then there is somehow a risk to the independence of the Police, when there is no linkage between the power of appointment of the Authority members and the independence of policing, because the Police is independent of both the Authority and the Governor and the Government in terms of its operational powers and controls. Therefore, somebody has got to appoint the Authority. That is an inescapable fact, not every citizen in this community starts from the premise from which the hon Member appears to start, that elected politicians in a democracy, who have to present themselves for re-election every four years, are going to abuse their powers of appointment in order to distort democracy. In the United Kingdom the Prime Minister, through his Cabinet Minister, appoints judges. I have never heard anybody say,

“well look, this means that the Prime Minister dispenses justice and interferes with justice”. In every country of the world, in every country in Europe, judges and police officers are appointed by elected politicians. I have never heard anybody say this is dreadful, this is just part of a very colonial mindset that I was alluding to earlier. Therefore, the link that he makes between the power of appointment and who does the appointing, and the seriousness of the potential issues of independence, are simply misconceived points, because our regime here in this Bill is much more diluted than the link between the Police and elected politicians almost everywhere in the democratic world. The suggestion that there could be any scope whatsoever for interference in policing matters through the powers of appointment of Authority members specified in this Bill, is not something that the Government think has any merit whatsoever. This Bill is a huge improvement in the present position where there is no accountability, no transparency, no answerability by anybody to anybody in Gibraltar. At the moment the appointment of the Commissioner of Police is in the gift of the Governor answerable only, I suppose, to people in the Foreign Office in London. That is the present position. It is true that recently, more enlightened Governors have chosen not to exercise that power in that way, and have chosen to be advised by a selection panel, voluntary on their part. I therefore think that this new system, apart from being much closer but much better in the sense that it keeps the political power much further from policing than the political power is in the United Kingdom, is a huge improvement which we should be welcoming and which we should be, frankly, grabbing as something that previous Gibraltar Governments thought the United Kingdom might never agree to give us. I have to say to the hon Member that I do not agree with the starting premise of his case for the business about the appointments by the Governor and the Government. There has to be a mechanism for appointment and this particular mechanism for appointment is as checked and balanced as it can be. Compared to the system for appointment in the United Kingdom, bearing in mind that in the United Kingdom I do not know if it is half or a third of the members of the Authority, are

elected politicians from the local Council, appointed by the Leader of the House and by the leader of his party and by the leader of that party. Here we are keeping politicians right out of the Police Authority. We could not have gone further than we have gone to keep politicians out of the new architecture for police control, even when in the model that we have copied, politicians are right throughout the system. That is the reality of the model that this Government brings to this House.

HON F R PICARDO:

When I come to this House I come with no case, I do not intend to cross with the hon Gentleman if he has to defend himself to me, that is the first point. He says that we could not have gone further to keep politicians out of the appointment process, but we just happen to think that we might be able to disagree if we had more time. It may be possible to do that but the point I wanted to make was this, that all we are asking for in terms of the composition of the Authority aspect, and what I was trying to convey, was that we wanted more time to consider these issues. Where I said there was a power open to abuse, I was not dealing with the process of appointment, I was dealing with the process of what one might like to call disappointment. Namely, the power to remove someone. The tenor of the Chief Minister's remarks seemed to be dealing with that, I only talked of abuse of power when I was dealing with removal. The Chief Minister has replied as if I was saying there was abuse of power in the appointments process. He may be replying to a press release issued by another political party but that is not what I have referred to in this House. The issue of appointments is one where all we are saying is that this could do with the benefit of more time and more work. The next issue, which is the issue of sub-paragraph (g), is the one where I am referring to the potential abuse of power.

HON CHIEF MINISTER:

What I have spoken to is not to statements made by anybody else which I have not seen or read, but to his opening point in his own address, where he flagged up, this regime transfers control from the Governor to an Authority that is controlled by the Governor and the Government. Then he said, well at least in relation to appointments it is control. Those were the opening lines of his address. I am replying to him on the basis of my notes on what he has said. What the hon Member is not free to do is to just constantly bicker from a sedentary position, as if he simply could not stomach the fact that proceedings in this House give the Government the first word, the Opposition the second word and the Government the third word. He cannot think that he is going to have the last word all the time. I sit down in good faith to give way to him, thinking that he has got some substantive point to make on the subject matters under debate, and he only uses the opportunity to bicker. Frankly, if that is what he is going to use the opportunities for, then I will not give them to him. The hon Member who goes to the trouble of photocopying Erskine May to give it to the Speaker during the luncheon adjournment to ensure that the parliamentary procedures are strictly adhered to, should read the whole of Erskine May, not just the bits that he likes.

I do not know what the hon Member means by the need for real and substantial consultation. I mean, I do not know to what extent any of what I said in the Constitutional Committee has been passed on to him. I just leave it at that, I suppose he is technically free to take the view that he is not part of that and therefore he has no notice of it, but the idea that the Government delays this legislation to consult with DOCRA, is not one that the Government agree with. I am glad though that the hon Member agrees with the Government that this Bill introduces and changes very positively the way the Police is controlled in Gibraltar. His complaint appears to have been that there is insufficient consultation to improve something which he thinks is already very positive. If we can agree that that is an accurate description of his position, then we can just leave it at

that. The community does not need more consultation to be reassured about the independence of policing. He asked for more consultation so that the community can, quote, "see the force is independent". The independence of the force is guaranteed in clear, unambiguous English on the face of the order that the hon Member agrees. Further consultation is not going to add to the independence of the force, the independence of the force is not capable of being further enhanced than it is enhanced by this Bill. I do not think that there is any rush whatsoever. This is a piece of legislation which does nothing but things that are hugely positive, compared to what the situation has been for the last several decades. It introduces a process of complaints which is Rolls Royce compared to the system that the community has been content to live with for the last 35 years, and it puts in the hands of a transparent, accountable, statutory authority, powers which were previously exercised by a completely unaccountable authority, namely, one man called the Governor. The hon Member might, if he wants to, take the view that it does not go far enough in improving the situation but that is not, in my view, a criticism of what there is in the Bill. He could say, if he wants to, with more consultation we can take even more powers away from the Governor and give even more powers to the Authority or to the Government. Yes, absolutely yes, that is what he could mean because this is what the Bill does. It takes powers that used to be in effect vested in one unaccountable, colonial authority and puts it, leaves the ones that are important, I think are important and should stay with him, with the Governor and puts the rest of it in an authority constructed around the same statutory framework and same role as is done in the United Kingdom. The only thing that is different here from what it is in the United Kingdom, is that in the United Kingdom many of the powers that we have left in this Bill with the Governor, are exercised by me, that is by the Home Secretary or by one of my colleagues. I suppose it would be the Home Secretary in the United Kingdom. That is the only respect in which this Bill differs substantially from the equivalent provisions in the United Kingdom. In other words, in the direction of greater independence, in the direction of greater lack of involvement by

politicians, because the powers that are left to the Governor here are left to the Home Secretary in the United Kingdom. A politician, an elected politician, and therefore whilst I accept that the hon Member is free to hold the view that he would have preferred a longer period of time to consult, the Government believe that this is a very good piece of legislation, there has been consultation with the Police, there has been consultation with the people who have to give up the power that we are taking away from them in this Bill, and it is not a question of there being any rush. This is not a situation in which the Government are free to bring to this House whatever legislation they please. This is an area of legislation where under the current Constitution, responsibility vests with the Governor. The idea that the Government, at least we would not do it and they never did, I suppose for good reason, there is a huge and serious risk that it might never receive Governor's assent and if it did, it would be disallowed by UK Ministers. The idea that any Government of Gibraltar could bring to this House, without the agreement of the UK Government, legislation that removes and transfers policing powers from the Governor to any other authority, is frankly unrealistic. Since this is not an area where the Government are free to do entirely as they please, the idea that we go out to consultation to ask DOCRA how they think that Gibraltar should be policed and then come here to bring legislation regardless of whether it is constitutionally possible or not, is not a realistic approach. It also has to be said that it is not anything that anybody has tried before. We think that this is the piece of legislation which does as much in the area of policing as the new constitutional relationship with the United Kingdom permits for. It is not a question of rushing, it is a question that this legislation needs to be in place before the new Constitution is in place. The United Kingdom Government, in agreeing to relinquish the exclusive Governor's control over the Police, needed to be sure in favour of what it was relinquishing the power. It is very logical, I would have adopted exactly the same position, if I was them. The idea that the United Kingdom Government was going to agree to relinquish constitutional control over the police through the Governor, without leaving the House of Assembly free to decide in whose favour subsequent

this is done, is not realistic either. Which is why I told hon Members in the Constitutional Reform Committee that the clause about policing in the new Constitution was only available to us on the basis that the Gibraltar Government would agree beforehand with the British Government, what would go into any new police regime. That is what this Bill is. It is not a question of rushing simply to deny the hon Member a few more days or a few more weeks to consider whether this is capable of being improved further or not, it is a question of necessary, in the circumstances in which we find ourselves, chronology. That is the reality of the matter.

Turning now to the point in paragraph 4(g), the power of disappointment. I just do not agree with the hon Member's view. I suppose that since he is particularly keen for me to reply on this point, he will listen whilst I reply. I cannot imagine circumstances, I really cannot imagine circumstances in which the elected Government of Gibraltar and the Governor of Gibraltar would both agree that it is inappropriate for some reason, perhaps not a reason envisaged in the list, that someone should continue to sit in the Authority and that that should constitute an abuse of power. Look, I suppose it is possible for an elected Chief Minister and a Governor, one representing the British Government and one representing the people of Gibraltar, to conspire with each other to remove somebody who is doing an excellent job. All powers can be abused on that basis. On that basis, the Governor could have removed Civil Servants any day of the week that he wanted to, simply for making decisions of which he disapproves. I go back to the point that there is a presumption, which is inevitable in a system such as operates in all democracies, that there is a presumption that powers are going to be used for a lawful purpose. But thankfully, for those of us all who live in a system where the rule of law prevails, if a statutory power holder exercises a power for an unlawful purpose, we have an independent judiciary capable of preventing it from so happening. That is true of every exercise of executive power in every area of government, and I do not see that a power is wrong simply because it is capable of abuse. That is true of all

powers. If it were true, it will be true of all powers. Therefore, this is not a question of forcing through the legislation, if the hon Members want to vote against a Bill which they think is very positive, simply because they have a theoretical point about lack of consultation. The concept of consultation on legislation in Gibraltar is quite recent, it dates to about 16th May 1996. Before 16th May 1996, the concept of consultation with the public on the provisions of any piece of legislation was as alien as Martians. I do not know whether that makes all the legislation that the previous Government passed bad legislation for lack of consultation. By their standards I suppose it must do. Obviously the hon Member thinks that the only Member of this House subject to the rules of it is me. By that logic, all the legislation that the hon Members passed before they discovered this commitment to independence and consultation and all of these things, must have been very bad indeed. This is the Government that has introduced the principle of the widest possible consultation in legislation. On this particular occasion, given the technicality of the subject matter, given the fact that the models being chosen are very much the models in the United Kingdom and the legislative provisions in the United Kingdom, with necessary variants to reflect the local circumstances, given the need that it has to be agreed with the United Kingdom because of the Constitutional position, and given the need for chronology in relation to the new Constitution, it has not been possible for us to extend the consultation any more widely in either the sense of time or people consulted than it has been possible to. That does not in any way affect the quality of the legislation. I doubt very much if this legislation could be improved by consultation with DOCRA. What I can tell the hon Member is that since this Bill was published, which was admittedly not a huge amount of time ago, no one has suggested to us that there are things in the Bill which would benefit from further consultation. If the hon Member had really wanted to ask the Government to delay the consideration of this Bill in this House, it might have been more appropriate for him to do it before he got to his feet, on the day in question, and he has had since 3rd July to put that request to the Government and has chosen not to do it. He must therefore have his reasons to have

wanted to do it in that way. If the hon Members will not agree to take this legislation through its Committee and Third Reading stages today, which is entirely proper and reasonable for them, we shall come back tomorrow and then he has overnight to think further about it and to seek the views of DOCRA and bring them all. I suppose he has taken the views of DOCRA in the last ten days, I assume, since he appears to be so concerned to consult them. We all look forward to learning what those might be tomorrow when we take the Committee Stage of the Bill.

Question put. The House voted.

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

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 CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later on in this meeting.

HON J J BOSSANO:

Mr Speaker, if the Government wish to take all stages today we will not prevent them from doing so because overnight is not the kind of extra period to consider, not just what the Bill says but all the explanations that the Chief Minister has given us. If, in fact, the situation is that the Parliament of Gibraltar, as it is going to be under the new Constitution, does not have the right to amend legislation because it has been pre-agreed with London, then clearly it does not matter whether we have tomorrow or the next 12 months to consider what is in there. Certainly, if the Chief Minister says he has followed everything there is in the UK, well as far as I am concerned, I will want to see what there is in the UK and not just say that because he has said it, it must be the Bible. If the Government want to take all the stages today, bringing the House back tomorrow just for the sake of being awkward, is not our style of doing things.

HON CHIEF MINISTER:

It may not be the hon Member's style but I thought I was just reacting to what his colleague had said five minutes before him. He particularly said that if the Chief Minister intended to take the Committee Stage and Third Reading later today, that would not enjoy unanimous support. As it can only happen with unanimous support, what the Member was saying was that he would not allow it to happen. If the Leader of the Opposition is now overruling his colleague, then that is a different matter but I was only responding to the position of the Opposition as explained by the Opposition Spokesman in this Bill, which has been the Hon Member opposite. For the reasons that I have explained to the hon Members already, this legislation should be taken through the House during this meeting and that means today or tomorrow. If hon Members have any substantive points in relation to the content of the Bill, not to some allegation of insufficient consultation, but if the hon Members wish to point to the Government any provision of the Bill which they would wish the Government to reconsider, he has had his address on the

Second Reading, he has not really identified any except section 4(g), only one, this business about whether a member of the Committee could be disappointed by the Governor and the Chief Minister, is the only point that he has made in relation to the content, the substance of the Bill which is what will become law. The suggestion that there has been insufficient consultation does not become law. What becomes law is the content of the Bill. If the hon Members want to address the Government on any content of the Bill, and they have only done so in relation to 4(g), then overnight is more than long enough for the Government to consider whether the Government are persuaded or not persuaded by the views of Opposition Members. But given that the hon Member has said that it is already very positive, and in his address on the Second Reading of this Bill on an issue which he says, and I agree with him, is so important, he has only found one point in which he appears to be in disagreement with the content of the Bill, then presumably, what they are signalling is that the hon Members are content with the contents of the Bill. As the hon Members are content with the contents of the Bill, I see no virtue in delaying its legislation.

MR SPEAKER:

For the avoidance of doubt, may I put the question again. Do all Members agree that the Committee Stage and Third Reading of the Police Bill be taken today?

Question put.

Agreed to.

SECOND READING

THE TOBACCO (ADVERTISING AND SPONSORSHIP) ORDINANCE 2006

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Council Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, be read a second time. Mr Speaker, this Bill transposes Directive 2003/33/EC, the policy aim of which is the harmonisation of national legislation across the EU on tobacco advertising, the printed media, radio broadcasting and the internet, as well as sponsorship of events with cross border effects. The Directive is driven by a wish to harmonise differences between Member States on the advertising of tobacco products and sponsorship. Such differences increase barriers to the free movement between Member States of the product, all services which serve as support for advertising and sponsorship. The Bill limits advertising of tobacco in the press, publication intended exclusively for professionals in the tobacco trade, and to publications printed and published in third countries, where those publications are not principally intended for the community market. Any other form of printed advertising is made an offence. As regards radio advertising and sponsorship, the Bill provides that all forms of radio advertising for tobacco products is made an offence. It is also an offence for a radio programme to be sponsored by an undertaking whose principal activity is the manufacture or sale of tobacco products. The sponsorship of events or activities having cross border effect by any tobacco undertaking is made an offence. Any free distribution of tobacco products in the context of sponsorship events, having the purpose of the direct or indirect effect of promoting such

products is made an offence. Enforcement provisions, which is clause 8, follow very closely those in the Unfair Terms in Consumer Contracts Ordinance. In essence, the Minister must designate by notice in the Gazette, persons or groups of persons who apply to him for designation and who, in his opinion, have a legitimate interest in the suppression of advertising, sponsorship or other matters contrary to this Ordinance. Those persons are then authorised to take action to stop them, infractions including where necessary, proceedings of an injunction against any person responsible. I wish to give notice that I will be making amendments in the numbering in clause 8 (section 8) where subsections “(6)” and “(7)” should read “(5)” and “(6)” respectively. These are obviously typographical errors. Clause 7 of the Bill is the only provision concerned with the matter of Government policy and not as a result of directive obligations. The clause makes it an offence for any person to place any form of advertising, in any public place, or in any place visible from any public place, or any club or commercial premises whatsoever, in order to advertise tobacco products. I wrote to Mr Speaker on 30th June with some amendments to the definition of “advertising” in an effort to clarify certain circumstances under which the prohibition of advertising and sponsorship of tobacco applies. I wish to withdraw this letter and instead I will be presenting an amendment to the Bill at Committee Stage, giving the Minister powers to make regulations making provisions for such exemptions from the provisions of this Ordinance, as he may deem appropriate. Regulations made under this section may make provision for such offences as the Minister may deem appropriate. This Ordinance will come into effect on a date to be appointed by me in my capacity as Minister with responsibility for Trade, by notice in the Gazette. This will allow me to take account of the needs of the industry when setting the date when the new laws come into effect. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

The House recessed at 4.30 p.m.

The House resumed at 4.40 p.m.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2006;
2. The Police Bill 2006;
3. The Tobacco (Advertising and Sponsorship) Bill 2006.

THE INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS)(AMENDMENT) BILL 2006

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

THE POLICE BILL 2006

Clause 1

Question put. The House voted.

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

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

Clause 1 – stood part of the Bill.

Clause 2

HON CHIEF MINISTER:

In clause 2, in the last definition, the last defined term, “Senior Appointments Commission” it should read “Specified Appointments Commission means the specified appointments commission if any”. Substitute the two references to the word “Senior” by references to the word “Specified”.

Question put. The House voted.

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

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

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

Clause 3

Question put. The House voted.

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

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

Clause 3 – stood part of the Bill.

Clause 4

HON CHIEF MINISTER:

Here again, I have given notice of this, in clause 4(1)(a) again delete “Senior” and substitute by “Specified” in front of the words “Appointments Commission”.

Question put. The House voted.

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

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

Clause 4 – as amended, stood part of the Bill.

Clauses 5 to 14

Question put. The House voted.

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

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

Clauses 5 to 14 – stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

In clause 15, I have given notice of an amendment to add a new sub-clause as sub-clause (2), so the existing section 15 in the Bill would become sub-section (1) and to add a new sub-section (2) in the terms of which I have given notice by letter, to read:

“(2) The Chief Minister will keep the Governor informed of any exercise by him of a power under this section and shall provide

to the Governor a copy of any report produced as a consequence thereof”.

Which hon Members will see is the equivalent provision to the provision in section 13(2). So where the Governor exercises his powers he keeps the Government informed and provides a copy, and now we are adding a provision which is in a sense reciprocal to that one. When the Government exercises a power they keep the Governor informed and provide a copy.

Question put. The House voted.

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

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

Clause 15 – as amended, stood part of the Bill.

Clauses 16 to 82

Question put. The House voted.

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

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

Clauses 16 to 82 – stood part of the Bill.

Clause 83

HON CHIEF MINISTER:

In clause 83, again, there is a reference to ‘Senior Appointments Commission’ and the word ‘Senior’ should be replaced by the word ‘Specified’.

Question put. The House voted.

For the Ayes: The Hon C Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana

The Hon Mrs Y Del Agua
The Hon J J Holliday
The Hon Dr B A Linares
The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon E G Montado

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

Clause 83 – as amended, stood part of the Bill.

The Long Title

Question put. The House voted.

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

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 Long Title – stood part of the Bill.

THE TOBACCO (ADVERTISING AND SPONSORSHIP) BILL 2006

Clauses 1 to 7 – were agreed to and stood part of the Bill.

Clause 8

HON J J HOLLIDAY:

As I indicated in the Second Reading of the Bill, there is a typographical error in what is now sub-section (6) which should read sub-section (5); and sub-section (7) which should read sub-section (6).

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

Clauses 9 to 10 – were agreed to and stood part of the Bill.

New Clause 11

HON J J HOLLIDAY:

As I also indicated in the Second Reading, there will be a new section 11 which obviously will be inserted after section 10, to read as follows:-

“Regulations.

11(1) Subject to the provisions of the Directive, the Minister may make regulations providing for such exemptions from the provisions of this Ordinance as he may deem appropriate.

(2) Regulations made under this section may make provision for such offences as the Minister may deem appropriate.”

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

Schedule 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 Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2006; the Police Bill 2006, with amendments; and the Tobacco (Advertising and Sponsorship) Bill 2006, with amendments, have been considered in Committee and I now move that they be read a third time and passed.

Question put.

The Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2006 and the Tobacco (Advertising and Sponsorship) Bill 2006, were agreed to and read a third time and passed.

The Police Bill 2006 –

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 E G Montado

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 4.55 p.m. on Thursday 13th July 2006.

**REPORT OF THE PROCEEDINGS OF THE HOUSE OF
ASSEMBLY**

The Eleventh Meeting of the First Session of the Tenth House of Assembly held in the House of Assembly Chamber on Friday 27th October 2006 at 9.35 a.m.

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

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 12th June 2006, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

The Hon the Chief Minister laid on the Table the Draft Despatch and Draft Constitution Order 2006.

Ordered to lie.

The Hon the Minister for Health laid on the Table the Report and Audited Accounts of the Gibraltar Health Authority for the year ended 31st March 2004.

Ordered to lie.

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

1. The Accounts of the Government of Gibraltar for the year ended 31st March 2005 together with the Report of the Principal Auditor thereon;
2. The Improvement and Development Fund Reallocations – Statement No. 2 of 2005/2006;
3. The Supplemental Agreement to the Revolving and Term Facilities Agreement between the Government of Gibraltar and NatWest Offshore Limited;
4. The Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2004.

Ordered to lie.

ANSWERS TO QUESTIONS

The House recessed at 12.05 p.m.

The House resumed at 12.11 p.m.

Answers to Questions continued.

The House recessed at 1.20 p.m.

The House resumed at 2.37 p.m.

Answers to Questions continued.

The House recessed at 5.37 p.m.

The House resumed at 6.00 p.m.

Answers to Questions continued.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Monday 30th October 2006, at 10.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 9.22 p.m. on Friday 27th October 2006.

MONDAY 30TH OCTOBER 2006

The House resumed at 10.35 a.m.

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 E G Montado CBE - Financial and Development Secretary (Ag)

OPPOSITION:

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

ABSENT:

The Hon F R Picardo
The Hon Miss M I Montegriffo

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk of the House of Assembly

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Government motion.

Question put.

Agreed to.

HON CHIEF MINISTER:

Mr Speaker, I beg to move the Motion standing in my name and which reads:

“THIS HOUSE

1. RECALLS its Motion dated 7th July 1999 constituting a Select Committee of the House to review all aspects of the Gibraltar Constitution Order 1969 and to report back to the House with its view on any desirable reform thereof.
2. RECALLS its Motion dated 27th February 2002 approving and adopting the report of the Select Committee.
3. NOTES the outcome of the negotiations on the text of a draft new Constitution, conducted between November 2004 and March 2006 by the Gibraltar Delegation (consisting of the Chief Minister, the Hon P R Caruana, the Minister for Education, Training, Civic and Consumer Affairs, the Hon Dr B A Linares, the Leader of the Opposition, the Hon J J Bossano, the Hon Dr J J Garcia, the Chief Secretary, Mr E G Montado, Mr K Azopardi, Mr D Feetham, the Hon A J Canepa and the late the Hon P J Isola) and Her Majesty’s Government in the United Kingdom, namely the text of the draft Constitution tabled in the House by the Hon the Chief Minister.
4. NOTES the statements by the British Government, made in Gibraltar, in the House of Commons and in the United Nations, that this new draft Constitution provides for a modern and mature relationship between the United Kingdom and Gibraltar, which description would not in Her Majesty’s Government’s view apply to any relationship based on colonialism.
5. NOTES the recital, in Chapter One of the draft new Constitution, of the right to self determination of the people of Gibraltar in terms that substantially reflects the language of the International Covenant on Civil and Political Rights.

6. REJECTS the view that the Treaty of Utrecht constrains the right of self determination of the people of Gibraltar, and NOTES the fact that in the proposed Despatch that would accompany the new Constitution, if it is approved by the people of Gibraltar, the British Government takes note that Gibraltar does not share the view that such constraint exists and that our acceptance of the new Constitution would be on that basis.
7. NOTES the statements made by the British Government publicly, in Gibraltar, in the House of Commons and in the United Nations, that the Referendum (being the Referendum to which this Motion relates) in which the draft new Constitution is put to the people of Gibraltar for their decision, will be an exercise of the right of self determination by the people of Gibraltar.
8. NOTES that the draft new Constitution will contain, in the same terms and manner as in the current Constitution, the historical sovereignty preamble, representing the solemn assurance by Her Majesty's Government in the United Kingdom to the people of Gibraltar on the question of Sovereignty.
9. NOTES that under the terms of the draft new Constitution there is no diminution in British Sovereignty of Gibraltar, and that Gibraltar will remain in a close Constitutional relationship with the United Kingdom, which provides for the maximum degree of self government which is compatible with British Sovereignty of Gibraltar and with the fact that the United Kingdom will remain responsible for Gibraltar's external affairs.
10. RATIFIES, APPROVES AND JOINS in the holding of a Referendum in which the people of Gibraltar, by a formal and deliberate act in a free and democratic manner, and as an exercise of their right to self determination, will decide whether they approve, and therefore accept, or disapprove, and therefore reject, the proposed new

Constitution for Gibraltar and the status that it represents.

11. APPROVES the question to be posed in the Referendum, namely:-

"In exercise of your right to self-determination, do you approve and accept the proposed new Constitution for Gibraltar?"

YES

NO

12. RATIFIES AND APPROVES Thursday the 30th November 2006 as the date for voting in the Referendum.
13. RATIFIES, APPROVES AND ADOPTS the designation of Mr Dennis Reyes, as Referendum Administrator.
14. RATIFIES AND APPROVES of the appointment of a committee to administer the Referendum independently of political parties, consisting of past and present senior civil servants comprising:-
 1. Mr Ernest Montado, Chief Secretary, as Referendum Co-ordinator;
 2. Mr Melvyn Farrell, Clerk of the House
 3. Mr Frank Carreras
 4. Mr John Desoiza
 5. Mr Brian Catania
 6. Mr Robert Santos
15. RATIFIES, APPROVES AND ADOPTS, for use in this Referendum (save where inapplicable or impractical) the Referendum Rules 2002, ratified, adopted and approved by this House by Resolution dated 14th October 2002.

16. RATIFIES AND APPROVES that the following categories of persons be eligible to vote in the Referendum:
1. Resident Gibraltarians registered in the Register of Gibraltarians under the Gibraltarian Status Ordinance;
 2. Resident British Overseas Territories Citizens by virtue of a connection with Gibraltar;
 3. British Nationals who have been ordinarily resident in Gibraltar for not less than ten years immediately preceding Referendum Day.
17. CALLS UPON AND AUTHORISES the Chief Minister, after consultation with the Leader of the Opposition, to invite persons and entities to act as observers of the Referendum.
18. DECLARES the importance of this question to Gibraltar and urges all entitled voters to cast a vote in the Referendum.”

Mr Speaker, perhaps I could start, before I start speaking to the detail of the motion itself, just to observe that already there are some people in Gibraltar posing about this Referendum the same question that the Spanish Government posed about the last one we held, with the approval of this House in November 2002. Namely, the Referendum is illegal. It is illegal, it is said, because there is not a Referendum Act, just as there was in the United Kingdom on the Referendum to approve or disapprove the entry or exit of the United Kingdom from the European Union back in 1975. Such comments are as misconceived on the lips of some Gibraltarians today in respect of this Referendum, as it was misconceived on the lips of the Spanish Government at the end of 2002 when we did our Joint Sovereignty Referendum, and they are both wrong for the same reason. Namely, that this Referendum is a political act not a legal act. There is a need for

a Referendum to be conducted under a statutory framework, as was the case in the European Union Referendum Act of 1975, when the result of the Referendum is to have a legal binding effect on the Government. This is not a legal binding effect on this or any other Government. This is a political act by the people of Gibraltar in that they are deciding, politically not legally. Legally what emerges is a United Kingdom Order in Council for which the United Kingdom does not require a legally binding Act of Gibraltar. The Constitution emerges as a legislative Act of the United Kingdom. This Referendum, therefore, is a political act, as was the 2002 one, not a legally binding act and therefore the suggestion of this Referendum that it requires a legislative framework as opposed to a political ratification in this House, which is not actually strictly necessary either, but since it is what we did in 2002 it seemed appropriate to us to do it again now, is wrong for the same reasons to suggest that either of these Referenda might need a statutory framework, and that is wrong for the reasons that I have just expressed. The House will be aware, therefore I will not need to remind it, of the contents of its two motions referred to in paragraph 1 and paragraph 2, and is aware of the upshot of those motions and of the work of the Constitutional Select Committee of this House. It resulted in a text that was agreed and approved in this House, that was followed by a process of negotiation between a Gibraltar delegation and the United Kingdom Government, after the Gibraltar Government had formally tabled the proposals to the British Government, I seem to recall that might have been around December 2003 but that is from memory, and what has emerged is the results of that negotiation. That result is reflected in the document that I tabled in the House at the last sitting. The House will recall that the Government delayed the formal submission to the British Government of Gibraltar's Constitutional proposal, because in the Government's judgement it was the intention of the then regime in the Foreign Office and in the British Government, pursuant to their Joint Sovereignty initiative, to hijack our Constitutional proposal and mould them into an instrument which they could use to advance their joint sovereignty

aspirations. Not that our proposals lent itself to that process, but still, that is to our knowledge what was intended.

Mr Speaker, paragraph 4 refers to the statements made by the British Government, which are well known. Paragraphs 4 and 5, if I could just refer the hon Members to the statements, well rather than refer repeatedly to them I will read them altogether. The statements referred to in paragraph 4 and in paragraph 7 of the motion, where the motion says that the British Government has declared that this Constitution provides for a modern and mature relationship between Gibraltar and the United Kingdom, which description would not, in Her Majesty's Government's view, apply to any relationship based on colonialism. Then in paragraph 7 notes the statements made by the British Government publicly in Gibraltar, in the House of Commons and in the United Nations that the Referendum, being the Referendum to which this motion relates, in which the draft new Constitution is put to the people of Gibraltar for their decision, will be an exercise of the right to self-determination. Before I refer to those texts I would like to give notice that I will be moving a small amendment to paragraph 3 and a small amendment also to paragraph 7. In the case of paragraph 7, to insert the dates of the statements to which it refers and in the case of paragraph 3, to add the words "and welcomes". I had not drafted this Constitution in terms of expressing any view but given that the Government propose to accept one of the amendments which will subsequently be moved, where a welcome had been added, we think it is appropriate to add it there too. In a joint statement issued by the Government of Gibraltar and the Foreign Secretary following publication of the text, the joint statement was issued on 27th March 2006, the Foreign Secretary joined me in saying, "the new Constitution provides for a modern relationship between Gibraltar and the United Kingdom. It does not in any way diminish British sovereignty of and support for Gibraltar and, indeed, the Sovereignty Preamble in the 1969 Constitution will be replicated in the new Constitution Order. The UK will retain international responsibility for Gibraltar including its external relations and defence, and as the Member responsible for Gibraltar in the

European Union. Thus the close Constitutional links with the United Kingdom and enduring British sovereignty are, in accordance with the wishes of the people of Gibraltar, enshrined in the new Constitution. The new Constitution confirms that the people of Gibraltar have the right of self-determination and that this must be promoted in conformity with the provisions of the Charter of the United Nations and any other applicable International Treaties. The UK will take note in the Despatch to the Constitution that it supports this right but holds the view that it is constrained by the Treaty of Utrecht and, therefore, that independence would only be an option with Spain's consent. The Despatch will also note that Gibraltar does not share the view that this constraint exists and that Gibraltar's acceptance of this Constitution would be on that basis. However, this is the first time that Gibraltar's right to self-determination so constrained is reflected in the Constitution." In answer to a Parliamentary Question, the then Minister of State at the Foreign Office, Geoff Hoon, said on 3rd July 2006 in answer to the Question to ask the Secretary of State for Foreign and Commonwealth Affairs, whether Her Majesty's Government will consider the forthcoming Referendum in Gibraltar to approve the new Constitution to be an act of self-determination by the people of Gibraltar, Geoff Hoon answered, "as Jack Straw set out in his written Ministerial statement of 27th March, the new Constitution provides for a modern and mature relationship between the United Kingdom and Gibraltar. I do not think that this description would apply to any relationship based on colonialism. The Constitution confirms the right of self-determination of the Gibraltarian people. The realisation of that right must be promoted and respected in conformity with the provisions of the United Nations Charter and any other applicable International Treaties. Gibraltar's right of self-determination is not constrained by the Treaty of Utrecht, except insofar as Article X gives Spain the right of refusal should Britain ever renounce sovereignty. Thus independence would only be an option with Spanish consent. Her Majesty's Government recognises that the act of deciding on their acceptance of the new Constitution in the forthcoming Referendum, will be an exercise of the right of self-determination by the Gibraltarian

people in that context. The new Constitution does not in any way diminish British sovereignty and gives Gibraltar much greater control over its internal affairs and that degree of self-government compatible with British sovereignty and the United Kingdom's continuing international responsibilities. If the new Constitution is agreed, the United Kingdom will retain its full international responsibility for Gibraltar, including for Gibraltar's external relations and defence, and as the Member State responsible for Gibraltar in the EU, the UK's long-standing commitment that the UK will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their wishes, will be unchanged." So, that is the public statement in Gibraltar and the public statement in the House of Commons. Recently at the United Nations on 6th October, the British Government representative said, the Leader of the Opposition will recall that they were not allowed to speak on that day because they had not put themselves down on the order paper or some such technicality, and indeed, it was said on the following day when neither he or us were present, "Mr Chairman, let me say that the British Government enjoys very cordial relations with Spain, our friend in the EU and NATO and the UN. I would like to respond to the remarks made yesterday by the distinguished representative of Spain about Gibraltar. I will try to be brief. I would first begin by answering the invitation from the Spanish Ambassador to comment on the new draft Gibraltar Constitution. It is my pleasure to inform the Committee that following an extended period of negotiation between Her Britannic Majesty's Government and a delegation representing Gibraltar, led by the Chief Minister of Gibraltar, we have agreed a new draft Constitution for Gibraltar. This provides for a modern and mature relationship between the United Kingdom and Gibraltar. Her Majesty's Government does not think that this description would apply to any relationship based on colonialism. Yesterday, you heard the Chief Minister of Gibraltar state his view that the UK/Gibraltar relationship is non-colonial in nature. This new Constitution will shortly be put to the people of Gibraltar in a Referendum to be organised by the Government of Gibraltar. Her Majesty's Government recognises that the

Referendum will be an exercise of the right of self-determination by the people of Gibraltar, as set out to the United Kingdom Parliament on 4th July 2006." Yesterday, in response to the tabling of my notice of motion, the Minister for Europe, Geoff Hoon, has repeated his earlier statements. He has said, I think this was issued on Friday, "in the light of the draft motion tabled recently by the Government of Gibraltar in the House of Assembly, announcing that it will organise a Referendum on the new Constitution to be held on 30th November 2006, Her Majesty's Government wishes to re-state that it recognises that this Referendum will be an exercise of the right of self-determination by the Gibraltarian people, as set out in detail in the UK Parliament on 4th July 2006. Her Majesty's Government therefore supports the right of self-determination of the people of Gibraltar, promoted and respected in conformity with the provisions of the UN Charter, except insofar only, as in the view of Her Majesty's Government, which it has expressed in Parliament and otherwise publicly on many occasions, Article X of the Treaty of Utrecht gives Spain the right of refusal should Britain ever renounce sovereignty, thus independence would only be an option with Spanish consent. The new Constitution does not in any way diminish British sovereignty and gives Gibraltar much greater control over its internal affairs, and that degree of self-government compatible with British sovereignty and the United Kingdom's continuing international responsibilities." So following the conclusion of the Constitutional negotiations themselves, we had asked the British Government, myself privately and the Leader of the Opposition a bit more publicly, that Gibraltar expected the British Government to declare publicly its position that this Referendum would be an act of self-determination, and what is more, we said to them that they must be willing to say that and shout it from the rooftops everywhere and not just mumble it with clenched teeth in Gibraltar in the hope that nobody else would hear it. They have done so publicly in Gibraltar, they have done so publicly in the House of Commons and they have done so publicly before the Fourth Committee of the United Nations. Therefore, in the Government's judgement, the British Government has

responded positively and fully to the requests that had been put to it in those particular regards.

Of course, as the Hon Mr Bossano and the Hon Mr Garcia, who were part of the Gibraltar delegation will recall, it was made clear to the British Government at the time that we were negotiating all of this language, that Gibraltar as a whole, speaking both for the Government and the Opposition and most of public opinion, simply does not accept the British view of Utrecht. We may have to live with, may have to live is a rather exaggerated way of putting it given that there is no call and no agenda in Gibraltar for independence, indeed we called for the opposite which is the maintenance of British sovereignty, which of course is totally incompatible with independence. In any case, theoretically, regardless of what might be the practical application of our position, Gibraltar simply cannot and does not accept that its right to self-determination is constrained as alleged by the British Government. We were able, hon Members will recall, to negotiate that a statement to the effect that the United Kingdom noted that this was the case and that we would accept the Constitution on that basis, was written into the Despatch to the Constitution, the very last line of which, which follows the British Government statement on the constraining effect of the Treaty of Utrecht as to independence only, the next sentence of the Despatch which is also the last sentence of the Despatch will read, "Her Majesty's Government takes note that Gibraltar does not share the view that this constraint exists and that their acceptance of this Constitution is on that basis". Nevertheless, I think it is appropriate that we should reflect that aspect of the outcome in this motion, by simply stating in paragraph 6 the fact that Gibraltar rejects the view that the Treaty of Utrecht constrains the right of self-determination of the people of Gibraltar, and notes the fact that in the proposed Despatch that would accompany the new Constitution, if it is approved by the people of Gibraltar, the British Government takes note that Gibraltar does not share the view that such constraint exists and that our acceptance of the new Constitution would be on that basis. I have already spoken to paragraph 7, in which the British Government said that the

Referendum will be an exercise by us of our right to self-determination. Paragraph 8 of the motion notes the fact that the draft new Constitution will contain in the same terms and manner as in the current Constitution, the historical sovereignty preamble representing the solemn assurance by Her Majesty's Government of the United Kingdom to the people of Gibraltar on the question of sovereignty. Hon Members will be aware that in the preambular paragraphs part of the Order in Council, which is where the preamble appears under the current constitutional arrangement, the very same words are repeated in what will be the Order in Council in respect of this new Constitution and which reads exactly as the current Preamble relating to sovereignty, "Whereas Gibraltar is part of Her Majesty's Dominions and Her Majesty's Government has given assurances to the people of Gibraltar that Gibraltar will remain part of Her Majesty's Dominions unless and until an Act of Parliament otherwise provides, and furthermore, that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes."

I have spoken already to the fact, well, paragraph 9 of the motion simply notes that under the new Constitution there is no diminution of British sovereignty, that Gibraltar will remain in a close constitutional relationship with the United Kingdom, and that it provides for the maximum degree of self-government which is compatible with British sovereignty of Gibraltar and the fact that the United Kingdom will remain responsible for Gibraltar's external affairs. Paragraph 10 is language taken from the equivalent paragraph in the 2002 Referendum, I will not read it again. Paragraph 11 is the question paragraph which deals with simply saying, "in exercise of your right to self-determination do you approve and accept the proposed new Constitution for Gibraltar?". Paragraph 12 simply nominates the date and paragraphs 13 and 14 approves the individuals who will administer the Referendum. Paragraph 15, rather than just pass new administrative rules for the conduct of the Referendum, simply extends the ones that were passed in 2002

for the same purpose *mutatis mutandis*, or save where inapplicable or impractical, in layman's language. Then paragraph 16 identifies, ratifies and approves the categories of persons who should be eligible to vote in the Referendum and they are the same categories of persons as voted on the very important question in November 2002, as to whether we approved or disapproved of the principle of joint sovereignty. They are, resident Gibraltarians registered in the Register of Gibraltarians under the Gibraltarian Status Ordinance; resident people who have obtained British Overseas Territories citizenship, by virtue of a connection with Gibraltar and other British nationals who have lived in Gibraltar for ten years. That is exactly the same as it was in the Joint Sovereignty Resolution. Paragraph 17 recognises the fact that we have not yet had an opportunity to invite people to be observers and the proposal is that the Government should invite people after consultation with the Leader of the Opposition. Paragraph 18, I think, simply declares what we all believe, that this is an important question for Gibraltar and urges all entitled voters to cast a vote in the Referendum. I think it is worth reading out, for the purposes of Hansard, the language in which the right to self-determination of the people of Gibraltar is recognised, which is referred to in the motion as being substantially the language of the UN Covenant. That is, "whereas all peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law." If I could just pause and close the quotes there, that is the classic statement of the right to self-determination in UN terminology. There is in another paragraph, which is also derived from the Covenant, in which there are two or three Gibraltar specific words added which for the UK means the Treaty of Utrecht and therefore the constraints that exist for our right to self-determination, that is, that we cannot have independence without Spanish consent, which we do not accept. That is, "and whereas the realisation of that right must

be promoted and respected in conformity with the provisions of the Charter of the United Nations". So far that is classic UN language too. It is the next words which have been slipped in for our benefit. "And any other applicable International Treaties". Now, if that had read "and the Treaty of Utrecht", that would not have been acceptable to Gibraltar because it would have required us to accept in our Constitution, an adjudication against us (a) that the Treaty of Utrecht is applicable in the 21st Century; and (b) that its proper interpretation, if it is applicable, is to deny us or to constrain the right to self-determination. Neither is the position of Gibraltar but those words are acceptable to Gibraltar because they are sufficiently ambiguous to include whatever interpretation Britain wants to place on them, and also the interpretation that we place on them which is that the Treaty of Utrecht is not applicable to our right to self-determination. So the words "and any other applicable International Treaties" in the plural, leaves open the question, as open as it has always been, whether the Treaty of Utrecht is applicable or not. We know what the UK's position is. The position of the United Kingdom is that that phraseology is intended and is in fact a reference to the Treaty of Utrecht, and that it is the United Kingdom Government's position, long-standing and which it does not change, that the Treaty of Utrecht does not constrain our right to self-determination, except insofar as relates to independence, which they say these words mean and the Treaty of Utrecht means we cannot have without Spanish consent. Hence, the inclusion simply by way of unilateral statement on our part that we in Gibraltar, whilst we have to live with the British Government's interpretation of those words, we do not accept them, we do not subscribe to that view and we do not accept it as our own.

The amendments to the motion that I would like to move are, in paragraph 3 where it says "notes the outcome of the negotiations" I would like that to read "notes and welcomes the outcome". In paragraph 7 also, I would propose an amendment which is that after the words "House of Commons" we open brackets and insert the words "on 4th July 2006", close brackets, which is simply the date on which they said it, and then after the

words “in the United Nations” that, again, we open the brackets and put “on 5th October 2006”, close brackets. Then at the end of the paragraph, which describes the statements of the British Government and not any position of ours, we should add the words “in the context set out in those statements”. Although it is not appropriate for me to indicate at this point in time which of the Leader of the Opposition’s amendments we shall be agreeing to, which we shall not and which we can agree to with modifications, I would indicate to him that we will, subject to a modification with which I am sure he will agree when he hears the reasons for it, we will be agreeing to his amendment to add the word “welcomes” at the beginning of that paragraph. But there is a modification which I am sure that when he hears the explanation he will agree that it cannot just be put in simply. With those amendments I commend the motion to the House.

Question proposed.

HON CHIEF MINISTER:

I am afraid that this is always where we get into procedural difficulty. It may be that Opposition Members will prefer, as I will when we come to their amendments, that we vote on the amendments one at a time, because they may agree to some of my amendments but not others. They will be defeated on my amendments but a lot of them will come out in the wash when we discuss his amendments. But I think, subject to what Mr Speaker thinks about it, the easier way for both sides of the House to proceed is to take separate votes on each of my two amendments. Of course, those two amendments to my motion may carry through to the rest of the debate by unanimity or by Government majority but at least they will be formally on the text. I do not know whether Mr Speaker thinks that is sensible.

MR SPEAKER:

The way I see it, we have a motion of which notice was given last week, there have been two or three amendments proposed this morning, I am proposing to treat those amendments as part of the original motion, to make it easier for us to respond. What I have done really is open the matter for debate now by proposing the question as if these amendments had been put in originally.

HON CHIEF MINISTER:

Are we talking to my amendments or to the whole motion?

MR SPEAKER:

To the whole motion. I am treating the amendments as included at this stage. It would seem pointless just to talk to the amendments which form a very minor part of the whole motion, unless the Leader of the Opposition has another view on that.

HON J J BOSSANO:

No, I think I agree with the view originally expressed by the Chief Minister. Quite apart from anything else, frankly, we have got even in No. 7, where we moved the welcoming of the statements, that was done on the basis of the statements that did not include the last statement, which we have not had sight of when we gave notice. The last statement which was made on Friday in the House of Commons was not a statement which had been made when we moved the welcoming. Therefore, given that particular statement I will want to talk on the fact that we are putting the dates, because I am not very sure whether we want to welcome that last statement or not.

MR SPEAKER:

I have no objection, if hon Members would like to take a vote on those amendments proposed this morning first, if that is what the intention of the House is. I do not understand the date of the last Friday statement included in the amendment this morning.

HON CHIEF MINISTER:

It is not a reference. I have understood the Leader of the Opposition to mean that when he proposed to welcome the whole of paragraph 7, Hoon had not yet made his statement in the House on Friday and he now wants to talk whether that means he still wants to carry on welcoming the whole of paragraph 7.

HON J J BOSSANO:

I have said I will support his amendments to give the dates because it is not included in the Friday statement. That is why I think it is important to talk to that.

MR SPEAKER:

So do I understand the hon Members correctly that they wish to debate the amendments put forward this morning first?

HON J J BOSSANO:

Yes. I take it that I am now talking on the amendment to paragraph 3, is that the first amendment the Chief Minister is moving? The Chief Minister has in fact said that he is introducing the word "welcome" in paragraph 3 on the basis that the original intention of the Government was simply to record what has taken place, but not in fact taking the position of either

welcoming it or not welcoming it. We will support that but I think in supporting it I need to be making clear that, as is well known throughout this process, we have been giving far more importance to the nature of the exercise in which we were engaged than to the content of the text. Particularly when we had a position at the beginning, after the close of the negotiations in London in March, where the position of the Government was that the people of Gibraltar were simply being asked to vote on the text. Therefore, even if there was no second preamble agreed by the United Kingdom, we should be proceeding to take a decision on the text per se. Whereas we were taking the view that if there was no second preamble there, then our position would be to oppose the Constitutional consultation on the basis that that preamble was fundamental to it being the exercise of the right of self-determination. So, obviously, since we have achieved what we wanted in terms of the statements from the United Kingdom, we are supporting the text that is before us, but in welcoming it I would not want it to mean or be taken to mean that we think that that particular text is perfect in terms other than as being the mode of decolonisation, which in the judgement of the United Kingdom and in the judgement of Gibraltar's Elected Representatives, produces a level of self-government which is sufficient to achieve the criteria of having obtained the status of being a fully self-governing territory, on the basis that we are not using options 1, 2 or 3 but the fourth option. In our view that does not prevent that particular Constitution from being altered in the text subsequently without requiring a new Referendum to approve the alterations. We see the text as being, like in any constitution, we know that in fact in most of the other territories there have been constant amendments to the constitution on the basis that they are reflecting things that have happened with the passage of time. We know that in 1969 the Constitution that existed prior to the introduction of the 1969 Constitution, was the one of 1964 but that in 1968 already, the Legislative Council was behaving in a way which went beyond what 1964 had set down and that we in this House of Assembly have for many years been doing things which, perhaps on a strict interpretation of the 1969 Constitution, we might or might not have had the

power to do but which the United Kingdom has de facto accepted. For example, there is the Gibraltar Council, which disappears in the new Constitution that has not existed for the last 15 years. So, I think welcoming the text is fine because we are committed to supporting that text as the form that is given to the option, but I thought it was important to put on record that we are not saying that by welcoming the text we are saying anything different from what we have said up to now.

HON CHIEF MINISTER:

I have no difficulty in acknowledging that that has always been the hon Member's position throughout all the discussions. He knows that we caveat it by saying, where he says that he is only interested in the nature of the exercise and not of the text, we take the view that they are both important and that the content of the text is also important, because it is the primary law by which this community will govern itself for many decades to come. I have no difficulty acknowledging that the hon Member has always held and expressed the view that he has just repeated here. I did not think I was doing anything controversial and indeed I do not think I am having heard him. Of course, both sides of the House have already welcomed the text publicly and therefore, the amendment was not intended to get the hon Members to say something with which I thought they might have had difficulty in saying, but simply to say it here in this Referendum. So I have no difficulty in acknowledging the hon Member's point, on which basis I think he may wish to speak to the second amendment. If indeed he does.

Question put on the amendment to paragraph 3. The House voted.

The amendment was carried unanimously.

MR SPEAKER:

We now move to the proposed amendment to paragraph 7.

HON J J BOSSANO:

I welcome the amendment that brings in the dates, for the reasons I have already indicated. The Chief Minister has, in fact, read the statement that has been made in the House of Commons, it is not very clear why the Secretary of State or the Minister for Europe felt a need to say again on Friday, but I do not think he was doing it for our benefit and certainly the feedback that I have heard from some quarters in Spain is that the Spanish Government was increasingly restive about the interpretation of what that statement that was made in the House of Commons meant. When in fact the statement was made by Geoff Hoon, the matter was after his visit to Gibraltar, after he had discussion with the Government and Opposition, and I had made it very clear that what we required of him was something that was not fudged to allow different people to interpret it in different ways and that it had to be clear. As far as I am concerned, it was clear cut. However, it was rather odd that in a subsequent debate in the House of Commons, also involving Mr Lyndsay Hoyle, the position that was taken by Mr Hoon was that, in fact, the answer he had given on 4th July had been warmly welcomed, both in Gibraltar and Spain. Now, since we have not been suddenly converted to the Spanish view, and to my knowledge they have not been suddenly converted to ours, it is perplexing to say the least that we should both welcome the same thing if we understand it in the same way. In fact, the position that was taken on 4th July had followed the position that had been taken by the Spanish Government before the Committee of 24 on 6th June, where it was very clear that the Spanish interpretation was that this was, as they stated in their letter to Jack Straw which Jack Straw, regrettably, never refuted and that is why we did not welcome that particular reply, they were saying throughout 'this is not a proper Referendum in the exercise of self-determination. This is an internal

consultation process' and therefore that is what was meant by the reply that has been given. That is not, as far as we are concerned, what would have satisfied us and I am sure it is not what would have satisfied the Government, or what was said. It is interesting that in one of my other amendments, which I will explain in more detail when we come to moving it, I am drawing a distinction as to what the references to our right of self-determination in Chapter 1 constitute. The Chief Minister has in fact read the relevant paragraph in the amendment that I have already given notice to the House, it is seen that that is separated. The reason why it is separated is because if we look at what was said on 4th July, what was said was 'the Constitution confirms the right of self-determination of the Gibraltar people.' Nothing there about the right of self-determination of the Gibraltar people in that particular sentence being made subject to anything or constrained by anything. It then says, 'the realisation of that right', (which is, of course, what the text actually says. The man was answering the question with what the text says) 'the realisation of that right must be promoted and respected in conformity with the provisions of the UN Charter and any other applicable International Treaties.' Now, I am always hesitant to say this is what this means legally because I am not very sure what things mean legally when lawyers get hold of them, but I know what it means linguistically. Linguistically it means that what is being made subject to any other applicable international treaties, is the realisation of the right and not the right itself. I do not think that sentence, with the full-stop after 'people' and the full-stop after 'treaties' is capable of any other interpretation, however much the Spaniards might like to think it is. Therefore, I think it is no accident that on this occasion the answer in the House of Commons is different from the one in July, because this time the answer says, 'Her Majesty's Government therefore supports the right of self-determination of the people of Gibraltar, promoted and respected in conformity with the provisions of the UN Charter', and it does not say 'and any other applicable treaties'. It did not say that this time because, of course, as the Chief Minister rightly pointed out, and I think it was Mr Azopardi in London inserted the word 'any' before 'applicable treaties' when

we were discussing that text and proposed it, whether the Treaty of Utrecht is such an applicable treaty or not can be challenged, but this time they do not say anything about whether the Treaty is applicable or not. They then go on to say, 'except that so far as in the view of Her Majesty's Government, which it has expressed in Parliament and otherwise publicly on many occasions, Article X of the Treaty of Utrecht gives the right of refusal should Britain ever renounce sovereignty, thus independence would only be an option with Spanish consent.' The House will be, of course, conscious of the fact that all the words here have all been used before. One thing that, of course, emerged in an interview that Mr Hoon gave El Mundo, was when he was asked specifically about this point he said that the answer that he gave on 4th July had been cleared with the Gibraltar Government and with the Spanish Government, and that in fact it had been cleared because the sequencing was very important. Well look the sequencing, as far as I am concerned, of 4th July is fine and therefore we welcome that and we welcome the fact that the Chief Minister is moving a date to make sure that it is that statement that is being welcomed and not the one that has just come out, because I am not sure whether the one that has just come out means exactly the same thing or means something different, even though it has all the same words but jumbled up in a different way. Therefore, we are happy to go along with that. I am not sure whether the need to put "in that context" adds anything new to this debate but it is quite obvious that one needs to be very careful with almost every word, full-stop and comma in this thing, so that somebody does not claim subsequently in the UN or elsewhere, that we have conceded any ground. As far as we are concerned, we were happy with the original one which did use the words "in that context", because we understood that by saying that the UK was recognising, because it says there is a full-stop after this business about independence being only an option with Spanish consent, then there is a completely new sentence which says, 'Her Majesty's Government recognise that the act of deciding on their acceptance of the new Constitution in the forthcoming Referendum will be an exercise of the right of self-determination by the Gibraltar people in that context', and given that the

only context in which our right to self-determination is mentioned is the context of the UN Charter and not the context of other applicable international treaties, we were happy to welcome that statement because that is how we understood it "in that context". If the mover is moving it on that basis and on that understanding, then we are also happy to welcome his amendment and support it.

HON CHIEF MINISTER:

Absolutely, and that is indeed part of the reasoning. Look, it is not for us to say why Mr Hoon made the statement that he made on Friday, but what I have little doubt of and I have never had any doubt, is that this area of development in Gibraltar is not politically easy for Spain. They have sacred cows in their own political debate, just as we have sacred cows in ours. Whilst they preserved their position on Utrecht, the United Kingdom has maintained its position on Utrecht and that is enough to provide Spain with the necessary comfort, that should not lead us to believe that these weeks and months, and particularly the Referendum that we are going to hold, these are not easy things for Spain to accept in the context of its own political debate. We may take the view, if we wanted to, that it is really none of Spain's business, we could take the view that, if she has difficulty it is difficulty of her own making but nevertheless, it is a political reality for Spanish Governments that these are difficult areas, difficult issues where they are constantly exposed to Opposition accusations that they have given away the family silver. I have no doubt that in that context there is restlessness, or nervousness or disquiet, it would not surprise me, but certainly one thing is clear, I do not read Mr Hoon's statement on Friday as nuancing in order to change the meaning of the statement of July. If it did it is completely ineffective because one cannot dislodge the effect of a statement in Parliament by a statement in the street. So I have no doubt, well I do not think there is any difference in political effect between Friday's statement and the one in July in the House of Commons. But if there is, the authoritative one is the one in the House of

Commons, because that is a formal statement of British Government policy to Parliament. It has to be remembered in this context that in his statement on Friday what he said was, "Her Majesty's Government wishes to re-state that it recognises that this Referendum will be an exercise of the right to self-determination by the Gibraltar people, as set out in detail in the UK Parliament on 4th July 2006". So it would be a pretty odd way of moving the goal posts to actually fix them by reference to that same statement. So even in his statement on Friday he is saying, 'no, no the detail is as per the statement on 4th July in Parliament'. Of course it is also worth remembering what the UK said in the United Nations as recently as October. Where he said, "Her Majesty's Government recognises the Referendum will be an exercise of the right to self-determination by the people of Gibraltar, as set out to the UK Parliament on 4th July 2006". So both in Friday's statement and in their statement at the United Nations they are saying, 'no, it is as set out in our statement of July in the House of Commons' which we all agree is perfectly acceptable for the reasons that the hon Member has made. So my own interpretation, for the reasons that I have just quickly taken the hon Members over, is that Friday's statement certainly does not represent a change of position by the British Government. It is incapable on its terms, on its face, but in any case, whether it is issued for reasons of re-stating its support for us, or for reassuring Spain that the right of self-determination is still subject to the Utrecht constraint in the sense that we cannot have independence, the latter would not surprise me one iota. But nor do I think it does us any damage because I think we have accepted, in reality. I think it is useful in the context of this mini debate that we are having on this amendment on this point, to set out the dates and to put the words "in that context", because it means that self-determination in the context of the statements that were made, and in those statements that were made in the House of Commons it is clear that the self determination is of the sort that the hon Member has described. In other words, UN self type, albeit we cannot have independence without Spanish consent.

Question put.

The House voted.

The amendment was carried unanimously.

HON J J BOSSANO:

I will be moving on the motion a number of amendments and I will speak on each of the amendments as I move it and I wish to have a vote taken on each one, which is the reason why I put them in independently for the reasons that I think were understood by the Government. I would not want to be in a position where they felt they had to say yes or no to everything, if there was a chance that we would be able to persuade them. Obviously I am going to try to persuade them to accept them all but that is part of my job. Before I do that, I feel that this is an occasion which requires that one put on the record in this House of Assembly, which we consider to be our Parliament even before the vote is taken in the Referendum, and I will also want to refer to some issues which are not covered by my amendments, and therefore I will not be addressing when I move the amendments.

The position that we find ourselves in now is quite extraordinary in one respect. We do not seem to have been successful, collectively as the representatives of the people, in transmitting to the people of Gibraltar that we are about to be decolonised. If that were indeed the case, then there should be no room in the public galleries on such an historic event. I think, frankly, the toing and froing that has taken place over this period as to whether if we did not achieve decolonisation it was better to at least have obtained a more up to date text, a modern Constitution, we have had debates with the Government where at one stage they said that if they called it more modern they would be agreeing with Mr Moratinos who calls it more modern and we should not agree with Mr Moratinos, we should call it modern. Okay, I will not call it more modern any more I will now call it modern. It is not enough to achieve decolonisation and it does not require an act of self-determination to have a modern Constitution, because the Constitution in 1969 was modern in 1969. In fact, the United Kingdom has argued over many years

that it was too modern for 1969 in 1969, and that it was only because of the special circumstances of the Referendum of 1967 and the hostility of Spain, that they actually went further with us in 1969 than with almost any other colony. In fact, the exception was Bermuda where in 1968 their Constitution was so modern that in some respects it is more modern than our one, not the 1969 one the 2006 one. In the discussions we held in London, Mr Hendry admitted that they had removed the reserve powers to legislate in 1968 from the 1968 Bermuda Constitution, and justified it on the basis that they thought that Bermuda was about to become independent and that is why they agreed to it. So that Constitution of 1969 not only did away with the role of the Financial Secretary, not only had a Minister for Finance in 1968 but also even did away with the reserve powers of Her Majesty the Queen to legislate. Therefore, I believe that with the statements that have been made by the United Kingdom, both in the UN and in Parliament which was referred to in the previous amendments to this motion, we have got to a stage which really is taking us back to where we started in 1964 in the position that we had then of support from the United Kingdom to a Constitution that would decolonise us. In 1964 when that red book was sent to the United Nations Committee of 24, which was signed up by all the members of the LegCo Council that had been in this Chamber before the 1964 Constitution came in, and before the 1964 Elections took place, and all the ones who were elected as a result of that, all past and present Members, jointly signed up to a document which said, 'we consider that the new Constitution of 1964 on which the five year Legislative Council has been created is the final stage before decolonisation.' We consider that the relationship in 1964 between us and the United Kingdom cannot be considered to be one of colonialism. That is what we told them in 1964, 42 years ago. So for Jack Straw to come along and say that this is something completely different because they do not think that a mature relationship like they have with the Legislature of Gibraltar and the people of Gibraltar can be considered to be based on colonialism. Well look, they were saying exactly the same thing in 1964 of the 1964 Constitution, and they went further. They said 'we are now working to produce the final

Constitution that will decolonise us in the life of this Legislature'. That is, before an Election takes place in 1969. The 1967 Referendum has to be seen in the context of that exercise in consulting the people, where the United Kingdom put to the people it was not the exercise of the right of self-determination. In fact, it only had really one option that might be considered to be consistent with the criteria laid down by the UN for decolonisation. That option was the Castiella proposals, because it did not say, 'you want to be integrated with UK or do you want to be integrated with Spain?'. Castiella proposed to the United Kingdom Government a method whereby the people of Gibraltar would become part of the Spanish State in 1967 and that they would enjoy a level of autonomy, we hear so much today about the Spanish Government offering us the autonomy that is enjoyed by different Spanish regions, well look, Franco offered us more than was enjoyed by anybody in Spain. The Castiella proposals included something that would be completely illegal and discriminatory today, they included the right to strike and the right to join free unions for Gibraltarians but not for Spanish workers in Gibraltar. Those were the Castiella proposals which we rejected in 1967. So the status of self-government and the level of self-government and the level of autonomy offered to us, of course nobody really believed they would deliver any of it anyway and nobody wanted it, but I think in the context of where we are today and where we were then, this is really the closing of the chapter that started in 1964 when the United Nations Committee of 24 first came up with this consensus view, which the United Kingdom did not accept by the way, the consensus of 1964 to which the Ambassador of Spain referred in June this year when he addressed the Committee of 24, was a consensus which emerged from the Committee of 24 after they were addressed by the late Peter Isola and the late Sir Joshua Hassan, both of whom put the arguments that I am now putting on the record in the House. Those arguments were put with the full support of the United Kingdom, who was then talking about a form of association with Gibraltar which would give us total, full, internal self-government and that it has taken us 42 years to get to what we were promised in 1964 by the United Kingdom, what we subscribed to

in 1964 in this House, it was then called the Legislative Council, what we defended in the UN and which the United Kingdom defended up to the point of a Referendum. Then they were caught flat footed because the last thing that they expected was that the United Nations should say, (a) the Referendum is illegal and you cannot hold it; and (b) the results of the Referendum are irrelevant and we are not prepared to see the people of Gibraltar deciding on whether they want to be decolonised by being a part of Spain or not, we are telling you they have to be decolonised by being a part of Spain and you have got until October next year to do it. The position that Spain has today, in our view, as a result of disregarding UK expert advice in 1992 and going to the UN against their wishes, is one where they have been losing ground constantly, year after year. In my view the level of ground they lost when Chairman Hunt spoke in June, and the level of ground they lost in October has been the biggest single loss of ground on one single meeting of the UN since 1964. It is something that we will be able to use to our advantage in the future at the UN, I have no doubt. As I said, in the context of the amendments in welcoming this text, we have already made very clear in October this year that we have gone down the route that we have gone down on the basis that we are taking the United Kingdom at its word. The United Kingdom has said in the United Nations, 'it is the view of Her Majesty's Government that the decolonisation of any of our Overseas Territories is a matter for each Territory and the United Kingdom and not for the UN. Therefore, if we and the people of the Territory are happy that we have achieved a full measure of self-government, then that is it.' Well look, we have now in Gibraltar reached that stage and met that criteria, which is the UK's own criteria. Our own preferred option on the Opposition side of the House, as I have said clearly at the United Nations, is and as the Chief Minister knows was our position from the beginning on joining the Select Committee of the House in 1999, was to seek the involvement of the United Nations in the drafting of the text itself. Therefore, what I said this year was, as far as we were concerned, if there were elements in our new Constitution which we have not identified as being such that they fail to provide for the full measure of self-government that is required for the

international status of Gibraltar to be that it is now a fully self-governing territory associated with the United Kingdom, because we have freely chosen that option of the options that are available to us, then our position is that since we see the vote as the selection of the option, if there are flaws in the actual text that gives effect to that option then by correcting those flaws the argument is won. The United Kingdom is saying this is self-determination and self-determination means one thing and one thing only. There is no possibility of self-determination meaning different things. Self-determination in a territory, in any one of the territories that are still considered to be non self-governing, is the achievement of a full measure of self-government, such that it is no longer subject to an administering power which is required by Article 73E of the Charter to submit annual reports because it has an international responsibility so to do. Therefore, really, in many respects there is a best practice approach to this and that best practice approach, frankly, is not one that is the one that has been adopted elsewhere but it is the one that the United Nations considers to be the best way of going about it. The information leaflet which we reproduced part of in the National Day Message this year which we distributed to all the households made very clear that from the UN point of view what we needed to do in Gibraltar or in any other non self-governing territory, was to explain to the people of the territory what self-determination was, which is very clear, the definition is that it means that the people of a colony or a dependant territory, which is just different terminology for the same thing, decide about the future status of their homeland. If we are not addressing a change in status this is not a self-determination Referendum, and that is what Spain says we cannot do and we will not be permitted to do by the United Kingdom because to do that is in fact for the United Kingdom to renege on its bilateral pledges to Spain, enshrined in the Brussels Declaration of 1984 and in the Lisbon Declaration of 1980. Therefore, it is from our perspective a situation that for the reasons that have been explained by the Chief Minister, that Spain has a difficult problem here in swallowing this bitter pill, the United Kingdom tries to coat it with sugar. Well look, they can coat it with as much sugar as they like as long as the sugar does not erode the

bitterness of the pill to that extent that the pill is not the pill we intended it to be. It is not that we want them to swallow it just for the sake of being nasty to them, it is that there is no choice. We have no choice in this, it has got to be either one thing or the other. We have always believed that it was that clear, we have always been opposed to the talks that were started with Dr Owen and Sr Oreja in 1976, we have been opposed to the Declaration of Lisbon which was accepted by this Assembly with one person against, which was me, we have been opposed in Opposition and in Government to the Brussels Declaration and in October this year, what did we have? Well we had a situation where the United Kingdom once again, notwithstanding that statement that we welcome, goes along with a consensus which is not the view of the United Nations. It is the United Nations supporting the joint view of Spain and the UK and what else do we expect the United Nations to do? I mean, we have often talked about this issue on the basis that there are grounds where we have got 100 per cent conviction of our rights but there is a thing called living in the real world. Well look, living in the real world means that what one cannot expect is that the Chairman of the Committee of 24 or the Members of the Fourth Committee should say, 'ah well, we have decided that notwithstanding the fact that the Chairman of the Committee puts in front of the Committee a text which has been negotiated between London and Madrid, we are going to reject the position of London and Madrid, two Member States, and instead uphold the position of the people of a colonial territory'. Well look, if the United Nations behave like that, which it has never done in its entire history, perhaps half the problems of the planet would not exist, but they never do and they never will. Therefore at the very least, and we have insisted on this in many Resolutions in this House before, what we need to do is to target London, target the colonial power which, as far as we are concerned, will cease to be the colonial power by their own definition and their own admission, because they have now got a Constitutional text which they believe gives us that level of self-government that is compatible with retaining British sovereignty over the territory. Now if we analyse that position, what is it that they are saying, what is it that they are saying to us about Gibraltar as a British

Colony which is different from what they say to the other eight or nine? Whether it is Bermuda or the Pitcairns. What they are saying to us and what they are saying to others is different only in one element in relation to the four options that all of us have. They are saying to the rest, and in fact Lord Tristan said that a year ago in one of the very territories, in the Turks and Caicos. He went there and he said to them, 'look, the British Government did not vote in favour of Resolution 1541 in 1960 and therefore we do not consider it to be binding', which is an insane thing to say because one third of the United Nations has been decolonised under the provisions of Resolution 1541 and two thirds of that, 40 out of the 60 were British Colonies where the British sent a member of the Royal Family to lower the Union Jack. Well look, if that is not accepting and acting in accordance with Resolution 1541 I would like to know what it is. We all know then it was a question of independence. The United Kingdom has said, 'we do not accept Resolution 1541 because as far as we are concerned we are not prepared to give any of you integration and we are not prepared to give any of you free association.' In the debates we have had in the Seminars the position of the Committee of 24 has been to explain to these territories something that is self-evident from reading the text of the UN Charter, and indeed, from the information provided by the Information Department of the UN, whose job it is to explain these things so that people understand exactly what their rights are. What those rights constitute and what has been said in the Seminars to the people who live in colonies is that the UK can say to you, 'I will not agree to integration because I do not want to integrate with you' and there is nothing that you can do to force them. 'I will not give you free association because I do not want to be associated with you'. But of course, the provisions in the Charter say that any of you can, if you can find a sovereign state that is willing to integrate you, or willing to give you free association, whether London likes it or not those options are open to you. Therefore the position of the United Kingdom to the other nine, which is 'the only thing you can have is independence', is the diametrically opposite position of the one they adopt with us, which is to say 'the only thing you cannot have is

independence'. So the UN position from the UK perspective is, well look, if any of these territories are not willing, or not happy, or not content with the level of self-government they enjoy in our association, which we consider already to be such that they should not be treated as colonies at all, because we need to remember that Jack Straw has said two things. He has said in the Joint Statement to which the Chief Minister referred when he opened the debate by quoting from the Statement that was issued by the Gibraltar Government and the British Government at the end of the negotiating process, he has said that the Government of Gibraltar and the United Kingdom Government consider that this provides for a mature and modern relationship between our two countries and that such a relationship cannot be said to be based on colonialism. Of course there was a subsequent letter in which he said none of the existing territories should be listed as colonies any longer because of the relationship they already have, which includes us and includes the 1969 Constitution and includes the 58 people in Pitcairn. Obviously, modernity and maturity are not listed by the UN as other modes for decolonisation. So the fact that something is mature and modern, as I pointed out already to the Chief Minister, the 1969 Constitution was considered to be mature and modern in 1969 by those that negotiated it, and the 1964 Constitution when the LegCo was created, was considered to be the final step before decolonisation. So this cannot be the final step before anything, this has to be it. We have gone from having the final step before decolonisation in 1964 to having decolonisation in 2006, 42 years later. I think the fact that there are people questioning the text of the Constitution, which has not been addressed in this debate, for example, these concerns that the Judiciary claim to have, I would say that what we are deciding is, even though there is only one option on the ballot paper of saying do you vote yes or no, what we are deciding is do you want to be decolonised by using your right to self-determination, to achieve a change in the relationship between ourselves and the United Kingdom, such that the level of self-government that it provides is the maximum level because the United Kingdom will not agree to any level higher than that. The Spanish Ambassador at the UN in October this year argued that

we could not say this was the maximum because the maximum was what we asked for in 2004 when we started the negotiating process. But that given that that maximum had been whittled away by the UK, this was less than the maximum. Well, it is the maximum possible because it is an agreed level between us and London. That does not mean that some of the things that are there cannot be altered, and some of the things that are there cannot produce higher levels of self-government. We all know that in practice the experience we have got here, possibly the same as has happened in any other colony but it is very clear that it has happened here, is that the reality of the evolution of our society, the reality is, that if we look, for example, at the presence of the Financial and Development Secretary in this House, on this particular occasion occupied by a native of the place, was put there in 1968 in the negotiations and reflected in the 1969 Despatch. It says the reason why the Constitution has to give the power that it does to the Financial and Development Secretary, is because of the special circumstances of Gibraltar in 1969. It is very clear. The text actually justifies the powers of the Financial and Development Secretary in 1969, which of course were powers that in 1968 had already been given to a Minister for Finance in Bermuda. By virtue of the fact that there was the amalgamation of the City Council with the Gibraltar Government there was going to be a single unified service, there were new responsibilities that were being taken on and there were serious threats to our economy from the campaign which was already under way from Spain. For all those reasons it was important to have a Financial and Development Secretary with all those powers. That is what the Despatch actually says in justification of something which was already on the way out in other Colonies. Indeed, colonies smaller than ours have all moved in that direction of having a Minister for Finance, but it has not meant that because they have a Minister for Finance, which has meant a more mature relationship with London and a more modern relationship with London, they have ceased to be colonies and they have ceased to be non self-governing territories. Neither would we for that reason alone. What makes this capable of being defended by us as the emergence from colonial rule, is that the United Kingdom says in the Preamble

that this is that level which is compatible with continued British sovereignty. That is, as far as we are concerned, substitute words for what we asked for originally which was the maximum possible level. The maximum possible level, unless one has a unilateral declaration of independence, is the level that one negotiates with the former colonial power if one wants to retain a link with the former colonial power. The former colonial power can say, 'well look, you can have an association with me such that I retain certain liabilities. Therefore, if I retain certain liabilities I will insist that I retain certain powers to enable me to discharge those liabilities'. That has been the only element that as far as we have been concerned in the negotiations with London, and as far as the Gibraltar Government's position in the negotiation, has been the only thing that could justify any level of self-government lesser than what would be our responsibility and our liability. That is to say, if the United Kingdom is answerable in the EU for something that may require action in Gibraltar which we do not implement, then it is obvious the United Kingdom will say, 'well I must have' (in fact they have been saying it for many years under the existing Constitution, where they have had the power but have been too scared to make use of it). They have always argued and they would want to argue in the new Constitution because we do not want our status in the EU to change and we do not want it to be changed so that anything can be done that undermines the terms that we enjoy and which cannot be changed without our consent. In order to retain those terms we must do nothing in the process of decolonisation that results in us having to renegotiate our position in the EU because our status has changed. That status is dictated by the wording of the Treaty, which was part of 227 in the original Treaty of Rome, which says that there is a thing called a European Territory for whose external relations a Member State has responsibility, and the only such territory that has ever existed and the only one that is ever likely to exist, is us and I doubt very much that if we did not have it anybody else would have it. Jersey, Guernsey and the Isle of Man in fact joined under totally different provisions, which are the reverse side of ours. What we are in for they are out and vice versa. In any case, their status, luckily for them, has never been

considered to be colonial because the United Kingdom chose not to put them on the list of territories that required decolonisation, which is what they did with us, and this is why, in fact, we have had this ability on the part of Spain to intervene in matters that ought to be exclusively matters for us and the United Kingdom and no one else. Of course, the honesty of UK's position will be tested next October. They might have got away with it this year because the decision has not yet been taken in the Referendum, but will they go next October to the UN and say to the Fourth Committee, notwithstanding the fact that the Gibraltarians exercised last November their right to self-determination and have now achieved a full measure of self-government, we are happy to go along with the idea that there is still a situation in Gibraltar that requires us to sit down with Spain and find a solution in the spirit of the Charter, the relevant Resolutions and in the spirit of the 1984 Brussels Declaration. That is only compatible with Spain's interpretation of what is taking place today in this House and what will take place in Gibraltar on 30th November. That is the crux of the fundamental position that Spain is defending in the UN and that Spain has been making clear on numerous public statements, they claim to be compatible with the language being used by the United Kingdom. That is, it is Spain's position, it is the position of Sr Pons in statements that he made in July this year, that since March the question of Gibraltar's Referendum and its right to self-determination and its new Constitution, have all been satisfactorily cleared to Spain's satisfaction and that, therefore, would not interfere in this process which has nothing to do with the Constitution as far as we are concerned, but has something very much to do with the Constitution as far as they are concerned because at the United Nations and in public statements and in the Spanish Parliament, the Spanish Government's position has been that there can be no change in our status. Because the new climate that they want to create is a climate in which the change of our status will be addressed, with that climate improves their prospect of success. From their perspective that is what they are trying to do. So of course, if the status was changed before they got to this mellow climate, the whole thing would have been as pulling the rug from under

their feet. They see it like that and so do we. That is to say, we see the logic of their position, even though we reject it, even though we do not agree with it, we see the logic of their position that what they are saying is, 'wait a minute. How can we carry on being in the United Nations committed to creating the necessary trust between Spain and Gibraltar so that in that friendlier environment we can go back to doing what we have been agreeing here to do with London since 1980, and what the UN has been saying we should be doing since 1964'? Either we are bringing this to an end or we are not. We are supporting this motion and we will be supporting the Referendum on the basis that the people that are voting there are doing precisely that – bringing to an end and closing the chapter on Gibraltar's decolonisation and putting an end to Spain's arguments in New York, on the basis that if they argue it they will be arguing it on their own and not jointly with the United Kingdom, which is what they have done until now. We have had plenty of evidence of that. We had a major difference of opinion with the Government of Gibraltar at the late stage in the proceedings of these negotiations, when the words 'applicable principles', which was in October again in the UN, had surfaced as the alternative to any other applicable treaty in the text. It surfaced in October 2005 for the first time, never before mentioned, and then for the first time these three words appear a month after we have debated them in the Caleta Palace. Well look, these are or were confidential then, it does not matter now because we have reached the end of the road. As far as I am concerned there is absolutely no reason why all the arguments that have been put should now not be public knowledge, given that the result is now agreed between Gibraltar and London and it is simply a question of whether the people ratify that result or not. I think we need to be clear that voting against the new Constitution, which people are perfectly entitled to do, and which we have to in fact ensure. I remember being told by the Chief Minister that on the occasion of the last Referendum in 2002, the people from the Electoral Reform Society were worried that insufficient exposure was being given to the people who wanted to campaign in favour of the Joint Sovereignty deal. It was not that anybody was denying it, except for one particular guy who actually went along with the

Spanish flag, I cannot remember anybody else volunteering for that role. So, on this occasion I think we have to give the right to people that may say, 'well look, I do not agree with this mode of decolonisation'. I suppose there could be people who also say, 'well look, I do not agree with being decolonised'. The 'no' in the Referendum is not people saying 'no I do not want our self-determination', it is people saying 'I am exercising self-determination, which is my right, to reject this particular option'. It could be people who want independence, it could be people who want integration with the UK, it could even be people who want integration with Spain and do not want this. At the end of the day the exercise of self-determination is giving people their free choice and at one stage we discussed perhaps coming here with the alternative of saying, 'well look, should we not list more than one option?'. But I think, frankly, given the difficulty people seem to be having in understanding this Constitution, let alone putting options that are theoretically available but not available in reality, have not entered into the discussion process, have not been recommended by either side of the House and all of us who have been elected here have been elected here defending, since the Select Committee was set up in 1999, the fourth option as the way ahead for decolonisation. There has been no candidate defending independence and there were some candidates defending devolved integration who did not get elected. So at the end of the day, if we think this is the best of the available choices then, I think it is legitimate and has been done in other colonies, but certainly the ideal is one which says 'do you want independence, yes or no; do you want free association, yes or no' and so forth. In fact, very few territories, to my knowledge, have ever used that. Perhaps more than one but not all four. We also have the fact that the Self Determination Group has written to the Government and written to me suggesting that in this vote in this House we should require that there should be a 65 per cent vote in favour of the new Constitution in order to make it capable of being approved. Well, it is not the case that the UN requires the exercise of self determination to meet the criteria of two thirds majority. It is true that the last colony, the most recent colony to have a Referendum which was an exercise of the right of self

determination, was the Colony of Tokelao, whose administering power, whose colonial power is New Zealand. It is true that in that Referendum the exercise of self determination resulted in the Referendum being lost with 61 per cent of the vote, because the criteria was 65 per cent. But it is not true that that requirement was put there either by the Tokelaoans or by the United Nations. It was put there by New Zealand because the Constitution they were approving was giving effect to a treaty of association negotiated between Tokelao Parliament and the New Zealand Government. New Zealand's view was that they were not happy to go down the road of having a free association constitution and a free association treaty under which they acquired a whole range of responsibilities, and they gave a whole range of rights including dual citizenship to Tokelaoans, Tokelao and in New Zealand, unless the support and the enthusiasm for that was two thirds of the people. So if we had had the United Kingdom saying to us, 'well look, we are not happy to grant you the association that you are seeking in this negotiated Constitution unless 65 per cent of the Gibraltarians want it', then that would be the parallel with what has happened in Tokelao with New Zealand and not, in fact, what is being suggested by the Self Determination Group that somehow, if 66 per cent of the people vote for this then that is valid decolonisation, but if 64 per cent do then it is not valid decolonisation. There is nothing in the UN that requires, indeed, even a Referendum to take place. Quite a number of the Member States of the United Nations achieve their decolonisation either with a bullet or with a ballot box in an election, without a Referendum. So, in the last Referendum before that, which was in East Timor, there was only one question put on the ballot paper which was independence, with the alternative being, 'do you want to continue integrated with Indonesia?' which was in fact what Indonesia had claimed throughout, Indonesia itself being a Member of the Committee of 24 and theoretically protecting our decolonisation, whilst denying it for 25 years to the East Timorese. But they always claimed that, very much like Morocco does in the case of Western Sahara, that in fact the decolonisation had taken place by integration with a Member State other than the administering

power, which as I have mentioned, is one of the options that the UN provides. Therefore, in that particular case, they were given the two options in the ballot paper, integration with Indonesia or independence. Therefore, in our case, the fact that we are not going for 65 per cent and the fact that there is only one option on the ballot paper, in our judgement do not invalidate the legitimacy of the right to self determination being exercised in this particular way, and this explains why we support this but I think we needed to be clear that in supporting it, it is not that we have not listened to and given consideration to the arguments of others which I think are important. This is a very important decision that is being taken by the House today and it is a very important decision that is going to be taken by the people when they vote. We do not know whether 30th November is the right date or not the right date or if there is a particular reason, but I think people need to know exactly what it is they are doing. Frankly, they need to be clear that what they are doing is what we are saying in this House they are doing. As far as we are concerned it is what the United Kingdom have said they are doing and that the Spanish interpretation of what they are doing is incorrect and it is not compatible with what the UK has said in Parliament and what the UK has said to us. Although I have to acknowledge and accept and recognise, regrettably, that it is compatible with the fact that the consensus in October in the UN, subscribed to by the United Kingdom, had nothing in it to suggest that there was any difference in Gibraltar's international status impending. Given the importance of this matter, therefore, we want to make sure and that is the reason why we put a number of amendments to this motion, we want to make sure that the text of the motion is such that if there are potential ambiguities capable of being used in a way that suggests that the Referendum is not capable of delivering the status that it is intended to deliver from our perspective, otherwise we would not need this motion here, that is overall the thrust of why we are moving the amendments that we are moving. There is one point that has been mentioned by the Chief Minister which I have not addressed, and this is the question of the legality of the Referendum itself and the legality of the decision we are taking today. Certainly, it is not something that we have given any

thought to, we have taken it for granted that there was nothing illegal about this. This business of whether it is a political decision or a legal decision, well look, what happens in an election is a political decision. That is to say, in November 2003 a number of politicians offered themselves to represent the people of Gibraltar in this Assembly and the election was the exercise by the people in their right to elect a Parliament of their choice. But the power of calling the election is a power that exists because there is a law that provides for the calling of the election. That does not make it a legal decision as opposed to a political decision, it is both. A decision based on a law which exists which controls how elections are carried out. The fact is that we are still operating under the 1969 Constitution. The way the 1969 Constitution is written, although it is not the way it is necessarily operated, is that unlike the new one, which does not list defined domestic matters, the 1969 one does and it lists elections as a defined domestic matter. But it does not list Referendum as a defined domestic matter. Given that what the Despatch said in 1969 is that anything that is not there or added to it subsequently is the prerogative of the Governor, does it mean then that in order to comply with the Constitution, it is the Governor that should be calling this Referendum? I think I would invite the legal expert, who happens to be in the House, to reassure the House that we have got the necessary powers under the existing Constitution, in his professional, legal judgement, because after all it is the role of the Attorney General to warn us if we are about to do unconstitutional things. The political decisions, we politicians take but of course, we have to have the power to take these decisions politically. As far as we are concerned, we have entered this on the basis that we have taken it for granted that that is indeed the case and that we had the power to do it in 2002, and that we did not do it the way we did it in 2002 because the law would have been disallowed if we had attempted to pass a law but that because we chose to do it that particular way. Just like we can have motions in this House which are, as far as we are concerned, not just politically binding but legally binding at least on the House or on the Government that supports the motion. If there is a motion saying the Government shall do this and this, and it is approved by the

majority in the Parliament, then as far as we are concerned the Government has to do what the Parliament has ordered it to do. Does it mean that if it is a law it carries a level of validity that it ceases to have if it is passed by Resolution of the House? Well, we did not think that there was a danger of that, we did not think that the Referendum of 2002 was any less valid and we did not think, frankly, that when the Spaniards were saying it was not valid it was because it had been done by a Resolution of the House, because I have never seen that argument anywhere until it surfaced recently. But now that it has surfaced, I do not think the rebuttal of the argument by the Chief Minister in moving a motion in simply saying, 'well look, this is not a legal question it is a political question'. Well, the fact that the people of Gibraltar have got the right of self-determination is very much a legal question. They have got a right to self-determination because we say that it is a matter of international law that the Charter of the United Nations is a legal instrument and that nobody has got the right, politically, to remove from us what we are entitled to as a basic international legal right under the Human Rights International laws and under the Charter of the UN. We are making use of those legal rights. It is important that we should be satisfied, we have been until now and it has never crossed our minds that it would be otherwise, or that the Government would do something without first making sure that we have got the power to do it. But, certainly, if there is any hint that the United Kingdom Government has expressed some opposition to this being done by the legislation, then by all means let us suspend Standing Orders and pass the legislation, and let them disapprove it if they dare. We have got to this stage and we want to make sure that we are able to answer every criticism, every argument against, so that when we go to the people we are able to defend what we have agreed to defend, on the basis that we are satisfied. Not just that we think so but that an independent person would give us the right. Just like we say on so many occasions, we are so confident that this nonsense of the Treaty of Utrecht will not stand up that we challenge anybody that thinks that it will to go to the International Court of Justice and seek an advisory opinion. The reason why we do that is because we are so confident that the

answer will be that they will lose it, and the point being that we would suggest it to them and we need to be equally confident about the motion we have got before the House. So, in seeking to not change the motion, because none of the amendments that I am moving are intended to change the motion but to clarify areas which we think gain by clarification, I have given notice of a number of amendments to the text and I now proceed to move the first of these.

This deals with paragraph 5 in the Resolution before the House, in the Motion before the House, and I move that we delete the existing paragraph 5 and replace it with the following. The new text is not intended to say something that is in contradiction with the existing text, but we could not find a way of changing things in the existing text to project and reflect what we think is important and what we think the new wording does. The replacement would read:

"5. NOTES that Chapter 1 of the draft new Constitution acknowledges:

- a. the full applicability of the right to self determination to the people of Gibraltar without constraint; and
- b. separately, and in terms that substantially reflect the language of the International Covenant on Civil and Political Rights, the obligation of UN Member States to promote and respect the realisation of this right."

In moving this amendment to the text of the motion, which I think is probably the most important one of the ones that I am moving as amendments, I am reflecting something that I am sure the Chief Minister will recall in the last day of our negotiations in London, I said to him when we were sort of speaking between ourselves, that it appeared to me that the constraint they were talking about was a constraint that applied to them and not to us. He suggested that the best thing was not to mention it in case they decided to change it. It was meant as an exchange but I had it very vividly in my head. What is the difference between

this and what is there originally? Well, I believe that what is there originally is a text that can be deemed to reflect what the United Kingdom seems to be trying to persuade Spain is the position, and which Spain in fact is not entirely convinced about. That is, that there is a text in the Chapter 1 which we have agreed to, in which we are saying with London, that we acknowledge that our right to self determination, that is, the exercise of this right, is capable of being constrained by any other applicable treaty other than the Treaty which creates the Charter of the United Nations. That is a treaty, the Charter of the United Nations itself is a treaty. In fact, no territory is required to subscribe to its right of self determination being limited in any shape or form by anything other than the Charter of the UN and the Covenants that give effect to the Charter of the UN, which is the framework of international law which provides for the exercise of this right in order to bring about the emancipation of people under colonial rule. As I have already mentioned previously, the way that particular reference in paragraph 1 is articulated, has a full-stop at the end of the sentence which refers to our rights and then goes on to express a view on the obligations of others. Let us be clear, the obligations of others including the Kingdom of Spain. In fact, what the actual Covenant to which Spain has signed up without reservation and without exclusion in 1976 says is, that it is the obligation of all the UN Member States, not just the administering power. So in fact, as far as we are concerned, under international law we have a right which is identical to the right that every other territory has, and the United Kingdom has accepted and acknowledged that and reflected it in Chapter 1. In addition to our right, there is a parallel obligation. It is the obligation that they believe to be constrained. Or at least whether they do or they do not, that as far as we are concerned is what the text says and that is what I think we should reflect in our own understanding of the text. Look, if the United Kingdom wants to argue subsequently that that is not what they meant, well they can argue it but as far as we are concerned, we have gone along with a text in that motion which for us places no constraint on the right to self determination. As far as we are concerned, goes on to say that in the support and the respect

and promotion of that right that we have, UN Member States (including Spain and the United Kingdom) must do so. They must promote it and they must respect it in accordance with the provisions of the Charter and any other applicable treaty. We do not consider that there are any other applicable treaties, but even if that was tested and even if that testing in an International Court produced a ruling which said, there is in the case of Gibraltar such other applicable treaty and the relevant other applicable treaty is the Treaty of Utrecht, even if they got that far, then the only thing that that Treaty could constrain would be the obligation of the United Kingdom to promote our right and to respect it. Therefore, it is not inconsistent with the argument that has been used that the constraint is exclusively in respect of us wishing to exercise our right in order to obtain independence. So as far as we are concerned, our right is untouched, we are free to attempt to obtain any one of the four options, the United Kingdom is required to promote the right and to respect it. But of course, they are free not to agree to any one of the individual four options. In fact, they are already doing that in all the territories. If they are saying to the territories in the Caribbean, or they are saying to St Helena 'we will not give you integration', then in fact, although they are required to promote the right, by international law they are not required to promote one particular option in the exercise of that right. If, therefore, they say to us 'if you come along and ask me for independence, which I am happy to say yes to in the case of St Helena, or even in the case of the Falklands', because although Argentina claims sovereignty of the Falklands, in the case of the Falklands the United Kingdom has not ruled out that they have the option of independence. They have actually said that in their case they have all the options available to them. Indeed, the problem that they have put to them is that the last thing the Falkland Islanders want is to be independent. On more than one occasion they have fended off requests for things from the Falkland Islanders by saying, 'well look, if you do not like the way we are handling this you can always go independent'. Therefore, if the United Kingdom is merely saying, as we argue that they are, that their interpretation is that their obligation to protect and promote the right of our self determination is constrained because if we were

to choose to exercise that right by picking the independence option, they would then have their hands tied by an applicable international treaty that requires them to go to the other signatory of that Treaty and seek their agreement or their consent. So that they could come back to us and say, 'yes you can be independent'. That is the way it has been formulated. That is the way they have said the constraint applies and we, in fact, in our view are spelling out here what is entirely consistent with what we have said in relation to the Despatch. That is to say, we do not agree that their restraint in saying yes to independence, but even less can we agree that we are restrained in asking for it. We are free to ask it tomorrow and they consider themselves not to be free in our case as they are in the remaining British Colonies, to say yes to us without seeking Spain's agreement. Now, given that we have no intentions of asking for it the matter will never be tested. Of course, what Spain has tried to convert this particular formulation into is not as the Chief Minister said on 4th April, I think it was in an interview with GBC. He said, 'well look, if we have been able to fend off Spain's unjustified and aggressive over-reaction to our new Constitution, merely on the basis that we are not going to be permitted by the United Kingdom to become independent, which we do not want to become anyway, unless they give their consent and they are willing to settle for that, then it is a good deal'. Well look, the Spaniards say they are not willing to settle for that. If the Chief Minister has been under the misimpression that that is the Spanish position, then frankly all he has got to do is analyse their statements of October, or their statements of June, or their statements of Sr Pons in the Spanish press. Throughout the Spanish position, which has not changed one iota, and I think we have got to give them credit for that. Their position has been, 'look, you do not have self determination, period. It is not that you do not have the option of independence but you have got the right of self determination which you can exercise in any of the other three modes. No, none of the four modes are available to you.' Although I suppose, really, if they ever considered that we had the right to self determination they would only consider it when they thought we were going to pick one mode, which was

integration with another Member State other than the administering power. They would probably come round to suddenly discovering that we do have self determination, if and when that unhappy moment ever arrived which I am sure it will not. Less so after I think we tie up any potential loose knots, as I am trying to do by the rephrasing of this particular section of the motion before the House, and I therefore commend the amendment to the House.

Question proposed.

HON CHIEF MINISTER:

For the purposes of the reply and to facilitate my dealing with it, can I take as also moved by the hon Member, because really he has spoken to it, the next amendment which is to add the words "in any manner whatsoever" to paragraph 6? Which really, if he were to speak to it he would only repeat everything that he has just said. Before addressing the actual amendments, I think there are one or two points that the Leader of the Opposition has made in his general and lengthy introductory statement, which I think need to be addressed. The hon Member said that the fact that the public gallery was empty, well it is not exactly empty but not more full, suggested we had not succeeded in transmitting to people what we are about to do. I honestly think that that is actually not the reason. I think people in Gibraltar substantially wish to be guided by this House about what they can do politically and if there is any danger, the fact that perhaps because ordinary people lead their lives on a day to day basis, that ordinary citizens do not attach the degree of importance that we attach in this House to issues such as decolonisation and things of that sort. I think that is much more likely to explain an empty gallery than people not knowing what it is that we are doing. By all means I think there now needs to be a campaign between now and voting day, where these issues have to be addressed. There has to be a communication campaign as part of any sensible Referendum. But I do not read into the fact that the gallery is empty. Look, in fact, the gallery is also empty on

Budget Day when people want to know, to which perhaps they attach more importance, which is 'are my taxes going to fall or rise?'. We have to understand that ordinary citizens do not live on the edge of their seats worrying about whether there is decolonisation or not. I think that these are issues in which they expect to be led and steered by their political class and we cannot expect them to be jumping up and down on issues such as decolonisation, as if Gibraltar were one of those historical cases of decolonisation where decolonisation was not just a political exercise, it was a means of freedom from what was an oppressive colonial yolk. I suppose that in India and in other countries there was this fervour because it was the breaking away of the shackles which they thought was unfair and unjust, which was having an impact on their day to day lives. So, I think we have got to say to ourselves that it is the 21st Century, when we are talking about our new Constitution and our decolonisation. Therefore, it is going to be differently received by modern society. The hon Member has heard me say before that we have a difficulty in the context of getting the United Nations to accept that this is sufficient decolonisation in the context of the de-listing campaign. This is why I have been genuinely surprised and I do not want to introduce discord into this debate, and I do not think I will. This is why I was surprised when at the United Nations the hon Member took the opposite view to me on the question of whether the de-listing criteria were outdated. Of course, it is those de-listing criteria and not this Constitution that are an obstacle to decolonisation in UN terms, because of not least the provisions in the de-listing criteria relating to the preservation by the United Kingdom of reserve powers of legislation. We need, in our judgement, of which I hope at some point in the future to persuade the hon Member, to persuade the United Nations that those de-listing criteria are not right. Otherwise we cannot square our circle. Our circle is peculiarly in Gibraltar that we want to decolonise in UN terms but also to preserve our British sovereignty. If this House was debating giving up British sovereignty and not debating decolonisation, that public gallery would be full not empty. That is because people are more concerned about preserving their British sovereignty than they are about decolonisation. We have

got to find a way of squaring that circle. I mean, I have no interest in engaging in a sort of esoteric exercise of whether the de-listing criteria are modern or antiquated or not antiquated. But at the moment there is an obstacle there. That obstacle is that whilst we want to retain our British sovereignty, the British Government have said that it is not willing to retain close constitutional links, he himself has said that in the case of Bermuda they took it out because they thought it was an act preparatory to independence. Well, the British Government's position is that they are not willing to let go the right to make reserve legislation whilst they preserve a constitutional relationship with these territories. For that they need independence, but of course, as independence is not available to us according to the United Kingdom, preserving our British sovereignty for us means unless we can either persuade the UN to change its de-listing criteria, or alternatively, persuade the United Kingdom to change its position on whether it insists on keeping the reserve powers of legislation, means that we have to break one of those two. Otherwise, we can pass whatever motions here we like and we can adopt whatever constitutions we like, we are always going to have that same difficulty. Now, I do not think this is a huge issue of local contention but I think that Gibraltar's particular wish to both decolonise and retain the sovereignty of the colonial power, is not something that the United Nations system is geared up to accommodate. That is why we have to challenge that system because we do want both things.

The hon Member alluded to the fact that others were making particular observations about the texts of the Constitution, and alluded particularly to the provisions about the Judiciary. Well, I think it is important that people should be able to express their views, but I think they should express their views accurately and faithfully to the reality of what is in the document. I can understand, for example, in relation to the provisions relating to the Judiciary, that there are people that will want the new Constitution to go even further than it does in what it achieves in relation to the Judiciary. What I think is absolutely outrageous is that people deceive public opinion by making public statements

to the effect that this new Constitution is worse than the existing one, because it actually makes the Judiciary more interferable with by the Executive than it is at the moment. That statement is outrageous to the point that it is incapable of being true. At the moment, under the current Constitution, all aspects of the Judiciary are exclusively in the hands of the Executive. The Governor hires, the Governor fires, the Governor disciplines, the Governor does not have to take the advice of any committee. Traditionally, judges have been interviewed for jobs by a committee comprising the Deputy Governor, the Chief Secretary and I do not remember who else. But the Governor is not obliged to accept. The Governor could say, 'thank you very much, I will appoint Joe Bloggs because I fancy'. The Judiciary today is entirely in the hands of the Executive, which is the Governor, whom under the Constitution vests the whole of the Executive. Executive authority under the current Constitution vests solely in the Governor. Here we have a Constitution which says no more in relation to the Judiciary. In future there will be an independent panel that will make recommendations to you, not just you, comprising of members of the Judiciary, members of the Executive and you will, except in very exceptional circumstances about which others have also expressed a view, those exceptional circumstances, and you will accept their advice, you will act on their advice and if you do not act on their advice in the context of these exceptional circumstances which entitles to reject them, you still cannot appoint who you like, all you can do is go back to the Commission and say recommend somebody else. In other words, no Governor, no Executive, can ever appoint a judge whose nomination has not been recommended to him by this Commission. Well look, I can understand that there are people who would want to go even further than that. What I cannot understand is anybody misleading public opinion by suggesting that the new Constitutional proposal is worse and that the new Constitutional proposal allows the interference with the Judiciary, suggesting that under the current one it is okay. Well look, the acid test is this. Would those people be happy if we withdrew the present proposals relating to the Judiciary and said to London, 'leave the existing ones'? That is the test of the honesty of the argument

that the new Constitution is worse in relation to judicial independence than the present one. I throw the challenge here and now, if there is anybody out there that thinks that the new Constitutional proposals are a step backwards and not a massive step forward in relation to de-linking the Judiciary from the Executive, let them say publicly that they would prefer the existing judicial provisions to remain in the Constitution. It is time that the people of Gibraltar were no longer sold the pup by people who have neither read nor understood clearly either the existing Constitution, in relation to judicial provisions, or the new one. If they had they could not possibly be uttering the rubbish that they are peddling out for consumption by public opinion in Gibraltar. I am glad for the hon Member giving me the opportunity to mention all these things. I was not going to mention them myself but as he was kind enough to allude to it in passing, it has given me the opportunity to say so. Never in the 300 year old British history of Gibraltar if this community adopts this new Constitution, never will there have been such distance between the Executive and the Judiciary as there will be post the adoption of this Referendum. Anybody that argues the contrary is premeditatedly misleading the people of Gibraltar. A wholly different argument is that recognising that fact, they would nevertheless have preferred it to go even further. That is different. That is a different argument, one can say to the people of Gibraltar 'this is a huge improvement but I think it should have gone even further'. That is a perfectly legitimate argument, I do not think it is right but it is legitimate. What one cannot do is undermine public confidence in the new proposals by suggesting, through insinuation, in the case of some people it is by insinuation, in the case of some others it is by outright deceitful and unambiguously deceitful public statements, by suggesting that somehow this is a step back, that now if we accept this new Constitution judges can be knobbed by the Executive whereas they cannot be under the new Constitution, which represents a huge step forward. Anyone, people can appoint as many constitutional experts in apartheid as they like, no one will be able to argue the contrary of what I have just said in this House this morning. Because all I am saying in this House this morning is that this is a huge, huge improvement on

the current Constitutional position. Frankly, I have to say as the person who today occupies the post of Chief Minister and is responsible for the reputation of this community in the international community, that I think that those who suggest that the independence of the Judiciary in Gibraltar needs to be adjudicated upon by people who have experience in South African apartheid dismantlement, do a huge and massive disservice to this community's 300 year old reputation for the rule of law, and for the maintenance of it and by insinuation to tarnish us by suggesting that lawyers that represented Mr Steve Biko have to come to Gibraltar to adjudicate on these issues, is a huge disservice to Gibraltar. What does it add to just mentioning the man's name? Why could they not just say Mr So and So QC and Mrs So and So QC? Why is it necessary, if it is not to taint by association what their case did that they handled presumably 20 or 30 years ago? It can only be that, it can only be to Africanise the assessment of Gibraltar's judicial system. Yes, but it is not funny, it is not at all funny and those that do it do not do a service to the people of Gibraltar. I have been meaning to get that off my chest for some time. Well, the last thing that I would wish to add in concluding my remarks on the Judiciary, is that where I have no doubt that the provisions in the new Constitution about the Judiciary represent a huge step forward, as agreed by the Gibraltar delegation and by the British Government to have been so, I have got frankly serious concerns that some of the suggestions being proposed by others, far from improving the independence of the Judiciary from all quarters, may actually make it worse. Whether those proposals that others are putting improve or make worse judicial independence in Gibraltar, and for whose benefit those proposals operate, is certainly open to serious debate and interpretation.

I agree with the Leader of the Opposition that of course there has to be, people have to have the right to campaign 'no', and I will revisit this point when I come back to some of his more specific amendments. Of course, let us record immediately, that far from there being any risk that people who want to campaign 'no' may not be able to do so, the evidence is of the contrary.

That those who are against the Constitution have started campaigning 'no' long before the campaign has even started. It has to be said, people that are not hugely representative of others, but still that does not diminish their right to conduct a campaign. I think there is no suggestion, I am not sure that the hon Member intended to make any such suggestion, in fact I am sure he did not, that there is no constraint on people's ability to campaign 'no' in this Referendum. People are free to campaign 'no', and indeed are already exercising it even though the 'yes' campaign has not itself started. We support the views expressed by the Opposition Members which coincide with our own, that there is absolutely no case for this Referendum needing a two thirds majority. When I reply to the Self Determination for Gibraltar Group I will tell them that the Government reject their view that there should be a requirement for a two thirds majority before the people of Gibraltar can be said to have expressed a view in support of this Constitution. On the question of whether it is legal or illegal, let me hasten to reassure the Leader of the Opposition that there is not even the remotest scintilla of a hint that the United Kingdom has, or has expressed without having, or has without having expressed, any concern about the legality. Indeed, all the evidence is the opposite. Not only has, in his statement of Friday, Mr Hoon said that in the light of the draft motion tabled..... announcing that it would organise a Referendum on the new Constitution to be held, he did not say 'which we do not think they are entitled to hold'. Indeed, the British statement at the United Nations as recently as October said this new Constitution will shortly be put to the people of Gibraltar in a Referendum to be organised by the Government of Gibraltar. So not only is it not their view that there is any element of impropriety or illegality in this Referendum, but indeed they are saying publicly the opposite. They are saying publicly that we are going to organise it and that they have no difficulty with that. Even in the case of the 2002 Referendum on Joint Sovereignty, the United Kingdom did not say it is illegal, only Spain said it was illegal. Mr Straw had some quite unkind things to say about it. I think he said it was a democratic deficit and he said it was eccentric but the United Kingdom has never challenged the legality or the constitutional

right, or the right of the Government of Gibraltar to hold such a Referendum. It is not the view of the British Government that the Gibraltar Government is un-entitled to convene and hold a Referendum, it is simply not the case.

If I could just now pass to the first amendment and perhaps when we have dealt with that we can adjourn for lunch. If I could just deal with the Leader of the Opposition's first amendment, paragraphs 5 and 6. Let me start by saying that I do not disagree with a single word that he has said in moving of this amendment. Well, I do not know whether it sounds promising or not, I do not think the hon Member should be pessimistic. I mean he said he did not expect to persuade us on all the amendments, he has not done badly so far, is he keeping a tally of these? Well, not only do I not disagree with anything that the hon Member has said, but it is worth pointing out because the hon Member made an allusion in passing to this affecting not just the UK but other Member States. Let me just point out that the self determination language, which is in Chapter 1 of our Constitution and which is contained in the International Covenant on Civil and Political Rights in its Preamble, that Article 1 of that Preamble actually says precisely that all Member States have the same obligations. It says, 'the State parties to the present Convention, including those having responsibility for the administration of non self-governing and such, shall promote the realisation of the right to self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations'. The obligation to respect the UN right to self-determination is not vested just in the administering power, it is an obligation of all Member States and that is specifically provided for in Article 1 of the Covenant. That said, and perhaps I should just say one more thing. We are precisely saying that there is no constraint to our right to self determination. Neither in the substance nor in the manner of its exercise. That is the whole purpose of present paragraph 6, which we will strengthen by adding the hon Member's words "in any manner whatsoever" rejects the view that the Treaty of Utrecht constrains, he will add and we will accept "in any manner whatsoever" the right of self-determination of the people

of Gibraltar. Now, all that said, we think that the strength of this Resolution is precisely that it does not rely on argument on our part. That the whole of its effect turns on UN language and turns on things that the United Kingdom have stated and interpretations that the United Kingdom have made. One way of enabling that to continue in this instance is, see, it is also important that we should not introduce argument with which other people may disagree, and try to weaken the Resolution by saying 'well that is your interpretation but not ours', because it is true and I agree with him, that not only the language used but indeed the UK statements describing the language used, is that the declaration of the right is unqualified but the exercise of it, to use the exact language so that we do not through the use of shorthand inadvertently alter the texts, that the realisation of that right must be promoted and respected in conformity with Charter and any other applicable international treaty. Now, what that difference means in practice of course is open for interpretation. Of course, it is no use being told that one has the right to self determination, pretending that one is being told that it is unqualified but when it comes to the realisation of it, one is being told that one of the ways of exercising it is not available, albeit through unilateral statement of the UK's position not ours. I think, and I would like to propose this way forward to the hon Member, given that we do not disagree on the language, that instead of introducing our assessment into it, into this Resolution, we can introduce it into other resolutions that we might want to move on another occasion, that the way to overcome this issue rather than to describe the language to actually set it out. I think we should set out here the entirety of the text of the self-determination language, which makes it perfectly clear on its face that paragraph 1 is unqualified and is unadulterated Covenant language and that the language about 'and any other applicable International treaty' comes in a paragraph which deals only with the promotion and respect of its realisation. All it is, is eliminating something that can be dismissed as argument by something which cannot be dismissed as argument because it is not us. It is the language in the Constitution, and that is what I would propose to the hon Members in an amendment which I would now like to circulate

so that the hon Members can see how it would look in print, or that they can imagine how it would look in print because they are familiar with the language. On this page there is also another amendment that I would like to introduce, for which I will speak in a moment and I will explain the reasons for it. But they will see there that I am proposing that paragraph 5 should read as follows, neither my original language nor his proposed new one. But it should read:

“Notes the recital in Chapter 1 of the draft new Constitution of the right to self determination of the people of Gibraltar in the following terms”. Then it just sets it all out there, and then no one can say that this is a self-serving argument on our part but it is simply the language. Now, the next amendment which is in a sense related, and as can be seen from my amendments from my reprinting of paragraph 7 on that sheet, that it includes the “in any manner whatsoever” so that amendment by the hon Member is accepted. Now I would like to propose that we insert a new paragraph 6 in between those two paragraphs, giving context to the rejection paragraph. In other words, as it reads if somebody that is not familiar with the texts, that is not familiar with the arguments, that is not familiar with the positions of the United Kingdom, reads well why are these guys suddenly rejecting things? I suppose this is a deficiency in my own draft. I would like to spell out what it is that we are rejecting and why. So a new paragraph 6 could read:

“Notes the UK Government’s view that while the new Constitution confirms the right to self determination of the people of Gibraltar, the realisation of that right”, (and this has the added advantage that it makes the distinction between right and realisation of, in a sense saving some of the hon Member’s language), “the realisation of that right must be promoted and respected in conformity with the provisions of the UN Charter and any other applicable international treaties, and that Gibraltar’s right to self determination is not constrained by the Treaty of Utrecht, except insofar as Article X gives Spain the right of first refusal should Britain ever renounce sovereignty.”

Now that is an accurate statement of Britain’s position. It also, helpfully, makes the distinction between the right and the realisation of the right, which was one of the virtues to the hon Member of the previous paragraph. But then, puts into context what it is that we are rejecting and why. All that this achieves, as far as I am concerned, is that it tells the whole story on the face of the Resolution. So my proposal, which is the Government’s response to the hon Member’s amendment, is that we do it this third way rather than either the first or the second. So whether that would mean that this is a new amendment by me or an amendment to his amendment, I do not think we ought to worry about that. I think that so long as we arrive at language that both can support, that is the main thing.

HON J J BOSSANO:

I am now speaking to the Chief Minister’s amendment to my amendment, right. I am not sure what he was speaking to before. He seemed to be speaking to the Judiciary more than to me.

HON CHIEF MINISTER:

No, I was responding to your comment about the fact that other people were commenting about the text, particularly about the Judiciary.

HON J J BOSSANO:

But see, I had made all those comments before I moved the amendment. Therefore, I am not sure whether he was exercising the right of reply to all my initial.....

HON CHIEF MINISTER:

Exactly.

HON J J BOSSANO:

I have to say first of all that I accept entirely the analysis that he has made that in some respects, by repeating what is there nobody can claim that we are actually cherry picking, I think that is a recent new element of the things he disapproves of. So that is fine, I think that is an argument that all that we are doing is we are putting what is there. I think the problem is that with the second half of paragraph 6, I know that it is the UK view but it seems to me we are reflecting a UK view here which is in contradiction to what we said before. The UK view in that respect is their interpretation of what the Constitution says. I think it is a valid argument to say, 'let us put what it actually says rather than what we believe it means', but then I do not think we should go in the next paragraph and put what the UK thinks it means, which we do not think is capable of being.....

HON CHIEF MINISTER:

It has to be read with paragraph 7 which then rejects it. It really is a description of what is being rejected.

HON J J BOSSANO:

Yes, we are rejecting that the Treaty of Utrecht constrains in any manner whatsoever the right of self-determination of the people of Gibraltar. There is no question about that, we agree with that. But not only are we rejecting that, we are rejecting the interpretation of the United Kingdom that what they have already agreed to implies that. We are saying what they have already agreed to simply constrains, if it constrains anything at all, their

support. Here we are repeating their view that it constrains our right to the extent.....

HON CHIEF MINISTER:

No, to the contrary.

HON J J BOSSANO:

Yes, because it says.....

HON CHIEF MINISTER:

The first four lines does, I think it does, the opposite of what the hon Member has just said. The first four lines does not repeat the view that the right itself is constrained. It said the opposite. It said, "notes the UK's view that while the new Constitution confirms the right to self determination of the people of Gibraltar." In other words, the right is confirmed without qualification. Then it goes on, "comma, the realisation of that right must be promoted". It is drawing precisely the same distinction that the hon Member tried to draw in his language.

HON J J BOSSANO:

Until one gets to the "and".

HON CHIEF MINISTER:

Until we get to what point, sorry?

HON J J BOSSANO:

That is the whole point, it is the last sentence. "And that Gibraltar's right to self-determination is not constrained by the Treaty of Utrecht" except in respect of independence, "except insofar as Article X gives Spain the right of refusal should Britain ever renounce sovereignty". That "except" refers to our right of self-determination not to their obligation to promote. It says, 'and that Gibraltar's right is not constrained except to this degree'. We cannot go along with that. We know that that is the view they expressed and they expressed it in a way as if that is what the text that we are now reproducing means. We do not think the text means that and, therefore, the argument about it being a challengeable interpretation, which is a valid argument and that is why we accept his argument and the replacement, we are now in fact doing the opposite for their benefit. That is to say, by simply repeating their view there.....

HON CHIEF MINISTER:

I would urge the hon Member if he would give way to me again, not to take that view. Not to declare that that is the proper interpretation of those words. I will tell him why. I will tell him why I am inviting him to reconsider. That is that this language is not invented here. It is contained in the Despatch which is on the front of the Constitution and it says, "thus, it is the position of Her Majesty's Government that there is no constraint to that right except that independence would only be an option for Gibraltar with Spanish consent". We do not accept, and we should not accept, that simply declaring those words.... So long as we declare those words in reporting what the UK's view is, it does not do any damage. In other words, the right distinction is, this is what the UK have said and we reject it. But it does not do any harm for us to say that that is what the UK says. We are not describing our view, we are simply recording what the UK's view is in order to immediately reject it in the very next paragraph. Now, I could not accept that simply reporting the UK's view has a prejudicial effect to Gibraltar because then we would also have

to accept that it has a prejudicial effect to Gibraltar when she says so in the House of Commons, and when she says so in the Despatch, and indeed when she has said so at the United Nations. The very same formula of words. So I will invite the hon Member to believe that provided he is satisfied that we are describing only the view that the UK subscribe to, it actually does us no harm because the whole point is to describe the UK's view in order to then reject it. The language is in the July Parliamentary Question, is in the UN speech and is in the Despatch. I would accept the hon Member's point if it we were not noting the UK's view. Of course, we could have said notes and rejects the UK's view, but of course we do not want to reject. That paragraph has got eight lines, of which the first six are to be welcomed not rejected. I mean the statement that our right to self-determination is only constrained insofar as independence is concerned, which we know to be the UK's position, that is to be welcomed. Otherwise we could have said notes and rejects. But do we really want to reject the statement that the new Constitution confirms the right of self-determination and that it is not constrained by the Treaty of Utrecht? If the hon Member wants to change, I honestly do not think that he should camp on that interpretation, which I think may be based on a hasty reading of the carefully structured sentence.

HON J J BOSSANO:

Well it is a hasty reading because I have only seen it in the House just ten minutes ago. I am not disputing that. The point that I am trying.....

HON CHIEF MINISTER:

The other suggestion that has just been made by one of my Colleagues that might help the hon Members, if we repeat the in the UK's view bit just before the right of self-determination, which may be thought to be too far away to be covered by it at the moment. So in the second half of the sentence we could

add “and that in the UK’s view Gibraltar’s right to self-determination is not constrained”.

HON J J BOSSANO:

It seems to me that the reason why we have difficulty with this is that, well, we have not got a problem in formulating things differently if what we set out to achieve is being retained. We do not think this retains it because precisely what we did in proposing the amendment that we have proposed was, to separate which is the way we see the text and that we think the text means that and can be defended. Therefore, what we did was to say the text in the new Constitution says we have the right of self-determination without constraint. That is what the text says, and says that in the view of the United Kingdom the obligation to promote and protect the realisation of that right has to be done in accordance with the Charter of the UN and other applicable principles, and therefore this means that it is the UK that is constrained not us. I think by saying.....

HON CHIEF MINISTER:

Well let us add that the UK is constrained.

HON J J BOSSANO:

That the right of self-determination is not constrained by the Treaty of Utrecht except..... As far as we are concerned that is not what it says. That is a view that the UK has expressed but not in the text that they have agreed with us. In the text that they have agreed with us, as far as we are concerned, what they have expressed is that their acceptance of independence is constrained, not our right to seek it.

HON CHIEF MINISTER:

Well, then let us add “and that the realisation of Gibraltar’s right to self-determination is constrained”.

HON J J BOSSANO:

Yes, “the realisation of Gibraltar’s right to self-determination is not constrained by the Treaty of Utrecht, except insofar.....”

HON CHIEF MINISTER:

Exactly.

HON J J BOSSANO:

The realisation.

HON CHIEF MINISTER:

Yes, because let us be clear. In the Parliamentary statement of 3rd July.....

HON J J BOSSANO:

No. Maybe we need to try and finish this after lunch and come back with, to give it more time, but we can say yes to “realisation” on the spot and then have further thoughts about it when we discuss it. The reality is that we are seeking to say in the amendment that we are moving, that the promotion and the respect by being obligations not just of the United Kingdom but as is shown in the text of the Covenant, the obligation of everybody, if anything is constrained it is that which is constrained. That is to say.....

HON CHIEF MINISTER:

We agree. Not only do he and I agree but indeed the British Government agrees. I mean, he sounds as though I am trying to argue to derogate from what Mr Hoon said in the House of Commons in July. Perhaps the way around this is to use that language and not my précis of it. In my précis of it, which is what seems to be causing him the difficulty, I think perhaps we should go back to the language of the 3rd July. The one that he has approved of, which says, "the Constitution confirms the right of self determination of the Gibraltarian people. The realisation of that right must be promoted and respected in conformity with the provisions of the UN Charter and any other applicable international treaties. Gibraltar's right to self determination is not constrained by the Treaty of Utrecht, except insofar as....." Perhaps if he could use just that language. All I am trying to do is to set out the context of the rejection. That is all, I am not trying to achieve anything else here.

HON J J BOSSANO:

I would prefer to come back having listened to all his arguments.

MR SPEAKER:

I think it might be helpful if we took the vote on paragraph 5, which is agreed it seems, so we put paragraph 5 to bed and perhaps both sides can consider coming back with the written text of the proposed paragraph 6. If that is helpful to both sides.

Question put on the amendment proposed by the Hon the Chief Minister to the amendment proposed by the Hon J J Bossano to paragraph 5.....

HON CHIEF MINISTER:

And 7.

MR SPEAKER:

No, 7 has been renumbered now.

HON CHIEF MINISTER:

Well, yes, but without renumbering. In other words, we accept the amendment to current paragraph 6, "and in any manner whatsoever", which has been amended. One of the amendments.....

MR SPEAKER:

Yes, but there is an amendment to his amendment at paragraph 5, that needs to be put to bed first.

HON CHIEF MINISTER:

We can now also put to bed.....

MR SPEAKER:

Then move to question 7. Okay, we can go back now. Question put on the amendment proposed by the Hon the Chief Minister to the amendment proposed by the Hon J J Bossano to paragraph 5. The House voted.

The amendment was carried unanimously.

MR SPEAKER:

I now put the question that the amendment proposed by the Hon J J Bossano to paragraph 7 be made. The House voted.

The amendment was carried unanimously.

The House recessed at 1.40 p.m.

The House resumed at 3.09 p.m.

HON CHIEF MINISTER:

Mr Speaker, during the luncheon recess the Leader of the Opposition and I have considered language which will, we think, simplify the layout of what is now paragraphs 5 and 6. Also, to introduce into that a couple of new paragraphs to address some of the other issues that one side or the other made in the debate this morning. There is a text in circulation, which simply says 6, 7 and 8, that is the one. That formulation of language would require us to revisit something that we approved this morning, which is the amendments to paragraph 7. In other words, paragraph 7 of this morning, or was it 6 this morning, well the rejection paragraph, the paragraph that starts with the word "rejects" which we voted through this morning on the basis of just adding the words "in any manner whatsoever", that paragraph is also redrafted here as paragraph 8 of the pages to accommodate some of the other amendments we have also agreed. Whether this stands I have lost track, whose amendments, perhaps if we just insert it as agreed language.

HON J J BOSSANO:

The position that we left it was that the new paragraph 6 had been moved but I asked that we should come back after lunch and now we can either consider the paragraph 6 that is being moved to be the new paragraph 6, since we did not vote on the

other one. That then leaves us with the existing paragraph 7, which is the one we are now changing, which we had already voted before lunch.

MR SPEAKER:

If I am not mistaken, a new paragraph 6.....

HON J J BOSSANO:

Paragraph 7 has now been circulated.....

MR SPEAKER:

Yes, but if I may go back a little bit, a new paragraph 6 was proposed by the Hon J J Bossano.

HON J J BOSSANO:

No, by the Chief Minister.

HON CHIEF MINISTER:

I proposed a new paragraph 6, "notes the UK Government", and that is the paragraph that gave rise to all the discussion. I proposed a new paragraph 6 which started "notes the UK Government's view" and that gave rise to debate about whether we were accepting the view or the statement of it, et cetera. That is the point that we have tried to save to our mutual satisfaction by this new formula of words. So in a sense, this is an amendment. I would like to take them together really. New paragraphs 6, 7 and 8, because in a sense they are all inter-dependent on each other. New paragraphs 6, 7 and 8 are amendments to my proposed paragraphs 6 and 7.

MR SPEAKER:

Is it correct to say the Chief Minister withdraws paragraphs 6 and 7 and proposes new paragraphs 6, 7 and 8?

HON CHIEF MINISTER:

That is one way, the mechanics does not matter.

MR SPEAKER:

I am trying to get a grasp of the mechanics. The best way I see it, paragraph 6 was proposed this morning and there was a paragraph 7 as a consequent amendment.

HON CHIEF MINISTER:

After discussion behind the Speaker's Chair, we agree to replace it, we both agree to replace it with new paragraphs 6, 7 and 8. I think for the purposes of Hansard the paragraphs should be read out.

Paragraph 6 reads:

"6. Notes that under Article 1.3 of the International Covenant on Civil and Political Rights, all States party to the Covenant shall promote the realisation of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations."

Paragraph 7 reads:

"7. Notes the view in the proposed Despatch that would accompany the new Constitution if it is approved by the people of Gibraltar, that", and then it quotes directly from the Despatch what the British Government's position is, and it says:

"Her Majesty's Government therefore supports the right to self-determination of the people of Gibraltar, promoted in accordance with the other principles and rights of the UN Charter, except insofar only as in the view of Her Majesty's Government, which it has expressed in Parliament and otherwise publicly on many occasions, Article X of the Treaty of Utrecht gives Spain the right of refusal should Britain ever renounce sovereignty. Thus, it is the position of Her Majesty's Government that there is no constraint to that right, except that independence would only be an option for Gibraltar with Spain's consent."

Then paragraph 8, which is presently paragraph 7, is just recast not in a way that changes any substance but really just to avoid repeating language that we have just used in paragraphs 6 and 7. So it reads:

"8. Rejects the view that the Treaty of Utrecht constrains in any manner whatsoever the right of self determination of the people of Gibraltar, and welcomes" (that is new, before we were just noting it) "and welcomes that Her Majesty's Government in the said Despatch takes notes that Gibraltar does not share the view that such constraint exists, and that our acceptance of the new Constitution would be on that basis."

HON J J BOSSANO:

I am not sure we actually need that to be an 8. I think, originally when we were drafting it, it was all part of 7. This is why instead of repeating this business about the Despatch we said 'the said Despatch' because it was in the same clause.

HON CHIEF MINISTER:

Nothing turns on the numbering of the paragraphs. It just makes it administratively easier but absolutely nothing, from the Government's perspective, turns on whether it is a separate

paragraph or whether it is an extension. It would be a rather lengthy paragraph but we can remove the 8 and bring the word “rejects” back to the margin. It does not matter.

HON J J BOSSANO:

That is right. We would then move on because there is a 7 and 8 which we have to deal with.

HON CHIEF MINISTER:

Yes, but that is just the renumbering. We can remove the figure 8 so that the paragraph starting “rejects” is not a separate numbered paragraph.

MR SPEAKER:

In that case I just need formally to put the question. I now put the question that paragraphs 6 and 7, as proposed by agreement between the Hon the Chief Minister and the Leader of the Opposition, be passed and introduced into the motion under discussion.

Question put. The House voted.

The amendments were carried unanimously.

HON J J BOSSANO:

I think that incorporates, in essence, the points that we were bringing up in the amendments that included the amendment to paragraph 7. The paragraph 7 that stands there now includes the word “welcomes” and therefore, I now move to my next amendment of which I gave notice. That is the amendment to paragraph 9 of the motion as it stands.

HON CHIEF MINISTER:

Sorry, which paragraph is that?

HON J J BOSSANO:

Old 9.

HON CHIEF MINISTER:

Starting “welcomes and states”?

MR SPEAKER:

No, old 9, the addition of the words “United Kingdom considers”.

HON J J BOSSANO:

The thing is we have got two paragraph 7’s, the one we have just put in and the one which was already there which we voted beforehand, which said, “notes and welcomes the statement made”, that was approved before. So those need renumbering.

HON CHIEF MINISTER:

Oh, I see. Yes, but those are my amendments, he also has an amendment.

HON J J BOSSANO:

Which was the word “welcomes.....”

HON CHIEF MINISTER:

Yes, but there is a point I would just like to make about simply welcoming. Let us be clear, that would now be paragraph 8, still it would remain paragraph 8. We do not mind welcoming that which we welcome, and I think that is also the hon Member's position. The difficulty with just welcoming the statements made on those dates, is that we would also be welcoming that which we have just rejected. Namely, the constraint and we cannot welcome the whole of the UK's statements, even the ones on those dates. So, whereas I think it is right that we should welcome, I think we should caveat the welcome by saying "subject to paragraph 7 notes and welcomes". In other words, we welcome the statements subject to what we have just rejected in paragraph 7.

HON J J BOSSANO:

It would be "notes and welcomes subject to....."

HON CHIEF MINISTER:

I would prefer to put the subject before the welcoming as a matter of legal drafting. I would prefer that we put, "Subject to paragraph 7, notes and welcomes the Statement". In other words, making it clear that the welcome excludes that which we have just rejected in paragraph 7. Which is why, sorry I had made my speaking note on that before the hon Member had removed a separate paragraph number from the reject paragraph. Of course, now we have got to be a bit more careful because there are things in paragraph 7 to which we do not wish to make the subject. For example, in paragraph 7 now that he has made it all one paragraph, Her Majesty's Government supports the right to self-determination. Well, it is not subject to that, it is really subject to the last paragraph of paragraph 7. That was the advantage of having a separate number for that paragraph, that we could have just said in the next paragraph

subject to paragraph whatever. Either we give it back a number of its own, so that we can refer to it here, or we put "Subject to the final paragraph of paragraph 7". It does not matter which but I think we cannot just welcome simpliciter

HON J J BOSSANO:

I think we would prefer to have it "Subject to the final paragraph". We would prefer to have it together.

HON CHIEF MINISTER:

So "Subject to the final paragraph of paragraph 7, notes and welcomes the statements", right. So that is an amendment to the Leader of the Opposition's amendment.

MR SPEAKER:

I now put the question that the amendment proposed by the Hon the Chief Minister to the proposed amendment by the Leader of the Opposition in paragraph 8 as passed earlier today, be made in terms proposed.

Question put. The House voted.

The amendment was carried unanimously.

HON J J BOSSANO:

I was, in fact, speaking to the amendment to old paragraph 9 which would now be paragraph 10 of the motion, on the basis that the previous amendment had been passed before lunch. In paragraph 9 of the motion, what we are proposing is the addition of the words "the United Kingdom considers" in the third line, after the word "which", so that the terms of the draft new

Constitution, which confirms that there is no diminution of British sovereignty and that Gibraltar would remain in a close constitutional relationship. We have also moved the replacement of the words "the maximum" by the word "that" because that is what the original view of the United Kingdom is. Of course, since we are now making it clear that this is their view and not ours, I think we have to quote their view as they have expressed it, which is using the word 'that' instead of the word "maximum". As far as we are concerned, when we originally put the proposals to the United Kingdom on the Constitution, the proposal that the words should say, "the maximum degree possible" was there from the very day that the work of the Committee started. This was an area where the United Kingdom, in fact, initially, when we met in Lancaster House took a position of saying, 'well look, it would be a matter for the judgement of Ministers whether the maximum had been achieved or not achieved in the changes that would emerge from the process of negotiation'. Of course, the position of the Gibraltar Delegation, expressed by the Chief Minister, was that we would not put to the people of Gibraltar anything less than the maximum possible beyond which there would only be independence. But it was our terminology and, therefore, I think they wanted to avoid using the word "maximum" but by implication, if it is that degree of self-government which they consider to be compatible with British sovereignty, it follows that in their judgement any higher degree of self-government than the one reflected in the present Constitutional relationship in the proposed Constitution, would in their judgement trigger off an incompatibility with continued British sovereignty, which we do not want to trigger. I think the importance that we attach to this is that, although the changes that we are proposing simply reflect what has happened, that it is the UK who has said this, is that we do not want to tie ourselves to the same element in that respect forever more. In the sense that we are accepting that the Constitution is the maximum that is possible at the moment and is therefore accepted by us and by the United Kingdom on the basis that the United Kingdom would argue that it is not possible to go further and retain British sovereignty, which is something that the Chief Minister himself has articulated today

on the basis of saying that we have a difference in that we do not share his and the UK view that the UN's criteria is antiquated. Well, as he correctly identified, if we were trying to square the circle there would have to be either, an ability to persuade the United Kingdom to alter its view as to whether there is still room left before we come up to the maximum, or alter the UN view as to whether the yardstick is set too high. Either the yardstick has to be lowered or we have got to get closer to the yardstick. I actually believe it is easier to persuade the United Kingdom than it is to persuade the UN, because I do not think it is in our interests to argue at the UN that there should be one yardstick for the other 15 colonies and one yardstick for Gibraltar. This is what Spain has been trying to achieve for the last 42 years. I think our position has to be, as Chairman Hunt said in the Committee of 24 in June, 'if the United Kingdom as the Member State believes that the criteria enshrined in the Resolutions of the UN are no longer relevant to this day and age and they are out of date and antiquated, then it is a matter for the United Kingdom to persuade a majority of Member States to specify different criteria'. But I would not be in favour and I would not consider it in Gibraltar's interests that we should say, 'well look, because we have got this problem with our neighbour, the criteria that is applied to everybody else should not be applicable to us'. It is a reality that in all the other cases, except in our case, the United Kingdom as the administering power says to the others, 'well look, if you want to go beyond what I have decided to be the maximum', because we have to assume that that level that we would enjoy in the Constitution of self-government, which is that which is compatible with continued British sovereignty. Presumably that same level of self-government would be something that any other territory could say, 'well look, I want to retain British sovereignty and I want to go to that level'. Now if the United Kingdom's position to the others is, 'well look, in the case of Gibraltar we have said they cannot go towards independence', and therefore, to the rest they say, 'well if you do not like the level at which I have got you, you have always got the door open to go independent and I cannot stop you'. In our case they do not, so there is in the UK decision-making process, they have themselves created a

constraint on their own ability to negotiate with Gibraltar. But I think in terms of our rights internationally, we have got to say, 'well look, this is their view, we note that this is their view but it is, in fact, a matter that we are accepting this new Constitution in the knowledge that the view of the present Government in the United Kingdom is that we cannot go any further'. That does not mean that it is impossible for a future Gibraltar Government to persuade a future UK Government to do something else. Who would have thought that anybody could persuade the United Kingdom to fork out £40 million to pay frozen pensions that they chose to freeze in 1988? But it has happened. I would have thought this was less difficult to achieve and I therefore commend the amendment to the House.

HON CHIEF MINISTER:

The Government are able to agree to the amendment.

MR SPEAKER:

I now put the question that the amendment proposed by the Hon J J Bossano to the renumbered paragraph 10 be made in the terms proposed by the Hon J J Bossano.

Question put. The House voted.

The amendment was carried unanimously.

HON J J BOSSANO:

I beg to move the amendment of which I gave notice, which was to old paragraph 10 which is now 11. What we are proposing is that before the word "status" we should introduce the words "new international status", and after the word "status" add "as a self-governing territory". As we have argued in response to the motion calling this Referendum, the purpose of the exercise is to

make use of our right to self-determination. We do not accept the view that has been expressed on a number of occasions by the Spanish Government at the UN and in correspondence with the Foreign Secretary, Jack Straw, at the end of the negotiations that there were two kinds of self determination. One kind, which is the one they think we are engaged in, which merely involves redistributing within the colony the powers and the responsibilities between the Governor and the Elected Government and nothing else changes. The other, which is the one that applies to everybody except us, which is the one that the United Nations definition of self-determination complies with, which is that it is the emergence in selecting one of the options which we are entitled to choose between in the process of decolonisation. For us the entire exercise, and the involvement and the attempt to achieve a consensus with the Government, where throughout the Constitutional Committee's work, the House of Assembly Select Committee, and subsequently, frankly, we have tried to accommodate in terms of the internal machinery, everything that the Government wanted given that they attach far greater importance to that element of the Constitution than we did. For our part, what we have tried to ensure was that movement on that part of the equation was not something that led to less attention being paid to what motivated our participation in this exercise. Therefore, it is quite obvious to me that what we are doing, whether we spell it out or not, is selecting a new international status for Gibraltar which will mean that we will have become a self-governing territory, having achieved the level of self-government that is compatible with continued British sovereignty, and that therefore we will have ceased to be a non self-governing territory and that that is a position that at this point in time is only recognised by the United Kingdom. It is a position that the United Kingdom, in our judgement, has to defend at the United Nations if they are to be consistent with the commitments they have entered into with this House and with the people of Gibraltar. Therefore, we want to see that spelled out in the motion so that the status is not then subsequently left undefined for others to define it as it suits them, but is defined in the way we intend to achieve it and in the way that we are recommending to our people the participation in

this Referendum on the basis that they are being given an opportunity to exercise self determination. It means they are given the opportunity to decolonise Gibraltar through the mode which creates this new international status, which we have called the Fourth Option, which has been there since 1970. Therefore, we do not think that the words that we are proposing create something that is not implicit already. It is just that we would prefer to see it explicitly spelled out.

HON CHIEF MINISTER:

The Government will, in fact, not support this amendment in this motion. Government do not believe that this is the motion in which political analysis and political argument, which some people in Gibraltar may agree with and other people in Gibraltar may not agree with, is properly to be included in a motion of this sort. This not only pre-empts the outcome of the vote but, indeed, it also pre-empts the success that we shall have or not have in persuading others that this is indeed the case. Of course, the Leader of the Opposition is free to move a political motion whenever he wants, to say these things and any other things that he wishes to say and we should debate it. It may surprise him the extent to which we may agree with him. But we do not believe that this is the motion that should contain political arguments or which should pre-empt implications of the Referendum, or the position of others if the new Constitution is accepted. These are issues which remain ahead of us. We have agreed that the new Constitution leaves British sovereignty of Gibraltar intact, leaves Gibraltar's external affairs in the hands of the United Kingdom and leaves the United Kingdom responsible for Gibraltar as the Member State of the EU. What implication all of that has for this concept that the hon Member describes as "international status" is for argument. The words "and the status" are inserted precisely because it is wide enough to cover all eventualities, including the one that obviously he wants to promote. As to the amendments of the "as a self-governing territory", well, Gibraltar is a territory that enjoys a degree of self-government, which we have just agreed is that

degree of self-government which is compatible with British sovereignty. I believe that the proper way for the House to make its declaration on this point is to say, "and therefore reject the proposed new Constitution for Gibraltar and the status and degree of self-government that it represents." People will judge for themselves what it represents by way of status and by way of degree of self-government. We must not convert this into a case of the emperor's clothes. Nothing is achieved by us simply making unilateral declarations. What we must declare is what is indisputable, and for the rest of it what we are doing is asking people a question. Do they accept the status that this represents? Of course, the hon Member is free both before, during and indeed after the Referendum in another place, to argue newness, new or international. It is open to him to argue degree of self-government or self-governing territory. What we are asking the people in this Referendum is whether they accept the status, whatever it is that the Constitution amounts to and the degree of self-government, whatever it is that the new Constitution amounts to, that it represents. If the hon Member wants this House's view on the two points at issue and one other, then I would urge him to bring a separate motion to the House and not seek to include such political argument. Whether they are right or whether they are wrong, whether I agree with them or not, or whoever outside of this House agrees with them or not, that is an issue upon which we should have a debate and from which the House can express a view on a political motion brought by him, rather than included in a motion which is simply intended on the basis of facts and not of interpretations, to put a text to the House. So the Government would not, in this motion, support those two amendments which, of course, express no view as to how the Government would vote on such language if they were included in a separate motion.

HON J J BOSSANO:

All I can say is that I am astonished. To suggest that if one says that the people of Gibraltar should hold a Referendum and that we approve and join with the Government in calling such a

Referendum, so that they by a formal and deliberate act in a free and democratic manner and as an exercise of their right to self determination, will decide whether they approve or disapprove a Constitution and the status it represents. That says nothing about the outcome of the vote. But if one says an international status, then it says something about the outcome of the vote. It is complete rubbish. By defining the status as a new international status, what we are doing is saying the act of self-determination, the exercise of self-determination is decolonisation. Or is it that that is not the position of the Government? I mean, are the Government coming to this House to invite Gibraltarians to decolonise Gibraltar on 30th November or not? If they are being invited to vote for a modernised relationship with the United Kingdom, which leaves our international status intact, which is what Spain says we are doing and is what Spain says they have received comfort on from London, then frankly, I do not understand what we have been doing so far since 10 o'clock this morning. Throughout this motion what we have been doing is making sure that the invitation to the people of Gibraltar for 30th November, is so that they make use of their right to self-determination and an exercise of that right is not a matter of political judgement, it is not that if we call the status 'new and international' then we are being political, but if we call the status 'new' we are not being, or if we call the status 'international' we are being because that is what upsets the Spaniards, the position is very simple. Do people go to the polls being told, 'if you vote this Constitution and the Constitution is implemented, the day that it is implemented the position of Gibraltar internationally will change, at least in the eyes of Gibraltar itself and in the eyes of the United Kingdom, that has publicly defended what you are doing as the exercise of self determination.' If we do not believe in that ourselves and we are not willing to say so, then how the heck do we expect anybody else? How do we expect to convince anybody that what we have just voted here was an exercise of decolonisation, if we are not prepared to tell people that is what we are doing? If people in Gibraltar are going to be invited to vote, then they must know what are the implications of that vote. Not just whether the Judiciary in the new Constitution

is more independent than in the old, or whether the criticisms of that concept is Africanisation of Gibraltar. I do not think people are going to be asked to pass judgement on any of those things that we have heard today. What people are going to be asked and what people will want to know is, 'what does it mean? If I vote for this Constitution what does it mean? It is not what does it mean by going through the document. The document is incomprehensible to the vast majority of people here like the 1969 one was. But if they are not going to change the status of Gibraltar then, frankly, what kind of self-determination are we engaged in? Is it that there are two kinds? It is not a matter of saying, 'well look' in a separate motion. The motion which we are being asked to vote for is one where we approve the holding of the Referendum as an exercise of the right to self-determination to decide whether we accept a Constitution that carries with it a status which is different from the 1969 Constitution. If it is not different, if the fact that it says the status that it represents allows somebody somewhere else to argue, 'well the status it represents is exactly the same status as it had before'. Well, if the view of the Government is that that is indeed the position, that the status is the same as it is today, then people should be told, 'look, you are voting but that will not alter the status'.

HON CHIEF MINISTER:

I do not agree with the hon Member's analysis at all. Therefore, the hon Member is practising the sort of emperor's robe principle. He is saying that because we are declaring it to be something then that is what it is, and because we go out of here telling the people of Gibraltar that this is a new international status for Gibraltar, then that is what it is. If we do not go out of here saying that it is a new international status for Gibraltar, then it is not. I do not accept any of those propositions. It is not for us to decide what the new Constitution means in terms of what he calls international status, but whatever he thinks it means is covered by the word 'status'. Presumably, the word 'status' covers all dimensions of status, and what the new Constitution

represents for our status is precisely what the combined effect of its content and what has been said about it by the United Kingdom, represents. What has been said about it by the United Kingdom? He is free to argue if he wants that this is a new international status for Gibraltar. I do not know what new international status for Gibraltar he has in mind as this being.

HON J J BOSSANO:

The decolonisation.

HON CHIEF MINISTER:

But that is not a question of new international status, no. What the United Kingdom has said about this is that it represents a relationship between Gibraltar and the United Kingdom which is modern and mature, words he does not like, but also some words which I hope he does like a bit more, not based on colonialism. So we do not know what the status that it represents is because it does not fit into any particular pigeon hole and this is not about labels. No, decolonisation is not a status. Decolonisation is not an international status. Decolonisation is a process, not a status. There are not pigeon holes. The only pigeon holes that are known internationally are, independent state, free association or part of a state, integration. Then there are scattered around the globe some things called principalities, other things called Crown Dependencies but there are no more international statuses, of which I am aware. These are meaningless labels. Now, what the United Kingdom has said about what this document represents by way of international status, is (1) that it leaves sovereignty firmly in British hands, as we would want; (2) that the United Kingdom remains responsible for Gibraltar's international affairs; and (3) that the United Kingdom remains the Member State within the European Union responsible for Gibraltar. That is what this document represents in terms of the known pigeon holes, the known trappings of international status. Does it mean that

Gibraltar is a Sovereign independent state? No, this does not represent that it is a sovereign independent state, why? Because sovereignty remains vested in the United Kingdom. Is Gibraltar's new international status the fact that it conducts its own external affairs? No, because the United Kingdom remain responsible for its external affairs. Does this Constitution mean that Gibraltar has a new international status because suddenly it becomes now the 26th Member State of the European Union? No, because the United Kingdom remains the Member State responsible for Gibraltar's European affairs. So, what is the effect on the status? Well, the effect on the status is, which is why we do not rubbish those words as quickly as others sometimes do, is that this Constitution represents a constitutional relationship between Gibraltar and the United Kingdom, and therefore a status that is British sovereignty (which is what we want), in which our external affairs remain in the hands of the United Kingdom (which is in a sense an extension of British sovereignty), but which is not based on colonialism. It seems to me that that is precisely the status that Gibraltar wants. The hon Member knows but he is free to argue differently come the Referendum. The hon Member knows that the way that we have opted to pursue the decolonisation of Gibraltar is bottom up approach, modernising the Constitution so that it no longer regulates a colonial relationship between Gibraltar and the United Kingdom; and the United Kingdom has declared, not just to us but also to the United Nations, that it regards this as such a Constitution. Well, it is not necessary for us now to self-servedly, unilaterally pigeon hole ourselves by declaring that there is a new international status for Gibraltar without describing it. What we do is describe the status, not just give it a label which means nothing and everything, but we describe what the status is. Now, that is the reality. Gibraltar cannot, unless it is playing the emperor's clothes game, unilaterally describe itself as a self-governing territory whilst he knows that we are still on the United Nations list of non self-governing territories. What he means is that post this Referendum and post this Constitution, Gibraltar wants to be recognised by the United Nations as a self-governing territory and will seek to achieve that. As we have both said in our last

speeches to the United Nations, that is the position. I see absolutely none of the implications that the hon Member has described as not including..... To hear the hon Member one would conclude that unless the words 'new international status' appear, then this is a meaningless exercise. Well, if that is the case I am surprised that this morning he described the amendments to paragraph 5 as the most important amendment that he was proposing, because the most important amendment would not have been that one but this one, if he regards those three words as a sine qua non of this exercise. I do not see it in those ways. I do not see this as having the implications that he sees in them. Of course, he is free to see those implications in them and to explain to people, unilaterally, whatever he thinks this means for Gibraltar's international status. But I would urge him please to do so in terms that explain what that change in international status is. If he means that we are in a Constitutional relationship with the United Kingdom, which cannot be regarded as colonial in nature, or cannot be said to be based on colonialism and that that equals de facto decolonisation, as we think it means, and that we now have to deal with the de jure aspects of it, then that is what we will be explaining to the people. If he thinks it means something different, he is free to explain something different. But we cannot now in this Resolution, in this House, in this motion, glibly grab catchphrases like 'new international status' without explaining to the people that are going to be voting in this Referendum what we mean by the phrase 'the new international status for Gibraltar'.

HON J J BOSSANO:

Well, the more I hear the Chief Minister the more astonished I am by these turn of events. The Chief Minister has just told us that he does not know what this means. Of course he knows what this means. He knows what this means because we had a Select Committee of the House, which produced a report which made a recommendation to this House which said in that recommendation that the text we were agreeing was, in our

view, the new international status covered by the fourth option. The Chief Minister mentions three, he has never heard of any other one he says, there is only three – independence, free association or integration. I have never heard of any other status anywhere. He has been for years talking about the Fourth Option in the United Nations and we have talked about it since 1999 and he talked about it in the Mackintosh Hall in 1997, when he described it as the Channel Islands Constitution.

HON CHIEF MINISTER:

What process? What status?

HON J J BOSSANO:

I will tell him what the United Nations says. In answer to the question 'what is decolonisation?', the United Nations says, 'in 1945 the Charter of the United Nations proclaimed the respect for the principle of equal rights and self-determination of peoples as one of its basic purposes. Self-determination means that the people of a colony decide the future status of their homeland.'

HON CHIEF MINISTER:

Their future international status.

HON J J BOSSANO:

I see. Well, I do not think the United Nations distinguishes between the international status and some status that we have which is not international.

HON CHIEF MINISTER:

Precisely and neither does the motion, that is exactly the point.

HON J J BOSSANO:

Yes, but what is the purpose of saying then that an international status is something different from a status? How can the status of Gibraltar internally be something that this motion is dealing with? It is dealing.....

HON CHIEF MINISTER:

I have not said that the international status is something different to the status. I have said that the word 'status' covers all dimensions of status, domestic and international. That is what I have said. It seems to me it is exactly the same approach taken in that little UN pamphlet that he is reading from.

HON J J BOSSANO:

No, that is not the case because the Chief Minister seems conveniently to have forgotten that the pamphlet, with which he is familiar, which I am reading from, makes it absolutely clear that if what we are talking about is things that affect the domestic affairs of Gibraltar, any changes in those affairs do not constitute an act of self-determination. The act of self-determination can only be one thing and nothing else. When we produced the report of this House, we finished up by saying that the Select Committee's recommendation was to achieve, the objective was to propose amendments to the current Constitution such as would maximise the self government of Gibraltar, whilst retaining British sovereignty and close links with Britain, and we claim that is what we have achieved. We then went on to say if this had been done on the basis that we would achieve a suitable modernisation of the relationship and that, if

accepted by the people in a Referendum, would bring about decolonisation of Gibraltar through the exercise of self-determination. Well then, I proposed that since it is the words "new international" that worry the Chief Minister and as a self-governing territory, we should then say that we are inviting the people to approve or disapprove of a new Constitution and the status that it represents in bringing about the decolonisation of Gibraltar. I now move, in the knowledge that the amendments of which I have given notice are not acceptable to the Government, that instead of inserting "new international" before "status", we leave "status" unqualified (which is what he wants), we do not proceed to call it as a self-governing territory, because he says that that is not something which is in our gift but instead we use the words we used in the Select Committee's recommendation to this House which were adopted by unanimity. That is to say, that the people of Gibraltar will, therefore, be invited by this Referendum which we are joining them in approving, by a formal and deliberate act in a free and democratic manner and as an exercise of their right to self-determination, to decide whether they approve and therefore accept, or disapprove and therefore reject the proposed new Constitution for Gibraltar and the status that it represents in bringing about its decolonisation, which we said was what we hoped would be achieved and which we claim is what we have achieved, and is what self-determination has to do otherwise it is not self-determination. So I move that amendment in replacement of the previous text which the Government do not find acceptable.

MR SPEAKER:

Would the hon Member please repeat the last few words, I have got here "and the proposed new Constitution....."

HON J J BOSSANO:

That is to say, that the paragraph that we are talking to, which is new paragraph 11 it used to be 10, remains as it stands as moved by the Chief Minister, except that I am adding the words that say, "the status it represents in bringing about the decolonisation of Gibraltar".

HON CHIEF MINISTER:

I will think about it.

HON J J BOSSANO:

I am more encouraged by that than by the welcome put there originally this morning.

MR SPEAKER:

Perhaps we can move on to the next proposed amendment while this is being sorted out.

HON J J BOSSANO:

The amendment that I am proposing now to the remaining paragraph, which is now paragraph 12, is in fact consistent with what I have already proposed about the status being representing Gibraltar's decolonisation. Therefore, I think the question on the ballot paper ought to reflect that when people have the question posed to them, and we are telling them 'in the exercise of your right to self-determination, do you approve and accept the proposed new Constitution for Gibraltar?' and the answer is 'yes' or 'no', then I think we need to say that the basis upon which they are being asked to approve or disapprove this new Constitution, is on the basis that we are promoting it as a

mode whereby a full measure of self-government is attained by Gibraltar whilst retaining its links with the United Kingdom, which is in fact what we have been seeking to achieve since the Report of the Select Committee was tabled in the House and throughout the process of these negotiations. That is to say, when we have wanted a second preamble in which we said it gave the maximum possible level of self-government, when in the motion today which we altered to read and remove the word "maximum" which had been put by the Government, well look, the maximum measure of self-government and a full measure of self-government amount to the same thing. In the sense that, of course, the maximum for one territory is the full measure that that particular territory can achieve. In the explanations produced by the United Nations as the basis for the information that has to be provided to the people of the territory to assist them in making this decision when they are exercising their right to self-determination, one of the things that is recommended by the United Nations is that the question is put 'what is the best option?'. The best option of the four let me say, not the best option of the three. The answer is, 'whichever option the people of each non self-governing territory freely elect, once they understand the possibilities and the special characteristics of their homeland.' That is what we are asking people to do in this Referendum, except that instead of putting a series of options and listing the pluses and the minuses, we have on their behalf, entrusted by them to do so in two General Elections, achieved a consensus on a Constitution which has then gone through a process of negotiation with the United Kingdom which has then produced something which the United Kingdom has, as the motion shows, recognised as constituting an act of self-determination on our part. Now, it is clear that the only possibility that this has of fulfilling the criteria so that it is an act of self-determination and decolonisation, which is the sine qua non of self-determination. That is to say, one cannot have decolonisation without self-determination. We have always defended, and so have the Government, that this is the only applicable principle and it also follows that we cannot have self-determination to produce anything other than decolonisation, except that technically one can reject independence, as was

done in a Referendum in Bermuda a few years ago. Therefore, one has exercised their right of self-determination in saying 'I do not want to become independent', as has just been done on a free association treaty between Tokelao and New Zealand, which is another recent example, there the people have exercised their right of self determination by rejecting the mode that was put in front of them. Again, there, there was only one option with a 'yes' or a 'no'. Therefore, I believe that in order to complete the explanation, so that people understand the importance indeed of this Referendum, which would be the first exercise of our right to self-determination in our history, and consequently the first time we are being given an opportunity to settle Gibraltar's status, that this Constitution and its contents are the result of a process whereby by unanimity in this House and by agreement with the administering power, we have come out with a decolonising formula that meets the constraint that the UK imposes on itself, which we do not agree exists, and gives us the type of Constitutional relationship which nobody else has chosen before us, but that does not mean that we should not have the opportunity that is provided to choose this as the decolonisation mode. Therefore, this particular phrasing here is consistent with what the other previous amendments that I have moved. I did not want to take them all together but, of course, as the Chief Minister recognised at the beginning, that did not mean that I was willing to lose any of them, it just meant that I hoped to be able to persuade him each one at a time.

HON CHIEF MINISTER:

He said that he did not expect to win them all, that is what he said.

HON J J BOSSANO:

Not that I would not try.

HON CHIEF MINISTER:

Try as he will he will not win them all. Having said this morning that I did not want others to Africanise the debate about the judicial provisions, I do not want to Africanise the Referendum either. Frankly, the hon Member or whoever may have advised him to insert this amendment to the Constitution, has surely to understand that whatever might be his anxiety for the emperor to look as if he is wearing certain clothes, anxieties which I make no comment about whether he is right or wrong in trying to do so. But the question in a Referendum cannot be loaded. The question in a Referendum cannot contain value judgements. The question in a Referendum cannot contain political argument. We would be the laughing stock of the international community if we felt that we had to load the question and make it a leading question. Not even when we were asking the people of Gibraltar about joint sovereignty did we load the question. To add to the question "as the mode whereby a full measure of self-government is attained by Gibraltar whilst retaining its links with the United Kingdom" simply converts it into a leading question. Well, because the question of whether it is a mode whereby a full measure of self-government is attained by Gibraltar, is moot. He cannot put this in the question, which is why I have put it in my original paragraph 9, which he struck off. He did not like the word "maximum", well he could have put 'fullest' 'fullest measure' in paragraph 9 but it cannot be put in the question. I am not willing to take to the people of Gibraltar a question which is politically loaded. The question must only ask for a decision on the document placed in front of them and must not expect voters to make value judgements. Still less, or rather should not expect voters to have to interpret our value judgements of what the question entails. No civilised democratic country does that in putting questions before its electorate in Referendum. Now, I was dealing with the same point as the hon Member is trying to put in the question, if indeed it is him. I suspect that this is one of those fruits of consensus with mediators.

HON J J BOSSANO:

.....wanted “that” and not “maximum”.

HON CHIEF MINISTER:

Yes, but he wanted to remove it from there presumably to put it down here. It is just not the place for it. It converts this Referendum into a sort of North Korean exercise and I am not willing to do that. We have got to leave some things to the judgement of the people of Gibraltar for themselves. The idea that we ram down the throats of the people who are going into a booth to vote yes or no, not just ‘do you agree with the document?’. No, no, ‘do you agree with the document and I am telling you here and now what the document means. It means that it is the mode of accepting the full measure of self government’. Well, it is a loaded question, it is in legal terms a leading question and it is not an appropriate thing. We can put similar language where I had put it, but one cannot have it in the question. The Government will not agree to have a complex question which contains legal argument and technical content. The question has got to be one which people understand. Do you approve or accept the proposed new Constitution? That is what this Referendum is. This Referendum is about whether people accept or reject that Constitution. It is for me and him to explain in argument in the campaign to the people of Gibraltar what they are doing when they are voting in this Referendum. But we cannot stuff the question with it. I am perfectly willing to revisit paragraph whatever it is, the one that says “notes that under the terms of” in case he wants to..... The only phrase there is “a fullest measure”, well we could say, “in a close constitutional relationship with the United Kingdom”. It could no longer be “which the United Kingdom”, it would have to say “which we consider provides the fullest measure of self government.....” Whatever. He would have to put up some other proposition but it cannot be in the wording of the question as far as the Government are concerned.

HON J J BOSSANO:

The Government are perfectly entitled to hold a different view, but I think what the Government do not need to do and have no right to do, is to say that their view is so perfect that our view would make Gibraltar the laughing stock. He can say that about as many things that he does as he wants but the fact that he pontificates on that basis does not make it true. In Tokelao, under the supervision of the United Nations, the people of Tokelao have had a similar question on their ballot paper and they have not been the laughing stock of anybody, and the United Nations has sent observers. Why? Because the Tokelaoans were being asked to exercise self-determination. The question was, ‘do you approve the Constitution that reflects the Treaty of Free Association with New Zealand?’

HON CHIEF MINISTER:

Correct, and that is the one question. ‘Do you accept the Constitution?’

HON J J BOSSANO:

Yes, but what does the Constitution that was put in front of the Tokelaoans do? It creates a mode of decolonisation which is a treaty with New Zealand of free association, and the implications of the vote were spelled out in the ballot paper. All I am saying to the Chief Minister is, well look, are the people of Gibraltar in the exercise of self determination approving a new Constitution for Gibraltar to do what? What is it that they are being asked to do? They are being asked to approve a way of decolonising Gibraltar, which is what we said they would be doing in the Select Committee Report.

HON CHIEF MINISTER:

We are only debating whether it is an appropriately reflected question.

HON J J BOSSANO:

Yes, but if we say this is what the people of Gibraltar will be doing when they vote.....

HON CHIEF MINISTER:

We must not do that.

HON J J BOSSANO:

I really do not understand why when the ballot paper cannot say this is what you are doing when you are exercising..... Why should we tell them 'in exercise of your right to self-determination?'

HON CHIEF MINISTER:

We can take that off if he wants but I thought that it was very good. In arguing against me, all I have said is that it is just not good electoral practice. It is not good Referendum practice, and that is the context in which I said it was laughing stock. It was not a remark addressed at the Leader of the Opposition, even if he is the author of the question, which I doubt. All we have been saying is it is just not sound Referendum electoral technique to put a question to voters in a Referendum which is a leading loaded question. One puts neutral questions and when I have sat down he has tried to shoot me down by pointing to Tokelao. It transpires that in the Tokelao case, which I have not got in front of me, I am just taking him at his word for what he

has just uttered, the Tokelaons (if that is what they are called) were not asked 'do you accept the Treaty with New Zealand as a mode whereby a full measure of self government.....?' No they were just has asked the question. 'Do you accept the Treaty with New Zealand?' Assuming that what he has just told me is the whole of the question that they were asked. The equivalent of that is exactly what we have drafted in the Order Paper, except that we have added 'in exercise of your right to self-determination' which the Tokelaons were not asked. But for that, 'do you approve and accept the proposed new Constitution for Gibraltar?' seems to me to be the exact equivalent of asking the Tokelaons 'do you approve of the new Treaty of Association with New Zealand?'. The Tokelaon question, which nobody doubts was an exercise of the right to self-determination in the UN terms, did not feel a need to go on to guild the lily by putting even more clothes on the emperor. There comes a time when we seek to put so many clothes on the emperor that people looking on will not believe that the emperor has any clothes at all. Why are these people so obsessed with clothing the emperor if they have any confidence in what they are doing? It has nothing to do with him being outraged....

HON J J BOSSANO:

The Chief Minister must understand that he keeps on using these literary assertions. I mean, the last time it was Baldrick's cunning plan and I have not got a clue who Baldrick was and now it is the emperor's clothes and I do not know what emperor he is talking about. If anything I am a Republican, I do not believe in emperors. I do not know whether he does this deliberately in order to confuse me when the debate comes.

HON CHIEF MINISTER:

Baldrick is a Member of the Labour Executive in England.

HON J J BOSSANO:

Clearly, let me say first of all to the Chief Minister that this has not been proposed to us by anybody outside. I want him to know since he mentioned it. In fact, in the previous one we felt that since we said that the United Kingdom considers, which is what we think we ought to say, we should not be tying ourselves down, then we have to put “that” instead of “maximum” because we have to reflect what they actually said.

HON CHIEF MINISTER:

I agree.

HON J J BOSSANO:

What we felt was worth having on the ballot paper, obviously is not in order to give the impression that we are tilting the balance in favour of a yes vote.....

HON CHIEF MINISTER:

There again, it makes it more difficult for people to cast any vote, either yes or no. People will not understand what they are voting for.

HON J J BOSSANO:

Well, I am afraid people do not understand what they are voting for. The people that ask me are saying to me, ‘yes, but what does it mean?’. The Chief Minister does not seem to understand that there are literally thousands of people in Gibraltar who have not got a clue what the Constitution of 1969 says, never mind the 2006 one. Who have never read it, who do not know what it says.

HON CHIEF MINISTER:

The Government have every intention of informing them. The campaign has not yet started.

HON J J BOSSANO:

Yes, but informing them, look, the actual new text is published and anybody can read it. The old text was published a long time ago and everybody could read it. They do not understand the new one and they do not understand the old one. What they want to know is, apart from the fact that we seem to be giving more independence to the Judiciary, according to one source, and less according to another source, which only serves to confuse everybody even more, what they want to know is, ‘well look, what is the net result of this? If we vote for this new Constitution how does it.....’

HON CHIEF MINISTER:

We are not voting for the results, we are voting for the Constitution, as they did in Tokelao.

HON J J BOSSANO:

Yes, but if I am to make a judgement as to how I vote, the question that I ask myself is, ‘well if I vote for the new Constitution what does it mean, having just used my right of self-determination, what does it mean? How is Gibraltar different when I have used my right of self-determination?’

HON CHIEF MINISTER:

He should explain it to them. All I am saying is that he cannot explain that in the question on the ballot paper. Precisely the

hon Member's obligation, as a leading member of this House.....

MR SPEAKER:

I do not think the hon Member has given way.....

HON J J BOSSANO:

Well, we are not going to have a fight over this one because if he does not want to have it there, I think that having it there does not weaken the independence of the Referendum, does not make the Referendum different from referenda in other parts of the world and I do not think we have got, in this House or in our country, an experience of holding referenda with such regularity, given that we have held three in our existence. One in 1967, where people were told 'do you wish to retain your existing links with the United Kingdom or do you accept the Castiella proposals?'. When they probably did not know what were the existing links or the Castiella proposals any way. They simply knew that one thing was being Spanish and the other was being British and that is what they voted for.

HON CHIEF MINISTER:

This is a conceptual point. The hon Member may not wish to accept it but it is the Government's view, I think, which will be recognised by most commentators as being correct that it undermines the integrity of a Referendum if the question is loaded. I remember the extent to which this is so, and I am going to go off in a small tangent just to give us both a moment to pause. When we devised the question for the 2002 Joint Sovereignty Referendum, the Electoral Society in the UK said to me, 'wow. What an honest, fair Referendum question'. I said, 'why?'. They said, 'because most Governments draft the Referendum question so that the answer that they want is

always the yes, because people prefer to vote yes than no psychologically, and most Governments always cast the question so that the result that they want is the yes'. I said, 'my goodness, it is just as well we did not load the question', because if that is the extent to which one goes to analyse the integrity of the question, to give me a little brownie point, imagine if we had loaded the question. There is a science of democratic Referenduming and it is based on people being asked a straight forward question that contains no controversy, that contains no value judgement, that contains no argument and that contains nothing with which the people may agree with one part of the question but not the other. The hon Member does not have to take it from me and I am sure will not take it from me, but this is nothing to do with the subject matter that we are debating here. It has got nothing to do with what this Referendum is about self-determination or decolonisation of this. It is simply an issue of Referendum techniques which sustain a certain view of the integrity of a testing of public opinion, as opposed to one which is said to be tainted by the hand of... Let me just give the hon Member an example of what I mean in relation to this. The words, 'as the mode whereby a full measure of self-government is attained for Gibraltar' are moot. They are moot. Full measure as defined by whom? We know, because the Committee of 24 spelt it out, that for a full measure of self-government to have been obtained as far as the United Nations is concerned, requires certain criterias to be met – the so-called de-listing criteria – at least one of which this Constitution does not meet. The one that says that the administering power cannot retain any right to legislate and that it must be a relationship of political equality. Well, I do not know whether the Committee of 24 is right or wrong in its assertion. I do not know whether the hon Member is right or wrong in its assertion. But what I do know is that 20,000 ordinary citizens should not be made to sit in judgement of whether the Decolonisation Committee is right in its definition of full measure, or whether the hon Member and I would be right if we included that value judgement in the question. That is precisely why controversial, loaded, political argument, assumptions perhaps, one could just say to avoid any language which may

inadvertently and in an unintended way cause offence across the floor. That is why assumption should not go into a question. Look, there are people out there, for example, that he quoted this morning, the Self Determination for Gibraltar Group has already, before this debate and before hearing him and I this afternoon, the Self Determination Group has already said that they are recommending a no vote because in their view this Constitution and this Referendum is incapable in resulting in the decolonisation of Gibraltar. So what are they supposed to do with the question whereby a full measure of self-government is attained by Gibraltar? They will say to it, 'hang on, I have already publicly said the opposite of that. Why am I faced with a statement that I find controversial to the point of disagreeing with it, in the language of a question? What sort of question is that? That is not a question, it is a statement disguised as a question by the convenient placing of a question mark at the end of it'. I am not even expressing my own views, I am simply defending issues that go to the integrity of the exercise. This is nothing to do, I had the phrase 'maximum degree of self government', 'maximum full measure' it is all the same to me, I had it in the text this morning before we started debating. This is not something that I do not want to say, it is just that I do not think that it can be said in the question.

HON J J BOSSANO:

All I can tell him is that all the arguments that he uses, and I do not want him to say 'will I give way?' so that he can suggest we take away 'in the exercise of your right to self-determination'. But the argument that he has just used about the Self Determination Group applies without my words to the exercise of the right of self-determination. The reason that they have said.....

HON CHIEF MINISTER:

That is the UK statement to that effect. The administering power says it is an exercise of the right of self-determination.

HON J J BOSSANO:

Yes I am aware, but if the administering power has told us that it is the right of self-determination and if we say in the motion that it is the right of self-determination, and if we are inviting people to exercise their self-determination, then my question is how is it possible to exercise the right of self-determination? The United Nations says the only possible way of exercising self-determination is to decolonise. If we have a vote in a Referendum to decide anything else other than decolonisation, it is a valid Referendum vote but it is not a self-determination Referendum.

HON CHIEF MINISTER:

I am only questioning its content in the question not the substance of it.

HON J J BOSSANO:

Yes, but the point is that he has given the example of the Self Determination Group. First of all he has told us that we would be the laughing stock of the world if we had something there because referenda are not carried out like that. Now we discover that apparently most Governments put biased questions, presumably and risk being the laughing stock of the world, and that the Electoral Reform Society was pleasantly surprised that this Government was not doing it in 2002.

HON CHIEF MINISTER:

Just for the record and as a point of order, I realise that the hon Member's debating style is to take considerable licence with the words that he attributes to others. I did not say that most Governments take liberties with loaded questions. I have said that the issue of whether the yes or the no is the result that one wants, is itself thought to be (by those who are the guardians of the integrity of Referendum process) a relevant feature. This is not loaded questions. The questions are not loaded, the question is 'do you want to leave the European Common Market – yes or no?' If the Government wants an exit vote it will put it in that way so that the answer is yes, that is not loading the question, it is applying psychology to the formulation of the question.

HON J J BOSSANO:

Well, the words he used was that when they raised that with him it was because they were pleasantly surprised because most Governments always cast the questions to get the answer they want.

HON CHIEF MINISTER:

No, all cast the question so that yes is the result that they want, is what I said.

HON J J BOSSANO:

Because they want a yes, they cast the question so that they get a yes vote. That is casting the question to get the result that one wants. I am misquoting him, well.....

HON CHIEF MINISTER:

No he is misinterpreting, misanalysing.

HON J J BOSSANO:

Oh, I see. Well, certainly, I do not know what the Electoral Reform Society would make of it but certainly I see nothing here that would have the effect of encouraging more people to say yes or more people to say no.

HON CHIEF MINISTER:

That is not the issue.

HON CHIEF MINISTER:

So in fact, this is not a casting of the question in order to make one result more likely than the other. This is not writing the question in a way that is more likely to increase and produce the 65 per cent that the SDGG would like to see, or not like to see, depending on how it is viewed. So, the only reason why I felt there was a need to spell it out on the ballot paper is because I think people need to be clear.

HON CHIEF MINISTER:

We can go round in circles. No, the Government have already indicated to the hon Member that regardless of argument, they will not approve a loaded question. They will not approve language in the question. I have offered the hon Member to transport equivalent language into the body of the Resolution. That is the most that I can do. There is no point in him standing up arguing why he thinks it should stay in the question and then me popping up again afterwards to tell him why I think. The

Government will not allow the question to be complicated by the addition of argument of this sort. That does not mean that I disagree with the sentiment, but let us put it in the motion and not in the question.

HON J J BOSSANO:

I am exercising my right of reply to an amendment and I have given way to him ten times and then he says that once I give way to him I have got to then end, because he cannot resist asking me to give way if I carry on talking. Look, I cannot help his genetic code, that is something I have nothing to do with.

HON CHIEF MINISTER:

Before he complained that I did not indicate how the Government were going to vote and I made him talk at length, even though we were going to support. Now I am doing the same in reverse. It is not a question of how long each talk about, the Government will not agree to this in the question.

HON J J BOSSANO:

I have been aware of that since we moved the amendment and the Chief Minister spoke the first time. Given that he uses arguments to support the Government's view which we do not share, and since I have the right of reply, then every time he uses that argument in support of the reason for not accepting it, I am entitled to seek to refute the argument on the record, even though I am also aware that refuting the argument is not going to make him change his mind. That is what I am seeking to do. Therefore, I do not accept that the words there are in any way diminishing the nature of the question. I mean, the question is yes or no. I think one of the problems in the approach that we have adopted from the beginning in this, because that was the Government's preferred approach from the bottom up, as he put

it, was that in asking people to vote for the Constitution one could also argue, well look, why should people who may agree with some things in the Constitution but not in others, have to have a situation where they have to say yes or no. What do they do? Do they sort of measure the content of the Constitution? If that is all that they were doing this would not be an exercise in the right to self determination. None of the essence of what has gone on since 1999 would have happened if this were simply a question of saying, well look, we have got a Constitution that is out of date, if for no other reason, it is because since 1969 we are no longer doing things in the way that we started doing them in 1969. It is quite obvious that one of the things that was supposed to happen that never did was that we were supposed to be adding periodically things to the list of defined domestic matters and none ever happened. I can tell the House from my experience that even the things that were there as defined domestic matters when it suited the United Kingdom. I remember at one stage when we wanted to bring in further development for the Savings Bank, which is listed as a defined domestic matter, we were told that the view of the Bank of England was that this was a colonial bank and colonial banks could not do more things than they were permitted to do. Even though it was a defined domestic matter in 1969. Well look, the move from listing things to not listing them is a good move but let us not kid ourselves. Even when they were listed it did not stop the United Kingdom seeking to interfere in the listed things as much as in the non listed, if they got half a chance. What is different about the relationship is the important thing, not so much as the detail of the Constitution. This is why we believe that the importance of the decision that has to be impressed on the people, is that the nature of their vote is the nature that has to do with the heart of the relationship with the UK, which has bedevilled the development of Gibraltar's role in the world, in the Commonwealth and in relation to many other colonies which have progressed less than us economically, or socially, or politically, but have nevertheless been able to achieve a constitutional status in advance of ours. It is the status that the Constitution gives us which is the key to it being a Referendum and not simply saying, 'yes, I like this Constitution so I will tick

this box, or I do not like it and will tick the other one'. Self-determination is a more profound exercise – it is the exercise of a basic, international, fundamental human right, which we have been fighting for a long time to have recognised and that we finally, at least, got the UK to recognise to the extent that we are able to put on the ballot paper, 'you are exercising your self-determination by voting yes or no to the Constitution'. We think to say by voting yes or no to a Constitution that is going to give one a new status in its links with the United Kingdom, is not in any way pushing people to vote in one direction or the other or altering. We have heard what the Government have to say and, therefore, regrettably, we will accept that we will support the Referendum even without those valuable words.

MR SPEAKER:

Is the hon Member then withdrawing the proposed amendment? I take it there is no objection to this proposed amendment being withdrawn? We move on to the next proposed amendment. Are we ready to go back to the renumbered paragraph 11? We have an amendment proposed to the earlier amendment proposed by the Hon J J Bossano.

HON CHIEF MINISTER:

The hon Member will be delighted to learn that we could accept his proposed language if he agreed to insert before the word "bringing" the words "the process of", "and the status that it represents in the process of bringing about the decolonisation of Gibraltar".

HON J J BOSSANO:

Yes, that is no problem.

Question put on the amendment to the renumbered paragraph 11 proposed by the Hon J J Bossano to include the words proposed by the Hon the Chief Minister.

The House voted.

The amendment was carried unanimously.

HON CHIEF MINISTER:

Mr Speaker, if I may just for the sake of the record, that sentence would read, "and therefore accept or disapprove and therefore reject the proposed new Constitution for Gibraltar and the status that it represents in the process of bringing about the decolonisation of Gibraltar."

MR SPEAKER:

Now we have a proposed amendment to the renumbered paragraph 17.

HON J J BOSSANO:

I beg to move the amendment of which I gave notice, which is to add a new clause to the motion before the House, which was numbered 16 but may now be 17, saying the following: "Notes that the UN defines self-determination as the people of a colony deciding the future status of their homeland and that, in addition to the traditional three options, the UN also provides for a fourth option which is the emergence of a new political status which is freely chosen by the people of a colony in the exercise of their right to self-determination". Then this would bring the consequential renumbering of the following points, if the Government accept the introduction of this. In effect, the amendment that I am putting to this motion collects the arguments that I have used in support of some of the other

amendments and is, in fact, a reflection and a direct quotation from the literature provided by the United Nations as the documentation that is recommended by the Information Department attached to the decolonisation Bodies in the UN, so that people understand what it is that they are doing when they vote in a Referendum and so that people understand what is the nature of the exercise of self-determination. I think it is important to have it there so that we assert that this is not our view, which it is, but that in fact what we are doing is reflecting in our motion what the UN says is the meaning of self-determination, which as I have said, is absolutely crystal clear has one meaning and one meaning also. It also collects, in fact, the recommendation of the original Select Committee which set out precisely to obtain this. It says in paragraphs 11 and 12 of the Select Committee Report that was approved by unanimity in this House, it says that the new Constitution should, when and if accepted by the people of Gibraltar in a Referendum, bring about the decolonisation of Gibraltar through the exercise of the right of self-determination by the people of Gibraltar. It then goes on to say that whilst there is no specific amendment in the Constitution to reflect this, the Committee felt that the people of Gibraltar should achieve decolonisation by electing, as is reflected in the proposed reformed Constitution, the so-called Fourth Option which has been identified by the United Nations as one of the acceptable ways of achieving this. Therefore, since that is what we said when we embarked on this road after three years of discussion, and what we recommended to this House and what was approved by this House, and what we took to London, I think it is only fit and proper that we should include it in the motion that explains that by moving down this road we are, in fact, getting to where we intended to get from the beginning. I commend the amendment to the House.

HON CHIEF MINISTER:

The Government will not, in this form, support this amendment for much the same reasons as we have explained in relation to previous arguments. But we will support an amendment that

reads, "Notes the UN definition of self-determination and notes also Resolution 2625 of December 1970 of the General Assembly in relation to the Fourth Option."

HON J J BOSSANO:

Well I am not sure whether this argument is the same as the argument that was being used before, given that the argument the Chief Minister used before was that we should not have it on the ballot paper and this is not going on the ballot paper. This is going in the motion in the House and if the Chief Minister is happy to say, "Notes the UN definition of self-determination", why is it that he is not happy to spell out what that definition is?

HON CHIEF MINISTER:

Because I cannot be certain here and now that that is what the definition is.

HON J J BOSSANO:

Well I am astonished. I am astonished that after dealing with this for so long he has some doubts as to whether the United Nations describe this but let me say to him that this, which is an official United Nations document, states 'self-determination means that the people of a colony decide the future status of their homeland'. Now, if he is not sure that that is what the United Nations defines self-determination as, then I cannot imagine what he thinks we have been talking about since 10 o'clock this morning and what we have been doing in London, I mean, throughout our negotiations with London.

HON CHIEF MINISTER:

If that is what he thinks the United Nations means by self-determination then he should be saying, 'thank you very much Chief Minister, I accept your alternative proposal' because it means exactly what he wants it to mean.

HON J J BOSSANO:

Yes, but the Chief Minister says that the reason why he wants to take out that self-determination is the people of a colony deciding the future status of their homeland, is because he is not sure that that is the correct definition. Now I would expect him, frankly, at this stage in the proceedings to know the definition of self-determination off by heart. I mean, we have gone to the United Nations and he stood there and said to them there is only one applicable principle in the process of decolonisation, and that is the exercise of the right of self-determination. Now he tells us that he is not sure what the definition of that right is. I find it difficult.....

HON CHIEF MINISTER:

Well, since he is astonished let me relieve him of his astonishment if he will give way. He should not be astonished. He should rather be astonished by him standing up to read one line from one pamphlet and simplistically suggest that that is the whole of what is required for self-determination, when he knows, well if he did not know it before he knows it now, when he knows that for it to amount to self-determination as defined by the United Nations, there are also de-listing criteria to be satisfied. Self-determination, as far as the United Nations is concerned, is not however much he might read from two-sided leaflets, simply that the people of a non self-governing territory vote and decide what they should be the future status of their homeland. For example, if we should all vote to continue to remain a colony of the United Kingdom, that would be the people of the colony

deciding the future of their homeland but the United Nations would not regard it as self-determination. Therefore, it is simplistic for the hon Member to pretend that all that is required for the exercise of self-determination as defined by the United Nations, is for the people of the colony to vote to decide what their future should be. For example, he knows it to be the case, that if the people of a colony do as we are about to propose to do, to vote for a Constitution that reserves to the colonial power, or in our case to the United Kingdom, the right albeit in residual circumstances to legislate for Gibraltar, that is not compatible. That does not satisfy the de-listing criteria of the United Nations nor the United Nations definition of self-determination. Of course, I can pick up leaflets and read just two lines from them and persuade whoever is listening to me that life is as simple as that. It is not. It rarely is and it is not in this case either. It is not just the people of a colony deciding the future of their homeland that equals self-determination as defined by the United Nations. I know it and he knows it and that is what I meant. I could have said if he had preferred that I do not think that what he has just read is the United Nations definition of self-determination. It is what it means assuming that by the vote one has also jumped all the other hurdles that the United Nations puts as pre-conditions. Otherwise, what would be the de-listing criteria? There would not be any de-listing criteria. The United Nations would simply say, 'you vote and whatever you vote if it decides the future of your homeland, that equals self-determination'. He knows that that is not the position. He knows that it is not as simple as that.

HON J J BOSSANO:

I can tell him that I know the very opposite. I can tell him that what he does not seem to know is that self-determination is one thing and decolonisation is another. He seems to be incapable of distinguishing between the two. I will do something else. Before this session of the House is over I will quote to him and give him the text of the date in this House, in another motion, when he told us that he had seen a UN document which said

that even voting to remain as a colony was the exercise of self-determination. I can assure him that he has said it in this House and that it is in Hansard in the context of another motion. So, it seems that when he says it.....

HON CHIEF MINISTER:

I do not say that it is but the United Nations does. We are talking about their definition.

HON J J BOSSANO:

The Chief Minister told the House that he had seen a UN document which stated that.

HON CHIEF MINISTER:

The hon Member thinks that the position is that if we vote to retain the 1969 Constitution and to stay a colony of the United Kingdom, that that is self-determination, is it?

HON J J BOSSANO:

Absolutely, and not only do I think so, he thinks so because he has said so in this House and he has actually said so in a debate in television with me. We know, I have given two examples today. The people of Bermuda held a Referendum on whether they wanted to proceed to independence and they voted no and they stayed a colony. The people of Tokelao only a few months ago had before them a Referendum under UN supervision, with UN observers.

HON CHIEF MINISTER:

Earlier this afternoon the hon Member was arguing that in order for it to be self-determination and decolonisation, which by the way, self-determination is the mechanism, it is the principle which when applied results in decolonisation. Earlier this afternoon he was arguing, when we were arguing on a previous paragraph, that for it to be decolonisation it actually had to result in a change in international status. Now he is arguing that it can be self-determination even if we remain a colony. Well, which of the two?

HON J J BOSSANO:

The two, he does not seem to know the difference. He has just repeated the same thing again. I was arguing that self-determination can mean rejecting this Constitution, that is self-determination.

HON CHIEF MINISTER:

We were talking about the UN's definition of self-determination.

HON J J BOSSANO:

Having a vote to decide the future of your homeland is the process of self-determination. If the decision that one takes gives independence, one is decolonised because one has chosen independence. But if one has a ballot paper which says, 'do you want to be independent or not?' and one says 'no', that 'no' is an exercise of the right of self-determination. Of course it is. He says to me that it is not decolonisation. I know it is not decolonisation, I am not saying here the UN definition of decolonisation is that we can stay a colony. I am saying the UN definition of self-determination is that we decide the status. Deciding the status can be deciding that we do not want to

change it. That is still self-determination and that is still the definition of the UN. He argued it himself, he has argued it in my presence in a television programme and he has argued it in this House and it is on record in Hansard and he it was right when he argued it before and is incorrect now because he is actually using the argument about whether it is decolonisation to then decide whether it is self-determination. Self-determination does not necessarily result in decolonisation but decolonisation can not happen without self-determination. That is the correct interpretation and that is the interpretation that we have defended. He has defended it and I. We have gone to the United Nations and said that it is not possible to decolonise Gibraltar other than by self-determination, but it is possible to have self-determination and emerge as we were before, because they have just done it. The last colony that was invited to exercise the right of self-determination chose to exercise it in a way that resulted in its not being decolonised for the simple reason that the power that offered it free association, as I explained, made it a condition that the new Constitution which has to be put in by New Zealand, would not be put in unless 65 per cent of the people casting their vote wanted it. Since only 61 per cent did, it does not mean the 61 per cent did not exercise their right of self-determination. Of course they did. Not only the 61 per cent that said 'yes', the 39 per cent that said 'no' as well. Both groups, the 61 per cent and the 39 per cent, were both participating on the status of their territory, and 61 per cent were saying 'we want the status to be that we are decolonised by the mode of free association' and there were 39 per cent who said 'we do not want to have free association'. Therefore, it may be.....

HON CHIEF MINISTER:

If he will give way. He is semantically right but that is not what we are debating. We are debating what the UN defines as self-determination, and whilst he is semantically right, I do not believe that that is what the UN understands by self-determination. The UN understands by self-determination an

act and a process which results in decolonisation. Then I offer the hon Member two ways out of this, not one, two. I say to him, leave it at "Notes the UN's definition of self-determination" so that it is whatever it is, or alternatively, he can say, "Notes that self-determination is the process of a people deciding the future of their territory, of their homeland". Either will suffice for me because neither attributes to the United Nations a definition of self-determination which I do not think is what they understand by self-determination, even if it is semantically right what the hon Member is saying. "Notes that self-determination is the process by which the people of a colony decide the future status of their homeland or their territory" or whatever. That I am perfectly content to support.

HON J J BOSSANO:

It is a joke.

HON CHIEF MINISTER:

No it is not a joke. It is not a joke, if he likes I will just vote against his motion. It is not a joke to try and find a consensus.

HON J J BOSSANO:

What is the difference?

HON CHIEF MINISTER:

The difference is that one is attributing it as the UN's definition and the other is not. I would have thought the difference was obvious. He may not agree with it.

HON J J BOSSANO:

It is not obvious to me. They seem to me to be saying the same thing.

HON CHIEF MINISTER:

I see. So he does not see the difference between the words "Notes that the UN defines self-determination as the people of a colony deciding the future of their homeland" that on the one hand, and on the other, expressing our view, "Notes that self-determination is the process by which a people". What I am not willing to do is attribute that definition to the United Nations because I do not think that is what they understand by decolonisation. Semantically correct as though he might be, I do not think that the United Nations regard as the exercise of the right of self-determination the decision through a Referendum to remain a colony. Now, that may be semantically the case, one has exercised a right to decide the future. How? By deciding to stay as they are. That is not what the United Nations understands by it. That is not what the United Nations understands by it, even though semantically, it is logical and correct.

HON J J BOSSANO:

I think it is more than semantically. I think that I have tried to demonstrate to the Chief Minister that the United Nations has just reported on the last colony which was invited to indulge in a Referendum which was an act of self-determination. That colony voted to remain a colony and the United Nations recognised that decision as the exercise of the right of self-determination.

HON CHIEF MINISTER:

That is different. An act of self-determination not self-determination. That an act of self-determination is the people deciding the future of their homeland. One can by an act of self-determination decide to remain a colony but that is not the definition of self-determination which is what we are debating here.

HON J J BOSSANO:

I see. Well, I think the problem is that the Chief Minister has an approach to these things.....

HON CHIEF MINISTER:

Which is accurate.

HON J J BOSSANO:

No, I do not think it is accurate. Look, when we go through this Hansard, if he has the time to do it which I doubt, he ought to see how many inaccuracies he has already developed in the last half hour.

HON CHIEF MINISTER:

I do not agree.

HON J J BOSSANO:

I do not expect him to. I do not expect him to agree that he has contradicted himself when he was arguing as to what was self-determination and what was not self-determination. Let me say

that I am quite happy to insert the words “an act of” in front of the words “self-determination” and say “Notes that the UN defines an act of self-determination as the people of a colony deciding the future status of their homeland”, which he has said is something different.

HON CHIEF MINISTER:

Correct, and then I will propose an amendment to the rest of it. That much we can accept.

HON J J BOSSANO:

Well, if the Chief Minister can accept that, that is fine. In any case, UK says this is an act of self-determination so it is consistent.....

HON CHIEF MINISTER:

Correct, in the context of the UN. I have no difficulty with that. Then in the rest of it I suggest that instead of.....

HON J J BOSSANO:

I will give way and hear what he has to suggest. He may have valuable suggestions to make.

HON CHIEF MINISTER:

Well, the difference between him and I is that my suggestions do not have to be valuable for me to carry them in five minutes if I wanted to. The one who has to make valuable suggestions to persuade the majority is the minority. So I do not think that he should be quite so dismissive of our willingness to sit here trying

to accommodate his requirements, when we have at hand a mechanism by which we can have our way in five minutes. Perhaps he thinks that he has the majority in this House.

HON J J BOSSANO:

I think that is totally uncalled for.

HON CHIEF MINISTER:

He may think it is uncalled for but perhaps he is not hearing his own quips.

HON J J BOSSANO:

Well, presumably we can both make quips on either side. Or is it that we have to have a majority to make quips as well?

HON CHIEF MINISTER:

One has to have the majority so that one does not have to make persuasive arguments. We do not have to persuade him of anything. He has to persuade us of the amendments that he wants to introduce to our motion. That is the reality.

HON J J BOSSANO:

Maybe we ought to have a new Constitution that dispenses with Parliament altogether.

HON CHIEF MINISTER:

I have no doubt that it would have appealed to the hon Member while he was Chief Minister but, certainly, I do not think it appeals to anybody else.

MR SPEAKER:

Can we turn our thoughts back to the substance of the debate?

HON CHIEF MINISTER:

There may be more to the substance than one imagines. I could accept, "Notes that the United Nations defines an act of self-determination as the people of a colony deciding the future status of their homeland, and notes also, Resolution 2526 of December 1970 of the General Assembly".

HON J J BOSSANO:

As the Chief Minister knows, Resolution 2625 of 1970 in the Annex is the one that introduced that fourth alternative and it is what we have called the Fourth Option in our Select Committee Report. So why does he not want to include the words "Fourth Option"?

HON CHIEF MINISTER:

We can add at the end, "relating to the Fourth Option".

HON J J BOSSANO:

We are willing to settle for that. So I then move that there would be a new paragraph introduced which would say, "Notes that the

UN defines an act of self-determination as the people of a colony deciding the future status of their homeland, and that the UN also in Resolution 2625 of 1970 provides for a Fourth Option".

HON CHIEF MINISTER:

No, that was not what I have offered. What I have offered him is, "Notes that the United Nations defines an act of self-determination as the people of the colony, (or I suppose we should use of the non self governing territory), deciding the future status of their homeland, and notes also Resolution 2625 of December 1970 of the General Assembly relating to the Fourth Option".

HON J J BOSSANO:

Relating to a Fourth Option.

HON CHIEF MINISTER:

To "the".

HON J J BOSSANO:

We are willing to support that redrafted paragraph 17.

MR SPEAKER:

I now put the question that the amendment to the motion before this House by the insertion of a new paragraph 17 in terms proposed by the Hon J J Bossano as amended by the Hon the Chief Minister be included in the motion.

The House voted.

The amendment was carried unanimously.

HON J J BOSSANO:

Mr Speaker, we have had some problem with this question of the Referendum Register which the Government decided should be produced on the basis of using the Electoral Register of November 2003 and inviting people on the basis that they were applying to be included in a register that would make them eligible to vote in the Referendum. The Chief Minister subsequently came out saying that the fact that such an invitation was being extended was not an indication that the matter was closed and that, in fact, the Government had not yet made up their minds and that they would probably make up their minds by the time the motion came to the House. Of course, the motion now before the House provides for British nationals who have been ordinarily resident for not less than ten years immediately preceding the Referendum day, to be included in the categories of people eligible to vote. I would remind the Chief Minister that in the motion for the 2002 Referendum, I did raise this but this time round it is even more important, because nobody was suggesting that the British nationals who exercised a vote in 2002 in that Referendum, were in fact engaged in an act of self-determination. The entire motion before the House, the statements in the Constitution and in the Despatch, the statements in the House of Commons and in the UN, all concur that as far as we are concerned, and as far as anybody else is concerned other than Spain, the right to vote is the right to exercise self-determination. Indeed, when Mr Hoon spoke both before and in his latest statement, he talks about the Referendum vote being an act of self-determination by the Gibraltarian people. Of course, the Gibraltarian people cannot possibly consist of anybody who arrived here from the United Kingdom last February, and if we want the Gibraltarian people to include for the purpose of this Referendum, the British nationals that have been here in the last ten years, then what I am

suggesting is that we define that decision in ratifying and approving who will be eligible to vote, by explaining that in doing so we are considering them to be part of the people of Gibraltar and possessed of the right to self-determination. Of course, if they do not possess the right they cannot engage in an act of exercising something they do not possess. We believe it is necessary to reconcile this so that nobody can argue, well look there were a lot of people there allegedly engaged in an act of self-determination, when their self-determination is not in Gibraltar but in their place of origin. They are not part of the people who are a non self-governing territory, and in order to make it also compatible with the invitation to register that has been issued, which requires people to certify that they intend to continue living in Gibraltar either permanently or indefinitely, however difficult that may be to monitor whether it has happened or not happened after they voted. Since they are saying in the form that they are declaring that that is their intention, then we believe that the definition of the category of British nationals should be those who have been here continuously for the ten years preceding the Referendum and who intend to continue here after the Referendum. That is the reason why we have in the invitation to register that criteria, we think the criteria should be in the motion itself. In relation to the question of the Register, I know that the Chief Minister in the debates we had in 2002 and in 2003, kept on telling me that all the experts and all the officials and everybody else said that we were wrong as to the number of people who were in that register and the number of people who subsequently disappeared. Let me say that the Referendum had 20,000 names, in round figures, and the Register of Electors a year later had 18,000 names. Given that the list of people with 20,000 names was confined to British nationals with ten years residence, and the one with 18,000 names permitted British nationals with six months residence, one would have expected that the second list would be longer than the first. By definition, everybody who had ten years had six months and should have been on the second list. But there must have been lots of people with six months who fell short of the ten years, who would have been in the second and not in the first. That was never satisfactorily

explained. I can tell the House that we did an exercise where we identified the 2,000 missing names. We have it electronically and in printed form. We do not know how many of them there are still around or whether they have gone, but there were many people who, in fact, for some peculiar reason, disappeared from the Register of Electors for 2003. I am sure Government Members must know some, the same as we do, who actually turned up to vote in 2003 assuming that if they had been able to vote a year earlier in the Referendum, there was no reason why they should not still be there to vote in the election and then they found that they were not. In some cases there were instances of the same household, some members having disappeared and some members still being there. Now, that is the register that is the base for the new Referendum. I hope that given that they have chosen to have it on 30th November, and frankly if we have waited this long, I would have thought that it was important that we get it right and we do not have a situation where at the end of the day there are people who challenge the whole thing on the basis of their being denied. This is a very serious and important exercise in consulting our people that is going to take place, if we mean everything we say about self-determination. At the end of the day, if one misses the boat in one election there is always going to be the next election where one should make sure one is included. But a Referendum which is an exercise of self-determination, given all the seriousness and importance that it has, we must make sure of that. I know the Government have left it open for a very long time but the reality of it is that I remember in the old days when Paul Garbarino was the Clerk of this House, that when he was the Returning Officer for the Election, he actually chased people up and made them register, because he knew from experience that, regrettably, there will always be people who leave it too late and who then do not check, and who then expect to vote and find that they are not there and that they cannot vote. I think in an important issue like this, I know that it has been kept open a very long time, but I think we need to be sure that we are not going to find ourselves with things that are difficult to explain when the time comes and people have got the right to vote. Therefore, I am saying that is not part of the amendment because the amendment is, in fact,

simply in our judgement, putting a definition on the eligibility to vote, which makes sure that nobody can question that the right of self-determination is the privilege of all the people that are being included and nobody can argue the opposite. That is the main thrust of this but I have taken advantage of this opportunity to flag this concern that we have about the composition of the Register.

HON CHIEF MINISTER:

With respect to the hon Member, I think there is no basis whatsoever to justify his concerns. A register for any election, I will deal in a moment with his suggestion that 2,000 people were lost, a register is something that is produced for every election as a new register. One can either start with a clean sheet of paper and say no one is on the register, everybody has to re-register, or one can say, we will use as a base the last one, give people week after week of advertisement in the newspapers the opportunity to register if they are not on it, then publish a draft register, give people the opportunity to inspect that draft register, whether it is in printed form or on the website of the organisers, see if their name is on it, if they are not on it they have got two or three weeks in which to get on it, with the administrators putting notices and advertisements in the newspapers saying, 'please check. The fact that you are on the last one does not necessarily mean you are on this one. Please check to see if you are on it and if you are not on it you can still register.' That has still got to happen and if at the end of all that process, and all that expenditure, and all that publication, and all that warning, and all that urging people to check and to register there are still people who cannot be bothered to do so, I do not really think that it is the onus of the Clerk of the House or of the Registrar to chase every individual in Gibraltar up, to make sure whether he has not registered despite ignoring all the systemic, administrative, public urgings and reminders to do so. What is going to happen with this register is that included on the first draft of it when it is published, there will be all the people which they (the chaps who are listed in this motion that we are just

passing), headed by the Referendum Administrator, think using their best efforts, may be entitled, that they are aware of are entitled. Then that is not the end of it, it is not as if those are the people who can vote. Then that is published as a draft form, both on-line and in print, and people can check. They will have two weeks, during which there will be an advertising campaign telling people that this draft has been published, and that they should look at it and that they still have two weeks to register if they are not on it. Thereafter, when all that has been gone through and all the advertisements placed in all the newspapers, and interviews that they normally give on television, if there are still people who ignore all that they must be living on Mars, and who then turn up on polling day saying they want to vote. It may happen, I do not doubt that it happens but it is not protectable against. There is nothing that one can do to take a horse to water except put the water there and tell them for two weeks that there is the water, and if they want to drink to come and drink, I do not think we can go beyond that. I do not think the hon Member is right, and if I go wrong the Chief Secretary happens to be here in a different capacity and he can leap to his feet to correct me. A total of 2,000 people did not disappear. The hon Member says, as I understood him, that there were 2,000 people who were eligible to vote in the Sovereignty Referendum, who when they came to the 2003 General Election they had disappeared. Well, it was a different register. It is a different register. I am advised that the register for the 2003 Elections was not based on the register for the Referendum. How could it be? A whole category of people had the right to be on the Election Register that were not entitled to be in the Referendum Register. It was a larger category for the Election than for the Referendum Register. But there was still the usual publication of draft, advertising, (for the 2003 Election I am talking about). There was still the usual opportunity to vote, do not assume because one has voted for the Referendum or at the last Election.... The fact of the matter is that there are 2,000 people missing between the Referendum Register and the General Election Register, it is only because there are 2,000 people who either went to the trouble to register for the Referendum, or were placed on the Referendum Register on the

basis of this default mechanism, that when it then came to the General Election Register, did not bother to register and did not bother to check that their name was on it. That is not 2,000 being lost, that is 2,000 people apparently showing more interest in voting in the Referendum than in voting at a General Election. One of the proposals that we mean to bring to this House to do away once and for all with this problem, for elections not for Referendum which will always be a slightly different case, is to move to the system of a permanent open register like they have everywhere else. Where we have a computerised register and people at any time can say, well deaths are normally dealt with automatically by the administration, but who can say, 'I have changed name', or 'I have got married', or 'I have got divorced', or 'I have changed address', or 'I have just come back to Gibraltar', and not have to start with a new register every time that there is an election. The problem is that with the law as it stands, and one has to have a new register for every election, there is a great risk that people who bothered to register for the last one may not bother to register for the next one. The administration cannot put people on the register like that. I do not know but this is how I understand the position. The Chief Secretary is nodding. This is how these things happen, the only way to avoid it is to go to the UK system of permanent open registers, so that registers are a continuing, evolving, updating, continuous document and not a thing that is thrown away and we start again with a blank sheet of paper for the next time, and people only have a window in which to register changes or to register. They can do it at any time, the day after an election they can go in and say they have changed their name, or their address et cetera. I do not know, turning now to things slightly more relevant to the language, I do not know where the hon Member, he must have seen something that I have seen which is different to what I have been told is the case and for which the Government's policy instructions have not been obtained. That is, this idea that there is some paper, which I think he has called an invitation form, flying about which requires one to require their intent to carry on living indefinitely. Well, it is not in any of the advertisements, I just happen to have a file here. These are not the published criteria. "Referendum – who is eligible to

vote?" It says what it says and it does not say that, it does not say any language similar to that. There is a form here which the Chief Secretary has just handed me, marked Form B, Gibraltar Referendum 2002 Claim for Inclusion in the List of Voters. Name, address, I declare, signed, there is nothing on it in this form, I do not know if the hon Member is looking at some other form, there is nothing on any form that I have seen. Anyway, if there is such a piece of paper flying around, of which the Chief Secretary as Referendum Administrator and the man who has been doing all these things is also unaware, certainly the Government are unaware of it. In any case, it is not the criteria. As the hon Member has himself foreshadowed in his comments, it is unverifiable. It would not be possible to put together a register of eligible voters, if before a name could go on it somebody had to be satisfied that the person intended to continue living in Gibraltar permanently or indefinitely. How is that to be established? It is administratively unworkable, because then if they did put somebody on it, the Chief Secretary still cannot find the piece of paper, but subject to production of it by the hon Member, nobody on the Government Benches, including fortuitously the Referendum Administrator who happens to be sitting here in a different capacity, is aware. He is looking worried and perplexed though. I do say subject to correction by production of the real McCoy. But I can say that it really is unworkable. Then, I am not sure that I can agree with the sentiment described by the hon Member that it is legitimate to give somebody the right to participate in the decision as to the sovereignty, but then regard them as disqualified for the purposes of exercising the right of self-determination. I accept that sovereignty and self-determination are not the same thing, but it will seem odd to people, I think, that they are Gibraltarian enough, or that they are people of Gibraltar enough to be consulted about whether we should accept the principle of joint sovereignty or not, but then when it comes to accepting a Constitution as an act of self-determination, then suddenly they are no longer enough in the definition of people of Gibraltar. That, as a matter of substance. But as a matter of form, I think it is completely unworkable to bring this in. See, because the present British nationals who have been ordinarily resident in

Gibraltar for not less than ten years immediately preceding, that can be verified. I do not know what they get asked, they get asked to produce an ID card, or whether they get asked to produce utility bills, there are check lists of documents that they have to bring in to demonstrate that fact. The criteria added by the proposed amendments are administratively unworkable and factually unverifiable, and they would just not be possible to hold the definition on this basis. I would like to propose to the hon Members for their consideration, therefore, a slightly different version of paragraph 17. I think the Hon Dr J J Garcia has been left in temporary charge for deciding these matters for the Opposition. The power has passed to the leader of the junior partner in the alliance on such momentous decisions. What the Hon Mr Picardo will think about this from New York, one can only speculate. Anyway here we are. "Considers, ratifies and approves that the following categories of persons should be regarded as the people of Gibraltar eligible to exercise the right of self-determination and thus to vote in the Referendum". What we are trying to do is to find an acceptable formula that deals with the point about mentioning that they are the people. But the difficulty that we have with the formulation proposed by the Leader of the Opposition, is that it disqualifies, it ejects from the category of people of Gibraltar, non-resident Gibraltarians. One thing is to say that they should not be eligible to vote in the Referendum in the act of self-determination, but I would not go so far as to say to a Registered Gibraltarian who may have gone off to live somewhere else for three years, that he is not a Gibraltarian. That he is not part of the people of Gibraltar. He is not part of the resident people of Gibraltar and therefore should not be included in the category, that part of the people of Gibraltar that exercise the right to self-determination. But because (i) is resident Gibraltarians, if we say "Considers that the following categories of persons are deemed to be the people of Gibraltar and possessed of the right to self-determination, for the purposes of this and therefore eligible to vote", we are excluding resident Gibraltarians. We, therefore, suggest a formulation which semantically is less exclusive of them as people of Gibraltar, although continues to exclude them from the category of people of Gibraltar that should be eligible to vote in

this Referendum. Our version says slightly differently to theirs, "Considers", we add "ratifies and approves, that the following categories of persons should be regarded as the people of Gibraltar eligible to exercise the right of self-determination". Without prejudice to the fact that there may be other people, namely non-resident Gibraltarians, who are also to be regarded as people of Gibraltar but not eligible to exercise the right to self-determination because of their non-residence and thus to vote. That is the only nuance that we are drawing. We are saving from ejection from the category of the people of Gibraltar the non-resident Gibraltarians. But it nevertheless has the effect which our old paragraph 16 did not have, of introducing the concept of anchoring the right to vote to the right to exercise the right of self-determination to being people of Gibraltar. I think hon Members will agree that our language does that too. The language that we now propose does that too, although we acknowledge that we did not have any such language in our original motion.

HON J J BOSSANO:

Yes, we have got no problem as I said in my introduction to the amendment. The parts that have been removed about intending to continue living in Gibraltar either permanently or indefinitely, was something that we came across in a form that is used to apply to be on the list in respect of people who have been living in Gibraltar for six months. In fact, we actually checked to see whether this is what the House of Assembly Ordinance says for the Register of Electors, and it does. So, even if the form is not readily available.....

HON CHIEF MINISTER:

This may apply to the six month minimum qualification for voting at General Elections. That is different. In other words, somebody who has just come off an aeroplane six months ago, is going to vote to see whether he or I should be the Chief

Minister of Gibraltar. In that context it may be that the law says that they, in addition to having been here six months, they have also got to express an intention. Of course, it is an unpoliceable declaration. I suppose they just accept the declaration.

HON J J BOSSANO:

That is the point, that people have been invited to apply to be registered to vote in the Referendum using the same language and the same criteria as there is to be included in the Register of Electors. Yes.

HON CHIEF MINISTER:

Where is it? But we are looking at the adverts.

HON J J BOSSANO:

I do not know whether it is the advert or not.

HON CHIEF MINISTER:

We are looking at the adverts, the adverts are here. No, this is the Referendum 2002 adverts.

HON E G MONTADO:

Let me try and explain what has been done since we started work on this in August of this year. As the advert said quite clearly, the draft voters list because it is not a register of electors it is a voters list, is based on the 2003 Register of Electors. So nobody has been invited to do anything. We have actually drawn up a register. We have gone through that register and to the 18,500, I seem to recall, that were on that register we have

added about 1,400 voters who appeared in the European Parliament vote register. Then there have been about 600 applications from people wanting to be included in the register, who are eligible and we have made deletions for people who are registered as having died during the period, plus we have taken advantage of the EU Register, if I can call it that, to undertake something like 1,500 amendments to peoples' addresses. In other words, to update a register but the final stage really comes when this House decides who votes. Just taking a straightforward exclusion of British residents with less than ten years residence in Gibraltar, by the ID Card number we are able to establish who has been here for ten years, who has been here for less or more, although there is a further step. We have approximately, as of Friday, three short of 20,000. So the voters list at the moment is basically 20,000. Excluded from that are, at the moment, again, about 150 British nationals who have been resident for less than ten years but we are checking those with other records because the fact that we have an ID Card that was issued less than ten years ago does not necessarily mean that one has been living here. In fact, we have already processed a third of those 150 and it has been established about 40 have been here for ten years or longer. Now, as a further break up of the figures, which might be of interest, of the 20,000 approximately 19,000 are red ID Card holders, and there were something like 300 persons included in the register who have no ID Card or have an old ID Card. But we have managed to cross-check using passports, employment and other Government internal records, to establish that they do indeed qualify, because they had qualified, anyway, for the Elections a couple of years ago. So we do not really have a huge problem in terms of who gets left out, because the vast majority of all those persons in the two previous registers will remain. We are really dealing with a question mark figure at the moment of about 100 people, who we need to establish whether or not they have been here for ten years or less, or ten years or longer. Once we publish this voters list, and that is really the key point, it will be up to people to check it and to see whether they have been included. For example, I can think of people who have reached the age of 18 since 2004, I think that category is not

automatically put into the rolling register that we have. They would have to apply but of the 600 that have already applied, a significant number of them were persons who had just reached the age of 18 or were 18 a year ago and will come into the register. The advantage of this register also is that because we are not tied by House of Assembly Elections Rules, the register will remain open right up to Referendum Day. So somebody who turns up to vote and is not registered can, if he can establish his residence and his details, can go to the Registration Officer who will in turn register him, allocate him a station and he will be able to vote. So the break up is such that we have a register now for the Referendum which can be used for a General Election at any time. I do not want to make any comment about that. It is important to say that because at the next Election, I think it will cost us about another £60,000 or £70,000 to restart a new register, when all the work has now been done in conjunction with this Referendum and all we have to do is update the register as we go along.

HON C A BRUZON:

Can Government define what exactly they mean by point 2? Resident British Overseas Territories citizens by virtue of a connection with Gibraltar. Is there any time element involved in that, or somebody who arrives seven months before the Referendum who marries a Gibraltarian, does that count as a connection with Gibraltar? Can that be explained for my benefit?

HON CHIEF MINISTER:

That is not a connection with Gibraltar but I understand that such a person can register as a Gibraltarian. So such a person can register as a Gibraltarian but not..... The phrase 'British Citizen by virtue of a connection with Gibraltar' means something very technical in the administration of naturalisation law. It does not mean that. The person that the hon Member is

describing could, the non-Gibraltarian that marries a Gibraltarian I understand is eligible to register as a Gibraltarian himself. I believe that that is the position and that is the route that he would have, not the other one that the hon Member has speculated.

HON J J BOSSANO:

Can I say, following the information provided by the Financial and Development Secretary, it shows the advantage of having a home-grown one, knows a lot of things about lots of things. I think it is very welcome because we are not constrained by the Rules of the House of Assembly Ordinance and the Register, because in fact, I think that anybody that has been involved in a number of elections in Gibraltar knows how uptight people get and how aggressive they can get if they think they were there for some peculiar reason and then they find when they get there to vote that they cannot. If that can be corrected and put right, I think that is a fantastic step forward. I have to say that when the Chief Minister said that may well apply to people who have been here for six months, that they need to declare that they have intent to continue living, he needs to remember that the invitation to register, which requires people to fill in a blue form, is on the basis that the criteria in that form is that one must be a British national who has been here since January 2006 and who intends to remain in Gibraltar continuously or indefinitely. The criteria is the same as the criteria in the register for General Elections. The reason why that is not there in 2002 was because in 2002 from day one it was decided it should be open to people who have been here for ten years.

HON CHIEF MINISTER:

But we do not want people who have only been here six months and who declare their intention to stay indefinitely to be able to vote here.

HON J J BOSSANO:

I appreciate that the Chief Minister does not want that now, but what the Chief Minister has to understand is that when the register was opened, it was opened on that basis and that when he was interviewed, he said they had not yet taken a decision on whether it should be six months or it should be ten years, and that the decision will probably be taken when they brought the motion to the House. Of course, everybody that has been registering until now has been registering on the basis that they would be eligible if they were here for six months and intended to stay. That is why I assure him that the forms that they fill said it, because in fact, it is as a result of seeing it in that form that we added this here so that the criteria here would be coherent with the application filled by the person to be put on the register.

HON CHIEF MINISTER:

We know, from the information provided to us by the Referendum Administrator, that there are only 100 such people. There are only 100 people out of 20,000 that have to now be subtracted from the list because they were invited to join on an uncertain basis. My information is that there are only around 100 people, of all the people that have tried to register and have registered, thinking that they might be allowed after only six months because it was not then decided, there are only 100 people according to the Financial Secretary (Acting). There are only 100 people that as a result of now limiting it to the ten year rule, now have to be reduced from the 20,000 that have either applied to register or have been put on by them administratively subject to checking. So yes, there are 100 such people but that is all.

HON J J BOSSANO:

I think the Chief Minister keeps on missing the point. I am not saying that there are 100 or more than 100. I am explaining that

the 100 that have been here for six months, or the 100 that have been here between six months and nine years, eleven months and 29 days, plus those who were here ten days, all filled in a form saying, 'I am going to continue.....' The form did not say 'have you been here ten years?' The form says 'have you been here six months and do you intend to stay permanently and continuously?' We have got a copy of the form it is just that I have not got it here. When we saw the form we actually checked the Ordinance to find out whether, in fact, the conditions of the Ordinance were being applied to the Referendum Register. We found that they were, so we discovered that the source of that requirement was the House of Assembly Ordinance for the purpose of drawing up a register of electors for the House of Assembly. Therefore, although this does not have to follow the Rules of the House, in this respect they did.

HON CHIEF MINISTER:

Yes, except that now, I understand, the list will be trawled and people who to the Government's knowledge have not been here resident at least ten years, as appears by their ID Card number, will be taken off the list. So whatever they said or whatever was the criteria to get on the list, to get off the list, everybody will be taken off the list who does not fall into the categories that we are describing here.

HON J J BOSSANO:

I have to say I am seeking to explain why that is there, but I have to say that even the explanations that have been given for removing people from the list is not something..... Frankly, all this could have been avoided if the Government had decided in the first instance to put it at ten years and then the problem would not be there. It is a problem created because of the choice that they made to put people in with less than ten years and then take them out again. It is all very well to say yes it is very simple, all we need to do is take them out. Well, it is not

simply true that there could be people who obtained an ID Card after being here three years and therefore have only had it for seven, but in fact they were residing here. The requirement is not that one has an ID Card for ten years or more. The requirement is that one has been residing in Gibraltar for not less than ten years immediately preceding Referendum Day. Presumably, that is the same as what we have put in. Continuously, I take it, is not needed because it is already covered. That is to say, that it is not enough to have been ten years intermittently. Well, the fact that one was here 11 years ago and got an ID Card and that one happens to be here now, is no evidence either that one has not come and gone in between. If we are passing a motion of this House saying the person who is eligible must have been here for ten years continuously before the date of the Referendum, and if that had been the decision taken originally, frankly, and the Register had been open on that, then that person would have signed saying, 'yes, I have been here continuously for the last ten years between the date of the Referendum and the date I arrived'. If that person subsequently was discovered not to have been the ten years, then that would be an electoral fraud because the form says one must not provide false information and he would have provided false information. Nobody can be accused of that because the information they were asked to provide is 'have you been here six months?' So the guy says, 'yes, I have been here six months'.

HON CHIEF MINISTER:

Yes, he is absolutely right. The integrity of the ultimate list depends on an administrative sieving out and not on the basis of the applicants' own applications. I think that is incontrovertibly the case.

HON J J BOSSANO:

Yes, and that administrative sieving out where the example given was, 'look, we are checking because there are people that do not have an ID Card that is ten years old, but we may be able to find out that they have been here for a number of years before they got round to applying for an ID Card'. Well look, there are 300 with no ID's and I may be in that category because I refuse to renew my ID when the Chief Minister took away 'Government of Gibraltar'. So I have no ID and I will not get an ID until we reinstate 'Government of Gibraltar'. So I am in the 300 and I hope that does not mean I am going to be stopped from voting and standing for the House of Assembly. Of course, it is 20,000 now on the register of which some 18,000 were there in 2003.

HON CHIEF MINISTER:

But he will check, a serious point, if he will give way. But presumably, when the first draft voting list is published, he will check to see that he is on it and if he is not on it, because he does not feature on the list of ID Card holders for the reason he has just said, he will put himself on the list for which purpose he will not need an ID Card. There are other ways for one to demonstrate the entitlement. So, everything turns upon, it depends on whether one is trying to protect the people who are entitled to be on it but have not got on it automatically by the administrative means, like him, and those people have the opportunity to check and get themselves on it. Or whether we are trying to protect the people who have just done what they have been told in the advertisement and now find that they will not be, in fact, eligible. I understand the points that the hon Member is making, what I do not understand is, I suppose, crudely I could say, 'so what? So what is the point? So what does the hon Member think requires to be done?'

HON J J BOSSANO:

Well look, the point is that having taken so long to get here I really believe we should have had the foresight, frankly, to do things in a way which did not have this unnecessary elements in it and I think it is because the Government chose to use the 2003 Register, which was in fact based on people having six months, then independent of the people that have applied now as having six months, what is the guarantee that we have? Is it that they are now going to go through the original register of the last General Election and start removing people from that one? Or is it that they are only removing people who have applied since it was opened up? If they are not doing the same exercise in respect of non Gibraltarian British nationals who were eligible to vote, then we must remember that one of the, it is all very well for the Chief Minister to say, 'well look, you cannot do more than advertise it and advertise it'. But one must understand that if somebody gets registered and votes in 2002, however much advertising may have been done, it is not an outlandish thing to think that if one was there in 2002 they are going to be there in 2003. I assure the Chief Minister that if he does not know of any cases, I know of lots of cases where the husband and the wife were there in 2002 and then in 2003 when the General Election came, for reasons that nobody can seem to explain, the husband had disappeared and when the husband and wife went to vote a year after the Referendum, the husband was turned back because he was not in the Electoral Register. A Gibraltarian who had been there, who had voted the year before. We have got a situation where, in fact, the difference between the two registers was of the order of 3,000. The net figure was something like 2,000 but there were people in 2003 who had not been there in 2002, and there were people in 2002 who had disappeared in 2003. Therefore, the numbers that have disappeared was bigger than the net difference in size of the two registers. Now we are back to the 20,000 figure. Well, I can tell the Chief Minister that not only will I check whether I am there, I am going to look through that list of 1,500 people that we still have the record of who were there, to see whether they have now been brought back into the register or not. At the end

of the day, our only concern is that in this exercise nobody for something as important as the exercise of their fundamental right to self-determination, should be excluded. That is our primary concern. Obviously, at the same time, what we do not want is to see that there is a category of people where because of the system of sifting out, we have some people who have been thrown back and other people who have not been thrown back. I think that is something that ought to be avoided because it does not do the system any good. The primary concern is the one that I have mentioned and which the Chief Minister identified earlier.

HON CHIEF MINISTER:

Yes, and as to the non primary concern, I think the Financial Secretary (Acting)/Referendum Administrator has heard what the hon Member has said and I am sure they will do all that they humanly can to make sure that no one who should not be on the register is on the register. For his primary concern, which I think is one that we would all share, we ourselves declare that this is an important thing and that everyone should vote. The system will give everybody the opportunity to check that they are on it, and certainly, the Government will spare no reasonable effort in bringing this opportunity to people's attention. That the draft is now out, that they must check it, that they must not assume that they are on it just because they were on it last time, or not assume that they are on it just because they can complained about being excluded last time. Therefore, they must check it and if they are not on it, get themselves on it. If the objective is to make sure that no one that is entitled to vote is excluded, then that is both something that we can all subscribe to politically, and I am sure that the Administrators, who are independent of the political Government here, would also want that to be so. So, we take all those remarks on board and with that, I cannot remember now whether we have formally voted on clause 17, now renumbered 18.

MR SPEAKER:

We have not voted yet. Has the Hon J J Bossano finished his reply?

HON J J BOSSANO:

Yes.

MR SPEAKER:

Where does that leave us? There is an amendment proposed.

HON J J BOSSANO:

The amendment that I proposed, I think the Government has put forward an alternative which I find acceptable and, therefore, we will support the new version.

MR SPEAKER:

In that case, I now put the question that the amendment to the renumbered paragraph 18, proposed by the Hon J J Bossano, be made in terms proposed by way of amendment by the Hon the Chief Minister.

The House voted.

The amendment was carried unanimously.

MR SPEAKER:

I now put the question in terms of the motion proposed by the Hon the Chief Minister, as amended during the course of today.

Question put. The House voted.

The amended motion was carried unanimously.

MR SPEAKER:

May I be the first to congratulate and commend hon Members on both sides for dealing with this motion in a most constructive manner and spirit. Obviously, with the interests of the people of Gibraltar paramount in their minds.

BILLS

FIRST AND SECOND READINGS

**THE FINANCIAL SERVICES (DISTANCE MARKETING)
ORDINANCE 2006**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, be read a first time.

Question put. Agreed to.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Thursday 2nd November 2006, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 6.20 p.m. on Monday 30th October 2006.

THURSDAY 2ND NOVEMBER 2006

The House resumed at 10.00 a.m.

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 R R Rhoda QC - Attorney General

OPPOSITION:

The Hon J J Bossano - Leader of the Opposition
The Hon Dr J J Garcia
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 T J Bristow - Financial and Development Secretary

The Hon F R Picardo
The Hon Miss M I Montegriffo

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk of the House of Assembly

BILLS

FIRST AND SECOND READINGS

THE FINANCIAL SERVICES (DISTANCE MARKETING) ORDINANCE 2006

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as the Long Title of this Bill suggests, it is a Bill transposing a European Union Directive, which deals with providing consumer protection in the area of the distance selling of financial services. The principle of the Bill is dealing with the concept of distance contracts. Distance contracts is defined in the Bill as any contract concerning one or more financial services concluded between a supplier or an intermediary and a consumer, under an organised distance sales or service

provision scheme (that is the concept that runs to the Bill) run by the supplier or by an intermediary who, for the purposes of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. So it is the concept of distance contracts done through the medium of distance communications, and it applies not just within the EU but also the EEA. It relates to financial services, which means any service of a banking, credit, insurance, personal pension, investment or payment nature. The term 'distance communication' or 'means of distance communication', which is what is caught, contracts relating to financial services concluded by distance through these means of distance communications. That is any means which, without the simultaneous physical presence of the supplier or intermediary and the consumer, may be used for the making of a service between those parties. It is really a sort of remote contract telephone, fax, e-mail, post, that sort of thing. Under section 4, the Bill does not apply or does not benefit or impact where there is in the law of the country where the consumer is based, well, yes reciprocally but let it be just for the case of Gibraltar. The Bill does not apply to a consumer in Gibraltar and then the hon Members read for that as being the European regime, so it would not apply to a consumer in France under the French transposition of this Directive, when the law of the EEA State in question either has transposed this Directive or has, making provision for EEA States which do not actually transpose Directives, has an obligation to have similar provisions in its domestic law. In other words, where there is already coverage by the laws of some other country within the EEA, then sections 7 to 14 do not apply. The protection applies, as I have indicated already, to financial services provided either directly by the principal supplier, or by an intermediary marketed on behalf of a principal by an intermediary, which is actually how most financial services are in fact delivered through this medium, through distance contracts. The main regime, having said what it applies to, well what is it that applies to that? What is the level of protection provided? That starts in section 7, which requires certain information to be provided to the consumer by the supplier of the service before the distance contract can become

valid. The information that he needs to supply is set out in Schedule 1 of the Bill, at page 359. So there is information about the supplier himself, the identity and the main business purpose of the supplier, the geographical address at which the supplier is established and then the geographical address relevant to the consumer. Where the supplier and the intermediary has a representative established in the consumer's country, the identity of that representative. Where the consumer is dealing with any professional, other than the supplier, the identity of that supplier and other details relating to him. So, information about the supplier, second paragraph, information about the financial service itself, a description of the main characteristics of the product, the total price to be paid, the fees and issues relating to risk and things of that sort. Then under the third heading, information about the distance contract. Whether or not there is a right to cancellation, setting out the right to cancellation, the minimum duration, information about the rights of the parties, practical instructions for the exercising of the right to cancellation. Then a fourth chapter there about redress, how the consumer is able, what rights of redress he has and what are the mechanisms for exercising those rights of redress. That is the panoply of information which under section 7 the supplier or the intermediary, as the case may be, has to give to the consumer before a distance contract can be valid and binding on the consumer. In subsection (4) of section 7, the hon Members will see that there are provisions relating to when the means of distance communication is by telephone, so that the supplier or the intermediary shall make clear his identity and the commercial purpose of any call initiated by him at the beginning of any conversation with the consumer, and if the consumer explicitly consents, only the information specified in Schedule 2 needs to be given. Schedule 2 relates to a truncated amount of information that needs to be given, provided that the consumer consents, when the means of distance communication is the telephone. Section 8 requires the service provider, having given all that information in the original distance communications means, to confirm that information to the consumer on paper or in another durable medium. Durable medium is basically something which is

durable in the sense that it is recorded in a way that the consumer is able to revert to and consider at his leisure, and does not have to remember something that he was told on the telephone or flashed up on a screen or something like that. Section 9, then having established a right of information and to have that information confirmed to him in a durable fashion before the contract can be binding, section 9 deals with the right of the consumer to cancel the contract. Hon Members will see that there is a right to cancel the contract, slightly different depending on whether the original information has or has not yet been confirmed through the durable means. In a nutshell, the cancellation can take place orally, in writing or in any other durable medium available and accessible to the supplier, which however expressed, indicates the intention of the consumer to cancel the contract by that notification. Under section 10, it provides for the periods within which this right can be exercised, depending on whether section 8(1) which sets confirmation of information, has or has not yet been complied with. In a nutshell, it is 14 days or let me put it the other way, it is 30 days from the date on which the consumer has had confirmed to him that a life insurance contract is valid. So it is 30 days from confirmation of contract in the case of life insurance products, but 14 days for any other type of contract. It is 30 days for life insurance and 14 days for other financial services contracts. In section 11 there are a number of exceptions to the consumer's right to cancel the contract. Hon Members will see them listed there, I think most of them are perfectly logical and explicable. When the financial services product depends on fixing a price in a fluctuating market, I mean, if one says to a stockbroker to buy some shares and he goes and buys them at the market there and then, the market falls, and one cannot then say cancel the contract. So when things depend on the price, when the financial service in question is price sensitive in a fluctuating market, or when the financial service in question is the purchasing of foreign exchange or money market instruments, transferable instruments, collective investments schemes, all that sort of thing, anything which is price sensitive, a contract which covers travel and baggage or a similar sort of short term insurance policies, those are the sort of things and it is logical

that they should not be cancellable because these are contracts which the right to cancellation could leave the consumer with a much bigger advantage than it was intended that he should have. The right of cancellation is intended to protect the consumer against mis-selling or hard selling and is not intended to give the consumer a benefit against the moving market. Still less a benefit against an advantage that he has already enjoyed before he cancelled. So that is the scheme, I think the only other main piece of the architecture of the scheme lies in section 13, which relates to payments of services and it simply provides that the service provider is required to refund any fees and monies that have been paid prior to cancellation. Section 15 creates an offence for the delivery of unsolicited services. Sections 17 and 18 create the enforcement mechanisms which are firstly, that the competent authority shall consider any complaints that are made to it by a consumer, that is section 17, and section 18 provides for the authority to obtain injunctions to secure compliance with the Ordinance. That is the enforcement piece as well, obviously, as the creation of offences. Section 20 provides the Minister with responsibility for financial services with a general regulation-making power. So that is the scheme of the Bill and it is the transposition of a Directive and I commend the Bill to the House.

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

HON J J BOSSANO:

There is only one point that I want to make in relation to the general principles of the Bill, given that the Bill is, in fact, giving effect to an obligation that we have got to introduce a level of consumer protection that we are required to have as a result of an EC Directive. Normally within the EU the general rule is that one cannot provide less than is required as a minimum, but there is nothing to stop one providing more. Therefore, presumably, there is nothing to stop us providing the same level of protection even if the supplier is not in an EEA State. I would

have thought, there may not be many instances but sometimes we get, for example, people being sold stuff from the States, I notice that it has a provision here that the individual has to be an EU national, an EEA national or the company has got to be an EEA based company, but presumably, if we wanted to extend this to those where we are not required to give protection to consumers in Gibraltar against the possibility of mis-selling from outside the EEA we could do that. I would have thought it may not be something that could be done straight away, in the context of doing something to this Bill at this point in time, but as a matter of general principle I would have thought if it is worth doing, it is worth doing irrespective of the source.

HON CHIEF MINISTER:

Yes, theoretically that is true and we could at this end, for example, make legislation that provides protection for consumers in Gibraltar that are mis-sold by distance selling from the United States of America or any other country. It, of course, would raise two types of problem. One is, this scheme is based on all the countries having the same regime in place, so that there is both reciprocity and enforceability, through the EU common enforcement mechanism. We could pass a law in Gibraltar saying that if a US company mis-sells by distance from the US to a Gibraltar consumer a financial services product, we could say that the contract is not valid. There would then be an issue of conflict of laws, which is a very complicated area of law, as to whether that contract had been struck in America or in Gibraltar and was therefore subject to the laws of America or the laws of Gibraltar, and therefore whether the laws of Gibraltar were or were not competent to decide on the validity. One enters into all that area, this is why that regime depends on a harmonisation right round the EEA, because everybody then puts the same law in place, there are no issues of conflict of laws, there are no issues of enforceability and there are no issues of any sort of conflict between the jurisdiction where the consumer is based and the jurisdiction where the supplier was based. So one could do what the hon Member is mooting but

one would have huge problems of enforceability. I think it would be pretty ineffective in practice. The other thing is that the hon Member started, and this is just an aside which is interesting anecdotally, that the hon Member started by saying, speculating, that he thought that one could probably always provide more rather than less cover provided by the Directive. Interestingly, that is actually not true in single market measures, because there are areas in which one can do it and there are areas in which one cannot do it. In the areas in which one cannot do it, it is because by putting up higher barriers for, for example, consumer protection one could be, in effect, putting up barriers to free trade within the single market. But there are many areas where it exists within the EU but in areas where the single market has established a harmonised regime, one is in grave danger if one exceeds the harmonised regime, one is open to the possibility, no more strongly than that, that somebody would try to argue (usually the Commission) that actually by doing the higher measures one is simply trying to protect one's own company within one's own market. It is not a certain area of the law yet, it is evolving, but those arguments have been made in some areas. So I take it from the fact that that is the hon Member's view that there is nothing, it is pretty straightforward, nothing in this Bill is politically controversial and I think it can be welcomed across the floor of the House, as providing a useful measure of protection to financial services consumers throughout Europe, including Gibraltar, and we are part of that market.

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put.

Agreed to.

THE INSURANCE COMPANIES (AMENDMENT NO. 2) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put.

Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is a very simple and short Bill which does little more than bring the Insurance Companies Ordinance up to date or compatible with the Bill which we have just taken the Second Reading of, so that the period is 30 days for life insurance and 14 days for other days. Section 72A(1) of the Insurance Companies Ordinance, which is what all this Bill amends, presently reads, "a person who has received statutory notice in relation to an EEA contract may, before the expiration of the fourteenth day, after that on which he is informed in writing that the contract has become binding, serve notice of cancellation on the insurer". Well, we have just passed another Bill saying it should be 30 days under the Distance Selling Directive, and this is just making the Insurance Ordinance compatible with it. I do, however, have to apologise to the House that in a one line Bill, which really only changes two figures, we have managed to get them both wrong. It says "30" and "14" instead of "thirtieth" and "fourteenth", which is how it should read. So, if I can just give notice that at Committee Stage I will move that amendment, of course it does not alter the principles of the Bill and I can see that the draftsmen are both

blushing behind me as I speak. So 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 have the honour to move that the Committee Stage and Third Reading of the Bill be taken later today.

Question put. Agreed to.

THE INCOME TAX (AMENDMENT) (NO. 4) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill deals with amendments to the Income Tax Ordinance relating to the legislation to implement some of the Income Tax provisions announced at the Budget

Session. The amendment to section 6(1)(d) of the Income Tax Ordinance brought about by clause 2(2) of the Bill, is simply to ensure that there is no provision, that there is no possible conflict of interpretation between section 6(1)(d) that charges to tax any pension charge or annuity, and the provisions of regulation 3A of the Income Tax (Amendment) (Allowance, Deduction and Exemption) Rules which implemented through those regulations, as the hon Members are aware, that that is the regulation that delivers the effective tax system which has already implemented the Budget provision. So, rule 3A of the Regulations provides that a pension from any statutory pension scheme, or provident or other fund approved by the Commissioner and received by an individual over 60, or compulsorily retired at age 55 by operation of law, is to form part of the assessable income of the individual but taxed at zero. So that is already the law. Section 6(1) is the charging section of the Ordinance. The Ordinance still reads that the following will be charged to tax – any pension. We just want to make it clear that the charge to tax of pension is subject to rule 3A, the effect of which I have just read to the hon Members. Clause 2(3) of the Bill repeals section 6(1)(g) and (h) of the Income Tax Ordinance. This is the bit of the Income Tax Ordinance that requires people to purchase, in effect, an annuity with 75 per cent of the proceeds because only 25 per cent of the capital value of the money purchase scheme could be withdrawn on retirement tax free and the balance had to be used to purchase an annuity. Hon Members are aware, for reasons that I gave at the time of my Budget presentation, that the Government have scrapped all of that so that one is now free to take one's capital, the whole of the capital, on retirement and tax free. So that is simply amending the Income Tax Ordinance to give effect to that. Clause 2(4) of the Bill legislates an enabling section to enable through the implementation through the secondary legislation, to implement the Government's Budget scheme to replace the existing charitable covenant scheme, which is the one that Gibraltar has historically used, in favour of, as I announced in the Budget, the more modern and more frequently used these days around Europe, so-called gift aid scheme under which the Commissioner pays to a charity in the year of

assessment following the date of a qualifying gift, an amount equal to the income tax which has been paid by the donor on the gross amount before deduction of tax at the standard rate applicable, is equal to the full amount of the gift and has been paid by the donor to the charity during the year of assessment. In other words, in effect the Commissioner of Income Tax pays the effective taxation on the gift in cash to the charity. This was also a Budget measure and, again, this is just reflecting on it in the Income Tax Ordinance but only, this is not done substantively, this is simply giving the Minister the power to make rules to bring it about. So this is an enabling power to legislate that, it does not actually legislate it itself. I commend the Bill to the House.

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

HON J J BOSSANO:

I think I want to talk primarily about the provisions on what is being deleted. We, in fact, had a Bill when the Chief Minister brought to the House an amendment to permit commutation of the balance of the amount in a provident fund, because at the time when they were introducing the No. 2 Provident Trust Scheme, and this is before it came into effect and it was in anticipation of that, where the Government in introducing the Bill the Chief Minister, and I am quoting from the Hansard of that particular debate which was in June 2004, told us that at present the situation was that only 25 per cent of the lump sum that had been accumulated or the capital that had been accumulated, could be collected tax free and that the balance was taxable at 20 per cent. In fact, he said that what he was doing, he said that in fact if the balance could only buy a pension which he believed was £104 per annum, £2 per week, then the law provided that it was possible to take that balance (all of it) tax free and that the Government were, in fact, increasing the pension that could be bought to £1,000 as the trigger mechanism. So that if a person could buy a pension in excess of £1,000, then he could not

withdraw the money tax free. Although he said that the effect was that with the new legislation a person that could not get an annuity of more than £1,000 would now be able to take away that capital tax free as well, even if it is more than 25 per cent, we in fact on that particular occasion said that we supported the explanation that had been given, but that was not what the law was actually providing. At the end of a debate on that particular point, it was established that in fact we were interpreting the provisions in the law correctly and that it was not doing what the Government said they wanted to do. In fact, the Chief Minister confirmed that even if the balance left in the fund did not buy a pension of £1,000, it would still be taxed at 20 per cent and, presumably, this has been happening in the last couple of years in some few instances. I am glad because we supported the principle the last time, and I am glad that this time it is happening because the whole thing is being abolished. Of course, at the time of the debate, I think the Chief Minister pointed out that there were two aspects to this. He said, 'well look, there is nothing to stop somebody getting 100 per cent of the capital and not taking a pension at all at the moment as far as the provisions in the Tax Ordinance are concerned'. What stops it is the fact that the Commissioner of Income Tax will not approve such a scheme for the purposes of making the contributions tax deductible. Now, I am not sure how that aspect is dealt with if we are repealing entirely the sections that allowed the balance to be collected but subject to a 20 per cent tax. If I recall rightly, the argument was that since this was capital and there is no tax on capital in Gibraltar, if one did not make a provision somewhere in the law to tax it, it would not be taxable. Now, if in fact the Chief Minister has said today this will allow people to take the whole of the 100 per cent of the capital they have got there, should they choose to and not pay tax on it, does that mean that the Commissioner will no longer block schemes that make that possible? That was something that had existed until 1987 and we were told in 2004, when the matter was last debated, was that there was a special provision for pre-1987 schemes with pre-1987 contributors. We were told that even in the pre-1987 schemes where that was the case, people joining after 1987 could no longer avail themselves of that and

that, in any case, no new schemes had been approved since 1987. So in fact, this by itself will not do what the Chief Minister has just said, in giving people the choice of either buying an annuity or saying they want to take the whole of the lump sum and not be taxed, because he would not be taxed because we are removing the tax provision, but he would not be permitted, presumably, by the Income Tax Department to take the balance unless there is an amendment somewhere else that is due to come or has already happened by regulation, which says there is no longer now a trigger which has to be £1,000 pension or £2,000 or whatever. We are now back to the 1987 system which, presumably, is what is intended if there is going to be what the Chief Minister has said, complete freedom to choose a lump sum or to choose a stream of payments. I think the other point on the general principles is that in the drafting of the gifts to individuals, I am not sure that an amount equal to the tax paid by the individual to the charity sounds quite right. Presumably, it is an amount equal to the tax paid by the individual to the Government in respect of the gross amount that he has paid to the charity. As I read this it says, 'the Minister may by rules make provision for paying to charities of amounts equal to the tax paid by the individual to the charity'. It is not the paying to the charity but that is already before amounts. I think it should stop with individuals, by the tax paid by individuals, because the tax has not been paid to the charity.

HON CHIEF MINISTER:

Well, I think the hon Member is right in his analysis but not in his conclusion. He is right in saying that section 6(1), which is the charging section of the Income Tax Ordinance, used to and until we have passed this amendment still does, charges to tax, and hon Members will have noticed that the commencement provision of this Bill says, 'and shall be deemed to have come into operation on 1st July 2006', to bring it completely back to the beginning of the financial year. Section 6(1)(e), (g) and (h) submitted, and without these sections there would not have been such charge to tax because it was capital, as the hon

Member has said, the last 75 per cent of the capital. Without that there would have been no charge to tax and what we are now removing from this Bill, is all of that regime. So now we are in the situation where there is no charge to tax for capital paid down by an occupational pension scheme. Of course this Bill only deals with the taxation, one still has to be part of a scheme which allows one to draw down the capital. That is a matter for the detail of the scheme in question, not a matter for the taxation law. One still has to be a member of a scheme that allows one to commute 100 per cent of the capital. Many schemes do not, because actuarially, the financial obligations are actuarially assessed to make payments to people over a number of years and not to make out payments. There are other schemes that give the choice. For example, there is a scheme in the public sector of Gibraltar, as the GBC scheme, allows a pretty wide choice, that is a matter for the scheme. A pensioner's ability to draw or not to draw so much capital is not a matter for the statute law of Gibraltar or for the tax law of Gibraltar, it is a matter for the terms of the pension scheme of which he forms a part. There are pension schemes which will continue to say that one is only entitled to draw 25 per cent or no part, with varying commutation rights. Those remain valid but these are not pension schemes which require one to buy an annuity, these are pension schemes which themselves make annual payments. A final salary scheme. So those schemes, in effect, are not affected because they are then exempted from tax, provided that the recipient is over 60, by the fact that the pension payment is itself exempt from tax. If there were out there a scheme of this sort, a money purchase scheme, in the private sector, that pays out a lump sum in the private sector, to the pensioner with the requirement that he buys an annuity, I think that would be most unusual. If the trustees of a private scheme are washing their hands of the responsibility towards that pensioner by simply making a payment to him, they are not concerned whether he actually buys an annuity or not. I understand that the hon Member's analysis took us to that point. The hon Member then, I think, is asking what happens to somebody that wants to buy an annuity and not commute his capital 100 per cent.

HON J J BOSSANO:

My question really is, I remember that in the debate we had in 2004, the basic point that I think was made very clearly by the Government was that the tax office would not approve schemes, and have not approved schemes since 1987, if they contained a provision saying the person may choose either to take the lump sum and not buy an annuity, or may choose to take 25 per cent of the amount as a lump sum but has to buy an annuity. My question is, as a result of this will the tax office now permit basically what was permissible until 1987? That there would be schemes to which one could contribute, claim tax relief and at the end of the day have a choice of doing one or the other?

HON CHIEF MINISTER:

Yes, I think the Income Tax Office will continue to have to approve schemes, or disapprove schemes, because of course the exemptions from tax on the receipt are limited to people who are 60 years old. One could have a pension scheme that entitles one to a pay out at a younger age. I am not understanding the hon Member's point.

HON J J BOSSANO:

My question is very simple. In 1987 the Government of the day changed the legislation so that what had been possible until 1987 was no longer possible. Therefore my question is, given that the consequences of that 1987 decision is now swept away, does that mean that the Commissioner of Income Tax will now be free to say to an employer, 'I approve your scheme even though it permits 100 per cent commutation which has not been possible since 1987?'. That is the question.

HON CHIEF MINISTER:

Yes, I believe that to be the case. The original amendments were consequences of the fact that annuities were not value for money. Not only were they not huge value for money but that indeed they were difficult to obtain in Gibraltar, because those companies in the UK that used to provide annuities in Gibraltar had withdrawn from the market. So the whole purpose of this is that people should take 100 per cent of their capital and should not have to buy an annuity with any proportion of it. So clearly, it would completely defeat that objective if the Commissioner of Income Tax were to withhold his approval from a pension scheme that permitted precisely what the Government are trying to bring about.

Question put.

Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put.

Agreed to.

THE FACTORIES (AMENDMENT) ORDINANCE 2006

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Factories Ordinance for the purpose of transposing into the law of Gibraltar Article 15 of Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents

(noise) (Seventeenth Individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill before the House amends the Factories Ordinance in order to transpose into the laws of Gibraltar Article 15 of Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) under the Seventeenth Individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC. Article 15 of Directive 2003/10/EC repeals Directive 86/188/EC. Directive 86/188/EC was transposed into the laws of Gibraltar by the Factories (Amendment) Ordinance 1997, by way of introducing the definitions of “daily personal noise exposure”, “exposed”, “first action level”, “the peak action level” and “the second action level” in section 6, and by inserting Part 3 and Schedule 1A of the Factories Ordinance. Clause 2 of the Bill amends section 6 of the Factories Ordinance by repealing all these definitions, and clause 4 of the Bill repeals Part 3 and Schedule 1A. Clause 3 amends section 58 of the Factories Ordinance in order to transfer the power to make regulations from the Governor to the Minister. This Bill will help complete transposition of Directive 2003/10/EC into the laws of Gibraltar. I commend the Bill to the House.

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

HON J J BOSSANO:

Well obviously we are in favour of bringing in more up to date minimum health and safety requirements, but at the moment what we can see is that everything is being repealed that was there. Is it that what is being repealed is going to be replaced by other provisions made by regulation, because the actual Bill itself repeals what is there now but does not say what is going to be put in place of it? That really is the only point of principle. We assume that what is replacing what is being repealed is more demanding than what is there already. Otherwise, we would be defeating the principle of the Bill which is to improve the level of protection by having higher requirements than the present minima.

HON J J HOLLIDAY:

I take note of what the hon Member has said. I was trying to check, I know this had been done by the substituting regulations which were actually published under Legal Notice No. 81 of 2003 under the Factories Ordinance (Control of Noise at Work) Regulations 2006, which transposed and updated the regulations according to EU requirements. This was done on 1 June 2006.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

**THE PUBLIC HEALTH (AMENDMENT NO. 2) ORDINANCE
2006**

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to amend the Public Health Ordinance to provide for a penalty for the breach of any provisions in Part IIA regarding the control of major-accident hazards involving dangerous substances, 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, this Bill before the House amends the Public Health Ordinance in order to provide for a penalty for the breach of any provisions in Part IIA of the Ordinance. Part IIA of the Public Health Ordinance provides for control of major-accident hazards involving dangerous substances, but there is no penal provision for breach of the provision in Part IIA. This Bill will help effective implementation of the provisions of Part IIA of the Ordinance which are EU obligations. 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 2006**

HON CHIEF MINISTER:

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

Question put. Agreed to.

COMMITTEE STAGE

HON ATTORNEY GENERAL:

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

1. The Financial Services (Distance Marketing) Bill 2006;
2. The Insurance Companies (Amendment No. 2) Bill 2006;
3. The Income Tax (Amendment) (No. 4) Bill 2006;
4. The Factories (Amendment) Bill 2006;
5. The Public Health (Amendment No. 2) Bill 2006.

THE FINANCIAL SERVICES (DISTANCE MARKETING) BILL 2006

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

Clause 2

HON CHIEF MINISTER:

In clause 2, I have given notice of an amendment, in writing, which does not alter the principles of the Bill. That is, that in the definition of “licensee” which hon Members will find at the bottom of page 340 and the top of page 341, that should be amended by inserting the words “and includes a person authorised or recognised under any of those Ordinances”. Those words should go immediately in front of the words “and licensed business”. So the return would read, “and includes a person authorised or recognised under any of those Ordinances and “licensed business” and “licensed activity” shall be construed accordingly.”

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

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

Clause 4

HON CHIEF MINISTER:

In clause 4, I have also given notice of amendment. In subclause (3) of clause 4, by the deletion of the word “custodian” and its replacement with the word “depository”, and by the deletion of the reference to “section 24 of the Financial Services Ordinance 1989” and their replacement by the words “section 34 of the Financial Services (Collective Investment Schemes) Ordinance 2005.” Then in subsection (4), the same

two amendments where the words “custodian” and the reference to the 1989 Ordinance appear. Just so that this Bill does not make allusion to things which are themselves now different.

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

Clauses 5 to 20 – were agreed to and stood part of the Bill.

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

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

THE INSURANCE COMPANIES (AMENDMENT NO. 2) BILL 2006

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

Clause 2

HON CHIEF MINISTER:

I have given notice of amendment. In fact, the situation is worse in my characterisation of it than I described at Second Reading. Not only does the Bill get the “thirteen” and “fourteen” right, but indeed it also claims that it is amending clause 20 of the Bill, when it is only clause 2. So I suppose we could renumber the clause in the Bill as clause 2 and not clause 20 and then I have moved the amendments. “Thirteen” reads “thirteenth” and “fourteen” reads “fourteenth”. So the Bill should read “amendment to section 72A, clause 2 section 72A(1) of the Insurance Companies Ordinance is amended by substituting “thirtieth” for “fourteenth”.

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

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

THE INCOME TAX (AMENDMENT) (NO, 4) BILL 2006

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

Clause 2

HON CHIEF MINISTER:

Can I just move the amendment for point out the need, for which I am grateful to the Leader of the Opposition. To delete the words “to those charities” from subclause (4) of the Bill.

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

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

THE FACTORIES (AMENDMENT) BILL 2006

Clauses 1 to 4 – were 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 2006

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report that the Financial Services (Distance Marketing) Bill 2006, with amendments; the Insurance

Companies (Amendment No. 2) Bill 2006, with amendments; the Income Tax (Amendment) (No. 4) Bill 2006, with amendments; the Factories (Amendment) Bill 2006; and the Public Health (Amendment No. 2) Bill 2006, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

Question put.

The Financial Services (Distance Marketing) Bill 2006;

The Insurance Companies (Amendment No. 2) Bill 2006;

The Income Tax (Amendment) (No. 4) Bill 2006;

The Factories (Amendment) Bill 2006;

The Public Health (Amendment No. 2) Bill 2006

were agreed to and read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 8th December 2006, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 11.13 a.m. on Thursday 2nd November, 2006.

FRIDAY 8TH DECEMBER 2006

The House resumed at 10.05 a.m.

PRESENT:

Mr Speaker.....(In the Chair)
(The Hon Hareesh 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 T J Bristow - Financial and Development Secretary
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 Miss M I Montegriffo

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk of the House of Assembly

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of accounts, a report, regulations and a statement on the Table.

Question put.

Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table:

1. The Social Services Agency Accounts for the year ended 31 March 2005;
2. The Social Services Agency Statutory Report for the same year.

Ordered to lie.

HON LT-COL E M BRITTO:

I have the honour to lay on the Table the Drugs (Misuse) (Flunitrazepam) Regulations 2006.

Ordered to lie.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

I have the honour to lay on the Table the Consolidated Fund Supplementary Funding – Statement No. 1 of 2006/2007.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE EUROPEAN COMMUNITIES (BULGARIA AND ROMANIA) (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the European Communities Ordinance in connection with the accession of Bulgaria and Romania to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is necessary because of the enlargement of the European Union to include two new States, the Republic of Bulgaria and Romania, which become part of the European Union on 1 January 2007. The Bill thus amends the European Communities Ordinance to firstly define the European Treaties as including the Treaty concerning the accession of Bulgaria and Romania, and secondly, to insert Bulgaria and Romania in Schedule 3 to the Ordinance, which sets out a list of European Economic Area States. The Bill, therefore, amends Gibraltar legislation to reflect the accession of Bulgaria and Romania to the European Union. Hon Members will have seen that it is a very similar Bill to that which we have passed on the occasion of previous enlargement. I have given notice that I will be moving a small amendment to the Bill, which is really just in the introductory aspects of the Bill, to remove the references in the Bill, really the secretarial instructions almost in the Bill, to remove the references for the final two paragraphs substituting in clause 2(1)(b) and replacing the words deleting for the final two indents after paragraph (m) and inserting, (it does not alter the substance, it is just really the references). I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE FINANCIAL SERVICES (OCCUPATIONAL PENSIONS INSTITUTIONS) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to implement in Gibraltar Directive 2003/41/EC of the European Parliament and the Council on the activities and supervision of institutions for occupational retirement pensions, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill transposes into Gibraltar the so-called pan-European Pensions Directive which relates to the activities and supervision of institutions for occupational retirement pensions. The basis of the drafting of the Bill is the copy out approach with necessary adjustments. In other words, the wording of the Bill follows very closely the wording of the Directive itself. The Directive has two main purposes. Firstly, to enable occupational pension schemes to operate on a cross-border basis. In order to achieve that, secondly, to put in place a minimum regulatory and prudential structure for the

supervision of schemes across the EU, in order to guarantee a high degree of security for future pensioners and efficient management of schemes. I should add straight away that the Bill for the Ordinance applies only to occupational pension schemes. So that State schemes, personal pensions and insurance based schemes are outside of its scope. It is only concerned with pensions provided by an employer through an occupational scheme with contributions from both the employer and the employee looked after by trustees. It does not apply to schemes which are funded through insurance, since the activity of insurance companies in the area of pension provision, are already supervised under the Insurance Companies Ordinance. Therefore, its practical impact on existing pension schemes in Gibraltar is likely to be minimal since there does not, at present, appear to be any or many employers offering schemes through institutions other than insurance companies based in Gibraltar. However, there may be an opportunity for the Finance Centre to take advantage of the possibility to set up cross-border schemes under this pan-European Pensions Directive. Section 2 of the Ordinance sets out the definitions used and section 3 the scope. Members will note the various exclusions, both those that I have already mentioned and the fact that small schemes with fewer than 100 members, are not included. Section 4 makes it clear that the activities of the institution must be under trust and limited to providing retirement benefits. The key feature of the Directive and of the Ordinance, therefore, are in sections 5 to 20. These set out the powers that the competent authority, which in Gibraltar will be the Financial Services Commission, will have in order to supervise pension schemes effectively and to protect members' rights. Section 5 provides for licensing, applies the fit and proper test to any person seeking a licence and allows the authority to attach conditions to a licence. In addition, the institution must have published rules, ensure its liabilities are properly certified and keep its members informed about the scheme. Section 6 provides for proper accounts and sections 7 and 8 lay down the information to be provided to members about the scheme, and its performance and its investment policy principle. Sections 9 and 10 provide for information to be given to the authority about the scheme's

operation and compliance, and for the authority to enter the premises of an institution to check on it. If the scheme appears to be failing in its duties, the authority may cancel the licence and remove a trustee of a scheme or transfer the scheme to others. Sections 11 to 15 deal with technical matters relating to the funding of schemes. A scheme must aim to have sufficient assets to cover the accrued pension rights as they fall due to be paid. A scheme may only hold insufficient assets for a limited period of time and have, with the authority's approval, a concrete and realisable recovery plan. The investment rules in section 14 apply the prudent person approach, and in particular, compliance with the principle that there should not be over reliance on any particular area and should be made on properly regulated markets. Section 15 provides for the Court to make an order freezing the assets of an institution in Gibraltar and for the authority to request an order freezing the assets of a Gibraltar institution in another Member State. Section 16 deals with cross-border activity. An employer of one Member State may sponsor a scheme in another Member State. The respective roles are set out in terms of the home Member State, essentially the State where the scheme is based, and the host Member State, where the employees are based. An institution in Gibraltar wishing to accept contributions from another Member State must seek authorisation from the authority which will be granted if the institution's structure, financial situation and repute are compatible with the other Member State's requirements. There must be continuing compliance with the social and labour law relating to pension provisions of that other Member State, and provision is made to revoke any authorisation if it is not. The same provisions apply in reverse so that an institution in another Member State receiving contributions from a Gibraltar employer, must continue to comply with our laws relating to pensions. This cross-border activity may be an opportunity in the future for Gibraltar institutions. Our Finance Centre activities and the financial expertise that lies within it, may be attractive to employers in another Member State where greater restrictions apply, although with the caveat that the institution in Gibraltar must continue to apply the social and labour laws of that other Member State, and

it may be that some Member State may seek to continue to apply those labour and social law restrictions. As I said, this Ordinance is unlikely to affect any occupational pensioners in Gibraltar in the near future, and it has nothing to do with State old age pensions. I have given notice of a couple of small amendments, which the hon Members will see in their letter, and which I will speak to during the Committee Stage. In the meantime, I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

**THE IMMIGRATION CONTROL (BULGARIA AND ROMANIA)
(AMENDMENT) ORDINANCE 2006**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Immigration Control Ordinance in connection with the accession of the Republic of Bulgaria and Romania to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill also is necessary because of the enlargement of the European Union to include the two new Member States, Bulgaria and Romania. As I said in my Second Reading debate on a previous Bill this morning, join the Union on 1st January 2007. The protocol to the Accession Treaty allows States to impose certain limitations on workers and posted workers from Bulgaria and Romania during the transitional period. The transitional period is from 1st January 2007 until 31st December 2011. The protocol does not permit restriction on the right to undertake self-employment. Nor on other rights of Bulgarian and Romanian workers in their capacity as European citizens, are not affected by those limitations therefore. In accordance with the limitations permitted in the protocol during this transitional period, workers from Bulgaria and Romania will only be able to work and reside in Gibraltar without a work permit, once they have worked for 12 months in Gibraltar with a work permit. The spouse and children under 21 of a Bulgarian or Romania worker will only be able to take employment without a work permit if, (a) they were resident in Gibraltar on 1st January 2007; or (b) they have resided in Gibraltar with the worker in Gibraltar for 18 months or from 31st December 2009, whichever is earlier. This Bill amends Gibraltar's immigration legislation to reflect the accession of Bulgaria and Romania to the Union specifically. Clause 2(a) replaces section 46, which originally dealt with the eight other Eastern and Central European States, which joined the EU on 1st May 2004, so it now includes Bulgaria and Romania. This new section sets out the relevant transitional provisions, provides that during the transitional period a worker from a relevant EU Member State, who is a worker or a posted worker, will not be a qualified person until he has worked in Gibraltar with a work permit for at least 12 months. This means that he will not be able to reside in Gibraltar without a residence permit

granted to work permit holders. The Bill also provides that during the relevant transition period, the worker's family have a right to reside in Gibraltar for the same period as the worker. It also provides that persons permitted to reside in Gibraltar under section 46(a), shall be granted with residence permits held by non-EEA nationals rather than those held by EEA nationals. Clause 2(b) inserts into Schedule 1, firstly, preliminary wording to clarify that EEA States include both the States listed as European Union States and those listed as EFTA States. Secondly, to add the Republic of Bulgaria and Romania. The Bill will be accompanied, once it is passed, by the Employment (Bulgaria and Romania) (Amendment) Regulations 2006, which will amend the Employment Regulations 1994 in order to transpose the restrictions on the working without work permits by Bulgaria and Romania during the transitional period. In other words, the forthcoming regulations that will amend the current Employment Regulations, will enshrine the detail of the restrictions. In other words, our laws will maximise the freedom to impose restrictions during the transitional period on workers from Bulgaria and Romania. 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 FINANCIAL SERVICES (TAKEOVER BIDS) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids 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 applies to takeover bids for securities of a Gibraltar company, where its securities are admitted to trading on a regulated market in one or more Member States. So the scope of the companies and mergers transactions covered by the Directive is fairly narrow but not, hon Members will notice, non-existent, since there may be such companies. The Bill does not apply to bids for open-ended investment companies, nor does it apply to bids for central banks. Political agreement on this Directive at EU level was extremely difficult to achieve. It was indeed only achieved as a result of a controversial compromise, which makes the two most important provisions of the Directive optional. Article 9, which prohibits the offeree companies from taking defensive action to frustrate bids without shareholder approval, and Article 11, which allows the offerors to break through certain offeree company restrictions, so that they can achieve full control of the offeree company. By virtue of Article 12, the optional arrangements, Member States are not obliged to impose the

requirements of these two Articles on companies registered within their territory. However, if they choose not to do so, which is indeed what we have done, Member States must nevertheless allow companies to voluntarily opt in to the provisions of those Articles, if the companies themselves wish to do so. There is a further twist in the means by which these Articles may be applied, in that Member States may allow companies which would otherwise be subject to Articles 9 and 11, not to have those Articles applied to them when subject to a takeover bid from a company which is not itself subject to those Articles, the so-called reciprocity provision. Article 9 sustains the principle that it should be for shareholders, not the management of a target company, to decide on the merits of any takeover bid. It was intended to be considered by the original architects of the Directive to be an essential element of minority shareholder protection, that management of a target company should not be able to take action to thwart or frustrate a bid, without the approval of shareholders at the time of the bid. The draft Bill makes Article 9 optional for companies in Gibraltar, so, that is dealt with in clauses 17 and 20 to which we will come in a moment. A further issue interwoven with the optional provisions in the Directive, is the proposed use of the reciprocity provision laid down by Article 12(3) of the Directive. Our Bill, in clause 20(3), provides the Minister with the power to apply the provision of Articles 9 and 11 on a reciprocal basis. The reciprocity provisions were included because of concerns, as I have said, about so-called third country issues. That is, takeovers by non-EU companies, particularly US companies, which were themselves not subject to the Directive and could have barriers in place to prevent takeovers of themselves, thereby creating a situation where American companies taking over European companies were at an advantage as compared to European companies seeking to take over American companies. These concerns came especially from the European Parliament and certain Member States, particularly Germany. Clause 20(3) gives the Minister power, as I have said, to give effect to the reciprocity provision in any particular case. Clauses 3 to 7 deal with the competent authority. The Minister is granted power to appoint an authority to supervise

bids, the authority is required to exercise its functions impartially and independently from all parties to the bid. Indeed, it is my intention to designate the Financial Services Commissioner in this respect. The clauses set out the functions and powers of the competent authority in carrying out that requirement, that regulatory function. The Directive provides two alternatives. The competent authority in the Member State in which the offeree company, that is to say, the target company, has its registered office will be responsible if the securities of that company are admitted to trading on a regulated market in that Member State, called the home competent authority. However, if the securities of the target company are not admitted to trading on a regulated market in the Member State in which the company has its registered office, responsibility will rest with the competent authority in the Member State on whose regulated market the securities of the target company are admitted to trading, the so-called host competent authority. But it will share responsibility with the home competent authority. Separate to the issue of which is the relevant authority in any particular case is the question of which takeover rules would apply. If there is a single competent authority, its takeover rules will apply to the bid. If responsibility for supervision is shared, clauses 3 to 7 set out which takeover rules would apply. Matters relating to the consideration offered in a bid, particularly the price, and to the procedure of the bid, in particular information on the offeror's decision to make an offer, the contents of the offer document and the disclosure of the offer, are to be dealt with in accordance with the takeover rules of the host competent authority. Matters relating to information for employees of the target company, and matters relating to company law, in particular things such as the percentage of voting rights that confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the Board of the target company may undertake any action that might result in the frustration of the offer, are to be dealt with in accordance with the takeover rules of the home competent authority. One of the difficulties which is inherent in this Directive, is that no mechanisms exist to resolve any jurisdictional dispute between competent authorities. In addition, it is not clear how

jurisdictions will be shared if one Member State has implemented the Directive and the other State has not. This is because of the two year implementation period that Member States may well implement at different times. Nevertheless, the competent authority must ensure that information that they receive is kept confidential. It is also required to cooperate with other authorities supervising capital markets, supply each other with relevant information and help each other to investigate any breaches of takeover rules. The competent authority must ensure that the parties to a bid comply with the Ordinance. However, the Minister can by regulations allow derogations from the takeover rules, either by including such derogations in the takeover rules, in order to take account of circumstances determined at national level, or by granting the competent authority power to waive the takeover rules, to take account of specific circumstances provided they give a reasoned decision for doing so. Clause 9 deals with the general principles and provides that the following general principles are to be complied with. All holders of securities of an offeree company of the same class must be given equal treatment or equivalent treatment. In particular, if a person acquires control of a company, the other holder of securities must be protected. Holders of the securities in a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. The Board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid. False markets must not be created in securities of the target company. An offeror may only announce a bid after ensuring that it can fulfil in full any cash consideration it offers. The target companies must not be hindered in the conducts of their affairs for longer than is reasonable by a bid for their securities. Clauses 10 to 11 deal with mandatory bids. Takeover rules require a mandatory bid for a company if a person, or persons acting in concert with him, acquire securities that when added to any existing holdings of security, result in that person having a specified percentage of the voting rights of the company giving him control of it. Control is not defined. Mandatory bids must be at an equitable price.

However, the competent authority can be given discretion to adjust this price, either upwards or downwards, in specified circumstances according to set criteria. Clauses 12 to 14 relate to information that must be provided in relation to a bid. The decision to make a bid is to be made public without delay and the competent authorities must be informed of the bid. As soon as the bid has been made public, the board of the offeror and the target companies must inform the representatives of their employees. The offeror must draw up and make public in good time an offer document containing certain specific basic items of information which are listed in the Bill. Before the offer document is made public, the offeror must communicate it to the competent authority. Where the offer document is approved by the competent authority it must be accepted for distribution, subject to any translation in the other Member States on whose markets the securities of the target company are admitted to trading. The parties to a bid must provide the competent authority, at any time on request, with all information in relation to the bid that is necessary in order to enable the competent authority to discharge its duties. Clause 15 provides for periods for acceptance of the bid. Clause 16 provides for disclosure of the bid and provides that the Minister may by regulation require a bid to be made public, so as to ensure market transparency and integrity for the securities of the target company, of the offeror, or of any other company affected by the bid. Clause 17 deals with prohibition on taking defensive action to frustrate bids, so-called 'poison pill devices'. After the announcement of the bid and until the result of the bid is made public, or the bid lapses, the board of the target company should not take any action, other than seeking alternative bids that may result in the frustration of the offer, and particularly, before issuing shares that may result in a lasting impediment to the offeror acquiring control of the offeree company, unless it has the prior authorisation of the general meeting of the shareholders given for this purpose. The Board of the target company must draw up and make public a document setting out its opinion of the bid and the reasons on which it is based. Clause 18 deals with the disclosure of information, the so-called transparency provisions, and there is a long list of detailed information in Clause 18,

which the company must publish, the structure of their capital, restrictions on the transfer of their securities, significant and direct cross shareholdings, whole specific control rights mechanisms in their Articles, a system of control of any employee share scheme, restrictions on voting rights, that sort of thing, and the list goes on just a little bit longer than that. Clause 19 deals with the enforceability of restrictions on the transfer of securities and certain voting rights and other rights. These are the so-called break through provisions. In other words, in effect a suspension of defensive barriers that might have been in place before the bid is announced, and which are temporarily dismantled by operation of law during the bid period. So for example, once a bid has been made public, any restrictions on the transfer of securities in the Articles of Association of the offeree company, or in any contract to which it is a party, shall not, insofar as affects the offeror during the time allowed for the acceptance of the bid, be valid. In other words, if somebody makes a bid for a company that has restrictions in their Articles of Association relating to the transfer of shares, those restrictions do not apply to the transfer of shares to the offeror by any shareholder that decides to accept the bid. Another example, once a bid has been made public, any restrictions on voting rights provided in the Articles of Association of the target company would cease to have effect when the general meeting of the target company is deciding on defensive measures under Article 9. The other break through provision is that following a bid, if the offeror holds 75 per cent of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to above, nor any extraordinary rights of shareholders in relation to the appointment or removal of board members in the Articles of Association of the company, shall apply. So there is a series of measures, firstly to prevent the erection of poison pills, so to speak defences, after the bid is announced but also to dismantle defensive structures that may be in the statutes of a company, even before the bid is mounted. Clause 20 is what I referred to before about the opting out of opting into clauses. Companies can disapply clauses 17(2) to 17(4) or 19, if the offeror or anyone who controls the offeror, is not subject to the same

restrictions. These are the so-called reciprocity provisions that I mentioned earlier. Clauses 21 to 22 contain so-called 'squeeze out' and 'sell out' rights. 'Squeeze out' and 'sell out' rights are introduced for offerors and target company shareholders in line with the provisions of Articles 15 and 16 of the Directive, where there has been a bid made to all the holders of securities of the target company for all of their securities. The offeror must be able to require all the holders of the remaining securities to sell it those securities at a fair price in one of the following circumstances. Firstly, where the offeror holds securities representing not less than 90 per cent of the target company's voting capital, and 90 per cent of the voting rights of the offeree company. Member States can increase both these thresholds up to 95 per cent if they want, but not higher. In other words, once shareholders accept one's offer and one reaches that level, one acquires a statutory right to force the remainder to sell to one. So one does not end up permanently in a situation where we have got 2 or 3 per cent of shareholders that refuse to sell out. Where the offeror has acquired, or firmly contracted to acquire, following acceptance of a bid, securities representing not less than 90 per cent of the offeree company's capital, carries voting rights and 90 per cent of the voting rights comprised in the bid. So, of course, a fair price has to be guaranteed, the price must take the same form as the consideration offered in the bid, on consist of cash, but the Minister may provide by regulations that the offeror must offer cash, at least as an alternative. Clause 24 deals with conduct of the bid and the Minister must make regulations governing the conduct of bids and the following additional matters – the lapsing of bids; the revising of bids; competing bids; the disclosure of the results of bids, and the irrevocability of bids and conditions permitted. Mr Speaker, I commend the Bill to the House, which as I say, at present has a limited application to Gibraltar. Hon Members will be aware that I have given written notice of a very small amendment to section 25(2) of the Bill, which I will speak to during the Committee Stage.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, 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, this Directive is known as the MIFID Directive, the acronym of Markets in Financial Instruments

Directive, and it has very significant implications on our Finance Centre. In effect, it will alter the basis upon which many of the firms in the investment services area of our Finance Centre have to deal with their clients and the duties and obligations that they reload to them. I should point out to the hon Members that under the terms of the Directive, this Ordinance will not come into effect until 1st November 2007, but there is an obligation to have put it into our laws by January of 2007, even though it does not come into effect until November. The Directive also repeals Council Directive 93/22, which we transposed in the Financial Services Ordinance 1998, in other words, the Investment Services Directive. So, hon Members will see that clause 63 provides for the repeal of that Ordinance. That is to say, for the repeal of that Ordinance in November 2007 when this Ordinance comes into effect. Directive 2004/39, or as I will now call it the MIFID Directive, has been the subject of much comment and analysis in the financial press. Government have consulted extensively with the financial services industry. Consultation centred not only on drafting matters but also on the approach to be taken in the implementation. Again, it was agreed that the best for Gibraltar approach to implementation was the so-called 'intelligent copy-out approach'. In other words, that the Bill is almost a verbatim copy out of the language of the Directive itself, as a means of ensuring in this very important area, that we run absolutely no risk of imposing requirements which are more stringent than the Directive requires. That approach has been agreed and fully endorsed by all the parties consulted. Mr Speaker, MIFID, therefore this Bill, introduces a single market and a single regulatory regime for investment services across the 27 Member States of the European Union. The key objectives are the following three. Firstly, to complete the EU Single Market for investment services, which had not been completed before. Secondly, to respond to changes and innovations in the securities market, mainly technology and risk factors. Thirdly, to protect investors. It will replace the Investment Services Directive transposed, as I said earlier, through the Financial Services Ordinance 1998. MIFID retains the principle of the EU passport introduced in the 1998 Ordinance but introduces the new concept of "maximum

harmonisation", which amongst other things, places more emphasis on host state supervision rather than the minimum harmonisation concept previously inherent in EU financial services legislation. The idea behind maximum harmonisation is to avoid Member States gold-plating or copper-bottoming their laws, precisely in order to create a barrier to the provision of financial services in their markets by operators from other services. In other words, the Community says we harmonise the level of regulation at the highest level that we can all agree, and then we cannot have it any higher than that, so we cannot then go adding barriers to entry by operators from other Member States. Another significant divergence from the 1998 rule, is the regime as set out in the 1998 Ordinance called the 'concentration rule' and this is abolished. The concentration rule permits Member States to oblige investment firms to route all client orders through regulated exchanges, so that will go. It will no longer be necessary to regulate client orders through regulated exchanges. In order to determine which firms are affected by the Bill and which are not, the Bill, following the MIFID, distinguishes between "investment services and activities" which it calls "core services" and ancillary services which it calls "non-core services". If a firm performs investment services and activities, that is to say core services, it is subject to the Bill in respect both of the core services and the non-core services, and it can use the MIFID passport to provide both in another Member State. In other words, if one provides both core and non-core, one is subject to the MIFID Directive in both and one can passport both. However, if a firm performs only the non-core services, it is not subject to the Bill nor can it passport its services into other Member States. In other words, one cannot passport only non-core services. The Bill covers almost all tradable financial products with the exception of foreign exchange trade. This includes commodity and freight derivatives which are not covered by the Investment Services Directive, so it is a very comprehensive piece of all-embracing investment services legislation. That part of a firm's business not covered by the above, is not subject to MIFID or, therefore, the Bill. Firms covered by the Bill will be authorised and regulated in their home State. Once a firm has been authorised

by their home State, it will be able to use the MIFID passport to provide services to customers in all the other Member States. These services will be regulated by the Member State in their home State, whereas currently under the Investment Services Directive, a service is regulated by the Member State in which the services take place, so there is a switch to the home Member State supervision rather than the host Member State supervision. The Bill requires firms to classify clients as eligible counter parties, professional clients or retail clients, and each of these three types of client enjoy different and increasing levels of protection. Clear procedures must be in place to classify clients and assess their suitability for each type of investment product. That said, the appropriateness of any investment advice or suggested financial transaction must still be verified before being given. The Bill has requirements relating to the information that needs to be captured when accepting clients' orders, ensuring that a firm is acting in a client's best interests and as to how orders from different clients may be aggregated. The Bill requires that operators of continuous order matching systems, must make aggregated order information available at the five best price levels on the buy and sell side. For quote driven markets, the best bids and offers of market makers must be made available. These requirements currently only apply to equities, but it is widely expected that they will also apply to other products in the future. The Bill requires that firms will need to publish the price and volume of all trades, even if executed outside the regulated market. These requirements currently only apply to equities, but similarly, it is envisaged that it will be extended in the future to other products. The Bill requires that firms take all reasonable steps to obtain the best possible result in the execution of an order for a client. The best possible result is not limited to the execution price, but also includes costs, speed, likelihood of execution and likelihood of settlement. The Bill abolishes the rule that all trading in securities must be handled through an authorised exchange. Indeed, the Directive allows for the possibility that banks, provided they conform to certain criteria, could match, buy and sell orders from clients in-house. In the Directive's jargon the bank would become a "systematic internaliser". I think only a bureaucrat in Brussels

could devise a phrase like that. But this is a very important change in the financial services world in Europe, and that is that banks and other institutions can say, 'I have got a client who wants to sell his shares, I happen to have another client who wants to buy', and the same bank with those two clients puts them together and does not have to deal for them in a regulated market. A huge change in the trading platform of the investment world. The other reform introduced by this legislation, which is of enormous significance to the Finance Centre, is the best execution rule. This rule introduces the notion of best execution, which means brokers will have to be able to show their clients that they achieve the best price when buying or selling stocks for them. Again, a very significant improvement in transparency of integrity of the market place, but certainly one which will put considerable administrative burdens on people like stockbrokers and other market dealers and makers. To conclude, the transposition of this Directive, as I have said, has to be completed by all Member States by January 2007, even if it only comes into force in November 2007, I commend the Bill to the House. Hon Members will also be aware that I have given notice of three amendments, which are not hugely significant and which I will speak to at the Committee Stage. 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 BANKING (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Banking Ordinance 1992 in order to change the title thereto and to complete the transposition into Gibraltar law of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, 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 small Bill, the principle intended purposes of which are to introduce amendments which are consequential on the coming into effect in due course of the MIFID Bill that we have just passed. The opportunity is taken to introduce two other changes. I will deal with those two other changes first. The first is that, as hon Members may have noticed, we have now started the practice of prefacing all the titles of financial services legislation with the words "Financial Services". For example, at the moment there is a Banking Ordinance, an Insurance Ordinance and much other legislation. By placing the words "Financial Services" in front of them all, the laws will be easier for people to find and be aware of their existence when they refer to indexes and things of that sort. So we are systematically, certainly as we introduce new legislation but as we amend old legislation, we are taking that step. So for example, one of the things that this Bill does is that the existing

Banking Ordinance is renamed the Financial Services (Banking) Ordinance. That is achieved in clause 2 of the Bill. The other non MIFID consequential amendment that we take the opportunity to introduce, is to transfer the regulation making power from His Excellency the Governor to the Minister with responsibility for financial services. The latter, that is to say the Minister, enjoys almost all the regulation making powers in financial services legislation, except in these older ones, and the opportunity is taken to standardise the regime across the board. The amendment introduced in clause 2(3) of the Bill, which is introduced at the bottom of the front page of the Bill, the text of which is in effect on the back page, that is the amendment that is consequential on the MIFID Directive. So, the Bill transposes Article 68 of MIFID, which amends Annex I of Directive 2000/12, by inserting the following words: 'the services and activities provided in sections A and B of Annex I of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 in marketing financial instruments, when referring to the financial instruments provided for in section C of Annex I of that Directive', are subject to mutual recognition according to this Directive. This is achieved by amending section 7 of the Banking Ordinance 1992 in order to enable financial services passporting in respect of services set out in Schedule 1 of the MIFID Bill, the Bill we have just passed. That is introduced into the Banking Ordinance by clause 2(3) of this Bill. I have given notice of amendments to introduce split commencement provisions. In other words, clause 1 of the Bill will stand amended, in accordance with the letter that I have written, and given that it is quite significant I will speak to it now during the Second Reading rather than at Committee. Not just the matter of defect. So that the change of the Banking Ordinance title, the change of the power to make regulations, come into effect immediately but the provisions of clause 2(3) which are consequential on MIFID, the Bill which we have just approved at Second Reading, do not come into effect until the MIFID Bill comes into effect. Hon Members will recall that that does not come into effect until November 2007. So this provision, and the same applies in the Bill that we are about to debate immediately after this one, to the extent that it introduces

amendments to the Banking Ordinance which are consequential on a Bill that does not come into effect until November next year, these consequential provisions themselves do not come into effect until November next year and it is done, not by reference to a date but by reference precisely to that wording. So the proposed new clause 1(2) of the Bill, as printed in the letter of amendments, reads: "Section 2(3) shall come into operation on the day on which the Financial Services (Markets in Financial Instruments) Ordinance 2006 comes into effect. With those amendments, I commend the Bill to the House.

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

HON F R PICARDO:

Yes, two very minor points I think but nonetheless important. The first is to ask the Government why it is that the practice of adopting the financial services moniker for all of these Bills, the first words financial services, obviously it is to be supported, it will just make references to the legislation easier, but why is it that we are deciding to change the name of the Banking Ordinance and not give it a date? Every other Bill that we are doing today has a 2006 date, the original Banking Ordinance has a 1992 date. That may be the reason, the fact that we are not substantially changing the 1992 Ordinance and we are just renaming it, but the practice has always been that legislation after 1984 has a date given to it. I would like to know why it is that we are deciding not to continue with the date for the Banking Ordinance. The second is more an issue of Parliamentary practice. This Bill does not provide in section 2 a fourth subsection but the amendment that the Chief Minister has passed us a letter on, that he will seek to introduce at Committee Stage, will include a new subsection (4) to that section too. It is a totally unobjectionable subsection (4) of the sort that we have seen in this House from the GSLP administration and the GSD administration on a number of occasions and will be supported. But I think the practice of

adding, 19 minutes before the House meets, we received this after the House had already started its meeting today, a new clause to a Bill and purporting to do that in Committee, is not necessarily one that should be supported on the basis that if it were not a clause that is straightforward which we can all support, it could be a clause of substance. We are supposed to have at least seven days to consider Bills and under the new Constitution we are supposed to have even longer to consider Bills, and I think at a Parliamentary level, that is not a practice we should fall into. Although of course, in this particular instance, it is a totally innocuous subsection that is being introduced in that way, but it is certainly not the sort of amendment that one would expect to see at Committee Stage.

HON CHIEF MINISTER:

We are not at Committee Stage, we are at Second Reading stage and there is no Parliamentary practice of which I have been aware, in the 12 years that I have been in this House, nor that any previous Government in Gibraltar has respected, that one cannot use the power to amend in the sense of introducing new or replacing clauses. It has always been done, it is done frequently and regularly in the House of Commons and there is no such provision. Nor, however, does that result in the hon Member being trapped in being given only 18 minutes before the House starts, it is a completely unrealistic picture that he takes. There is no need for the legislation process in Gibraltar to take only one day. The hon Member hears me say frequently that we will take Committee Stage and Third Reading of the Bill later today if all hon Members agree. Well, if there is an hon Member who believes that having had insufficient notice of an amendment he has had insufficient time to consider his views on the Bill, all he has to say is 'no' and then he gets more time to proceed. So I do not accept either that adding a new section to a Bill, whatever its content, whether it is controversial or not controversial as is the case here, I do not accept that there is any such Parliamentary practice but even if there were it does not have the effect that the hon Member says of forcing him to

make a decision, this is not the Committee Stage this is the Second Reading stage. The Committee Stage does not have to take place today if in the context of a controversial Bill the hon Members were not content with it. So there is plenty of provision to deal with the issues concerning the hon Member. I am sure that his colleague sitting next to him, the Leader of the Opposition, will be able to whisper in his ear that it has been the long-standing practice of the party of which he is now a Member, when it was in Government, that it would frequently introduce amendments to legislation in the form and, indeed, it has happened on many occasions during the last number of years. All of which, by the way, he has been referring to the few years also that he has been a Member of this House and he has never taken this point before. So as to why we do not add a date to the name of the Bill, we could do but there is no need in our statutory system for the name of an Ordinance to carry a date. Of course, to change the name in 2006 and in 2006 decide to call it the Financial Services (Banking) Ordinance 1992, is odd. One would not in 2006 re-title an Ordinance and include in that Ordinance a year that has already passed. Nor, of course, would one change the title to put in a year which might mislead people into thinking that 2006 was the date on which the substantive provisions were introduced. So we opted for this measure which is just to remain silent on the question of date, but it is not a hard and fast rule, either option could have been adopted.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Financial Services (Collective Investment Schemes) Ordinance 2005 to complete the transposition into the law of Gibraltar Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/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, this Bill, like the last one, is also to introduce an amendment consequential on the introduction and commencement of MIFID, and therefore also would not come into effect until November 2007 when MIFID comes into effect. I have given notice, just to ensure that no one forgets to commence this in 2007, I have given notice to amend the commencement procedure date in clause 1, to delete the reference to the day on which the Minister with responsibility for financial services appoints by notice in the Gazette, which can always be overlooked, and replace by 'on which the Financial Services (Markets in Financial Instruments) Ordinance 2006 comes into effect'. So when that main Bill is commenced, this one and the previous amendment to the Banking Ordinance would both be automatically commenced. The Bill transposes

Article 66 of the MIFID Directive which amends Article 5(4) of the 1985 Directive 85/611/EEC, by replacing the Article with the following words: “Article 2(2), 12, 13 and 19 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, on markets in financial instruments, shall apply to provision of services referred to in paragraph 3 of this Article by management companies”. This is achieved by inserting after section 28(3) in the 2005 Ordinance a new subsection (4). The effect of the amendment is to apply MIFID rules relating to capital and organisational requirements to UCITS management companies wishing to manage non authorised UCITS retail schemes, certain non UCITS collective investment schemes and authorised discretionary portfolio management. Subject to the amendment of which I have given notice, 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 WEAPONS OF MASS DESTRUCTION (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Weapons of Mass Destruction Ordinance 2004, 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 amends the Weapons of Mass Destruction Ordinance 2004 in order to impose prohibition on importation of the chemicals listed in the Schedules of that Ordinance, and to re-arrange some of the provisions in Schedule 4. Clause 2 of the Bill inserts a new section 10A providing for prohibition against importation into Gibraltar of any of the chemicals listed in Schedules 1 and 2. It is not a huge change and this is one that the UK has decided its own legislation was deficient on, and has asked all the Overseas Territories to follow suit. Hon Members may not have the Weapons of Mass Destruction Ordinance in front of them but section 10 of that Ordinance deals, in relation to the chemical weapons, deals with the use, the development, the transfer and various other things in relation to those chemicals but did not actually prohibit their importation. All that this Bill does is add importing them to the list of things that one cannot do with the chemicals which are already listed in Schedules 1 and 2 of the Ordinance. So, for example, it prohibits one from otherwise acquiring, the Convention refers to a requirement to prohibit otherwise acquiring but this phrase has not been used in section

10 of the Ordinance as it currently stands. Therefore, in order to complete the scope of prohibited acts, this Bill introduces a prohibited imports regime in relation to these weapons. The Bill also amends Schedule 4 of the Ordinance in a number of places. Schedule 4 is the reproduction of the Annex on implementation and verification to the Chemical Weapons Convention. The Bill takes the opportunity to correct some errors that happened whilst formatting by computer before printing of the Ordinance. The Bill will, according to the UK, complete the implementation by us of the Convention on the Prohibition on the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1993 in Gibraltar by adding a prohibition against their importation into Gibraltar. 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 INVESTOR COMPENSATION SCHEME (BULGARIA AND ROMANIA) (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Investor Compensation Ordinance 2002 to change its title

and in connection with the accession of Bulgaria and Romania to the European Union, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as appears from the Long Title, the Bill is consequential on the accession of Bulgaria and Romania. In addition to that, we take the opportunity to change the title to add the words 'Financial Services' in front of it. The effect of the Bill is simple. During the transitional period Bulgarian and Romanian firms, and the transitional period Hon Members will recall is 1st January 2007 to 31st December 2009 in respect of Bulgaria, and 1st January 2007 and 31st December 2011 in respect of Romania, permits Bulgaria and Romania to operate investor compensation schemes which offer a lower level of compensation than that required by Directive 97/9 during that transitional period. So technically, a Bulgarian and Romanian firm but for this Bill would be able to passport investment services, for example, into Gibraltar offering lower levels of protection than our own schemes. This Bill amends our Investor Compensation Scheme Ordinance in line with the protocol and introduces a new section 2A into the Ordinance, which prohibits Bulgarian and Romanian firms from setting up branches in Gibraltar during the transitional period unless they participate in Gibraltar's Investor Compensation Scheme. The Bill amends Gibraltar's legislation to reflect Bulgaria's and Romania's new status as members of the EU, whilst at the same time ensuring protection of local investors. Sub-clause (1) says that during that transitional period Bulgarian firms may not open a branch in Gibraltar unless "it participates in the scheme" in order to cover the difference between the level of investor compensation required by the law of Bulgaria and the compensation payable

under the Gibraltar scheme, so-called 'topping up'. The same applies for Romania. 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 SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Social Security (Closed Long-Term Benefits and Scheme) Ordinance 1996, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to enable those pre-

1969 ex-Spanish worker pensioners in Gibraltar, who choose to accept the offer that will shortly be made to them by the United Kingdom Government following the Cordoba Ministerial Statement on Pensions in September 2006, should be free validly and lawfully under our pensions legislation, to renounce their rights to benefits under our pensions legislation. Under clause 22 of the Ordinance as it presently stands benefits are inalienable, and this amendment which the hon Members have before them, is to insert a new section 22A in terms crafted specifically around the Cordoba Statement. To say, namely, 'in this section "the Agreement" means the arrangements set out in the Ministerial Statement on Pensions made at Cordoba on 18th September 2006, inter alia, by the Chief Minister. (2) A beneficiary who in a manner approved by the Director (the Director of Social Security) notifies the Director or the Director becomes aware, has accepted the offer of payment made to him under the terms of the Agreement, shall be deemed to have renounced any benefit to which he may be entitled under this Ordinance and shall forthwith cease to be entitled thereto. (3) Any person to whom subsection (2) applies may not at any later date and for any reason be readmitted as a beneficiary under this Ordinance, or be entitled to make any claims arising out of or in connection with his contribution. (4) Where a person other than the person who made the contribution would be entitled to any actual or prospective benefit by virtue of the contributions of a person to whom subsection (2) applies, that first mentioned person's right shall also be terminated and he shall cease to be entitled.' (In other words, widows, people of that sort that have a claim on the back of the contributor.) 'Section 22 shall not apply to any person to whom this section applies. The Minister may by regulations make such further or different provisions as he may think necessary or desirable to give effect to the Agreement, and any such regulations may have retrospective effect to the date on which this section comes into operation. Any regulations made under subsection (6) shall be laid by the Government in the House of Assembly at its next meeting following the date of their publication in the Gazette.' Therefore, the purpose of this Bill is to ensure that those pre-1969 Spanish pensioners who choose to accept the UK's offer, do not get both

the UK's offer and then come to Gibraltar and say, 'you cannot deprive me of my Gibraltar statutory scheme because they are inalienable and any contract to alienate them is void'. This amendment, therefore, is designed to prevent people who choose to accept the UK scheme from in effect sticking up both hands instead of just one.

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

HON J J BOSSANO:

We understand what the purpose of the Bill is, because it is self-evident from reading its text, that it is so that those who are going to be made an offer to leave the scheme can no longer be in the scheme having accepted the offer to leave it. However, we cannot support the Bill because by implication supporting the Bill means supporting the Agreement that has been done in Cordoba, which gives a privileged position, in our judgement, to persons that contributed to the Gibraltar scheme up to 1969 using three criteria which we consider to be challengeable under European law, on the basis of all the arguments that the United Kingdom Government used before to create the problem that was created by their decision to freeze the pensions in 1988. That is to say, when the United Kingdom Government did not want to pay after the original agreement in 1986, when they agreed to fund the commitment that was given and even at that stage, that is to say, even on the upgrading of the pensions from £1 something to £47.80 which took place in January 1986 and which the United Kingdom had committed themselves in writing to in July 1985, the argument that was put constantly to Gibraltar when I was in Government and before I was in Government by the United Kingdom Government was, that anything that made different payments to different contributors on the basis of their nationality, their residence or the date of their contributions, on any one of those three grounds, would be open to the argument that it was in breach of European law and would run a serious risk of the United Kingdom finding itself facing infraction

proceedings. As I have already pointed out to Mr Hoon in a letter that I have written to him, it seems to me that what the announcement that has been made in the Cordoba text in fact includes all three things and not just one of them. Consequently, we cannot support the amendment, not because we think they should be paid twice but because we think that the Agreement that has been done in Cordoba is open to challenge, is going to be challenged and that the challenge will succeed. I accept that since the Government are committed to that they have to bring this Bill to the House, but we do not support it for the reasons that I have stated.

HON CHIEF MINISTER:

It is not strictly necessary for me to do so because he has not challenged the principles of the Bill as such, accepting the need for it, given what the Government have agreed to do. However, I just want to record lest anyone in mounting any future challenge should take unwarranted and unjustified succour from the hon Member's remarks, that I firmly believe that the hon Member is wrong, completely wrong, in the statement and legal analysis that he has just made. It is precisely in the nature of the Cordoba Agreements that members of the scheme will not be made different payments. The payments that the United Kingdom is making are payments to induce people to leave the scheme, and those are not covered by the EU Regulation, that prohibits discrimination. So the scheme has been carefully structured precisely so it should not be open to the challenge. So, of course, it might be challenged because there are always people willing to keep lawyers in fees quite unnecessarily. But it certainly is very unlikely to succeed in the challenge because, in fact, the premise of the hon Member's assessment is in my view incorrect. The premise of his assessment is that this will result in unequal payments being made to people to whom the EU Regulation prohibits the making of unequal payments, and that is not factually the case on the basis of the Agreement in Cordoba. So, as a lawyer who one day hopes to return to legal practice, it is not for me to derail gravy trains for lawyers fees.

Question put. The House voted.

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

For the Noes: The Hon J J Bossano
The Hon C 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 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 EQUAL OPPORTUNITIES ORDINANCE 2006

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to repeal and re-enact the Equal Opportunities Ordinance 2004 and

certain provisions in the Employment Ordinance; to transpose into the law of Gibraltar Council Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, to transpose into the law of Gibraltar the provisions on age and disability discrimination in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill builds on the Equal Opportunities Ordinance 2004, which it revokes and replaces. The 2004 Ordinance makes it unlawful to discriminate on the grounds of sex, religion or belief, racial and ethnic origin or sexual orientation, in relation to employment, vocational training and education. It also outlaws victimisation and harassment on those grounds and makes it unlawful to discriminate in relation to the provision of goods, facilities and services and certain other specified activities, on the grounds of racial or ethnic origin. In addition, the Employment Ordinance also contains various provisions regarding equal pay and pensions for men and women. The Bill transposes a number of Directives as follows. In relation to discrimination on grounds of age, disability, sexual orientation, religion and beliefs, Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. In relation to discrimination on the grounds of race or ethnicity, Directive 2000/43/EC of 29 June 2000 implementing the

principles of equal treatment between persons irrespective of race or ethnic origin, and in relation to sex discrimination, Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. Directive 75/117/EEC of 10th February 1975, on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. All these Directives, with the exception of the Equal Pay Directive, follow a similar structure and prohibit discrimination in the fields of employment, self-employment and vocational training. The RACE Directive, which is Directive 2000/43/EC, also prohibits discrimination in the provision of goods and services by the public and private sector bodies. The Sex Discrimination Directive also imposes an obligation on Member States to actively take into account the objective of equality between men and women when formulating laws and policies in relation to employment, occupation, self-employment, vocational training and also deals with maternity. The Equal Pay Directive has a particular set of rules for determining whether work done by male or female employees is equal, and therefore equal pay should be required. Finally, the RACE and the Sex Directives both require the establishment of a body or bodies for the promotion of equal treatment. The main purpose of the Bill relates to the workplace and training for the work place. Employers, partners, trade unions, professional associations, vocational training providers and employment agencies will all be under an obligation not to discriminate on equal opportunity grounds. Employers will need to be aware that the legislation makes them responsible for discrimination by their employees, unless they can prove that they took reasonable steps to prevent such discrimination from occurring. Moreover, the

legislation provides for a reverse burden of proof. In other words, that where an applicant is able to demonstrate facts from which discrimination may be inferred, then it would be for the employer or the trade union, or partnership et cetera, to disprove that there was discrimination. In relation to discrimination on the grounds of race or ethnic origin, the Bill also prohibits discrimination in relation to the provision of goods and services by both private and public bodies. The main purpose of the Bill is to build on the provisions of the Equal Opportunities Ordinance 2004 in order to extend the prohibition on discrimination to cover discrimination on the grounds of disability, age, pregnancy, maternity and extends its statutory provisions on harassment to sexual harassment. It also transposes Council Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. It also transposes the age and disability provision of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. It also clarifies and streamlines the employment and equal opportunities legislation. I shall now briefly set out the main provisions of the Bill.

Part 1 of the Bill is a general section. It includes the interpretation section defined as equal opportunity ground and sets out the application of the Bill. The Bill will apply in both the private and public sector, including in relation to employment in Government. However, the Bill does not apply differences in treatment on the grounds of nationality nor immigration matters. Part 2 of the Bill defines discrimination on various equal opportunity grounds. Most of these provisions already exist in the 2004 Ordinance. Discrimination on the basis of sex, race, sexual orientation and religion is defined as including direct discrimination, which is treating a person less favourably on particularly equal opportunity grounds, for example, a job advertisement which said they were looking for a lady between 21 and 25 to work as a secretary, or a dinner lady, or fireman.

So, only offering overtime or training to employees of a particular religion or sexual orientation, and indirect discrimination which occurs where a provision appears neutral but whose effect is unfavourable to persons in a particular equal opportunities category. For example, holding a business meeting in a men only club, or in a particular religious worship or advertising for a Chinese speaking only. Indeed, discrimination may be lawful where proved to be objectively justified by a legitimate aim and necessary and appropriate to meet that aim. The Bill also prohibits harassment, that is, subjecting people to treatment on equal opportunity grounds which has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. In addition, the Bill makes victimisation unlawful. That is, treating people less favourable because they are or are considering bringing legal action under the Bill, or are supporting somebody else who is doing so. Not all discrimination will be prohibited. As already mentioned, indirect discrimination may be justified in limited circumstances and the Bill provides a number of additional exceptions. The new provisions introduced in this Part are clause 5, which makes it clear that instructing another person to discriminate will be discriminating against the person so instructed. Clause 7, which defines discrimination on the basis of pregnancy or maternity leave. It will be unlawful discrimination to treat a woman less favourably on the grounds of her pregnancy during her maternity leave, or right through in terms of her work period, as defined in the Employment (Maternity and Parental Leave and Mental Health) Regulations 1996, or to treat her less favourably on the grounds that she is seeking to exercise her right to maternity leave or right to return to work. Clause 11, which defines discrimination on the basis of age, this clause makes it unlawful to discriminate against someone by either direct or indirect discrimination, on the basis of their age. As an exception, unlike in respect of discrimination on the grounds of sex, race, sexual orientation or religion, it is unlawful to discriminate either directly or indirectly on the grounds of age, if the employer can prove that the less favourable treatment was for a legitimate aim and that the means of achieving it were both appropriate and necessary.

Age discrimination may take many forms, including age restrictions for access to employment, training or promotions benefit, or promotion based on seniority of service and requirements to retire at a certain age. The Bill contains specific provisions in relation to national minimum age, clause 58, and benefits based on length of service, clause 59. The provisions on retirement are set up in clause 57 and Schedule 3. I will cover them later in my speech. At this point, I wish to emphasise that the age discrimination provisions do not affect state old age pensions. Clause 12 defines discrimination on the basis of disability. There are three separate elements to unlawful discrimination on the grounds of disability. Firstly, there is direct discrimination that is treating a person less favourably on the grounds of his or her disability. Secondly, disability discrimination which is treating a person less favourable from a person which relates to his or her disability, and which is not just supplied by the material or substantial reason. Thirdly, failure to make reasonable adjustment when under a duty to do so. The duty to make reasonable adjustment is a new concept for Gibraltar. It seeks to achieve a balance between ensuring that the needs of persons with disability in employment and self-employment are met while ensuring that unreasonable burdens are not placed on persons under a duty to make such adjustments. The persons under a duty to make reasonable adjustments where appropriate includes employers and users of agency staff, partnerships, employment agencies and vocational training providers, trade unions and professional organisations. The duty to make reasonable adjustments is defined in clause 29 and requires persons under a duty to take such steps as are reasonable in the circumstances, to prevent a disabled person from being substantially disadvantaged, where a provision, criterion or practice operated by him, or any physical feature of the premises occupied or controlled by him, places the disabled person concerned at a substantial disadvantage. Failure to make reasonable adjustment will be unlawful discrimination unless the employer or other duty holders can show that it was unreasonable to expect him to know that a disabled person was being put at a substantial disadvantage. Clause 29(2) sets out the factors to be taken into account in determining whether it

would be reasonable for a particular person to take such steps. These include whether the steps will prevent the disabled person from being substantially disadvantaged, the cost and the duty holder's financial resources and the size of the business or undertaking. Clause 29(3) sets out examples of types of reasonable adjustment which a person might be expected to make, including allocating some of the disabled person's job duties to another person, acquiring or modifying equipment, providing supervision, training or other support, assigning the disabled person to a different place to work, and making adjustments to premises. In relation to recruitment, the duty would require employers to ask applicants if they have any particular requirements in relation to the interview and then to accommodate those needs where they are able to. For example, by providing a nearby parking space, holding the interview in an accessible building, dimming the lights for an applicant with photosensitivity, ensuring that the blind applicant is escorted to the interview room or allowing a person with a learning disability to be accompanied by an assistant. Clause 14(2), which deals with sexual harassment, is also a new provision. Part 3 of the Bill deals with discrimination in the field of employment, self-employment and vocational training. Under Part 3 it will be unlawful for the following to discriminate on equal opportunity grounds: employers (clause 15); employers of agency workers (clause 19); employers appointed or recommending office holders (clause 20); partnerships (clause 22); trade unions and professional bodies (clause 23); employment agencies and career guidance bodies (clause 24); bodies offering authorisation and qualification in relation to trades and professions (clause 25); vocational training bodies, including bodies providing work experience and educational establishments which provide vocational training (clause 26); trustees and managers of occupational pension schemes (clause 27). Clauses 17 and 18 of the Bill permit discrimination where there is genuine occupational requirement. Clause 17 permits discrimination where a job in question generally requires that a person is of a particular age, sex, race or other equal opportunities category, and it is appropriate to apply the requirement in that particular case. Thus, for example, a job

conducting personal searches for men could generally require it to be conducted by men. Clause 18(2) provides a specific exemption for employers with an ethos based on religion or belief, where they can show that it is necessary and proportionate to require that an employee must be of a particular religion. Clause 18(3) contains a specific provision for employment for the purpose of organised religion, for example, religious leaders. In all cases, it would be for the employer or other person prohibited from discriminating, to prove that the exception applies. Most of the provisions in this Part are already in the 2004 Equal Opportunities Ordinance. The following changes have been introduced in this Part to existing provisions in the 2004 Equal Opportunities Ordinance. Firstly, there is the introduction of the duty to make reasonable adjustment. Secondly, the deletion of provisions regarding barristers, where these provisions are necessary in the UK because of particular legal provisions of practice in barristers there. In Gibraltar they are unnecessary because barristers work either as employees under the control of a firm, or are partners or self-employed. In relation to discrimination in occupational schemes, the introduction of a prohibition on different rules for overseas residents. These provisions previously appeared in the Employment Ordinance in relation to sex discrimination only. Fourthly, the deletion of specific provisions allowing race discrimination in limited circumstances. Part 4 of the Bill deals with the issue of equal pay and equal provisions for men and women. These provisions were previously found in the Employment Ordinance, which will be amended to remove the corresponding provisions which appear therein. The provision transposes the Equal Pay Directive. Clauses 31 to 34 imply terms into contracts to require that men and women receive equal pay and equal pensions where the work is either like or the same, where work which is not like or the same but which have rated as equivalent. Finally, work which has not been rated but which is of equal value. Importantly, where a job evaluation study is conducted, it must be not be based on discriminatory criteria. For example, evaluating a job on the basis of the criteria of physical strength, the requirement would be discriminatory unless physical strength was objectively

necessary for the job in question. New to this Part is the definition of pay which appears in clause 31(6), which makes clear that pay includes not just salary but also any form of remuneration. The definition of pay must be in accordance with European Directive 75/117 and Article 141 of the Treaty establishing the European Union. Part 5 of the Bill deals with discrimination outside the field of employment, self-employment and vocational training. It prohibits discrimination on the grounds of racial and ethnic origin by educational establishments, public authorities, public and private providers of goods and services, for example, hotels or shops, and persons disposing of or managing premises to discriminate or victimise persons. Most of the provisions in this Part already exist in the Equal Opportunities Ordinance 2004 but some of the exceptions provided in the 2004 Ordinance have been deleted to ensure that our legislation fully complies with the RACE Directive. Part 6 of the Bill deals with other unlawful acts. The provisions are already in the 2004 Ordinance. Employers should note that they will be responsible for discrimination by their employees, unless they can show that they took reasonable steps to prevent employees doing such acts. For this purpose, employers may find it useful to have equal opportunity policies and ensure that their staff are trained in, know, understand and adhere to these policies. Part 7 of the Bill sets out the general exceptions to the Bill. Most of the provisions already appear in the 2004 Ordinance. New provisions include clause 52, which provides an exemption to religious discrimination, or still, in connection with the wearing of safety helmets. Clause 54 will provide an exception to sex discrimination in connection with sports. Clause 57 contains specific exemptions relating to age discrimination and retirement ages. The clause provides that it shall not be unlawful discrimination to retire a person at the age of 65, provided that the consultation procedure laid down in the Schedule 3 is being followed and the dismissal is for retirement defined in the Employment Ordinance. The Employment Ordinance will be amended to insert specific provision relating to dismissal for retirement at age 65. The effect of the new provisions will be that employers may not require an employee to retire before the

age of 65 against their will, unless they can prove that retirement is an appropriate and necessary means of achieving a legitimate aim for their business. Employers will be obliged following the consultation procedure set out in Schedule 3. Under this consultation procedure the employer must contact the employee in writing no less than six months before the retirement date, and invite them to submit their views in writing as to whether they are happy to retire or wish to remain in employment after that date. Employers will be under a duty to consider a request to remain in employment and to hold a meeting with the employee to discuss their request. However, an employer is not obliged to agree to an employee's request to stay in employment. Consequential amendments to the Employment Ordinance are planned, which will enable an employee over the age of 65 to bring proceedings for unfair dismissal, including where retirement provisions of this Bill have not been complied with. Clauses 58 to 60 contain additional exemptions to age, discrimination in relation to minimum wage, provisions of benefits such as increased pay or extra holidays, based on length of service and life assurance covered by retired workers. Part 8 of the Bill deals with the validity of contracts, collective agreements and rules of undertaking. The provisions are already in the 2004 Ordinance. A term of a contract would be void where it makes the contract discriminatory. It is included in the furtherance of unlawful discrimination or provides for the doing of an unlawful discriminatory act. The Supreme Court may order the removal of such terms from a contract. Similarly, any terms in a collective agreement rule made by an employer for all employees, rule made by the trade union or professional association or qualification body to its members, would be void where it is unlawful by virtue of the Bill. The Industrial Tribunal may order that such terms or rules are void. Part 9 deals with remedies. Discrimination claims have not to date proved legitimate in Gibraltar. However, as previously stated, employers and others need to be aware that in a discrimination claim, even employees able to prove facts which suggest that there has been discrimination, the burden of proving that there was no discrimination will be upon them. That covers clauses 74 and 77. Applications and potential applicants will be able to

serve questions on a person who they consider may have discriminated against them, and failure to respond to such a question within four weeks will permit the Supreme Court or the Industrial Tribunal to draw inference, including an inference that there has been unlawful discrimination under Clause 65(4). The main changes introduced by this Bill to the existing remedies are all employment related discrimination claims, that is, all matters covered by Part 3 of the Bill, other than qualification bodies and educational establishments, will be dealt with by the Industrial Tribunal. Discrimination in non-employment matters on the grounds of race and ethnicity will be dealt with by the Supreme Court. Claims by the Industrial Tribunal will be made within three months of the alleged breach of the Bill. The provision now extends to equal pay claims under clauses 71 to 73, as these claims can be particularly complex. The Director of Employment may serve questions on an employer to investigate whether there has been a violation of equal pay provisions under clause 71(3), and the Industrial Tribunal may request the Director of Employment to prepare or commission an expert report, where it is alleged that the work of a man or a woman is of equal value under clause 72. Clause 73 is the new provision dealing with interest on compensation. Part 10 contains a number of miscellaneous provisions, including clause 78, which gives the Gibraltar Citizens Advice Bureau, responsibility for equal treatment on the grounds of race and sex, unless or until an equal opportunities commission is established as provided for under clause 79. This is the current position in Gibraltar law, the Citizens Advice Bureau was given these duties in Legal Notice 2006/58. Clause 80, which introduces the new duty on public authorities, to have regard to the need to eliminate unlawful discrimination and harassment on the grounds of sex, and promote equality of opportunity between men and women. Clause 81, which obliges all employers to bring the provisions of the Bill to the attention of their employees. Schedule 1 contains further provisions in relation to the definition of disability and past disability. Schedule 2 provides provisions relating to occupational pension schemes and exemptions of age discrimination. Schedule 3 sets out the duty to consider working beyond retirement provisions in relation to age discrimination

already referred to. Schedule 4 provides forms to be used by complainants or potential complainants in questioning respondents with a view of bringing complaints under the Bill, or a reported complaint under the Bill. Employers and others affected by the new provisions will need to look carefully at their current practices, to ensure that they are not in breach of the new law. They will need to look at their recruitment practice and application forms. Do job advertising or application forms contain discriminatory language, or ask for information about marital status, sex or age? If so, is that information needed in order to select potential candidates or could be collected after a candidate had been recruited? Do they check where applicants have a disablement requiring reasonable adjustments, or ask applicants or existing employees what adjustments they need? Employers should ask themselves if they look for people of a particular age, sex, disability status or racial origin and if so, why? Or is it discrimination in breach of the law? In relation to existing staff, employers will need to ensure that promotion is non discriminatory as are pay and conditions, and that they understand and apply the new provisions on retirement. Organisations such as trade unions and professional bodies will also wish to ensure they are complying with the new provision. This Bill transposes Gibraltar's obligation under the European Equal Opportunities Directive and streamlines our Employment and Equal Opportunities legislation. In keeping with the Government's commitment for equal opportunities reflected in the Constitution, for which Gibraltarians recently voted in the Referendum, the Bill seeks to ensure that persons are able to play a full role in Gibraltar's economy whatever their age, sex, sexual orientation, race, religion or belief, or physical and mental abilities and that discrimination, whether intentional or unintentional, does not prevent Gibraltar's economy from benefiting from their input. The Bill also insures against discrimination on the grounds of racial or ethnic origin, in relation to the provisions of goods and services. The Bill will be accompanied by forthcoming changes to our employment legislation, to provide modern equal opportunities legislation for people who work and live in Gibraltar. I have given notice of two minor amendments which I will wish to put forward at Committee

Stage and for which I have already given notice. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, this Bill is to be welcomed but we believe it has been unnecessarily delayed. In fact, it is our understanding that the transitional provision expired for the passing of this Bill, provisions that were not yet in our laws expired yesterday in respect of those EU Directives. It is also heartening to see that the provisions preventing these discriminations now do not just apply to employment but to other areas also, in education et cetera. Of particular interest, is the Schedule which defines disability which does not require a person to have been born with a disability in order to come within the definition of disability. There is a very wide definition of disability there. The Government will be aware, as is the Opposition, that a lot of individuals who believe they should receive disability benefits in respect of the provisions of another Ordinance, do not receive that benefit because they were not born with the disability. I think it should be the beginning of our laws being changed to reflect that people can acquire disabilities during their lives and not have to be born with them in order to take the benefits that the State may afford them as a result of finding themselves with disabilities. On the body of the Ordinance, we are concerned to see in section 2(2) of the Ordinance, a definition of 'employment' which we have some difficulty with because of the reference to a person's tax or social insurance status not being determinative of whether that person is in employment or not. We would be grateful if the Minister could indicate to us why it is that that definition has been adopted. Why a person who is paying social insurance as an employed person, or is paying tax as an employed person is not to be able to point to that to show that he is in employment. Separately, we take the view that the Citizens Advice Bureau is not the best agency to oversee the

enforcement provisions, or rather, the compliance with this. I think the Government take the same view and that is why the CAB is only going to transitionally hold those powers. We would be grateful if the Minister could indicate how quickly it is likely that we are going to have an Equal Opportunities Commission. Enforcement will be in the hands of the Employment Tribunal to a very great extent, and I made the point when the original Bill was brought to the House in 2004, that that Tribunal is already very over-worked. At the moment the Chairmen of those Tribunals are appointed from ad-hoc appointments of lawyers from No. 6 Convent Place, and I said when we were first looking at the original Bill that perhaps we should consider having one or two standing chairmen of the Industrial Tribunal, so that there is always a chairman available, and it is only the diaries of the two lawyers before him, or if there is no lawyer, of a trade union representative or the employee before him, that need to be coordinated and not three diaries because from experience, Mr Speaker will know because he has sat as Chairman and appeared in that Tribunal, that it is sometimes very difficult to get dates. The Tribunal dates are building up because there is only one secretary and the lawyers are involved in other matters in courts et cetera. There is an exception carved out in section 80 of the Bill for the proposed Ordinance for the House of Assembly. That section deals with the obligation now imposed on public authorities to ensure that in carrying out their functions they eliminate unlawful discrimination and harassment on the grounds of sex. It does not deal with all the grounds for discrimination, just the grounds of sex. Now, I would like to know from the Minister why it is that it has been decided that the House should be exempted from that provision in the exercise of its functions. I can understand why, for example, the House of Parliament might want to have that exception carved out because the UK does not have a written Constitution, but because we have a written Constitution and another one coming, that would already prevent us from exercising our functions in a way where we were to discriminate on the grounds of sex. We would like to know what the thinking is behind leaving that provision in for the House of Assembly. A House which either side, I am sure, will agree will not want to in

any way act in a manner which does not eliminate unlawful discrimination or harassment on the grounds of sex, or in any way fails to promote equality of opportunity between men and women. So, there must be some logic behind that section, I am sure, and perhaps the Government could give us a further indication of why it has been done in that way. Other than that the Bill will be unanimously supported on this side of the House.

HON CHIEF MINISTER:

I would like to comment on one or two of the points. The Government are reviewing, generally, in relation to employment but there are wider tribunals than employment nowadays. We are generally reviewing whether Gibraltar's historical systems of tribunals, which is to ask busy lawyers to sit on them, ought to change in favour of more the UK system, which just as there is a permanent Stipendiary Magistrate, one can have a permanent Chairman, it may not be enough work to have a permanent full time chairman of the Employment Tribunal, but if we lump together enough of these little tribunals there may be enough work for one permanent Tribunal "judge". That being looked at, it is an idea, it is not yet in any sense decided but that is where we are. On the question of the wider definition of 'disability' and 'disability benefits', I think that the Government have given an indication already that they are considering whether and to what extent there should be a change in the very long standing position that one is only entitled to disability benefits if one is born with them. In fact, only last week somebody visited me who had only just not been born with them because they had developed something within weeks of birth. But whether it is as simple as saying every disability of whatever degree, regardless of whenever developed, should be regarded as a disability, I do not think it is quite as simple as that either. So there has to be, I think, a widening of the net, so to speak, but without throwing the flood gates open to everybody who says that they have got back aches and things of that sort. Certainly, the Government believe that the present system is simply too narrow and has to be widened to some degree not yet determined and not yet

decided. Just trying to get my head round the House of Assembly point. I am only speculating, the draftsman is checking the source of this exemption, but I suppose that it may have something to do with the fact that the functions and proceedings of the House of Assembly are principally the passing of laws. We cannot be under an obligation from one of our own laws to pass laws of a certain sort or not of a certain sort. The Constitution might force our hand in that regard but not one of our own Ordinances. I am only speculating, perhaps when we consider this later I can give him a more considered response on that. I can only speculate that the reason why this Parliament should not be obliged in the laws that it passes or chooses not to pass, to be regarded as a public, because that is what we are an exemption from. It is not that we are exempt from the Constitutional requirements, we are just not included in the definition of 'public authority'. It would be most unusual for an Ordinance to oblige the hand of a legislature. The House of Assembly shall do this, or shall not do that would be quite an unusual provision in our own legislation. The House of Assembly has to have due regard to the Constitution and the Constitution says what it says about discrimination and non discrimination. I think that this is much wider. I am speculating on my feet, it is not an issue to which we have given any thought, if we can alight on the reason before we have finished today's Session I will let him know what the reason for that might be. What I am being told in my ear is more or less to confirm that my speculation is close to the mark. That this section, which by the way applies only to the sex ground and not to any of the other grounds, is designed to affect the public administration, for example, the Housing Department in the administration of housing, the Education Department in the administration of education and not a Parliament in its legislative sense. Of course, any legislation that we pass in breach of the Constitutional provisions against discrimination, in the fields to which the Constitution applies, would be unconstitutional but not under this. In other words, this Ordinance does not impose a statutory obligation on the House to go about its business with an obligation to have due regard. Every time we debate a Bill we are not under a statutory obligation to have due regard to,

but of course, if as a result of not having had due regard to we were to pass an Ordinance that infringed the Constitution, which I think is narrower than this by the way, then of course that legislation to that extent would be unconstitutional.

HON J J HOLLIDAY:

I think that the only issue that the Chief Minister has not covered in his address is the issue of the Citizens Advice Bureau and the appointment of the Equal Opportunities Commission. As I said in my presentation earlier on, it is the Government's intention to appoint an Equal Opportunities Commission but I am not able to give him the timescale as he has asked at this stage.

HON F R PICARDO:

There is also section 2(2) and this question of whether tax and social insurance status is determinative of employment.

HON CHIEF MINISTER:

First of all I would point out that it says that it shall not be determinative of. It might be affected by, it may be a factor, but it is not the only determining factor and I am advised that that is there because of the status of barristers in particular. I should point out that subsection 2(b) says that a person's tax and social insurance status shall not be determinative. In other words, shall not by itself dispose of the question although it may well be, and will be, a strong factor in deciding the status. I am advised the reason why this provision is there at all is to accommodate the status of barristers, who even if they are in employment, are nevertheless treated as self-employed because of their professional status. That is what I am being told is the reason for that. I am just being told that it might be wider than barristers. The test is remuneration plus control of the employer. Barristers is the obvious example of somebody

who even if they are paid a fixed wage is not thought of as being an employee in the normal sense of the word. For example, a barrister, and in the hon Member's firm a barrister is on a salary in the sense that he is not a partner. That individual still has obligations to the court with which his employer cannot interfere. A barrister is not under the control of his employer in the same way as somebody else who is in employment. What I am just being told is that, of course, I must not assume that barrister is the only one; a doctor for example might be in a similar position.

HON F R PICARDO:

Just to take that example to its logical conclusion, certainly in most firms, associate lawyers who tend to be the barristers if they are not the solicitors are actually self-employed on a contract for services not a contract of service. I would have thought that they are therefore not caught simply on that basis and they are registered with the Employment Service. I certainly registered in that way originally as self-employed for just those reasons. So I dare say that it is not necessarily an area where we need to concern ourselves too much about, but if it is potentially wider, then at least we have that explanation on Hansard of why we are doing it.

HON CHIEF MINISTER:

I was an employee, when I was an employed barrister I was an employee.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

**THE TRADE UNIONS AND TRADE DISPUTES
(AMENDMENT) ORDINANCE 2006**

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Trade Unions and Trade Disputes Ordinance and to ensure compliance with Article 8 of Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is one of a number of Bills necessary in part in consequence of Gibraltar's equal opportunities legislation. It eliminates sex discrimination from our existing legislation. Currently, section 18 of the Trade Unions and Trade Disputes Ordinance prohibits the use of violence against wives and not husbands. It also updates our Trade Unions and Trade Disputes Ordinance to ensure compliance with Article 8 of European Regulation 1612/68 on freedom of movement of workers within the Community and the Euro/Mediterranean agreement between the European Community and Morocco,

and transfers responsibility for trade union matters from the Governor to the Minister with responsibility for employment. In detail the amendments are as follows. Clause 2(a) introduces the definition of Minister. Clauses 2(b) and (c) deletes existing provision about aliens in order to ensure compliance with Article 8 of the European Regulation 1612/68 and the Euro/Mediterranean agreement. Clause 2(d) substitutes the word "spouse" for "wife". Clause 2(e) clarifies that the trade unions are not immune from the compliance with the Equal Opportunities Ordinance 2006. Clause 2(f) substitutes "Minister" for "Governor" where it appears in the Ordinance. This Bill eliminates sex discrimination from the Trade Unions and Trade Disputes Ordinance and ensures that our legislation complies with European obligations. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE BANKRUPTCY (AMENDMENT) ORDINANCE 2006

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill modernises our Bankruptcy Ordinance by eliminating sex discrimination. It also does so as follows. Clause 2(a) amends section 24(1). Section 24(1) currently allows the Court to summons before it the debtor and his wife to give information. The amendment will permit the husband of a female debtor to also be summonsed to court. Clause 2(b) amends section 26(b). Section 26(b) deals with fraudulent settlements on the settlor's wife or children. The amendment will ensure that the section also covers fraudulent settlements on the husband of a female settlor. Clause 2(c) amends section 38. Section 38 deals with the property of a bankrupt and exempts certain properties from division amongst creditors. Currently the section provides for certain property of a settlor's wife but makes no provision for a female settlor's husband. The amendment makes provision for the husband of a female settlor. Clause 2(d) amends section 42(1). Section 41(1) deals with settlement with properties made, inter alia, on or for the wife or children of a settlor. The amendment makes provision for settlement of property made on the husband of a female settlor. Clause 2(e) amends section 107. This section makes provision for evidence from, inter alia, the deceased wife of a debtor. The amendment makes provision in settlement of the deceased husband of a female debtor. This Bill eliminates sex discrimination from the Bankruptcy Ordinance and ensures that our legislation provides in respect of both men and women who become bankrupt. I commend the Bill to the House.

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

HON F R PICARDO:

We have no difficulty whatsoever with the proposed amendments to the Bill, but I understand in fact that there was a wholesale amendment to the whole of the Bankruptcy Ordinance and there was, in fact, to be a new Bankruptcy Ordinance some time ago, but that has not seen the light of day. I understand it went out to consultation et cetera, is that something that we are still likely to see and, if so, is there an indication of when it might be coming to the House?

HON CHIEF MINISTER:

The answer is that it does not arise in the consideration of this Bill, but in any event, we do not mind saying that the answer is that that piece of legislation is unlikely to emerge in the immediate future. Unlikely to emerge in the near future.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE DANGEROUS DOGS (AMENDMENT) ORDINANCE 2006

HON J J NETTO:

I have the honour to move that a Bill for an Ordinance to amend the Dangerous Dogs Ordinance 2003, 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, this Bill corrects a small lacuna in the Dangerous Dogs Ordinance. Under the Ordinance the owner of any dog declared in the Ordinance to be dangerous has two months to seek an exemption certificate, destroy or to remove it from Gibraltar. Under section 2(2) of the Ordinance, any other type of or individual dog may be declared to be dangerous by order in the Gazette and the provisions of the Ordinance will then apply to it. However, the two months period in which an exemption certificate can be sought in respect of dogs added to the Ordinance by an order, is not on the face of it extended to those dogs. It is my intention shortly to publish an order declaring the breed known as American Bulldog to be added to the Ordinance under section 2(2). However, in order to give the owners of these dogs the opportunity to have them exempted, provided they comply with the strict provisions, it is necessary to add references to the date of publication of an order under section 2(2), so that they are in the same position as owners of dogs declared dangerous under the original Ordinance. There is one other small change to the Ordinance. In order to obtain and renew an exemption for a particular dog, the owner must show that there is in force an insurance policy covering any damage the dog may cause. It would, of course, be possible for an unscrupulous person to obtain insurance, get his exemption certificate and then promptly cancel the insurance policy. So the amendment to section 9(a) provides that it is also an offence not to produce a valid certificate of insurance, as well as a certificate of exemption, in respect of the dog if asked to do so by a police officer. These are minor amendments to the Ordinance which will make its operation fair in respect of dogs added to it by an

order and improve its operation to ensure that all dangerous dogs will always be insured. 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 at a later date.

Question put. Agreed to.

THE GIBRALTAR ELECTRICITY AUTHORITY (AMENDMENT) ORDINANCE 2006

SECOND READING

HON F VINET:

I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Electricity Authority Ordinance 2006 be read a second time. Mr Speaker, this is a straightforward Bill to amend the Gibraltar Electricity Authority Ordinance 2003, in order to enable the accounts of the Authority to be produced on a cash basis. Clause 2 amends section 25 by way of replacing subsections (2) and (3). The new provisions provide for the Authority to keep proper books of accounts and records in relation to the business of the Authority and to prepare financial statements of the Authority on a cash basis of accounting. This is in line with the standards prescribed for the preparation of the

public accounts of Gibraltar. The Accountant General is authorised to give directions to the Authority as to how such accounts should be prepared and recommend steps. 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 F VINET:

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

Question put. Agreed to.

COMMITTEE STAGE AND THIRD READING

HON ATTORNEY GENERAL:

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

1. The European Communities (Bulgaria and Romania) (Amendment) Bill 2006;
2. The Financial Services (Occupational Pensions Institutions) Bill 2006;
3. The Immigration Control (Bulgaria and Romania) (Amendment) Bill 2006;
4. The Financial Services (Takeover Bids) Bill 2006;

5. The Financial Services (Markets in Financial Instruments) Bill 2006;
6. The Banking (Amendment) Bill 2006;
7. The Financial Services (Collective Investment Schemes) (Amendment) Bill 2006;
8. The Weapons of Mass Destruction (Amendment) Bill 2006;
9. The Investor Compensation Scheme (Bulgaria and Romania) (Amendment) Bill 2006;
10. The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2006;
11. The Equal Opportunities Bill 2006;
12. The Trade Unions and Trade Disputes (Amendment) Bill 2006;
13. The Bankruptcy (Amendment) Bill 2006;
14. The Gibraltar Electricity Authority (Amendment) Bill 2006.

THE EUROPEAN COMMUNITIES (BULGARIA AND ROMANIA) (AMENDMENT) BILL 2006

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

Clause 2

HON CHIEF MINISTER:

I have given notice in writing which I hope the Committee will agree as read. In clause 2(1)(b), delete the words “for the final two paragraphs, substituting” and replace with the words “deleting the final two indents after paragraph (m) and inserting”.

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 FINANCIAL SERVICES (OCCUPATIONAL PENSIONS INSTITUTIONS) BILL 2006

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

Clause 3

HON CHIEF MINISTER:

I have given notice of an amendment to clause 3(2)(f) by deleting the words “under any enactment” so it should just read, “any pension scheme provided, guaranteed or administered by the Government of Gibraltar”. If it were to say “under any enactment” it would not cover, for example, the Provident Schemes which are not established under enactments. So the amendment is to delete the words “under any enactment”.

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

Clauses 4 to 13 – were agreed to and stood part of the Bill.

Clause 14

HON CHIEF MINISTER:

I have given notice of an amendment here, to add the words “with the consent of the Minister” at the end of paragraph 14(1), to make it clear that the Authority may make rules, and this is quite novel, but that they should require the consent of the Minister.

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

Clauses 15 and 16 – were agreed to and stood part of the Bill.

Clause 17

HON CHIEF MINISTER:

I have given notice of an amendment. There was there a general power to the Authority to make rules with the consent of the Minister but I have been advised that it is not even appropriate, even with the consent of the Minister, because this is the rules that would relate to such things as appeals from the decision of the Authority, and I have been advised that it would not be appropriate for the Authority, even with the Minister’s consent, to make rules relating to such things as appeals from its own decisions. So that is converted by the amendment of which I have given notice to a power to the Minister to make rules rather than to the Authority to make rules. The rules that the Authority can make in relation to investments is in the previous section 14. This is simply too wide a legislative scope to give to the Authority, even with the consent of the Minister, because they are wide enough to cover things that the Authority should not be the legislature of. This is the amendment to clause 17(1). Then there are amendments to clause 17(3), although in my letter they are presented as a deletion and

replacement. It is just to enable hon Members to see the clause intact. Actually, it is amendments to the existing 17(3) by way of replacement. Clause 17(3) shall now read, "the Authority shall provide the Minister with written notice of its intention to make rules under section 14(1)" (given that he can no longer make rules under section 17 because of the amendments that we have just approved) "or issue guidance under subsection (2)" (elimination to subsection (1) because it is no longer being the case) "or to revoke or amend rules or guidance already made thereunder". In other words, it is to make subclause (3) consistent with the amendments that we have passed to subclause (1). That is all that the amendments to subclause (3) do.

HON J J BOSSANO:

The word "guidance" which is referred to in the amended clause 17(3), that is not in subsection (2) or 14 it is in subsection (3) of 17 which is what is being removed. Does that make any difference? If before section 17(3) referred to 17(2) where it says the Authority may issue guidance consisting of such information, but this is now about 14(2) not 17(2). Section 14(2) says any rules issued by the Authority shall include provision. Here it is talking about the provision in the rules and the word "guidance" is not there.

HON CHIEF MINISTER:

Correct. This business of guidance is something that is common in financial services regulatory legislation, where the regulator issues guidance which does not have the effect of law, although actually they are quite consequential because some of these guidances if breached the Commissioner has power to revoke the licence. So it is not law of the land but it is capable of being quite commonsensical, and it is when the Commissioner says, 'well look, the law says this or that, I as regulator say that the view that I will take about what complies

and what does not comply', it is just steer. As the Bill was originally drafted, the Commissioner could issue rules under 14(1). We have amended that to say that he can issue rules but only with the consent of the Minister. Under section 17 as it is printed on the green paper, it says that the Authority may with the prior consent of the Minister make rules, and we have now removed that from him, the rules now under 17 are now made by the Minister. Section 17(2) leaves intact the Authority's power to issue guidance. So now he can only issue rules under 14(1) with the consent of the Minister, or guidance under section 17(2) by himself.

HON J J BOSSANO:

The point that I am making, therefore, the amendment the Chief Minister has moved should say, "rules under 14(1) or guidance under 17(2)" not under 14(2), that is the point.

HON CHIEF MINISTER:

Yes, I am sorry, that is exactly what it says. It does not say 14(2), it says, the Authority shall provide the Minister with written notice.....

HON J J BOSSANO:

Oh I see the (2) there, it is not 14(2) it is 17(2).

HON CHIEF MINISTER:

No. Under subsection (2) means of this section, it does not say it but as a matter of statutory drafting when it does not refer to a previous section it means of this section.

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

Clauses 18, 19 and the Long Title – were agreed to and stood part of the Bill.

THE IMMIGRATION CONTROL (BULGARIA AND ROMANIA) (AMENDMENT) BILL 2006

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

THE FINANCIAL SERVICES (TAKEOVER BIDS) BILL 2006

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

Clause 25

HON CHIEF MINISTER:

In subclause (2), although the Government are fully content to designate the Financial Services Commission in fact that is not the structure of the Bill. The structure of the Bill is that it is a competent authority, yet in subsection (2) there is specific reference to the Financial Services Commission. So the amendment is just to make that consistent. For example, the following subsection refers to the competent authority, by deleting the reference to the Financial Services Commission and replacing by a reference to the competent authority.

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

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

THE FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) BILL 2006

Clause 1

HON CHIEF MINISTER:

There is an amendment to clause 1(2), because this is a Bill with a future commencement date that is already known, I propose that instead of saying that the date of commencement will be appointed by the Minister by notice in the Gazette that it should simply read “this Ordinance comes into force on 1st November 2007”, which is the date on which it is required to come into effect under the Directive itself. Then, although it is not an amendment to clause 1, can I just point something out which arises in clause 1 in the context of an amendment that I will propose much later on in the Bill. Hon Members will see in the letter of amendments, that the second amendment of which I have given notice, the renumbering of the last four clauses because the Bill has been typed with two clause 60’s. Of course, the amendment then says, quite novelly in fact, that clauses 60, 61, 62 are then renumbered and that any cross-references in the Bill to those renumbered clauses will also be deemed to have been amended. Can I just point out to the hon Members that in clause 1(4), and I will point them out to them as we go through the Bill, that once we have approved the second amendment, which we are not approving just yet, the effect will be that the reference in clause 1(4) to section 60 will become a reference to section 61. I am just pointing them out even though they do not yet take effect, but I will point out to the hon Members where the cross-references actually arise.

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

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

Clause 3

HON CHIEF MINISTER:

In clause 3(2)(d) and (e) there are references to “60” in two places there and those will become in a few moment’s time references to “61”.

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

Clauses 4 to 10 – were agreed to and stood part of the Bill.

Clause 11

HON CHIEF MINISTER:

I have not given notice of this amendment but I think hon Members will agree, that given that we have just passed a Bill that changes the name of the Investor Compensation Scheme Ordinance to the Financial Services (Investor Compensation Scheme) Ordinance, it might be useful housekeeping to amend the reference to that Ordinance in this Bill to call it by its proper name. So that the references there, both in the heading and in clause 11, could read now Financial Services (Investor Compensation Scheme) Ordinance.

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

Clauses 12 to 60 – were agreed to and stood part of the Bill.

Clauses 60 to 63 (Under Part V Final Provisions)

HON CHIEF MINISTER:

The second clause 60 which is headed ‘transitional provisions’ for the first section in Part V, should be 61 since the previous section was also 60. Clause 61 should now be 62. Clause 62 should now be renumbered 63 and, in addition, I have given notice of amendments to insert in section 62(1) (now renumbered section 63(1)) add after the words “shall” “with the prior consent of the Minister”, and the same in subsection (2). So that codes of practice will be a matter for the competent authority to draw up so the Minister cannot decide what the codes are, but they will nevertheless require the Minister’s consent. These codes of practice increasingly acquire quasi-law status. I think it is inappropriate for bodies that are not accountable to this House, or indeed to the Electorate, to be able to make what are in effect quasi-laws. Clause 63 shall be renumbered 64.

Clauses 60 to 63, as amended, were agreed to and stood part of the Bill.

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

THE BANKING (AMENDMENT) BILL 2006

Clause 1

HON CHIEF MINISTER:

I have given written notice of various amendments to this Bill to all of which I have spoken during the Second Reading debate. Therefore, I hope that the Committee will agree to take the amendments as presented. Clause 1, is deleted and replaced with the following:

“1(1) This Ordinance may be cited as the Banking (Amendment) Ordinance 2006.

(2) Section 2(3) will come into operation on the day on which the Financial Services (Markets in Financial Instruments) Ordinance 2006 comes into effect.

(3) Sections 1, 2(1) and 2(4) come into operation on the day of publication.”

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

Clause 2

HON CHIEF MINISTER:

After clause 2(3), insert new clause 2(4) as follows:

“(4) Sections 10(2) and 79 are amended by substituting for the word “Governor” the words “Minister with responsibility for financial services”.

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 FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) (AMENDMENT) BILL 2006

Clause 1

HON CHIEF MINISTER:

I have just given notice of the same amendment as we did for the Banking Ordinance, in clause 1 commencement, instead of

the commencement being by reference to the day that the Minister appoints by notice in the Gazette, it should be the day on which the Financial Services (Markets in Financial Instruments) Ordinance 2006 comes into effect.

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

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

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

THE WEAPONS OF MASS DESTRUCTION (AMENDMENT) BILL 2006

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

THE INVESTOR COMPENSATION SCHEME (BULGARIA AND ROMANIA) (AMENDMENT) BILL 2006

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

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) BILL 2006

Clause 1

Question put. The House voted.

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

The Hon J J Netto
The Hon F Vinet
The Hon R R Rhoda
The Hon T J Bristow

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

Clause 1, stood part of the Bill.

Clause 2

HON CHIEF MINISTER:

An amendment, of which I have not given notice, and which is grammatical only. I think the comma after the words "set out" are both superfluous and erroneous. In this section the agreement is to the arrangements set out in the Ministerial statement on pensions and there is no purpose for a comma after the word "out", we should just remove the comma.

MR SPEAKER:

If I may indulge myself, is "at Cordoba" correct or "in Cordoba"?

HON CHIEF MINISTER:

I think this is a phrase which is being used with other documents in relation to that event.

MR SPEAKER:

It is just self-indulgence, I am not proposing it.

Question put. The House voted.

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

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

The Long Title

Question put. The House voted.

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

The Hon T J Bristow

For the Noes:

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

The Long Title, stood part of the Bill.

THE EQUAL OPPORTUNITIES BILL 2006

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

Clause 2

HON F R PICARDO:

I have a small amendment in section 2(2)(b). I think in the second line it should be determinative of and not or.

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

Clauses 3 to 24 – were agreed to and stood part of the Bill.

Clause 25

HON J J HOLLIDAY:

I have given notice in clause 25(7), the definition of “profession” and “trade” should be amended by substituting section 23(7) by section 23(8).

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

Clauses 26 to 48 – were agreed to and stood part of the Bill.

Heading after Clause 48

After section 48, it is not actually part of 48, Part VIII should actually read Part VII under ‘general exceptions’.

The heading after clause 48, as amended, was agreed to and stood part of the Bill.

Clauses 49 to 84, Schedules 1 to 4 and the Long Title – were agreed to and stood part of the Bill.

THE TRADE UNIONS AND TRADE DISPUTES (AMENDMENT) BILL 2006

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

THE BANKRUPTCY (AMENDMENT) BILL 2006

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

THE GIBRALTAR ELECTRICITY AUTHORITY (AMENDMENT) BILL 2006

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 European Communities (Bulgaria and Romania) (Amendment) Bill 2006, with amendments;

The Financial Services (Occupational Pensions Institutions) Bill 2006, with amendments;

The Immigration Control (Bulgaria and Romania) (Amendment) Bill 2006;

The Financial Services (Takeover Bids) Bill 2006, with amendments;

The Financial Services (Markets in Financial Instruments) Bill 2006, with amendments;

The Banking (Amendment) Bill 2006, with amendments;

The Financial Services (Collective Investment Schemes) (Amendment) Bill 2006, with amendments;

The Weapons of Mass Destruction (Amendment) Bill 2006;

The Investor Compensation Scheme (Bulgaria and Romania) (Amendment) Bill 2006;

The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2006, with amendments;

The Equal Opportunities Bill 2006, with amendments;

The Trade Unions and Trade Disputes (Amendment) Bill 2006;

The Bankruptcy (Amendment) Bill 2006; and

The Gibraltar Electricity Authority (Amendment) Bill 2006,

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

Question put.

The European Communities (Bulgaria and Romania) (Amendment) Bill 2006;

The Financial Services (Occupational Pensions Institutions) Bill 2006;

The Immigration Control (Bulgaria and Romania) (Amendment) Bill 2006;

The Financial Services (Takeover Bids) Bill 2006;

The Financial Services (Markets in Financial Instruments) Bill 2006;

The Banking (Amendment) Bill 2006;

The Financial Services (Collective Investment Schemes) (Amendment) Bill 2006;

The Weapons of Mass Destruction (Amendment) Bill 2006;

The Investor Compensation Scheme (Bulgaria and Romania) (Amendment) Bill 2006;

The Equal Opportunities Bill 2006;

The Trade Unions and Trade Disputes (Amendment) Bill 2006;

The Bankruptcy (Amendment) Bill 2006; and

The Gibraltar Electricity Authority (Amendment) Bill 2006

were agreed to and read a third time and passed.

The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2006.

The House voted.

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

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

The Bill was read a third time and passed.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Wednesday 20th December 2006, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 1.41 p.m. on Friday 8th December 2006.

WEDNESDAY 20TH DECEMBER 2006

The House resumed at 10.10 a.m.

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

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk of the House of Assembly

BILLS

FIRST AND SECOND READINGS

**THE IMPORTS AND EXPORTS (AMENDMENT) ORDINANCE
2006**

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Imports and Exports Ordinance 1986, 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, there is a view amongst some lawyers in

Government that this Bill is, strictly speaking, not necessary and that there is already sufficient indirect statutory authority to do what this Bill is intended to do. The Government are actually not satisfied that that is true, and mainly for the protection of immigration and customs officials, would prefer to see it stated explicitly so that there is absolutely no issue. In other words, that the legal cover for doing this should be a matter of incontrovertible certainty and clarity and not subject to an interpretation, or not subject to a clever argument or a clever interpretation of existing words, which may or may not pass the test of judgement in time. So the Government have decided to bring specific legislation which the hon Members will be aware is to give statutory effect to something that we agreed in the Ministerial statement on Gibraltar airport, one of the Cordoba agreements. Namely, that as an administrative concession, as an administrative concession only, passengers embarking an aeroplane bound for Spain and entering the terminal directly from La Linea, would not be subject to in the case of this Bill customs, in the case of the next Bill immigration controls, and vice versa. In other words, passengers arriving at Gibraltar airport from a Spanish airport and heading directly into La Linea, initially during the transitional period through the bussing arrangements, and eventually more permanently through the new terminal linkage to the frontier, would also not be, as a matter of administrative concession, subjected to customs and immigration controls. Without prejudice, of course, in certain circumstances, well, without prejudice to the legal ability and jurisdiction of the imposition of those controls. The Bill achieves that by enabling the Government to direct the Collector of Customs, in circumstances that need to be described in any such directions, and they would be the circumstances described in the Cordoba statement, from carrying out any controls, searches or other functions or powers required or permitted under the Imports and Exports Ordinance, on any person or category of persons who enter or leave Gibraltar and who are in transit by land or air to the airport to any country specified in any such direction. Obviously, the country that will be specified in such direction is Spain. Such a direction is mandatory on customs officers. In other words, they are bound by subsection

2 to implement those directions. Obviously, subsection 3 means that the Government cannot give a direction, such as would authorise or allow any person to import into Gibraltar a prohibited import. So, amongst the controls et cetera that cannot be waived, a waiver, for example, of a prohibition against importing drugs or any other prohibited import. Finally, there is a regulation making power in the event anything further should be necessary. We do not envisage that anything further will be necessary, but in case anything else should be necessary to implement the Cordoba agreement, a regulation making power in subsection 5. I have given notice, as hon Members may have in front of them a letter that will explain to them, of an amendment which actually does not derive from the Cordoba agreements but it is a very old section in our Imports and Exports Ordinance, which actually has been systematically flouted by us, by Gibraltar, almost since the frontier opened because there is a very old, and I suspect long forgotten, statutory provision in section 92 of the Ordinance that actually prevents Gibraltar from operating a red or green channel system at the Four Corners gate. Section 92, which is a very old provision, says that in respect of the Four Corners entry gate, one cannot just proceed along the green channel, one has to stop, stopping is mandatory even when going through green. Section 92 as it presently reads, which of course is not how it is being operated and how most people understand it, but section 92 reads, "a person driving a vehicle shall on entering or leaving Gibraltar by Four Corners, stop the vehicle for examination by the customs officer on duty and shall not proceed until authorised to do so by the customs officer". In other words, section 92 is a requirement in every case to stop, even if going through the green channel, and not proceeding until specifically told to proceed, which of course is totally incompatible with the working of a green channel system, which is to proceed unless requested to stop. That is the whole basis of it which our law, actually, has never sanctioned so we are taking this opportunity to amend section 92, as set out in the letter, so that indeed Gibraltar itself can lawfully operate a green channel system and in a sense make compatible with the events as they have operated on the ground for a number of years. So the

amendment that we are moving to section 92 would be to delete and replace, but in fact all that is being added to the existing section 92 is the words "if requested to do so by a customs officer". So it now reads, "a person driving a vehicle shall on entering or leaving Gibraltar, if requested to do so by a customs officer on duty, stop the vehicle". In other words, an absolute requirement to stop is replaced by the requirement to stop if requested to do so. That, I think, is a provision that properly reflects not only the practice as it has been over the years, but indeed, it enables us to operate a green channel system too. I commend the Bill to the House.

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

HON J J BOSSANO:

On the general principles of the Bill, we take note that in fact the Government think that it is already possible with the existing law to waive the exercise of immigration and customs controls in the case of transit passengers, by presumably giving directions to the Collector of Customs just so that it is not capable of being challenged or anybody should suggest that the officers in question are acting in breach of the law, this Bill is being brought to the House. Well, obviously, as far as that particular principle is concerned, we are in total agreement that people who are public servants should not be put in a position of being instructed to do things which break the law. That is a possible construction of the existing law, it is better to have it clear now. Secondly, we support the view that the Government should have that power totally independent of whether a statement to the effect has been made in the Cordoba meeting or not. That is to say, that in particular if we look at the question of the directions being given to the Collector of Customs for transit passengers, in that particular clause it says transit passengers going to any country. We think that that should be there in the law anyway, even if it is not 100 per cent sure that it is required, we do not agree with the specific reference to the Cordoba agreement for

reasons that are well known. That is to say, that we are not committed to implementing everything that that agreement provides for and, therefore, we do not want to give the incorrect impression that by supporting the Government in bringing this legislation we are supporting everything in that agreement because we are not. That is, in fact, similar to the position that we explained to the Government when we spoke on the general principles of the Bill in terms of what was done at the last meeting, to amend the provisions in the Social Insurance Ordinance in respect of the right to collect old age pensions in Gibraltar. Therefore, I have given notice of an amendment which I hope if accepted will achieve the objective of enabling the Government to do what they want to do, and which then we would be able to support. Of course, if the amendment is not acceptable to the Government then we would not be able to support the proposals.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE IMMIGRATION CONTROL (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

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

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Immigration Control Ordinance in like manner and for the same purpose as the amendments to the Imports and Exports Ordinance. Here the need for it is a little bit clearer and I hope that with the leave of the House I will limit myself to explaining why there is a clearer need for it here and not go into all the political reasons for the amendments, which are the same as on the previous debate. There is, actually, a statutory requirement for anybody entering Gibraltar to be in possession of a valid entry permit and a clear statutory requirement of that sort cannot be waived by administrative concession. Anybody to whom we waive immigration controls, actually what we are waiving is the need to have an entry permit before entering Gibraltar. So there is a clearer need for the statutory provision here than in the case of Imports and Exports. In other words, the language does not exist in this Bill such as exists in the other Bill, in the Imports and Exports Bill, that would justify the view that this could be done administratively without statutory provision. There is this clear requirement in section 12(1) of the present Ordinance which says everybody who enters Gibraltar who is not a believer shall be in possession of a valid entry permit. There is no way around that except by specific statutory provision. So the principal effect, apart from the general waiver, subsection (2) specifically says, "a direction under subsection (1) may include a waiver of the requirement to be in possession of a valid entry permit under section 12(1), and upon the issue of any such direction, the provisions of section 12(1) shall not apply to any person to whom the direction relates to the extent that it requires such a person to be in possession of a valid entry permit". So that is a specific provision, in effect giving statutory authority to waive the statutory requirement for such people to be in possession of a valid entry permit. The rest of it mirrors the amendments that

we have moved to the Imports and Exports Ordinance and I therefore commend the Bill to the House for the same reasons.

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

HON J J BOSSANO:

Well, only to say that as regards what is the mirror image of the provisions for the Imports and Exports Ordinance, the position is as I explained in the previous Bill and the amendments circulated is intended to serve the same purpose. That is to say, what the Government want to achieve without an explicit reference to the statements that were made in the Cordoba meeting. I think in respect of the new element that has been brought to our notice by the Chief Minister in moving the Bill, my only question on the question of principle is, is there really a need for this valid entry permit provision, which presumably dates from a time that.....

HON CHIEF MINISTER:

Yes, there is a need.

HON J J BOSSANO:

Perhaps the Chief Minister may have an opportunity to explain. If this is a relic of the past..... The only point I am making there is that if it is something that is not really strictly necessary because entry permits may not be things that we now do any more. Particularly, if we are talking about the movement across a land frontier, where the bulk of the people crossing there are EEC nationals, presumably this does not apply to EEC nationals. It would only apply to people who do not have a right to enter Gibraltar. Well, I have noted that in fact it seems to be necessary, I was just going to suggest that if it were not really

necessary we might not need to be waiving it, we might need to be getting rid of it altogether.

HON CHIEF MINISTER:

I think the hon Member may be misleading himself by misinterpretation of the phrase "entry permit". Entry permit is not some archaic legal document, entry permit is the stamp in the passport and it is the backbone, it is the central pillar of our Immigration Control Ordinance. If we do away with the need for the entry permit we are as good as repealing the whole Immigration Control Ordinance, and in effect we would have a completely open door policy for everybody. The entry permit is the mechanism by which visa requiring nationals are checked and the stamp is put in, non-entitled people with work permits are given their immigration status. I think the hon Member might have initially assumed that the stamp is something else and that this reference to entry permit means some formal document, which is actually not the case. The entry permit is the stamp which can be for a week. Most tourist that arrive, I think, are given a three day or seven day stamp, that is the entry permit. So we cannot actually do away with it without a huge reform.

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 FINANCIAL SERVICES (AMENDMENT) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to amend the Financial Services Ordinance 1989, 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 purpose of the Bill is in relation to a number of amendments which have been specifically suggested and/or requested by the promoters of the proposed Gibraltar Stock Exchange and its legal advisers, which the Government are content to enact. There are one or two ancillary, as I said last time when we visit Ordinances, there are one or two tidying up things that we do. So, for example, we are taking the opportunity that we are amending the Financial Services Ordinance to re-title that Ordinance. Obviously, normally we would re-title it by putting the words "financial services" in front of the preface of the Ordinance, but this one is called the financial services. I think mis-called the Financial Services Ordinance because it suggests that it is generally applicable to all aspects of financial services, when actually, it deals only with two aspects of financial services, investments and fiduciary services. So it has probably been a bit of a misnomer from the beginning, so now what we are proposing is that this Ordinance should be called the "Financial Services (Investment and Fiduciary Services) Ordinance" which would make it consistent with the nomenclature principles dealing with the rest of financial services legislation. We are also taking the

opportunity, which is a general housekeeping exercise as hon Members know, to substitute Minister for Governor in the regulation making powers. Also, in the definition of "authority" which presently says somebody appointed by the Governor, we are actually directly, the Ordinance will be directly naming the authority and there is no change there. The person designated there in subsection 4(1) is the Financial Services Commission, which is the person that is presently the authority under the Ordinance. So that is a stylistic change rather than a substantive change. I have also given notice, and I will move them at Committee Stage, because none of them raise any issue of principle, one or two amendments which are either correcting typographical errors or some very technical cross-reference corrections which do not go to the principles of the Bill, so I will raise them directly at Committee Stage. The next Bill, which is the re-enactment in a sense of the so-called Listing Directive, is also related to the stock exchange. I commend this Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

On a point of order, if the House will allow me, what I said in my address was that the requirement was suggested by the promoters of the stock exchange and then I went to say that there were a few other things. I may have left the House with the unintended impression that except for the two or three that I mentioned, the regulation making power, all the others had been asked for by the promoters. In fact, there is one which is related to the stock exchange but which had not been requested by the promoters, it is a matter of Government policy, and if I could just raise it even though the debate is closed as a point of order by

way of clarification to the House. They will see in clause 5(2) that there is an amendment to add a (c) that the Minister has consented on behalf of the Government to the grant of a licence. That is not a request by the promoters of the stock exchange, that is to reflect the Government's view that whereas the Government do not want to get and should not get involved in individual licensing applications, nevertheless, whether Gibraltar hosts a stock exchange or does not host a stock exchange, raises macro-economic issues which the Government should be able to express a view on. In other words, it would be, I think, very odd that a small place like Gibraltar should have a stock exchange, even if the Government think that for some macro-economic reason Gibraltar should not have a stock exchange. That is why there is, indeed, the Government do think Gibraltar should have a stock exchange and provided that the Financial Services Commission are content that the licensing aspects of it are in order, the Government intend to give their consent. But I think as a matter of principle Government ought to be able, in these macro-economic, not in individual banking applications but on something as structurally significant as whether we have a stock exchange which has huge international ramifications. I think Government ought to be a co-decider in the decision whether Gibraltar should have a stock exchange or not. I just wanted to make that clear lest the hon Members should have thought, which they would have been entitled to think, about the way I presented my contribution on Second Reading, that all amendments in relation to stock exchange had been sought by their promoters or their legal advisers.

HON F R PICARDO:

Just on a point of order and clarifying for the purposes, I think, of the rules that I have a material interest in the promotion of a stock exchange as a partner of one of the firms that owns part of the exchange, of which the Government are aware, that the point the Chief Minister makes must surely be right. Not just in relation to a stock exchange, but in relation, potentially, to stock exchanges. This is a macro-economic point and it may be that

Gibraltar wants to have, or the Government may want Gibraltar to have a stock exchange but not stock exchanges. Of course, there are different types of exchanges and it must be right that the decision-making power in that respect should rest with the executive Government and not with the regulatory authority as they are to regulate other aspects of the business and exchange.

HON CHIEF MINISTER:

I think the fact is that our regulator is not just a regulator and the Financial Services Commission is also the licensing authority. Certainly, the Government do not want to signal by this amendment that the Government have any difficulty with the fact that the Financial Services Commission is the licensing authority, as well as the regulator. We think that that is how it should be, we are very happy for that to continue to be the case, and indeed, the Government do not intend or approve of Governmental interference in individual licensing applications. This is an exception, there may be other exceptions in the future but they would have to be, from our point of view, fall into the same category that raise macro-economic consideration. The hon Member is quite right to say this does not allow the Government to bring in a stock exchange, because it still has to be licensed by the licensor which remains the Financial Services Commission. But it does prevent the Government from saying 'no'. As custodian of the macro-economic policy of Gibraltar, we do not think that Gibraltar should have even one stock exchange, which is not our position, but certainly the point that the hon Member adds is a very good one. We may not want more than one or we may not want more than five, or we may want this sort of exchange but not that sort of exchange. I think this section serves that purpose well too.

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 FINANCIAL SERVICES (LISTING OF SECURITIES) ORDINANCE 2006

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Ordinance to transpose into the law of Gibraltar the provisions of Directive 2001/34/EC of the European Parliament and the Council of 28 May on the admission of securities to official stock exchange listing and on information to be published on those securities; to repeal the Listing of Securities Ordinance 1998; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this House has already passed the Listing of Securities Ordinance in 1998 to transpose the so-called Listing Directive 2001/34. Hon Members will see that what this Bill does, amongst other things, is to repeal that Ordinance. The reason for that is that the promoters of the stock exchange and their legal advisers have pointed out to the Government what they regard as certain deficiencies in the accuracy of that transposition, and indeed, certain methods of transposition

which were matters of choice at the time but were not exercised in the context of an imminent establishment of an exchange. So, rather than introduce multifarious amendments, this Bill in effect repeals the Listing of Securities Ordinance 1998 and sets up what amounts to an enabling framework for the Directive to be re-transposed by subsidiary legislation. So, of course, this Bill will not be commenced until those regulations are ready, because if the repeal of the existing Ordinance came into effect before the new regulations, we would be in non-transposition. What will happen is that regulations will now be drafted, when they are ready this Bill will be commenced and those new regulations will be commenced on the same day so that there is no gap in the coverage of Gibraltar's transposition of the Directive. Therefore, I believe this Bill is uncontroversial, it is part of the statutory architecture for the establishment of the new stock exchange proposed and I therefore commend the Bill to the House.

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

HON F R PICARDO:

Just to give notice of and making the same disclosure I made before in relation to the stock exchange, but just to give notice of an amendment that I intend to move in the Committee Stage so that, perhaps, the Government can consider it. In section 3(3) we are told the official listing rules may impose obligations and discretions on the regulatory authority. I do not think one can impose a discretion, one can grant one, so I am going to suggest at Committee Stage that impose obligations and grant discretions. Nothing on the substance but I think it is proper that the Government have time to think about that.

HON CHIEF MINISTER:

I shall make a commensurate deduction from the draftsman's, that is to say, his own firm's fees for drafting the Bill in the first place. I think he is absolutely right, if he can give me as many as possible so that perhaps I can reduce the fee to zero.

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 COMMUNICATIONS (AMENDMENT) ORDINANCE 2006

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Ordinance to amend the Communications Ordinance 2006, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as the Government announced in the Budget earlier this year, television licences are to be abolished. This

short Bill achieves that. Section 61 of the Communications Ordinance gives details of what requires a licence, whilst section 62 provides for exemptions. Section 62(1) currently provides an exemption for receiver only radio communication apparatus, with the exception of television receivers. By removing the words "with the exception of television receivers", such receivers will be exempt from the necessity of obtaining a licence, and therefore fulfil the Budget commitment. The House will note that the Bill is effective from 1st October 2006, and indeed, no licences have been sought from that date. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

COMMITTEE STAGE AND THIRD READING

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 Imports and Exports (Amendment) Bill 2006;
2. The Immigration Control (Amendment) Bill 2006;

3. The Financial Services (Amendment) Bill 2006;
4. The Financial Services (Listing of Securities) Bill 2006;
5. The Communications (Amendment) Bill 2006;
6. The Dangerous Dogs (Amendment) Bill 2006.

THE IMPORTS AND EXPORTS (AMENDMENT) BILL 2006

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

Clause 2

HON J J BOSSANO:

I beg to move the amendment of which I have given notice, so that in the proposed new section 25A(5), the following words should be deleted. Namely, “give effect to the arrangements set out in the Ministerial Statement on Gibraltar Airport made at Cordoba on the 18th September 2006, inter alia by the Chief Minister” and that the words should be replaced by the following, “provide for the waiver of controls in respect of arrangements for passengers, cargo and all other matters at Gibraltar Airport”. Since I have already given an explanation of why we are proposing this amendment in the general principles of the Bill, I do not think I need to explain anything further and I commend the amendment to the House.

HON CHIEF MINISTER:

The Government will not be supporting the amendment and I hope to be able to persuade the hon Member that it does not have the effect that causes him to move it, and he might therefore, either withdraw his amendment or support the Bill notwithstanding. Firstly, obviously, I do not hesitate to place on

record that this reference to the Cordoba Agreement to the Airport Statement is not there as some sort of device to cause him to vote for something with which he might not agree. If that is his concern I have no difficulty in acknowledging now that their support for the Bill would not have that effect and could not be thought by anybody to have that effect, and would not in fact have that effect. The reason why it is not appropriate to introduce the words, indeed, I should add before I go on to explain that, that the reference to the Ministerial Statement is in the regulation-making power section only, and that this regulation-making power is relevant only to aspects of the Airport Agreement with whom he has publicly said he has no difficulty, and is completely irrelevant to those in respect of which he has publicly expressed a different view. In other words, these waiver regulations are relevant to the waiver of Gibraltar immigration control and Gibraltar customs control, and are not relevant to any other aspect in respect of which he has expressed a different view. So, it would not in any event have the read-across to acceptability of things that he has not yet expressed the view that are acceptable to him. The reason why the Government do not think they can support the words are twofold. Firstly, the Government do not want general powers to waive general statutory provisions in respect of customs and immigration control. I think it would be quite unusual to have an immigration control regime, or a customs control regime which Ministers could say, ‘in respect of every and any part of it, in every and any circumstances while I am an executive, waive such and such from compliance with such and such’. I think it is simply an unusual and, I think, excessive power for Ministers to allow themselves by such means. But look, the reason why we want a reference to the Cordoba Ministerial Statement, is that there may be other things that we have not yet thought of that somebody might come of, which we do need to do to implement what we have agreed to do in Cordoba, which is not covered by the language of the first four subsections. I do not think there is, cross fingers, touch wood, because it has been quite carefully thought of. But there might be somebody who comes up and says, ‘well look, this is the Cordoba arrangement for example involves....’. Let me give an example which has just come to my

mind as I am on my feet. That is, for example, the bus driver driving the bus across the border, is not a passenger in transit but he is not going to be subject to customs and immigration controls either. There may be things like this that are not covered by subsections (1) to (4). There are things like this that we do not want to find ourselves with the arrangements in place, somebody pointing out to us a lacunae in the statutory cover and finding that we cannot fix it until we can bring primary legislation to the House. That is the sole purpose of this regulation-making power which otherwise serves no useful purpose, and which actually can be repealed. This regulation-making power can be repealed as soon as the transitional arrangements, well actually I cannot, because even the permanent arrangements involve a waiver of customs and immigration controls. But in any case, having explained to the hon Members that it does not affect their difficulty with the Airport Statement, can I point out one further aspect to them about that. That is, that actually, all they have to do is if they do not like it is repeal them. As indeed they could do with directions in the rest of the amendments. Hon Members will see that the directions are irrevocable, amendable. In fact, I think it has been omitted from the Imports and Exports Ordinance but I think the Immigration one certainly has. Yes, in subsection (3) of the Immigration one, it says "any direction issued under subsection (1) may be revoked or modified by the Government at any time and from time to time". Therefore, in the event, which I like to think is unlikely, that the hon Members may find themselves in that position, they can always repeal or revoke. All I am trying to do is satisfy the hon Members that there is a reason, other than just getting them to vote in favour of something that has a reference to the Cordoba Agreement, for wanting this in place and relieving them of their concern by openly acknowledging that it does not have, the Government do not think that it has and it is clearly not capable of having the effect of suggesting that there is nothing in one or all of the Cordoba Agreements of which they disapprove, and voting for this regulation-making power does not signify anything of the sort. If that enables them to support the Bills then so much for that.

HON J J BOSSANO:

I welcome the fact that the Chief Minister recognises that we are not trying to be obstructive. It is just that we think it is important that we state our position clearly. However, I do not think we can go along with supporting the Bill but the fact that we vote against it should not be interpreted as not wanting these arrangements to be put in place, because I have made that very clear when I have spoken about the principles. Let me say that I do not quite see why the problem is with the powers being there to make the regulations to provide for anything else that may turn up. In any case, one of the things that I commented earlier was that we welcomed, particularly, the fact that in section 25A(1) the power to give directions to the Collector of Customs is not limited to transit passengers that will be coming in overland and flying to a Spanish airport, which is what is happening in the immediate future, but is there for the possibility that somebody may come in by air and leave by air, which is in fact what normally happens at other airports for transit passengers. We think that if we want an airport that is more than just a small regional airport for the UK servicing airports in Spain, then it is right that that facility should be there. We consider that the wording of the wider powers to make regulations is consistent with the provisions in subsection (1) which, in fact, do not mention the specific Agreement and do not limit the power of the Government to anything that may be required for the arrangements in that particular Agreement made on that particular date. We have noted the reasons why the Government feel they cannot accept the amendment and, therefore, on that basis we will not be supporting the Bill but we are in favour of what the Government are doing at present with the present arrangements.

Question put. The House voted.

For the Ayes: The Hon J J Bossano
 The Hon C A Bruzon
 The Hon Dr J J Garcia
 The Hon S E Linares

The Hon F R Picardo
The Hon L A Randall

For the Noes:

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

Clause 2, stood part of the Bill.

New clause 3

HON CHIEF MINISTER:

The amendment of which I have given written notice, and perhaps we can take as read, namely, that section 92 be amended by the deletion of “92(1)” as it presently stands and its replacement by the new text which I have set out in full in the letter and which basically amounts to the adding of the words “if requested to do so by a customs officer on duty” after the words “Four Corners” and the subsequent consequential deletion of the words “on duty” where they presently appear. As I already explained at Second Reading, that the effect of this is to eliminate the compulsion on every driver to stop and instead to stop only if requested to do so. Of course, even with a red and green channel system, the fact that one is in the green channel does not mean that the customs officer cannot stop one, it means that one stops only if requested to do so.

HON F R PICARDO:

Just a minor point for the purposes of the transcript, that is actually an amendment to clause 2 it is not clause 3.

HON CHIEF MINISTER:

This is a new clause, it is not an amendment.

HON F R PICARDO:

The way it is done in the letter, which is perfectly right, is to seek to amend clause 2 to insert clause 3 and all the rest of it but the Clerk read out clause 3, we are not there yet, we are amending clause 2.

HON CHIEF MINISTER:

What my letter says is, “after clause 2 insert the following” not an amendment to clause 2.

New clause 3, as amended, was agreed to and stood part of the Bill.

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

THE IMMIGRATION CONTROL (AMENDMENT) BILL 2006

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

Clause 2

HON J J BOSSANO:

I beg to move the amendment of which I have already given notice, and I will not repeat the rationale of it and I am assuming it will suffer the same fate as the previous one. In clause 2 – section 11A(5), delete the words “give effect to the arrangements set out in the Ministerial Statement on Gibraltar Airport made at Cordoba on the 18th September 2006, inter alia by the Chief Minister” and replace with the words “provide for the waiver of controls in respect of arrangements for passengers, cargo and all other matters at Gibraltar Airport”.

HON CHIEF MINISTER:

I do not think that in a Parliamentary democracy the minority losing a vote is actually suffering a fate. I think it is quite usual, thanks to the ex-officio Members that will be no more after today.

Question put. The House voted.

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

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

Clause 2, stood part of the Bill.

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

THE FINANCIAL SERVICES (AMENDMENT) BILL 2006

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

Clause 4

HON CHIEF MINISTER:

I proposed an amendment to clause 4 because actually, the party that is presently appointed to be the authority under the Financial Services Ordinance is not the Financial Services Commission as the Bill says, it is the Financial Services Commissioner. Indeed, there is a debate now taking place within the Commission as to whether that should change, and it is very likely that the Commission will be asking the Government to amend all regulatory legislation to give the powers not to the Commissioner but to the Commission as a corporate body. The Government, I think, will agree to do that but at the moment we are not intending to effect any change by this, so we just want to replicate what the position is at the moment, which is that under the Financial Services Ordinance 1989, the authority is the Commissioner. So I amend the Bill to make it read Commissioner. So delete the words “Commission established” and replace by the words “Commissioner appointed”. In subsection (2) it is simply to make the amendment apply to two definitions. Not just the definition of “European authorised institution” but also to the definition of “credit institution” where the reference to the Banking Ordinance exists. Hon Members may remember that at the last sitting we amended the Banking Ordinance to change its title to the Financial Services (Banking) Ordinance, and this is a useful opportunity to therefore bring up to date a cross reference to that Ordinance in this Ordinance to

call it by its new name. It has no substantive effect other than that.

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

Clauses 5 to 6 – were agreed to and stood part of the Bill.

Clause 7

HON CHIEF MINISTER:

In clause 7 I have given notice to correct a cross reference. The reference to section 59 should be to 60. Therefore I propose the deletion of “59” and replacement of it by “60”.

HON F R PICARDO:

At the end of section 7, we are inserting the words “Financial Services (Banking) Ordinance” and we are only deleting the word “banking”, so we would have the Financial Services (Banking) Ordinance Ordinance, so we need to delete Ordinance where it appears as the final word of section 7.

HON CHIEF MINISTER:

I am grateful to the hon Member, that is correct.

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 FINANCIAL SERVICES (LISTING OF SECURITIES) BILL
2006**

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

Clause 3

HON F R PICARDO:

I moved the amendment which I told the House I would move, which is to include the word “grant” before “discretions” in subsection (3). I note that in 3(2) and also when we come to it in 4(1)(b), we are making reference to Community instruments. The schedule to the European Communities Ordinance tells us that the word “community” has to have a capitalised ‘c’ when we refer to Community Instruments, which is a defined term under that Ordinance in that way. So I move the capitalisation of the ‘c’ there and in 4(1)(b) when we come to it.

HON CHIEF MINISTER:

In a twist of their fate the Government can accept all their amendments and we shall be voting in favour.

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

Clause 4

HON F R PICARDO:

There is another amendment to clause 4 at 4(2) that I would propose. It is that the connection between (a) and (b) should be “or” not “and” because once found guilty either on summary conviction or on conviction of indictment, not and.

HON CHIEF MINISTER:

Fate takes yet another twist. I do not think so. Well, it is not that I do not think so, I think it is arguable. In any event, I should tell the hon Member that at 10 per cent fee reduction per

amendment, he has already cost his partners 30 per cent of their fee. He could save them 10 per cent by not insisting on this last amendment.

HON F R PICARDO:

As it is Christmas, let us go up to 15 per cent per amendment and insist on the “and” being changed to the “or”.

HON CHIEF MINISTER:

I can only agree to amendments on the hoof if I am absolutely certain that they do not have an undesirable and difficult effect. It is not that one is liable to one thing or another, either one is tried summarily, in which case, the penalty is what is said in (a) but they are separate regimes. So if one reads the whole thing, it says “any person who for the purposes of or in connection with any requirement made by or under the regulations, make any statement which is false in any material particular, shall be guilty of an offence and shall be liable”. Well, shall be liable to what? There are two regimes, (a) and (b), and the “and” is to reflect that there is a second regime, not that he can be done for both. So in the cumulative sense, the “and” is simply because there is regime (a) and regime (b). That is why I said I am not necessarily opposed, that it is arguable, it depends how one understands the word “and” in that context. It is not “or” in the sense that if one is tried under one, there is an alternative as to what one’s penalty can be. So, I do not think that the hon Member’s amendment is necessarily wrong, but not doing the amendment does not have the effect which the hon Member I think is trying to say, which is that one should not be done twice. Let me just read it again because 10 per cent of what are usually excessive fee notes is certainly worth saving. I do not think that the amendment does any harm, I am not convinced it is strictly necessary but by the same token I do not think that it does any harm. If a substantial part of the House, even though a minority, prefers to have that the Government are not going to

oppose it. We are talking in subsection (2), yes that is okay. Does he have any more? Is he absolutely certain?

HON F R PICARDO:

The usually reasonable fee notes will become even more reasonable as a result of this.

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

Clauses 5 to 7 – were agreed to and stood part of the Bill.

The Long Title

HON CHIEF MINISTER:

In the Long Title insert the figure “2001” after the words “28 May”.

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

THE COMMUNICATIONS (AMENDMENT) BILL 2006

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

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

THE DANGEROUS DOGS (AMENDMENT) BILL 2006

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

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

THIRD READING

HON ATTORNEY GENERAL:

I have the honour to report, probably for the last time, that:

The Imports and Exports (Amendment) Bill 2006, with amendments;

The Immigration Control (Amendment) Bill 2006;

The Financial Services (Amendment) Bill 2006, with amendments;

The Financial Services (Listing of Securities) Bill 2006, with amendments;

The Communications (Amendment) Bill 2006;

The Dangerous Dogs (Amendment) Bill 2006

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

Question put.

The Imports and Exports (Amendment) Bill 2006;
The Immigration Control (Amendment) Bill 2006.
The Financial Services (Amendment) Bill 2006;
The Financial Services (Listing of Securities) Bill 2006;
The Communications (Amendment) Bill 2006;
The Dangerous Dogs (Amendment) Bill 2006

were agreed to and read a third time and passed.

The House voted.

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

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

The Bills were read a third time and passed.

GOVERNMENT MOTION

HON CHIEF MINISTER:

I have the honour to move the Motion standing in my name and which reads that, "This House resolves, pursuant to section 4 of the Public Services Ombudsman Ordinance 1998, that a salary of £42,950 (effective from 1 October 2005) per annum be paid to the Ombudsman, with increases in accordance with the Civil Service Pay Award, and that an additional sum up to £162,050 be provided to the Ombudsman in respect of the expenses of his Office, including the personal emoluments of staff and other operating expenses". Mr Speaker, the Ordinance establishing the Ombudsman, that is to say, the Public Services (Ombudsman) Ordinance 1998, requires this House to approve by motion such as is before this House right now, the financial resourcing of the Ombudsman. That provision was inserted for

a perfectly worthy motive. That is to say, that as one of the principal functions of the Ombudsman is to do things Government may find uncomfortable, that Government should not be in a position by themselves to dictate the financial resources and that the House, in a wider context, should have the opportunity. In theory, it is a very good thing, I think in practice too. But in practice, it does mean that there is this housekeeping issue that separately from the Budget, one has got to move motions and it is a chore that sometimes falls into slippage, particularly, because it is separate to the Budget arrangement. Anyway, this is the provision, it is the Ombudsman's personal salary and his office budget in effect, to pay the salaries of employees and other expenses. The salary of the Ombudsman is, as I say, dealt separately with in the motion and has been the subject of negotiation and agreement with the Ombudsman, as indeed has his budget. So the motion increases the salary to £42,950 and in order to avoid the need for an annual negotiation it is linked for purposes on the size of increase to the general Civil Service Pay Award, and of course his own employees are paid out of his own budget and that is reflected in the rest of the sum - £162,050. The Ombudsman's estimate for the next year of £195,000 exceed the £180,000 threshold set by the last motion in 2004. The Budget Office estimate that a new ceiling of £205,000 should be sufficient to carry the Ombudsman through to 2008/2009. If necessary we will bring another motion to the House, I commend the motion to the House.

Question proposed.

HON J J BOSSANO:

Obviously we are supporting the motion and we supported the last one. I just wondered whether in terms of making it possible for increases to happen automatically, the reference should not be to a specific grade, senior grade in the civil service rather than to the general rights given. Presumably under an average worked out different grades can get different levels of rises. It is

not something we have discussed before, but certainly, we support that the Ombudsman's resources should be periodically increased so that he can continue to do the good job that he is doing.

HON CHIEF MINISTER:

I am not aware, certainly it has not been the case in the last nine or ten years, that the civil service has a split percentage increase. There are sometimes regrading elements in an annual pay review which means that different people get different basic amounts, but the percentage increase, what is called 'the general review', has always been a flat increase because the hon Member knows that there is this local agreement whereby UK differences, performance-related this, bonus that, is all flattened out into what we know here as a general review. So, in fact, there is a general percentage increase and it is the same one affecting all grades.

Question put. The motion was carried unanimously.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

I beg to move the motion of which I gave notice on 1st November, namely:

"This House:

1. NOTES the apparent inconsistency between the explanation given in answer to Question 819/2006 and the figures contained in that answer;
2. CALLS on the Government to have the apparent inconsistency investigated and report back to the House,

either confirming the accuracy of the calculations reflected in the above answer or alternately providing the correct calculations.”

Let me say that from our perspective the inconsistency is not just apparent, it is very real and very evident and it is an inconsistency that I have not been able to find an explanation for. But I know how reluctant the Chief Minister is to accept that there are inconsistencies or mistakes made. Therefore, I have put in the word “apparent” before he did it for me. The genesis of this is, in fact, the statement that the Chief Minister made during the Budget debate of 2004, when he quoted a number of GDP and Government spending figures for a number of years, this is on page 30 of the Hansard of that debate, when he said in 1978/79 public expenditure was the equivalent of 29 per cent of GDP and so on, and came up with a figure going up to 2001/2002 which was 31 per cent. In reply, I put on record that he was saying this, in fact, he explained to the House because there was a myth in some quarters in Gibraltar that the public sector was too big and that that was not true. In reply I pointed out that we did not, as a matter of policy, as a matter of philosophy, believe that there was any way that anybody could say what was the right size for the public sector. In fact, it is not a question of whether it is too big or too small, it is whether one can afford it. Certainly, the experience in European countries is that the performance of the economies do not show any correlation between the size of the public sector and the economic strength. In Scandinavian countries the share of the public sector has been much bigger than in Mediterranean countries and the Scandinavian countries have got a long track record of successful rates of economic growth which compare very favourably with people with a lower share of public spending. Therefore, in pursuing this line it is not because we want to demonstrate that it is too big, or too small, or too anything. It is just that we want to be sure that the information that we are getting is accurate. I am not suggesting that the Government have been trying to mislead the House, but if we in looking at the figures do not see that they appear to do what it is suggested they are doing, we feel we need to bring the matter

back to the House. Therefore, I first followed this up in Question No. 1968 of 2004, when we were given different figures this time based on Government final consumption estimates, as contained in the published National Income Accounts. Then in Question No. 819 of 2006, I took up the matter again because the figures that I had been given, having had the opportunity to analyse them, did not seem to me to be accurate. That is to say, they did not make sense, frankly. Therefore, when I put the question in Question No. 819 of 2006, the answer that I got was one that makes very little sense. In fact, I was told that the figures that were relevant, the Chief Minister said in reply, that the figures that needed to be used to arrive at Government final consumption, and he listed them for the year 2001/2002, 2002/2003 and 2003/2004. The Chief Minister said that the questions that I had put misidentified the number that needs to be adjusted. Having said that the number that I had used was the wrong one, he then ended his answer first of all by saying, therefore, the figure the hon Member should have mentioned in his question as being the figure subject to adjustment would have been, and he listed the figure that I actually had put.

HON CHIEF MINISTER:

It must have been a mistake.

HON J J BOSSANO:

I see. First of all he told me I had used the wrong figures and then told me the figures I should have used were the ones that I had actually used. Secondly, the figures that he actually quoted in his answer produced a figure for departmental expenditure which says in the explanation, for each of the years in question departmental expenditure as itemised in the Estimates of Revenue and Expenditure is adjusted to include total expenditure on health service, GBC, Elderly Care Agency, Electricity Authority and to exclude grants, subventions, contributions to funds and other such transfer payments. Well in

fact, the figures that he put as departmental expenditure do not do any of those things. I have gone back to the audited accounts for all those years and the figures that are there are, in fact, not the adjusted figures we have made the adjustment for expenditure. For example, on the Health Authority and the grant of the Government to the Health Authority. Indeed, if I give the example of the year 2001/2002, we have a figure in the answer to Question No. 819 of 2006 which says that the departmental expenditure for the year is £121.6 million. If the hon Member looks at the Estimates for 2003/2004, it shows the figure for 2001/2002, which is on page 25 and which is in fact the actual figure that appears in the audited accounts, the final figure for that year is £121.577 million, which is the £121.6 million in his answer. Now that is not a figure that is adjusted for anything at all and, therefore what we have is, if we look at that particular year and the same is true of all those years, the answer that he gave me to Question No. 819 of 2006 was that the year in question the departmental expenditure in the Government Estimates of Revenue and Expenditure is adjusted to include total spending on the health service. Not true. The figure in the unadjusted document is £121.577 million and the figure in the supposedly adjusted figure is £121.6 million. We are talking about the same figure. The Consolidated Fund charges are then shown under Consolidated Fund expenditure, which for that year is £22.6 million, and that produces a total of £144.1 million, which is in fact the figure in that same page 25. So the figures that he has given me here are identical to the Total Departmental Expenditure and Total Consolidated Fund Expenditure for that year. What is true of 2001/2002 is true of the four years given in that answer. So, the reply that I was given that these adjustments had taken place and that it is the adjusted figure which is then subjected to some changes, so that for example, in 2001/2002 the £144.1 million becomes £152.3 million. There is no explanation given as to why it moves up by £8.2 million but certainly the explanation in the answer does not explain either the £144.1 million or the £152.3 million. As a follow-up to Question No. 819 of 2006, I then came back asking for a breakdown in Question No. 1212 of 2006. In respect of that year the £121.6 million, which is given here in the

first column in the answer to Question No. 819 of 2006, is subjected to a number of adjustments and there is an explanation saying that these are the adjusted departmental accounts, which is given in Note 3 of the Audited Accounts. Then we see that the £121.6 million has removed from those totals the amounts that are the transfer payments. So, for example, the Health Authority in 2001/2002 received £8.6 million from the Consolidated Fund. Therefore, the logic is that from the £121.6 million one takes away that £8.6 million. But of course, having taken away the £8.6 million that has been given to the Health Authority, one then adds back to the total the entire expenditure of the Health Authority. That is the explanation that was provided but that is not what has happened, no adjustment is shown in the figure in this first column and if the adjustment that I was told in the explanation had taken place, then what should have happened for example in that year, and I am not going to be quoting for all the years because the examples I have given shows that it applies to all the years that I have been given in the answer, but in that year one would have had to remove £8.6 million from the £121.6 million, then add the whole of the spending of the Health Authority. The reason for removing the £8.6 million was that if one added the expenditure of the Health Authority, one would be counting the £8.6 million twice because there are two ways of doing it therefore. One can either first remove the £8.6 million and then add the total expenditure, or one can remove the £8.6 million from the total expenditure and add the net amount, but the net amount would produce a higher total as a starting point. In terms of the amount of the Consolidated Fund Expenditure, which was the other question that I put to the Government to try and get to the bottom of how these figures are arrived at for the calculation of Government final expenditure in the GDP, was how the amount given in terms of Consolidated Fund expenditure suffers an adjustment which I was told was by excluding the transfer payments, such as pensions payments, contributions to social insurance and public debt charges. Now, having been told initially in the answers that the figures were net of contributions to social insurance, public debt charges and pensions payments, I asked the Government to explain why the gross

figure was the one that I had been given, having been told that that figure had been netted of these amounts. Indeed, if one were to remove from the Consolidated Fund charges the public debt, the social insurance and the pensions, there would be precious little left. In fact, I think the only thing left would probably be the pay of the Governor. So, I have quoted all the answers I have been given so that the Government can see that although my motion refers to the inconsistencies of the answer in Question No. 819 of 2006, it is not just the fact that I was told that I had quoted the wrong figures and then told that the right figures to quote were the figures that I had quoted. It is that the figures that I was given is entirely incompatible with the explanation that I was given. Indeed, if the Government establishes a result of my motion, assuming that they will support it, that these figures need to be recalculated, I would assume that that would mean that the published Government Final Consumption figure in the published National Accounts of Gibraltar, will all have to be adjusted retrospectively because they would all be showing the wrong percentages. As I have said, although we do not share the view that has been expressed in some other quarters that there is some finite magic figure which is the correct relationship between public expenditure and GDP, what we do feel is important is that whatever that figure may be, the figures should be accurate and that everybody should be able to satisfy themselves how it has been arrived at. Therefore, that is the purpose of the motion that I bring to the House which I commend.

Question proposed.

HON CHIEF MINISTER:

I am glad that the hon Member acknowledges that even if what he were saying were correct, and we do not think that it is, but even if it were it would not mean that we were seeking to mislead the House, as the hon Member knows from his days in office, that there are certain sort of internal Government statistics that the Government bring to the House because they

are prepared internally by the Statistics Office and Ministers do so when the source of the statistic is an official source, then it is possible for Government statisticians to make a mistake. In which case, it is equally probable, unless one spots them in advance and some are spottable and others are not, that a Minister may cite an inaccurate figure which he has been given. But actually, we do not believe that this is such a case. I know that the hon Member thinks, because he has just said so again, that the Chief Minister is reluctant to admit mistakes. Well actually, the Chief Minister is not reluctant even to admit mistakes when they are his, and certainly there is no reason why the Chief Minister should have any reluctance to admit mistakes when they would be, in any event, somebody else's and not his, although of course the Government feel, I think, a duty to defend the performance of civil servants in this House, which I think is a tradition in our Parliamentary democracy. But when mistakes are made they are made, if I made a mistake myself I would have no hesitation in admitting it, but in any event this would not be a mistake made by a Minister and, therefore, even less reason would we have to not wish to admit it. We do not think, and our statisticians do not think, that there is any apparent inconsistency. Let me see if I can clarify that statement for the hon Member. Can we just first of all say by way of background to this, that historically the Government statisticians have used, when calculating national accounts, with GDP, the Government statisticians have historically used the actual column in the Estimates booklet, because the accounts traditionally were not available at that stage. In other words, the first set of statistics to become available is the actual column in the Estimates booklet. If they waited for the accounts to be produced, to produce the accounts figures audited for that year, it would take much longer to calculate the national accounts. So that there is certainly a difference in presentation between the actual column and the accounts, and I suppose in some circumstances, the accounts might actually reflect a different figure. For example, if the Accountant General or the Principal Auditor were to find some mistake in the actual figures as stated in the Estimates booklet, he would correct those. I just say that by way of background information. The other thing that I would

say by way of background information before we get stuck in to the main aspects of this debate, is that up to 2002/2003, the import duty transfer to the Social Assistance Fund, hon Members will recall that the Social Assistance Fund receives a payment from the Consolidated Fund which is booked down to import duty for reasons which we do not need to go into, that until 2002/2003 that amount of money which has gone increasing over the years has been included and really this is a transfer payment. The view was taken in 2002/2003 that it should no longer be included, and from 2002/2003 onwards it was not. In other words, it was stripped out, it was added to the excluded column in the netting exercise. But of course the effect of excluding those were not in any sense favourable for the Government. We were, in effect, taking six or seven, whatever the figure is, out of Government final consumption. It is worth bearing in mind that all this is, in any event, relevant only to the comparison between the income and expenditure models of calculation. Now, to the main issues. The hon Member has said this morning that he believes that the figure..... Let me start by saying that the draftsman of the answer, which was actually not the statistician, this was added in No. 6 by those who check answers that come in from Departments for me, that the hon Member is absolutely right in one thing that he said in his statement. That is that in pointing out to him that he had misquoted figures, he had misidentified the figures to be netted in his question. Unfortunately, we then went on in the answer in attempting to correct him, we then went on to cite the very same figures that he had used in his question and which we were suggesting were misidentified figures. Unfortunately, when somebody was typing out the answer they looked at the wrong list and instead of looking at the list of what should have been what I said, he looked at the questions. In fact, he did misidentify the figures but it is also true that we misprovided to him, we mis-recited back to him the same figures. Indeed, the figures my answer should have read, he has misidentified the figures to be netted in his questions and the figures that he should have mentioned were, instead of the ones that I mentioned, which were the very ones that he had mentioned in his question which I was trying to tell him he had

got wrong. In other words, that answer should have read, therefore the figure that the hon Member should have mentioned in his questions as being the figure subject to adjustment, would have been, I will just give them to him now, £137.4 million, £144.1 million, £165.5 million and £165.2 million. So, I was right in saying that he misidentified the figures to be netted, but in trying to correct him I myself limited myself to repeating the figures in his question rather than give him the list of the right figures that should have been, and I apologise to the hon Member for that. The hon Member has said this morning, and I think he has also said it in our earlier exchanges on this issue, that the figure under Departmental Expenditure, that is to say, if he looks at the answer to Question No. 819 of 2006, the figure on the extreme left-hand side, that those are not the figures to be netted.

HON J J BOSSANO:

What I am saying is, as I read the answer, the answer to the question is that that is the netted figure and that is not the netted figure, that is the figure that appears in the Estimates.

HON CHIEF MINISTER:

It is not the netted figure, it is the figure to be netted. I will explain that to him in a moment. If he is saying that that is the gross figure but that the answer suggests that it was the net figure, then he is correct in that that is the gross figure and not the net figure. However, those whose handiwork I am defending here, invite me to point out to the hon Member that the, obviously it is to be regretted if the choice of words caused the Leader of the Opposition to misinterpret the position, but the answer does say, as the hon Member may be able to deduce from the answer that I am about to give him, his questions misidentified the number to be adjusted. The figure in respect of Government Recurrent Expenditure, which are subsequently adjusted, are the following, and then I set out the column which

he interprets as being the netted figure. But the preamble to that listed figure says that these are the figures that are subsequently to be adjusted. So the hon Member may have interpreted the answer to mean that those were, in respect of Departmental Expenditure, the net figure. They are not the net figure, they are the unnetted figure, they are the figures to be adjusted not the adjusted figure. In defence of the drafters of the answer, I am asked to suggest that there was a little hint in the position. It does not alter the fact but, obviously, the answer led the hon Member to believe, and I am not sure whether in the subsequent discussions that obfuscation may have been made worse by anything I may have said or by anything else. But certainly, those who drafted the answer in the first place, which I brought to the House, clearly believed, accept that it is not the net figure and had not intended to use language that was capable of creating the wrong impression. So the figures given are accurate in that those are the gross, the total, as the hon Member has said, unadjusted figures which appear in the actual column and then a similar figure appears in the Accounts for that year. So those are the figures to be adjusted. In our earlier discussions on this matter, the hon Member also questioned how the £165 million of Government expenditure after adjustment, to exclude pensions and other transfer payments, could result in a higher figure. The hon Member will remember that we looked at the figures and we said, how can the Government final consumption figure be higher than the addition of the two figures to be adjusted. The explanation for that, which I think we eventually got to in our earlier discussions at Question Time, is that there are occasions on which the figures to be excluded in the netting are higher in total than the figures to be included, or vice versa. Therefore, one year the Government final consumption could be higher than and another year it could be lower than the total of the unadjusted figures by adding the Departmental Expenditure and the Consolidated Fund. There is, of course, another presentational error in the table set out in Question No. 819 of 2006 which, I think, we both spotted at the time. That is, of course, that the heading of the second column should not be Consolidated Fund Expenditure, it is all Consolidated Fund Expenditure, it should be Consolidated

Fund Charge. So that explains the reason why in some years the Government Final Consumption figure is higher than the addition of the total departmental expenditure and the Consolidated Fund Charge expenditure. The hon Member has also stated that the unadjusted Consolidated Fund Charges should be £24.5 million and not £32.5 million shown in the answer in respect of the year 2002/2003. Total Consolidated Fund Charges, as shown in the Annual Accounts and in the Estimates of Revenue and Expenditure, are £32.5 million for that year as stated in the answer. However, the answer should have gone on to mention that public debt repayments are excluded for national income purposes. The table given in the answer therefore shows the unadjusted figures of Departmental Expenditure and total Consolidated Fund Charges. The hon Member also concluded that expenditure in respect of Social Services Agency had been double counted.

HON J J BOSSANO:

It was not listed.

HON CHIEF MINISTER:

Yes. This is not actually the case. Although the contribution to the Social Services Agency, which was £2.3 million in 2003/2004, is included in the Departmental Expenditure of £139 million, as shown in the Annual Accounts, this contribution is deducted for the purposes of estimating Government final consumption. This contribution is deducted for the purposes of estimating Government Final Consumption and the total expenditure of the Social Services Agency of £3.3 million, as shown in the Social Services Agency's receipts and payments accounts, is subsequently added. There is thus no double count, I am assured. All other contributions to the Agencies and Authorities are similarly deducted from Departmental Expenditure and the total expenditure, that tends to be higher than the initial contribution, is added later. I would have no

difficulty, it is clear that the hon Member obviously amuses himself and enjoys reconciling figures and that is fine as a hobby. Indeed, it is right that he should make sure that the information that we give in this House is accurate. But if for either of those purposes, either for the hobby purpose or for the more formal Parliamentary purpose, he wants to see the detailed analysis in respect of all the adjustments to each of these figures, I am perfectly happy to have the Statistics Office through me to provide those figures to him, so that he can see exactly in respect of each of those years what has been added and what has been excluded. So that in effect, he can see what would amount to the Statistics Office working calculation that results in the figures set out in these questions. I would, however, point out whether he asks for that information or not, that there is from time to time a change. For example, judicature expenditure had previously been excluded from the Government final consumption for reasons that no one could understand why, given that most of it is expenditure on salaries. But as from 2003/2004 the view was taken that this was incorrect and that it should now be included, so hon Members will see, if he does get that assessment, that from time to time the Statistics Office decides that something that has received one treatment in the past, should correctly receive a different treatment and that is reflected in the figures.

HON J J BOSSANO:

Well, I regret to say that the explanations that have been provided by the Chief Minister do not achieve the result, because all that the Chief Minister has said is, in fact, that okay they made a mistake in telling me that the figures I had originally quoted were not the ones that needed to be adjusted, but Question No. 819 of 2006 was, "Can Government explain what were the elements of the adjustments made to a figure of £196.6 million?". The answer is that the figure that I should have asked as being the figure that needed adjustment, should not have been £196.6 million (which is what I got from the Principal Auditor's Account and Report) but the figure of £165.2 million,

which is the figure in the final column of the Approved Estimates of Expenditure. What the answer tells me is that for each of the years in question, departmental expenditure as itemised in the Estimates of Revenue and Expenditure, is adjusted to include total expenditure on the health service, the GDC, the Elderly Care Agency, the Electricity Authority and to exclude grants, subventions, contributions to funds and any such transfer payments. Now, that answer of course does not give me any of the information that I was seeking in the question, because in fact, the figures that I have been given are the figures prior to the adjustment being made. First of all they separate the Consolidated Fund Charges and incorrectly label Consolidated Fund Expenditure. The point is that having asked for an explanation about the elements of the adjustment, I get given the recurrent expenditure figure from the Estimates Book, the Recurrent Consolidated Fund Charges from the Estimates Book, I then get told in the answer that in respect of the first figures they are adjusted by including additional expenditure, which is normally in the green pages at the back of the Estimates, minus transfer payments and I get told that the Consolidated Fund Charges are adjusted to exclude the payments of pensions, contributions to social insurance stamps, as well as public debt charges. Now, if we take the examples in that answer, in the case of 2000/2001, the adjusted figure is some £3 million/£2.5 million less than the unadjusted figure, and that is the main difference between the two. In fact, I have not attempted to move from the £137 million to the £134 million by taking away from the £137 million certain things and adding others, because in fact, in any case the list that I am given is not exhaustive. In fact, that was the information that the question sought. To be simply told that the elements of the adjustments are as follows, and then what I get given in the answer is the figure that is already published and available to me and available to the House, does not get me any closer to understanding how the final consumption figure.....

HON CHIEF MINISTER:

I think what the hon Member now is saying is something quite different to what he has been saying. He is now saying that Question No. 819 of 2006, Question No. 819 was one of a series of questions, there were a bunch of questions of which No. 819 was the end one, but it did not actually give him the full extent of the statistical information that he thought he was asking. Well, the statistical information that he now says he was asking in Question No. 819 of 2006, then is the one that I have now offered him this morning which is the analysis of the amounts. But of course, the way the question was interpreted and therefore answered, was that the elements were being described. The question does not say 'can Government explain what were the elements and the amount in respect of each element?'. The question simply says 'can the Government explain what were the elements?'. The answer was, 'the elements are pensions et cetera, adjustments, transfer payments, transfer payments as listed in the second paragraph'. The figures given in answer to Question No. 819 of 2006, were not given to him as part of the answer to his question. The figures in Question No. 819 of 2006 were given to him as part of the attempt to correct the figures that had been mis-cited by him. So, but for that, the answer would have started, 'for each of the years in question' would have started with that bottom penultimate paragraph. If what the hon Member is now saying is that what he always intended to obtain or to seek from Question No. 819 of 2006 was in respect of each item of exclusion and inclusion, what was the amount so that he can do what he now says he has not tried to do, see how he gets from £137 million..... For example, to continue to use his first example of 2001, so that he can check the accuracy and the reliability of the calculation that converts the simple addition of published figures of £137.4 million to the Government Final Consumption figure of £134.9 million, that to check the reliability of that figure he needs certain statistical information and that is what he intended to ask for, I agree that that is what was not given to him. But that is not how his question was interpreted, but I have offered to give it to him this morning because there is

no reason why he should not have that information and so that he can do that calculation. But this is not a question of giving, this is a different issue. This is not now an issue of errors in the figures, it is a question that the answer in his view was incomplete, in that it failed to give him statistical information as opposed to qualitative information, which is what he had intended to seek. I am grateful to him for giving way.

HON J J BOSSANO:

Well, in fact, in Question No. 1215 of 2006, I had already asked for a further explanation because Question No. 819 of 2006 did not make sense. If we take the same year that we are talking about, whereas in Question No. 819 of 2006 I was told 'Departmental Expenditure is £114.3 million' which is, in fact, the final figure in the fourth column of the Annual Accounts. I was then given as a separate figure to add to it the Consolidated Fund Charges of £23.1 million, which is also the figure in that year in that column to produce a total figure of £137.4 million. Then, what I did in Question No. 1215 of 2006, I asked the Chief Minister to give me a breakdown of what were the contributions to the things that had been listed in the answer of Question No. 819 of 2006. I was told that there was £8.6 million to the GHA and £3.9 million to the GDC, £6 million to the Social Assistance Fund.

HON CHIEF MINISTER:

But the contributions are not the only deductions.

HON J J BOSSANO:

Those deductions are the only deductions that I had given in answer to Question No. 1215 of 2006, based on the elements listed in Question No. 819 of 2006. That is to say, the Chief Minister says I am making a different point. Well look, I am not

making a different point now, I made the point in Question No. 1215 of 2006. Given that the value of each of the elements had not been provided, so that I could do the adjustment and see how they got from a to b, I asked in Question No. 1215 for the contributions that had been made to the GHA, GDC, the Elderly Care Agency, the Social Insurance, namely, the elements listed in answer to Question No. 819 of 2006. In the supplementary to that question, in Question No. 1215 of 2006, when I asked the Chief Minister why there was an apparent inconsistency between the answer I was being given in Question No. 1215 of 2006 and the answer I had been given previously, his reply was because this was a totally different issue which had nothing to do with GDP and which had to do with the audited accounts. That was the supplementary that I got. So, I am afraid that the explanation given to me today does not take us any further, because if we take that particular year, the answer in Question No. 1215 of 2006 produced deductions of £18.5 million and adjusted departmental expenditure of £95.8 million. So, presumably, based on these two answers I would have expected to have a situation where the starting point with the minuses, before putting the pluses, should have been £95.8 million. However, the netting out from the Consolidated Fund Charges, which was the other question that I put, the answer that I got to that made even less sense. Having been told that the figures were inclusive of this, having been previously said, the Consolidated Fund Charges is adjusted to exclude transfer payments and the payments are listed, I then asked in a subsequent question, 'well, if they are adjusted how is it that the answer that I have been given is not adjusted'. The Chief Minister did not say, 'because that is how the question was read'. I have brought the motion after carefully studying a series of questions, all stemming from my original attempt to understand the figures that were quoted by him in the Budget of 2004, and although I get a great deal of pleasure out of analysing figures, I am not doing it as a hobby I am doing it because I actually get paid to be here in this House and to try and do a job as best as I can.

HON CHIEF MINISTER:

I have not got Question No. 1215 of 2006 in front of me and I do not want to extend the debate to that because that is an answer generated by the Treasury Department not by the Statistics Office, and I do not know what the context of that question was. But I just rise for the last time, I promise not to interrupt any more, to tell him that we do not accept that the explanation that he has had today does not take the matter any further. We think that what we have told you this morning provides a total answer to his observation. If he wants, he has not taken me up on my offer, if he wants he can have all the analysis figures that demonstrate that the explanations that I have given him explain what he thinks are erroneous figures, which actually are not, and he will be able to work that out for himself. In other words, I am happy to provide to him in writing the information that he was asking for in Question No. 819 of 2006 and did not get, he says. Can I just point out one more final thing? The answer to his question was not that in respect of the adjustments of the Agencies and Authorities is not adjusted to include total expenditure on health services and to exclude grants and contributions. It goes on to say 'and other such transfer payments'. So he should not assume that the figures that he has added up are the only deductions in respect of those Agencies, because there may be deductions of other transfer payments which are not included in that. What I will do is I will provide him with the analysis in respect of each of those years, so that he can see how the column headed 'total' in the table in Question No. 819 of 2006, has become the figure in the column headed 'Government Final Consumption'. We can revisit the issue thereafter again if he still thinks. That would then be a debate about miscalculations and about erroneous figures. I will write to him and I will send him those tables.

HON J J BOSSANO:

Then, can I say I am grateful for the offer of the information and I look forward to getting the information and come back if I feel there is a need to.

Question put.

HON CHIEF MINISTER:

So what is the motion?

HON J J BOSSANO:

Well, the motion.....

HON CHIEF MINISTER:

Then we call for a vote.

HON J J BOSSANO:

I asked the Government to do it on the assumption that the matter would be taken away and then a reply provided in the House. The Chief Minister has given a reply today, frankly, which I do not think produces evidence that the information that I was given before is indeed accurate information. In fact, the only thing that has been acknowledged is that they quoted the wrong figures back at me, because I have quoted the figures I have. I think it has been.....

HON CHIEF MINISTER:

In that case, can I say on the question of vote, that we could vote in favour of the motion, provided it did not include reference to apparent inconsistencies. If we are going to put it to the vote, obviously, we do not think that there are apparent inconsistencies and could not vote, but certainly, I do not mind voting in favour of a resolution that calls on the Government to investigate and report back to the House, and confirm the accuracy of information that the Government have provided to the House. If that is what the motion said we can vote in favour of it, but obviously, we cannot vote in favour of a motion that acknowledges that there are apparent inconsistencies.

HON J J BOSSANO:

Well, I am happy to remove 'apparent inconsistencies', but in any case, the answer that the Chief Minister has given me that he is willing to send the information in the answer that I was hoping to get. Either one saying yes, to check the figures and that they are okay, and the reason why I put 'apparent' clearly was not enough, not even apparent enough, for the Members.....

HON CHIEF MINISTER:

If we take a vote now, it defeats the purpose of my sending him the information because he will be voting on it before he has the benefit of the information that I am going to send, which I am hoping would persuade him to vote against the motion as well.

HON J J BOSSANO:

Well, I am happy to remove, at this stage, 'the apparent inconsistency' and revisit the matter if there appears to be an apparent inconsistency when I get the additional information.

MR SPEAKER:

Sorry, there are two references to 'apparent inconsistency'. Delete 'the apparent inconsistency' in both cases.

HON J J BOSSANO:

I move to amend my own motion to read:

"This House:

1. NOTES the explanation given in answer to Question 819/2006 and the figures contained in that answer;
2. CALLS on the Government to have the explanation investigated and report back to the House, either confirming the accuracy of the calculations reflected in the above answer or alternately providing the correct calculations."

HON CHIEF MINISTER:

The Government will support the motion, as amended, without prejudice to their view that they have already given the explanation and are now going to illustrate the explanation that has been given. If the explanation does not satisfy the hon Member and he still thinks that there are apparent inconsistencies, then he can either move the motion again, or ask further questions, or move a new motion based on the information that he has been provided. I think that is a neat way of leaving the matter.

Question put. The amended motion was carried unanimously.

ADJOURNMENT**HON CHIEF MINISTER:**

Now Mr Speaker, in moving the adjournment sine die and before wishing the House a Happy Christmas and all of that, the House will now be aware that His Excellency the Governor intends to publish the Order in Council and to proclaim the 2nd January 2007 as being the date of commencement of the Constitution Order, so on that date we shall have our new Constitution. That does have implications for the fate of our Members of today. Therefore, I think that we bid farewell from this House, not just to Tim Bristow, the Financial and Development Secretary and Ricky Rhoda as Attorney General, but more significantly, because this is nothing personal against them, more significantly bid farewell to the, in my view, democratically indefensible fact of having un-elected Members, members that are not elected by the people of Gibraltar, sitting as Members of this House, and that indeed the next time that we meet we shall meet as the Gibraltar Parliament and not as the Gibraltar House of Assembly. I would like to, since they are here, thank both Ricky and Tim for their contributions to this House which consistent with the views that I have expressed whether they should be present at all, their contributions might not have been as great as they might have wished but they have been sensitive in the discharge of their Constitutional obligations to keep their interventions in this House to the minimum required to discharge their Constitutional obligations, I think in recognition of the fact that they are not Elected Members. Of course, for the Financial and Development Secretary, the new Constitution has even more dire consequences than for the Attorney General. At least the Attorney General survives, albeit not as a Member of this House, and indeed in a more reduced form he survives. I fear for the Financial and Development Secretary the consequences are even graver, in the sense that the office of the Financial and Development Secretary will cease to exist. Of course, there will still be a Senior Finance Officer in the Government of Gibraltar, there must be, and part of this Constitutional reform includes

reshaping the public administration in the context of statutory and constitutional responsibility for financial control. Farewell to them both personally and sincerely meant, farewell to their offices from this House. There will, I think, early in the new year be a Minister for Justice and a Minister for Finance. I look forward in moving the adjournment sine die, to congratulate Gibraltar on its new Constitution, to congratulate this House for shedding the nomenclature of simply being a Legislative Assembly and for reconvening in the new year as the Parliament of Gibraltar, which I think this community well merits and deserves. With that extended farewell to the Financial and Development Secretary and the Attorney General, I wish Members of this House, Mr Speaker and the Clerk included, and the staff of the House of Assembly a Happy Christmas and New Year.

HON J J BOSSANO:

Mr Speaker, if I start off from the end, I join the Chief Minister in wishing all concerned the best for the coming season. We shall have some rest from politics until we reconvene in the new year as the Parliament of Gibraltar. I think it is a change in name which is long overdue. That is to say, this House has in fact been operating as a Parliament in practice for a considerable number of years and the fact that this has not been reflected in changes in our Constitution, are for reasons that we all know, that all the other colonies have been going through periodic changes and we are the only ones who have had a Constitution where, in practice, there has been evolution of our operational methods and our institutions but the British Government have been unwilling to look at any other changes. Indeed, when the first changes were suggested in 1972 to the United Kingdom Government, they opposed them totally even though the proposals which came from the Government benches at the time, were based on the logical requirement that the entry of Gibraltar into the European Union in January 1973, would create a new situation and that the Constitution should reflect that we were entering into a situation where we were as part of the

European Economic Community, going to be required to transpose Directives and that that should be reflected in the area of the separation of powers between foreign affairs and domestic affairs. The reply from London was that we could not expect another constitutional change when there was only three years since the last one. I hope we do not get the same answer when we start wanting to change this one, if we find that it fails to decolonise us. The role of the Financial Secretary in the House, I think, first started being changed when the AACR introduced change in the procedures of the Budget, where there were two main Budget speeches. So we started off in 1969 with the Financial Secretary really telling everybody in this House what they could spend or not spend, and then we moved to a situation where the political Government took 50 per cent of the role in assuming responsibility for the public finances and defending, as it should, since they were called to answer for it to the electorate and the things that had to be increased or the things that were going to be decreased in terms of costs of public services. Then in 1988 we took the matter one step further and the Financial Secretary since 1988, has simply stood up to say, 'I introduce the Appropriation Ordinance' and then he sat down and the Chief Minister has taken over. Therefore, in terms of that role, I think the democratic exercise has been there de facto and it is about time it was there de jure and therefore it is right and I think it has been recognised. The reasons that were given for the special role of the Financial Secretary in the 1969 Constitution have long disappeared. In fact, in the Despatch a case is made that because of two issues, which was the merger of the City Council with the Gibraltar Government, the merger of those finances and the closed frontier, there was a special need for expertise to be involved at the highest level of the political decision-making process. I think it is a completely new ball game and, in fact, we have advanced a great deal in our own capacity to take political decisions affecting our economy and our finances. I think, on the question of the Attorney General role, the question of a non Elected Member voting in the Parliament is something remnant of the past. Indeed, in places like Bermuda they were there in 1968 before we got the 1969 Constitution. I have felt that it is useful for

Members of the House to have somebody with legal expertise being able to give a legal opinion which would not be in any way influenced by policy in terms of political philosophy. I think politicians who are lawyers, although sometimes they behave too much like lawyers in my judgement, they do not believe 100 per cent like lawyers and, therefore, one assumes that the hon and learned Attorney General would be 100 per cent a lawyer and zero per cent a politician, but perhaps it does not necessarily follow. In any case, I think we have to be grateful for the contributions that they have made, which I am sure they have made in good faith and for the benefit of Gibraltar. Therefore, although it is important that the House will become the Parliament of Gibraltar, elected by the people of Gibraltar, the role of those officials who have been here in the 34 years that I have been here where I have had many quarrels, particularly with Financial Secretaries, I have always found that at a personal level they were people who had Gibraltar's interests at heart and wanted to contribute. I wish everybody a Merry Christmas.

MR SPEAKER:

My I add my own appreciation to the Attorney General and the Financial and Development Secretary for their services to this House, and their predecessors' services over the last 37 years, and wish them well for the future. My own compliments for the Season to all the hon Members and their respective families and to the Clerk and staff of the House. I look forward with the same degree of enthusiasm which all hon Members have expressed, when we meet next as the Gibraltar Parliament. In the meantime, I now propose the question which is that this House do now adjourn sine die.

Question put. Agreed to.