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 Gibraltarian people.' Nothing there about the right of self-determination of the Gibraltarian 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 Gibraltarian 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 Gibraltarian 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 may 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 to 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 knobbled 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 Beko 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 Tokelaons 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 Registrator 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 and 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 that 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 "depositary", 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 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

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. he 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 belonger 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 it if 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 mis-provided 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.