REPORT OF THE PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

The Second Meeting of the Eleventh Parliament held in the Parliament Chamber on Wednesday 5th December 2007, at 3.00 p.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development and Technology and Deputy Chief Minister
The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment, Traffic and Transport
The Hon F J Vinet – Minister for Housing
The Hon J J Netto – Minister for Family, Youth and Community Affairs
The Hon Mrs Y Del Agua – Minister for Health and Civil Protection
The Hon D A Feetham – Minister for Justice
The Hon L Montiel – Minister for Employment, Labour and Industrial Relations
The Hon C G Beltran – Minister for Education and Training
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon F R Picardo
The Hon Dr J J Garcia
The Hon G H Licudi
The Hon C A Bruzon
The Hon N F Costa
The Hon S E Linares

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk to the Parliament

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on 26th February 2007, were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

HON CHIEF MINISTER:

Mr Speaker, in rising to lay documents on the Table can I once again take this opportunity to welcome to this the first working meeting of the House all new Members on both sides, and I do so not just as Leader of the Government but indeed as Leader of the House. We look forward to democratic interaction with the new Members on the other side of the House as I hope they do with the new Members on this side of the House. That said, I have the honour to lay on the Table the following:

1. Consolidated Fund Reallocations - Statement No. 3 of 2006/2007;

2. Consolidated Fund Pay Settlements - Statement No. 4 of 2006/2007;

3. Consolidated Fund Supplementary Funding - Statement No. 5 of 2006/2007;

4. Improvement and Development Fund Reallocations - Statement No. 1 of 2006/2007;

5. Report and Audited Accounts of the Gibraltar Regulatory Authority for the year ended 31 March 2007;

6. Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31 March 2005.

Ordered to lie.

ANSWER TO QUESTIONS

The House recessed at 5.35 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 Thursday 6th December 2007, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 6.55 p.m. on Wednesday 5th December 2007.

THURSDAY 6TH DECEMBER 2007

The House resumed at 9.35 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development and Technology and Deputy Chief Minister
The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment, Traffic and Transport
The Hon F J Vinet – Minister for Housing
The Hon J J Netto – Minister for Family, Youth and Community Affairs
The Hon Mrs Y Del Agua – Minister for Health and Civil Protection
The Hon D A Feetham – Minister for Justice
The Hon L Montiel – Minister for Employment, Labour and Industrial Relations
The Hon C G Beltran – Minister for Education and Training
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon F R Picardo
The Hon Dr J J Garcia
The Hon G H Licudi
The Hon C A Bruzon
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon J J Holliday – Minister for Enterprise, Development and Technology and Deputy Chief Minister
The Hon F J Vinet – Minister for Housing

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk to the Parliament

ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 1.00 p.m.

The House resumed at 2.35 p.m.

Answers to Questions continued.

The House recessed at 5.45 p.m.

The House resumed at 6.10 p.m.

Answers to Questions continued.

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 Government motions.

Question put. Agreed to.

MOTIONS

HON CHIEF MINISTER:

Mr Speaker, there is no requirement under the Rules for this motion to be taken today because it is the Permanent Select Committee on Members' interests.

CERTIFICATION FOR BILLS REQUIRING URGENT CONSIDERATION

HON CHIEF MINISTER:

Some Members may be aware because I have informed the Leader of the Opposition, that I have issued the first and, hopefully continuing exceptional certificate in respect of one piece of legislation, which I do not think is going to be in any sense controversial between us. I think getting it through just protects Gibraltar from comment by others, and I would like to take it on this date which gives them the usual seven days that they would have had under the old system. The Leader of the Opposition knows that I regard this as being a very exceptional thing, really to be done only when the interests of Gibraltar, as opposed to the Government's own policy interests, require. In those circumstances, I hope the House will not object to proceeding on that basis.

HON J J BOSSANO:

I can confirm we have been told about the reasons for doing it and we are supporting it.

HON CHIEF MINISTER:

Obliged.

ADJOURNMENT

The Hon the Chief Minister moved the adjournment of the House to Friday 14th December 2007, at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 9.00 p.m. on Thursday 6th December 2007.

FRIDAY 14TH DECEMBER 2007

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 Enterprise, Development and Technology and Deputy Chief Minister
The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment, Traffic and Transport
The Hon F J Vinet – Minister for Housing
The Hon J J Netto – Minister for Family, Youth and Community Affairs
The Hon Mrs Y Del Agua – Minister for Health and Civil Protection
The Hon D A Feetham – Minister for Justice
The Hon L Montiel – Minister for Employment, Labour and Industrial Relations
The Hon C G Beltran – Minister for Education and Training
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon F R Picardo
The Hon Dr J J Garcia
The Hon G H Licudi
The Hon C A Bruzon
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon Lt-Col E M Britto OBE, ED - Minister for the Environment, Traffic and Transport

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk to the Parliament

MOTIONS

HON CHIEF MINISTER:

(1) Mr Speaker, I beg to move the motion standing in my name and which reads:

> "That this House resolves that the following Members should be nominated to the Permanent Select Committee on Members' Interests:-
>
> The Hon Lt-Col E M Britto OBE, ED
>
> The Hon J J Netto
>
> The Hon C A Bruzon
>
> The Hon S E Linares"

Mr Speaker, it is standard procedure after a General Election to move a motion nominating Members of the Permanent Select Committee on Members' Interests, I do not think that there is any need for me to say anything in support of this motion. These are the Members that each side of the House has nominated and, therefore, I assume that the motion will be supported by all sides. I commend the motion to the House.

Question proposed.

Question put. The House voted.

The motion was carried unanimously.

HON CHIEF MINISTER:

(2) Mr Speaker, I beg to move a motion standing in my name and which reads that:

> "This House approves the Pensions (Amendment) Regulations 2007 which shall have retrospective effect to 1st January 2001, pursuant to section 3 of the Pensions Act."

Mr Speaker, section 3(3) of the Pensions Act says, "whenever the Government is satisfied that it is equitable that any regulation made under this section should have retrospective effect, in order to confer a benefit upon, or remove a disability attaching to any person, that regulation may be given retrospective effect for that purpose". However, it then goes on to add a proviso, "provided that no such regulation shall have retrospective effect, unless it has received before being made the approval of the Parliament signified by Resolution." In other words, it is the retrospective element that the House will be approving if it approves this motion. By way of some background, the Pensions (Amendment) Regulations 2001 provided for the industrial employees of the Government to receive the same pension and gratuity as non-industrials on retirement, on or after the age of 60. This was the initial step taken towards the equalisation of pensions benefit between industrial and non-industrial employees of the Government. Obviously, we are in the realms of occupational pensions here not old age pension. This was followed by the Pensions (Amendment) Regulations 2002, which purported to equalise the pension benefits payable in circumstances where an industrial employee retires prior to the age of 60 or dies in service. However, there was a problem with the wording of the 2002 amendment, as it did not clearly identify industrial employees and did not cover all of the numerous provisions in the Pensions Act and Pensions Regulations. For example, retirement on medical grounds, there was an assumption in the original drafting that this retirement would always be by reaching the age. There are other grounds in the Pensions Act which could lead to somebody's retirement, and the equalisation provisions had not been framed to cover those other grounds. The purpose of these Regulations before the House is to regularise the position and to give industrials the right to receive a pension that is equivalent to that of their non-industrial counterparts, in

those circumstances that have not been covered by the original regulation. The point of retrospection will have struck the hon Members as obvious, and that is the date to which the 2001 Regulation applied because, in fact, individuals had been allowed to benefit before the defect in the drafting had been noticed. The administration had allowed a few cases to go through and it was, in fact, the Principal Auditor that noticed the language of the Regulation, so we are correcting it retrospectively to provide cover for that half a dozen or so cases that have gone through. I commend the motion to the House.

Question proposed.

HON G H LICUDI:

Mr Speaker, the Hon Chief Minister has moved a motion which refers to retrospection to 2001 and which provides that this House will approve the Pensions (Amendment) Regulations 2007. The Regulations which are referred to in the motion are the Pensions (Amendment) Regulations 2007, which as far as we can see from the Regulations themselves, make no mention of the date of 2001, they talk of coming into effect and deemed to come into operation on 1st July 2007. In fact, when we saw this motion we were somewhat perplexed by the reference to 1st January 2001, we could not understand what that referred to. But the Chief Minister has now explained it is in relation to an anomaly which arose in respect of that particular date, but we do not see that reflected in the Regulations themselves. The Regulations which are attached in this motion, only refer to retrospection to 1st July 2007. We would be grateful if the Chief Minister would clarify the position on that. There is a second point, although I should say that we support what the Government are trying to achieve in this matter. We are not sure whether the Government with these particular Regulations actually achieve what they are trying to do. In the Pensions (Amendment) Regulations 2007, which are the ones referred to in this particular motion, these were actually published by Notice in the Gazette last week, Legal Notice No. 129 of 2007. So these Regulations had actually been made already, they appeared in the Gazette last week, dated 6th December 2007. As the Chief Minister has pointed out, under section 3 of the Pensions Act, there is a requirement, where regulations are to have retrospective effect, to have prior approval of this House before the Regulations are made. These Regulations appear to have been made before the approval was given. We would ask the Government to see how that is going to be corrected. We had assumed, in fact, this was going to be corrected with a further motion that stands in the name of the Chief Minister, to which I will not speak now, but which we thought addressed these procedural issues. There is another motion in the name of the Chief Minister, in which he seeks the approval of this House for the Pensions (Amendment) (No. 2) Regulations and those Regulations which are in draft and can be approved before being made, which is the proper procedure, provide that Legal Notice No. 129 of 2007 shall have no effect. So it is difficult to understand how we are required to approve a particular set of Regulations when there is another motion before this House which actually says, in the Regulations which are to be approved, that these particular Regulations will have no effect. So we would ask the Chief Minister to clarify these positions and whether it is intended to proceed with the Pensions (Amendment) Regulations 2007, or simply to put those to one side, that those should have no effect and we proceed with the proper ones which are in the other motion referred to as the Pensions (Amendment) (No. 2) Regulations.

HON CHIEF MINISTER:

Mr Speaker, the clarification is very simple, and it is that the hon Member has got his facts wrong again, rather like his confusion of Transport Lane and Transport Road at Question Time. We are debating here Pensions (Amendment) Regulations 2007 and not the (No. 2) Regulations 2007. The Pensions (Amendment) Regulations 2007, indeed has a statement in it which says "these Regulations may be cited as the Pensions (Amendment) Regulations 2007 and shall be applied from 1st January 2001".

These Regulations have not been commenced, so both his points are wrong and derive from the fact that he has simply confused one set of Regulations from the other. The other Regulations do not deal with the same subject matter. The other Regulations, he has obviously not read and/or understood them, deal with the question of breaks in service for Civil Service pensioners. These Regulations do not deal with that issue at all. Therefore, the clarification that the hon Member seeks is simple. He has simply confused one set of Regulations with the other, we are currently on a motion that deals with the Pensions (Amendment) Regulations 2007, dealing with pensions for non-pensionable officers. The copy of the Regulations attached to the motion are in draft and have not been promulgated, they clearly refer to the pensions for non-pensionable officers, they are undated and regulation 1 says, that these Regulations may be cited as the Pensions (Amendment) Regulations 2007 and shall be applied from 1st January 2001. So, last minute ill-researched points, whilst I am perfectly happy to give the hon Member the benefit of inexperience of the business of this House, I am happy to offer him that obvious clarification.

HON G H LICUDI:

If the Chief Minister will give way before ending his reply.

MR SPEAKER:

I think he has ended the reply.

Question put. The House voted.

The motion was carried unanimously.

HON CHIEF MINISTER:

(3) Mr Speaker, I beg to move the motion standing in my name and which reads that:

> "This House approves the Pensions (Amendment) (No. 2) Regulations 2007 which shall have retrospective effect to 1st July 2007, pursuant to section 3 of the Pensions Act."

These Regulations provide for the increase in existing pensions payable to all retired Civil Servants under the Pensions Act, taking account of all periods of public service irrespective of any breaks in service. This increase will have retrospective effect to 1st July 2007. The reason for that, as hon Members will recall, is that I announced this as a Budget measure last year and that the Budget measures start xxxxxx. That is the reason for the 2007 retrospection. In days gone by, Civil Servants who gave up work for a while or wished to become part-timers, were obliged to resign. In the latter case, many resigned as full-timers on a Friday, only to be re-engaged as part-timers on the next Monday. The resulting break in service, which was sometime over the weekend that they would not have worked anyway, resulted in the earlier period of service not being counted towards pensionable service. Many of the affected persons were women who wished to stop or reduce work hours in order to raise a family. These Regulations also provide for Civil Servants who retire with effect from 1st July 2007, that is retirement having served the minimum prescribed continuous service of ten years, to have all previous periods of employment in the Civil Service, recognised for the purposes of pension entitlement. Account will be taken of the gratuity which has already been paid to such people, for prior periods of service together with interest thereon in arriving at the revised pension. In other words, they will not pocket the gratuity that they have already received, that will be deducted with interest from their future pensions increase. The full amount of the revised increased pensions will be payable as a pension and no part of the increase will be payable as a gratuity. Finally, I would draw

Members' attention to regulation 5, which says that for the avoidance of doubt Legal Notice No. 129 of 2007 has no effect. The reason for this is that these Regulations were inadvertently published in the Gazette before being approved by the House. In other words, the section requires that the approval of this House should be before and not after. By administrative error, these Regulations were sent to the Gazette and published, so we have revoked them. Once the House approves this motion, a new Regulation will be published post rather than pre approval in this House, assuming that we approve the motion. Mr Speaker, I think that both sides of the House will welcome the correction of this, I think, historical anomaly in the pensions entitlement of these public officers, and that we will have unanimity in this House on this motion, which I commend to it.

Question proposed.

HON G H LICUDI:

Mr Speaker, we certainly welcome the introduction of these Regulations and we agree that this corrects a long-standing anomaly. Therefore we will be voting in favour. The only point that would be made is that we reserve our position generally, because we are not sure whether these Regulations go far enough in correcting all possible anomalies which might exist as a result of break in service. We note, for example, that under regulation 4 the uprated pensions for existing pensioners applies to those people in receipt of a pension. There may be people, for example, we do not know that is why we are reserving the position, whether there is anybody in a category who has retired but is not actually in receipt of a pension but would have been in receipt of pension had the break in service counted for the totality of the service. Therefore, there may be other categories of people who would not have the full benefit. We do not know whether such people exist or not and we reserve the position generally. Finally, as regards regulation 5 which the Chief Minister has pointed to, this indeed refers to Legal Notice No. 129 of 2007, which I referred to earlier on. The Legal Notice which was published last week actually talks of the Pensions (Amendment) Regulations 2007, we now see that this has been revoked and is of no effect and we certainly welcome that, because that was, as we have heard, an inadvertent mistake. Therefore, we support the motion.

HON CHIEF MINISTER:

Yes, I mis-spoke when I said revoked. We have not actually revoked because they are of no effect. So what we have said is that for the avoidance of doubt, Legal Notice No. 129 of 2007 has no effect. Revoked suggests that they were valid in the first place, of course, being that they were *ultra vires*, the enabling Act. The hon Member raises two points. It is not the case that these Regulations only apply to people who are already in receipt of a pension. It also applies to people who have not yet retired and are therefore not already in receipt of a pension. But he is right, and the regulation clearly says so, that it does not apply to people who did not have, one has got to have ten years service in the second stint. There may be some people who had ten years service in the first stint, the hon Member may not know or he may but he may not, that in the Civil Service one is not entitled to an occupational pension unless one does ten years service minimum. So if anybody leaves the Service after nine years service, for example, he earns no pension. The regulation is, as a matter of policy, framed around the principle which appears by regulation. Let me see if I can point to the actual, yes, by the words "and who qualifies for a pension having served the prescribed minimum continuous period of retirement". One has got to be an eligible pensioner in respect of one's stint immediately before retirement. Let us call it the second stint. If one is qualified for a pension by virtue of the second stint, one may then tag onto it the first stint. What one cannot do is qualify for the ten year rule by adding both stints together, because that would entitle to a pension many people who have served very short stints on either side, almost at opposite ends of their lives, and it is very difficult to calculate what the cost to the public purse would be on that. So, it has

been especially formulated for this reason, the hon Member will no doubt make a point of this, listed on his points of possible content for his manifesto. Before he does so, I would urge him to consider the cost of that, there are lots of people, perhaps that is why he may want to do it. Anyway, he should not think that that is an oversight, that is a matter of Government policy.

Question put. The House voted.

The motion was carried unanimously.

HON CHIEF MINISTER:

(4) Mr Speaker, I beg to move the motion standing in my name and which reads that:

> "This House resolves in accordance with section 18 of the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act that the Government proceed with the making of the Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment of Schedule 3) Order 2007."

Mr Speaker, section 18(3) of the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act says that no order shall be made under section 18 unless it has been approved by Resolution of the Parliament. The House has before it a draft Order entitled, as I have just read out, (Amendment of Schedule 3) Order 2007. This Order increases the rates of unemployment benefit by ten per cent, as announced during the Budget session just before the summer. It has retrospection to 1st July, like all the other Budget measures that we are dealing with, and I commend the motion to the House. In short, therefore, the Act requires this House to approve any increase in these benefits, and it is now doing so and doing so retrospectively.

Question proposed.

HON J J BOSSANO:

Can I just ask? Given that this is retrospective and it is unemployment benefit, presumably the Department will contact the people, because most people who have been unemployed are unlikely to know that this is happening.

HON CHIEF MINISTER:

Yes indeed, there will be arrears payable as tends to happen with many. In the UK they follow a different practice. In the UK when the Chancellor makes a Budget announcement, it normally has a forward application date, precisely to allow the administration time and legislative time to take any steps. Here, we have always tended to do it in the reverse, and that is that Budget measures are usually given with effect from the date of announcement, or some approximate date. But then it does not put us in the position of having to apply it retrospectively, which is administratively burdensome, but yes, that is precisely what will happen as he says.

Question put. The House voted.

The motion was carried unanimously.

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

Mr Speaker, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1), in order to proceed with the laying of a document on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table the Gibraltar Annual Policing Plan 2007-2008, which is the first new plan to be laid. Now, clearly this year's Police Plan, which is not raised by the Government but is sent to the Government for laying in the House, is much later on during the year than the Act envisages. I would urge hon Members to take into account the fact that this is the result of the implementation of the Act, which came into effect at a time when really the policing year had already begun and there was really no opportunity to prepare a policing plan. But the Act itself contains a timetable, which I am assured by the Police Authority, will be followed for what will be the second plan. But we could not even say to them, well do not bother with the policing plan this year, given that it has all come in halfway through the year, because the Act actually says there shall be a policing plan and it shall be laid in the House. So albeit late, I think the view has rightly been taken that better put one in albeit late than not put one in and be in breach of the section that does not allow. In retrospect, the Act might have had a transitional clause in it to deal with the point that the timetables just did not work between commencement, appointment of the authority and their obligations in relation to the timetable to preparing a policing plan for the year.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE CRIMINAL JUSTICE (AMENDMENT) ACT 2007

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Criminal Justice Act 1995 to partly transpose into the law of Gibraltar Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and to fully transpose into the law of Gibraltar Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, 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, in accordance with section 35(3) of the Constitution, I have certified that consideration of this Bill by Parliament should be undertaken before the expiry of six weeks from the date of its publication. The power to abridge time is exercisable where, to quote the Constitution, "consideration of the Bill is too urgent to permit such a delay". I should say some

words by way of background information. Through the Finance Centre Department, a committee was established in November 2006 to consider the issues that could arise for the Finance Centre and other parts of the economy of Gibraltar, as a result of the requirements of the Directive. The committee was tasked with the consideration of the Directive and following from that, to advise the Government of any particular issues to which it should direct its mind. I am informed that representatives from a number of entities were asked to send a representative to form the committee. These included, the General Council of the Bar of Gibraltar, the Gibraltar Association of Compliance Officers, the Gibraltar Bankers Association, the Gibraltar Society of Chartered and Certified Accountancy Bodies, the Financial Services Commission, the Gibraltar Regulatory Authority and the Gibraltar Financial Intelligence Unit. The Attorney General's Chambers, the Finance Centre Department and the Legislation Support Unit, were the Government Departments involved. The committee first met on 7th December 2006 and again on 21st December 2006. Subsequent meetings on 16th April, 24th May and 11th October 2007, when the committee met for the last time. A final draft of transposing legislation was sent to me as Minister for my approval on 23rd November. I have given the unnecessary opportunity for damaging comment that late transposition of a Directive on money laundering, which is a sensitive subject in Europe these days, would give Gibraltar's detractors. I am satisfied that the reputational risks to Gibraltar outweigh the reasons for this House having more rather than less time to consider this Act. On this occasion, therefore, I have given the certificate. I have said to the House in the past, that although the constitutional phrase that I read out a moment ago, actually gives quite a lot of latitude, it is my intention to exercise it as sparingly as possible, because I believe that it is right that the legislative process in Gibraltar should take longer than seven days, and that we should get used to our Parliamentary procedures, giving the House a more detained period of time and relaxed period of time in which to consider legislation. But on this occasion, I think, the interests of Gibraltar justify the exercise of that power by way of the Constitution, and therefore I have done so.

Mr Speaker, as the Long Title of the Bill suggests, the main purpose of it is to transpose two Directives. Directive 2005/60 is more commonly referred to as the Third Money Laundering Directive and is transposed by this Bill. Then, there is another Bill on the Order Paper, also covered by my certificate, that makes corresponding amendments to the Terrorism Act, which deals with terrorism financing. Directive 2006/70 which supplements the Third Money Laundering Directive and is transposed also by this Bill. It goes without saying that the Third Money Laundering Directive builds on the previous Directive, which was transposed by the Criminal Justice Act 1995 and the subsequent amending Act. Mr Speaker, there are one or two aspects of the Bill which are not Directive-driven and the point that I am about to make next is one such point. The title "Criminal Justice Act" I think is a misnomer. It implies that the Act is concerned with wider issues pertaining to the criminal justice system. In fact, the Act is rather limited in scope and really deals only with money laundering and the confiscation of proceeds of criminal conduct. Therefore, I think it is helpful that we change that. Therefore, clause 2 of the Bill amends the Short Title of the Criminal Justice Act so that it should henceforth be called "The Crime (Money Laundering and Proceeds) Act 2007". Then the name of the Act will not only reflect what it does but it will give us an aptly named Act to add on future legislation. For example, if we wanted to have wider legislation about the recovery of proceeds of crime, if we wanted to establish some mechanism for that sort of thing, it would allow us to park it in an Act which is more aptly named for the purpose. Clause 3(a) to (c) corrects a number of renumbering errors in the current Act. For example, the current Act contains two subsections (2). By way of substantive amendment to section 2 of the Act, a person who undertakes a relevant financial business, must now make a disclosure on the additional grounds that he has reasonable grounds for suspecting a person to be engaged in money laundering and that he is attempting to launder money. Presently under the current Act, a disclosure is only required where a person knows or suspects that a person is actually engaged in money laundering. Clause (3)(d) inserts two definitions in section 2 of

the Act, with respect to the definition of the Gibraltar Financial Intelligence Unit or GFIU, the present position is that a disclosure concerning money laundering can be made through any police or customs officer. As it stands, the Act fails to recognise that it is those officers who are based in the GFIU that are in a position to respond to such disclosures. Although in its recent review the IMF noted that the GFIU functions effectively within Gibraltar and was actually complimentary about the work it carries out, it did recommend that this point be addressed. As a first step to doing so, the definition of "GFIU" in the Act will assist in clarifying to whom reports ought to be made. In other words, that whereas in the current Act, reports are made to a police officer or customs officer, meaning any police officer or customs officer, in future it will be to the Gibraltar Financial Intelligence Unit, which is the dedicated body comprised of police officers and customers officers, set up precisely to receive money laundering notifications. Indeed, as a second step, although we have not done it in this Bill, in implementing the IMF's recommendation we are going to put GFIU on a statutory footing. At the moment it is just an informal coming together of police and customs officers but we will give it a statutory framework soon. I am told the legislation is being worked on already. Clause 4 of the Bill substitutes section 5 of the Act relating to tipping off. The current section 5 of the Act, subsections (4), (5) and (8) to (10) remain intact, save for them being renumbered. The effect of the amendments to the other subsections are to refine the tipping off provisions. For example, the current position is that an offence is committed if a person discloses knowledge or suspicion that a police or customs officer is acting or is proposing to act in connection with an investigation, which has or is about to be instituted, and that disclosure is likely to prejudice a current or proposed investigation. That is the current anti tipping off regime. Under the recast section 1, the offence is committed if the disclosure relates to information obtained in the course of a business or activity to which section 8(1) applies. Section 8(1) is the definition of relevant financial businesses. The tipping off relates to (a) his or another person making disclosure to police, customs, money laundering reporting officer or GFIU; or (b) to an investigation which is being undertaken or is being contemplated. From the foregoing the hon Members will deduce that the actual offence is narrower in the sense that it applies only to information that has come to the person's knowledge in the course of his business or activity. So the effect of this amendment is actually to narrow rather than to widen the offence. Then only if that person undertakes a relevant financial business as set out in section 8(1) of the Act. Presently, there is no limitation as to the manner in which a person acquires the knowledge that he then tips off, and therefore places him at risk. So this is a narrowing of the scope of the offence of tipping off in one sense. In another sense it is also slightly wider, in that currently the prejudice actual or potential to an investigation has to be proven, and that requirement is no longer the case. So it is narrower in one sense and wider in another. It is wider in the sense that previously they only had to be prejudicial to an investigation and now that no longer has to be proved. Other amendments to section 5 of the Act include a provision exempting certain intra group disclosures by credit and financial subsections. So in other words, these are people that can tip each other off, so to speak, without incurring the offence of tipping off. For example, disclosure by auditors, accountants and legal professions already enjoy an exemption, and that is now extended to disclosure to similar professions in other jurisdictions where they share ownership, management or control. Therefore, and subject to certain restrictions and qualifications, an accountant in Gibraltar might not commit the offence of tipping off, by the mere fact that he makes the disclosure to a colleague in another branch outside Gibraltar. That is one example of the application of this widening of the list. A further and new defence is provided in section 5(8), where the purpose of the disclosure is to seek to dissuade the client from engaging in criminal activity. So in future, those hon Members of the House who are practising criminal lawyers, will be able to dissuade their clients from committing criminal activity, without thereby incurring the risk of being prosecuted for tipping off. Section 5A is introduced by clause 4 of this Bill and is a new provision which seeks to restrict the disclosure to persons who are in States or Territories, in respect of which the EU adopts a

decision restricting such disclosures. Clause 5 of the Bill amends the heading of Part 3 of the Act, so that it properly reflects the fact that the part provides for measures for the prevention of the use of the financial system for the purpose of money laundering. It will now make it clear that terrorist financing is also being addressed by Part 3 by adding those to the Title. Clause 6 of the Bill amends the definition in section 6 of the Act to include certain definitions used in the Third Money Laundering Directive, deletes some that will be made redundant by changes that are to be made by the Bill, and by way of housekeeping amends some definitions that require updating. Clause 7 of the Bill recasts section 7 of the Act in line with the new provisions in Article 3.9 of the Third Money Laundering Directive, and which redefines what constitutes a business relationship. Clause 8 of the Bill amends section 8 of the Act. In particular, clause 8(1)(b) amends section 8(1)(k) to exclude general insurance intermediators following representations from that sector. Clause 8(3) of the Bill provides the legal basis for any future amendment of the list of business and activities in section 8(1), by regulations, and this will give the Government the ability to carry out amendments without undue delay, in order to respond to the needs of the various sectors or to give effect to any future requirements. In other words, section 8 contains the list of businesses which are deemed to be relevant financial businesses and who are subject to the regime of the Money Laundering Act. From time to time, the EU will seek to add businesses to that list. In the last round they added estate agents and car dealers, retailers of articles worth more than 10,000 euros, and that list may continue to grow. The effect of clause 8 of the Bill is that we shall be able to add to the list by regulation, but what we are doing is not changing the regime of the Act but simply adding a new line of business which is covered by its provisions. Sections 9 and 10 of the Act are substituted by sections 10A to 10R to bring customer due diligence requirements in line with the Third Money Laundering Directive. New section 10A defines in greater detail than was the case what customer due diligence measures mean. Under the new section, documents used to identify a customer must be capable of being verified on the basis of information obtained from a reliable and independent source. That is the crux of the change to the new diligence provisions. In the case where the beneficial owner is not the customer, section 10A(b) requires that in the case of a natural person, his identity is established and where the person is a legal person, a company trust or something like that, that the ownership and controlled structure is clear to the person undertaking customer due diligence. In other words, that relevant financial businesses must know the identity of their ultimate client and not simply be dealing with an intermediary or a middle man, masking the identity of the real beneficial owner of the structure. When customer due diligence measures are to be applied, is set out in section 10B. In other words, those are the due diligence obligations, now when must they be deployed? The answer to that is to be found in section 10B. Generally, customer due diligence measures are to be applied (a) on the establishment of a business relationship; (b) when an occasional transaction amounting to 15,000 euros or more is undertaken; (c) where money laundering or terrorist finance is suspected; and (d) where there are doubts as to the veracity or adequacy of documents previously obtained for identification purposes. On-going monitoring of a business relationship is provided for now in section 10C. Since the application of customer due diligence at the outset of the business relationship does not guarantee that at some point after the relationship has been established, that relationship is not abused. In other words, this is another of the changes. Due diligence obligations is not now a question at the outset, there is an obligation to continuously monitor due diligence of one's existing clients throughout. So it is not just a once and for all activity. New section 10B, sets out the timing for the verification of the identity of the customer, which ordinarily should occur at the outset. However, there is provision for when this is not possible and the risks are low. In other words, that there is provision for certain sorts of transactions which one can proceed with without due diligence, because the risks of money laundering are low, but one must then get on with it quite quickly immediately after the transaction. Section 10E applies to casinos and is unchanged in its practical effect, save for the raising of the threshold from 1,000 to 2,000 euros. In other

words, I think the existing Act says that the casino has to exercise due diligence whenever somebody cashes in 1,000 euros worth of chips or buys 1,000 euros worth of chips and that has just increased to 2,000 by the Directive. Therefore, identification of customer will be required where purchase of gambling chips reached or exceeded the buyer's threshold. Section 10F is a new provision that requires the cessation of a transaction where customer due diligence measures cannot be applied.

The main feature of the new regime introduced by the Third Money Laundering Directive, is the approach to assessment of risk by the introduction of the so-called risk based approach. Under this regime, under the so-called risk based approach, and that is really the most important philosophical changes of the Third Money Laundering Directive. Under the risk based approach, the new concept of simplified due diligence, may be undertaken in appropriate circumstances, that is, where the risk of money laundering and terrorist financing are considered to be low, as set out in section 10G. Conversely, enhanced customer due diligence will be required where risks are higher. Such as in the cases of non face to face transactions, provided for in section 10I. That, for example, will have implications in due course for our on-line gaming industry who are always establishing new relationships with their clients on a non face to face basis, because the clients are dealt with on-line. But also applies to such things as correspondent banking relationships where a party is outside the EEA, and that is provided for in section 10J. Another area in which increased risks are perceived to exist, is in connection with transactions involving a class of persons described as "politically exposed persons". That class of persons is identified in section 10A. The Opposition Members can rest on the question. It actually only applies to politically exposed persons in another Member State. I think the Directive assumes that countries have their own anti-corruption legislation and that this Directive is not about providing for how Member States deal with their own politically exposed persons. It is a mechanism to ensure that Member States have certain obligations in respect to another country's politically exposed persons. So, that class is identified in section 10K as read with paragraph 3 of Schedule 1, and applies to persons who have held prominent positions in other States or Territories, Community institutions or international bodies, as well as family members and close associates. Such persons will automatically be subjected to increased scrutiny by relevant financial businesses. The increased scrutiny includes the requirements for senior management approval to the establishment of a business relationship, that is section 10K(1)(a). Increased source of funds and investigations set in section 10K(1)(b) and enhanced on-going monitoring, section 10K(1)(c). New section 10L requires credit or financial institutions that have branches and subsidiary undertakings outside the EEA, to apply measures which are at least the equivalent to those in the Act, so far as this is allowed by the laws of that State or Territory. New section 10M as the section heading suggests, relates to shell banks and anonymous accounts. With respect to shell banks, these are not considered appropriate vehicles for the conduct of business, and as a result the Directive prohibits credit institutions from entering into or continuing correspondent banking relationships with shell banks. The section also prohibits the creation of any anonymous account or passbooks. Also credit institutions are required to conduct customer due diligence and on-going monitoring of any existing anonymous account. This requirement is, as I say, a Directive requirement and therefore needs to be transposed. But at a practical level, industry practice has for some time shied away from anonymity and also relationships with shell banks. Therefore, it is highly unlikely that these amendments will have any practical significance. The definition of a shell bank is a bank set up in a jurisdiction in which the bank actually has no management presence. Really, what is called the brass plate bank. There are some jurisdictions in the Caribbean that specialise in this, banks in name but there is no presence, there is no brick and mortar, there is no management, that is what a shell bank is. Section 10N provides the framework for when a relevant financial business may rely on the customer due diligence that is performed by another party, including where customer due diligence is outsourced. In general terms, the

relevant financial business may rely on another person if that person falls within a certain category, and if that other person consents to be relied on. The category of persons is defined in subsection (2) and includes credit or financial institutions, auditors, external accountants, and independent legal professionals to name but a few. In other words, these are people on whom somebody that has an obligation to due diligence, may rely on or may outsource his obligations to. The key aspect with respect to reliance on another is that the liability for compliance with customer due diligence measures cannot be divested or outsourced. Therefore, it is incumbent on the person seeking to rely on another, to satisfy himself that the procedures that he shall be relying upon are adequate. In other words, one cannot just rely on another lawyer or accountant, or outsource one's obligations to him in respect of one's business, without taking care to see that his methods are compliant with the legislation. In other words, one cannot just outsource and look the other way. Section 10O is not a requirement of the Directive being transposed. By this section, the Minister may direct a relevant financial business to desist from entering into a business relationship, or from continuing one, where his corresponding party is situated in a State or Territory against which the Financial Action Task Force or FATF has applied counter measures. Should this power need to be invoked, it will be effected by the Minister for Finance issuing a direction which would be published in the Gazette. In other words, from time to time the FATF black lists or advises counter measures to be taken in respect of businesses established in particular territories. It is rare but it happens. This measure will give the Gibraltar Government the statutory framework to respond to that by saying, following this measure by the FATF, which is applied by all the FATF Member States, which is all the reputable finance centres, the Minister prohibits Gibraltar financial services companies from having relations, either with institutions in a particular country or with a particular institution in a particular country. New section 10P relates to the keeping of records and recasts sections 16 and 17 of the Act. The requirements are fleshed out in some more detail than was the case. However, the underlying principle and the length of time in respect of which documents ought to be retained, five years, remains largely unchanged. Section 10Q requires that a relevant financial business establishes and maintains policies and procedures in relation to the following matters. In other words, this is where the legislation actually adds costs and bureaucracy to businesses, because businesses have to have policies and trained staff to implement policies in this list of things. Customer due diligence measures and on-going monitoring; reporting to the GFIU, for example, any suspicious transactions; record-keeping; internal control; risk assessment and management; the monitoring and management of compliance with and the internal communication of such policies and procedures, in order to prevent activities related to money laundering and terrorist financing. In other words, every relevant financial business, that is, every business the nature of which is listed in section 8(1) of the Act, has to have internal mechanisms for each of these items that I have just listed now. As mentioned earlier, the difference brought about by the latest Directive is that these policies and procedures may be implemented on a risk sensitive basis. Therefore, the burden on any individual business will vary according to the risk profiles of its clients. Section 10R requires that employees be trained, not only as to the legal obligations flowing from the legislation, but also at a practical level in recognising and dealing with suspect transactions. Such training is not a one-off thing, since section 10R(b) requires that such training be regularly given, and this is capable of also throwing up new cost to businesses in those areas. Clause 11 of the Bill amends section 19 of the Act, and in particular subsection (2), which is replaced by a provision designating the bodies listed in Part 1 of Schedule 2 as supervisory bodies. Such a list may be amended by Order. Part 1, Schedule 2, lists the supervisory bodies which were previously set out in section 19(2), with the exception of paragraph (e) which is a new addition. For the present, the Financial Secretary is designated as the supervisory body for the businesses and activities in respect of whom there is currently no supervisory body in place for oversight of the application of the Act. These are, auditors; external accountants and tax advisers; real estate agents; notaries and other independent legal professionals; dealers in all

high value goods; currency exchange officers, bureaux de change, which will shortly go to the FSC; money transmission/remittance officers, which will also shortly go to the FSC. It should be noted that paragraph (e) also provides for the transfer of the supervisory duty to other persons or bodies, to the publication of a Notice in the Gazette. Clause 12 of the Bill inserts a new section 19A, the effect of which is to make supervision a statutory duty of the listed supervisory bodies. Clause 14 of the Bill inserts sections 20A and 20B, the effect of which is that criminal offences are established for particular breaches of duties imposed under the Act. Clauses 15 to 18 are of a housekeeping nature. Clause 19 inserts two Schedules to the Act. I have already referred to Schedule 2 in relation to supervisory bodies. Schedule 1 elaborates on the conditions applicable to simplified due diligence, and further defines the class considered to be politically exposed persons. Clause 20 is also a housekeeping measure that addresses the changes required as a result of the use of the formulation of GFIU in place of police or customs officer. It also corrects certain references to Acts that have in recent times had their Short Title amended. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, a Bill transposing a Directive that attempts to further tighten how we control and ensure that the financial system is not abused for the purposes of the laundering of money and which is the proceeds of crime, is only ever going to enjoy support on both sides of the House. The fact that the time for the Bill's publication and passing in this House has been abridged, in the circumstances explained by the Chief Minister in this case, is also going to enjoy, although it does not need it, the support also of the Opposition. I am minded to remind the House, that those who criticise us the most have only recently themselves transposed what is known as the First Money Laundering Directive, and they should be looking at keeping their own house in order before they criticise others. In Gibraltar, we see pieces of legislation in the Finance Centre and politically, as opportunities. A piece of legislation which deals with issues such as this, as opportunities to ensure further the raising of already very high standards on the control of the abuse of the financial system for the purposes of money laundering. It is an opportunity, not an obligation that we shy away from, and it is an opportunity to ensure that high standards are raised even further, and that those who might wish to launder funds can see this as a red light to their attempts to use Gibraltar as the financial services centre where they might want to do that.

Looking at the detail of the Bill, on the question of the Title, the things that the Chief Minister has told us as the rationale for the changing of the Title, I think make a lot of sense. He will know, that the first transposition of Directive 91/308 into the Criminal Justice Act, followed very much the transposition in the UK which also referred to its anti-money laundering legislation as criminal justice legislation at the time. It now refers to it as proceeds of crime legislation, which is how we will be referring to it, therefore, we agree with that logic. Section 5, subsection (12) or the new section 5(12) which is being inserted by clause 4, is not a new subsection. Section 3(10) of the existing legislation already provides that very wide ambit for police officers and customs officers to do things that they need to do to police this Act, without themselves being found to commit offences in the process. Even if they do, the Act is xxxxxx of what might otherwise be offences. A Parliament is always going to be careful in granting immunities to individuals, whatever their professions, to allow them to commit offences. I think that the trust deposited in the law enforcement agencies in 1995, when the original subsection giving those powers was passed, has been well placed and well deposited in our police force and in our customs department. But I think it is fair to note that this is, again, the same very wide power being given and that, obviously, it is deposited with them on the basis of full and complete trust by this Parliament. Section 10N(2), at page 1314 of the Bill, deals with who an individual can rely on to already

have carried out the due diligence procedures which an individual who is in financial services business caught by the Act, has to carry out himself. There is a change of philosophy here, as well, which I think is important to note. The existing legislation and the existing anti-money laundering guidance notes issued by the Financial Services Commission, allow company managers and professional trustees to rely on the due diligence having been carried out by each other, in the circumstances provided for in the legislation and in the Directive. My reading of the Directive is that it would be possible to allow company managers and professional trustees to continue also to rely on the due diligence having been carried out by others. In this instance, the way that subsection (2) is phrased, the only parties whose due diligence can be relied on are credit or financial institutions which are authorised by 10N(2)(a). By 10N(2)(b), auditors, insolvency practitioners, external accountants, tax advisers or independent legal professionals supervised for the purposes of this Act, and then by (c), persons who carry on business in another EEA State which carry more or less the same description, or by (d), persons authorised in a non-EEA State that carry out the same sort of description of business. The provisions of the Directive that deal with this aspect of this matter are in section 4 of the Directive, which deals with performance by third parties. The Directive by Article 14, envisages continuing or the possibility allows Member States to allow the classes of individuals covered by the Directive, and it specifically includes trust and company service providers not already covered by the definition of parties covered by the Directive. So they are specifically covered under Article 2.1 to rely on each other's due diligence. We have decided not to allow company managers to rely on that. We have allowed them, company managers and trustees have done due diligence capable of being relied upon until now. I do not see the Directive requiring us to create a regime that does not include their due diligence as due diligence which can be relied on. I would be grateful if the Chief Minister could tell us why it is that the Government, with the leeway that they have in the Directive, have decided that that should be now the case. That their due diligence is not due diligence which now can be relied on. Other than that, we have only minor points to raise in Committee. I am grateful for the Chief Minister having given us his letter setting out what are the points that he will raise during the debate.

HON CHIEF MINISTER:

Yes, just to say that I did not raise the intended amendments in my own address on the principles because I think they just relate, really, just so that it is English, so that the section reads, there is no substantive amendment. I am grateful to Opposition Members for acknowledging and accepting, albeit that their acceptance is not necessary, but I think it is a power that, where possible, should be used consensually. I do not forego the right to use it even in non-consensual circumstances, but certainly, I am most comfortable using it consensually. Therefore, I am grateful to them for signalling that they believe it is a proper use of the power on this occasion. I think the hon Member has raised only one point that goes to the actual principles set out in the Bill, and it is the one that requires a reply from the Government. That is the one that he has just spoken about, in layman's terms, why cannot trust and company managers rely on each other as others, given that the Directive appears to permit it. I have to say that this is not a point upon which the Government's policy guidance has been sought. Therefore, having been alerted to the point by the hon Member, I will certainly look into it and if there is a good policy reason why that option has been chosen, then the legislation would stay like this. If on the other hand there is no good reason and the preferable view is that it should be extended to them, we will introduce amending legislation at a later date. But, certainly, speaking for the Government at a political level, we have made no conscience decision to exclude the ability of trust and company managers, or indeed others, because the effect of section 14 applies to everybody covered by the Directive. It is all parties covered by the Directive, so theoretically it is all relevant financial businesses as listed in (a). I am not sure that I would wish to extend the ability to rely on each other to all of them, but there may be some to whom it has not been extended by our

legislation, perhaps that it ought to be extended. I will certainly have a look at that point.

HON F R PICARDO:

It is not just that company managers and professional trustees cannot rely on each other. It is that even, for example, one of the parties whose due diligence can be relied on. For example, an insolvency practitioner who is doing business with a new customer, cannot rely on the due diligence having been carried out by a company manager or professional trustee on that individual, even when he might think that it is appropriate to do so. I am grateful for the Chief Minister's indication that he may come back on this. This is not yet, in my view, an Act that is going to be in final and untouchable form. There are issues, as the Chief Minister knows, as to for example, who will be responsible for compliance issues before the Bar Council, et cetera on which I am sure that we still have to come back. So that may be an appropriate point to consolidate all these issues that are coming out in this debate.

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 TERRORISM (AMENDMENT) ACT 2007

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Terrorism Act 2005 to partly transpose into the law of Gibraltar Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 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, in my earlier address in connection with the Criminal Justice (Amendment) Bill, I stated that the transposition of Directive 2005/60, the Third Money Laundering Directive, was being partly transposed by that Bill and by this one. I also referred to the reasons why I considered necessary to abridge and I will not repeat those points again. Although simply to note for Hansard that my certificate under the Constitution for the abridgement of the six weeks applies also to this Bill. In effect, the changes to the Terrorism Act made by this Bill are quite modest. Clause 2 of the Bill inserts the definition of GFIU in identical terms to that employed in the previous Bill, and this will replace references to the Police. In particular, in section 9 of the Act, as provided for in clause 3 of the Bill. Clause 4 of the Bill inserts section 9A to exempt certain professionals from the obligation to make disclosures to the GFIU in certain circumstances. This, again, is not a new concept having been available in the Criminal Justice Act. It is only new insofar as it had not been provided for in the context of the Terrorism Act. Clause 5 of the Bill inserts a new section 10A, the effect of which is to give persons immunity from suit, whenever they make a

disclosure to the GFIU as required by the Directive. I commend this Bill to the House.

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

HON F R PICARDO:

I will not repeat what I said earlier about the abridgement of time, or about the fact that we are doing these things more expeditiously than most other Member States. But this is a point which I know we are doing here what the Directive is saying we should do, it is really just a point that I raised with the Chief Minister and with the Parliament generally. I understand why it is that there should be exceptions, for notaries, independent legal professionals, auditors and external accountants who might be involved, in my reading, in the representation of someone in proceedings where that person has alleged to have been involved in terrorist activities. Frankly, in my view, any tax adviser that comes across information that suggests that somebody is involved in terrorism, should have an obligation to report. Having said that, the Directive is what we are transposing, the Directive allows tax advisers the same leeway in exactly the same way that is set out here. I just cannot for the life of me think why it is that the Commission would not want tax advisers caught when they identify potential terrorist activity, but so be it.

HON CHIEF MINISTER:

Yes, only to point out to the hon Member that this was one of the most controversial aspects of the debate within the EU institutions. Actually it is not a Commission wish, it is a Parliament wish. This was inserted by the Parliament after huge lobbying from the industry. It is not the language that the Commission sent up, hon Members may remember seeing it in the press, these exemptions were the main issue. When this proposed Directive, as it then was, came before the Parliament it was the main issue debated *ad nauseum* in plenary and, indeed, I think a special committee was formed and it went on and on and this was the compromise that they eventually worked out.

HON F R PICARDO:

Absolutely right. I am grateful to the Chief Minister for that. The Directive in Article 23, tells us that Member States shall not be obliged to require these classes of individuals to make reports et cetera in the circumstances set out in the Directive and now set out in our Act. We are able to bring people more tightly under control and we are able in this Parliament to require tax advisers who come across information that suggests that somebody is involved in terrorist activity, to make a report. I am raising the issue because although, of course, Gibraltar is a Finance Centre and as a result we give a lot of tax advice, I cannot think of any adviser in the Finance Centre who is giving tax advice, who might come across evidence that somebody that he is advising is involved in terrorist activity, who would not but jump and make a report. I raise that point because the Chief Minister may wish to consider it in the future. But this is perfectly proper transposition of the Directive as it is at the moment. But it is something that, perhaps, we may want as a Parliament to revisit later on.

HON CHIEF MINISTER:

Well, just two points. First of all, as he quite rightly points out, the fact that there is not a legal requirement to make a disclosure does not prohibit the making of a disclosure, and there is, it has to be recognised, a general climate/principle within the Government that says that normally Gibraltar transposes Directives giving itself the benefit of maximum leeway. In other words, unlike some countries that transpose their Directives on a sort of copper plated bottom basis. In other words, they gold plate it and then it is taken up the hill, we tend to apply the other principle, which is the principle adopted in

most EU Member States. That is, that we only transpose EU Directives that are compulsory, and where one has a choice, that is not compulsion. Where one has a choice not to do something that is not compulsion, and as a rule it is not transposed. But, of course, as a matter of domestic law and not by EU compulsion, we can pass in this House whatever legislation we like. Since most tax advisers tend to be lawyers in Gibraltar, I assume that the hon Member is not particularly suspicious of them in the context of terrorist financing.

HON F R PICARDO:

The lawyers have a specific exemption themselves and it is right that they should, because a lawyer may come across information relating to terrorist activity, not just in his capacity as tax adviser but in his capacity as the defence counsel of a terrorist, or somebody who is alleged to have committed offences relating to terrorism, and there must be privilege in those circumstances. But somebody who is in the other class, and this is a class on its own, tax adviser on its own, who comes across such evidence in my view should be compelled by this Parliament to make a disclosure, should have no discretion not to make one.

HON CHIEF MINISTER:

Yes, the hon Member may actually be raising inadvertently a different point. The hon Member has, I suspect inadvertently, but in any case I am grateful to him, alerted me to what might actually be a defect in the drafting of this, because the exemptions from (a) I think there is a problem here with the layout. In other words, the words at the bottom which are restricting of the exemption, "whether such information is received or obtained before, during or after such proceedings", I think as set out would apply only to (b). So in other words, lawyers appear to have a narrower exemption than notaries, independent legal professionals, auditors et cetera. "The information has been obtained on or received from one of their clients", it has all got to be read together. (a) is the list of persons, (b) is the extent, which is a limiting extent of the xxxxxx, if not in all circumstances.

HON F R PICARDO:

Just in proceedings then.

HON CHIEF MINISTER:

"The information has been obtained on or received from one of their clients (i) in the course of ascertaining the legal position for their client; or (ii) whilst performing the task of defending or representing that client in, or concerning judicial proceedings," including advisory……. "or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings". In other words, the whole of (b) including those two last lines, applies to the whole of (a). Even to the tax adviser, so it is a restricted, it is not an absolute, exemption. I think the idea of this is, what I remembered from reading the debate in the European Parliament at the time, that there was a very strong view……. There are some cases which are clear money laundering and other cases which may not be, and people are entitled to take legal advice as to whether their case comes within the scope of the law or it does not, without running the risk of having the whistle blown on them by the very person from whom they are taking that precautionary advice. It is also intended to protect the professional, whose advice is sought, who does not have to blow the whistle on every party to whom he gives advice. The party may be coming in perfectly good faith, "look I am doing this transaction, is it or is it not covered by the Directive?" There was a very strong view in the European Parliament that people should not be compromised in their ability to seek advice in the context of ascertaining what their

legal rights and obligations are. I think that is the context in which this provision needs to be read.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

COMMITTEE STAGE

HON D A FEETHAM:

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

1. The Criminal Justice (Amendment) Bill 2007;

2. The Terrorism (Amendment) Bill 2007.

THE CRIMINAL JUSTICE (AMENDMENT) BILL 2007

Clauses 1 to 5 – were agreed to and stood part of the Bill.

Clause 6

HON F R PICARDO:

In clause 6, which is amending clause 6(a)(iv), in the definition of "credit institution", I think that the draftsman has cut and pasted the definition of "credit institution" from the Directive and has in that exercise cut and pasted also the footnote that appears there, just before the comma in the sixth line the (1) is a footnote that has come into the text. I think we need to delete the "(1)".

HON CHIEF MINISTER:

Yes, but only the "(1)" not the language that follows it.

HON F R PICARDO:

Absolutely right. If the Chief Minister looks at the definition of "credit institution" in Article 3.1 of the Directive, which goes all the way to the word "community", it is fine that we should have that in here but we do not need the reference to the footnote. That is just a cross reference to the definition as it first appears in the Official Journal in another Directive.

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

Clauses 7 and 8 – were agreed to and stood part of the Bill.

Clause 9

HON CHIEF MINISTER:

In clause 9, at new section 10P, which relates to record keeping the hon Members will find at page 1317 there are a few amendments to do mainly with re-lettering. In subsection 2(a) for "10L(4)" substitute "10M(4)". In subsection (5), for section

"10N(1) (a "third party")", substitute section "10N(2)(a) or (b)". In subsection (6) for section "10N(1) (a "third party")", substitute section "10N(2)(c) or (d)" and after subsection (7) insert a new subsection (8) to read:

> "For the purposes of this section a person relies on another person when he does so in accordance with section 10N(1)."

HON C A BRUZON:

In this same section, in 10E where reference is made only to euros, I assume that is the case because that is the official European currency but what happens in countries like the UK or Gibraltar where Sterling is the official currency? I am not a lawyer, of course, and I speak as a layman in these matters but could there not be a loophole in the law if somebody is told that because the value of the chips being bought is more than 2,000 euros and Sterling is the currency in use. Would it not be wiser to add "or the equivalent in countries where euros is not the official currency"?

HON CHIEF MINISTER:

No, because it is phrased in terms of with a value of 2,000 euros. In other words, whether one pays for them in Sterling or anything else, they have a value of 2,000 euros. It means, I suppose in marginal cases, where it is 1,999 euros or 2,001 euros, one's guilt or innocence may depend on the precise rate of exchange at that moment in time. But with the exception of that there is no defect in the legislation. In the earlier bits of EU legislation, a Sterling equivalent had been put in which then constantly had to be changed, because the Directive requires the value to be 2,000 euros. If one puts a figure in Sterling, which we could do, we could now calculate what is 2,000 euros in Sterling, every time the exchange rate varied we might have to increase or decrease the amount of the Sterling figure involved, and that would simply be too cumbersome.

HON F R PICARDO:

By way of background, the Chief Minister may recall that the original Directive 91/308 was actually expressed in ECU, the old measure of currency for the Community and that was actually transposed into our law, as I recall we had to check constantly the rate. In 10K, still in clause 9, (1) a relevant financial business who proposes to have a business relationship, I think it actually is a relevant financial business which proposes to have a relevant business relationship.

HON CHIEF MINISTER:

Well, the hon Member is assuming that the list of relevant financial businesses applies only to legal persons. Of course, a relevant financial business can also be a natural person. I am not sure, therefore, that the point that he makes is right in all cases.

HON F R PICARDO:

Of course, the next clauses go on to deal with businesses which would not be individuals, because they talk about senior management in organisations.

HON CHIEF MINISTER:

Yes, but section 10K is politically exposed persons, it is one of the obligations relating to relevant financial business and it is an obligation that affects individuals as well. I accept that most businesses nowadays tend to be carried out by legal persons and not individuals, but there are still individual traders and

things of the like. So I do not think that that amendment is indicated.

HON F R PICARDO:

I think, this is really not an issue we should debate at length, but the elegance of our legislation concerns all of us just as much, I am sure. If I as an individual practitioner do business with a politically exposed person, I Fabian Picardo am a who but I am still exercising my financial business obligations, a business which makes a declaration, a business which makes a tax return, et cetera. I am a business "which", I am a person "who". I do not think it is one we should score points over, I just think it does not read right as "who".

HON CHIEF MINISTER:

I did not say that he was wrong. One way of getting over this would be to have neither "which" nor "who" but rather "that". A relevant financial business "that" proposes to have a business relationship.

HON F R PICARDO:

I will agree with that.

HON CHIEF MINISTER:

Well, if he agrees with that I agree with that.

MR SPEAKER:

Consentual politics.

HON C A BRUZON:

In 10G(7) where it speaks of euros again, would it not be better, following the Chief Minister's previous argument, to insert the word "value". A life insurance contract where the annual premium is no more than the value of, or the value and then the last phrase of no more than the value of 2,500 euros?

HON CHIEF MINISTER:

My point did not depend on the use of the word "value". The use of the word "value" certainly helps but it is not that if the word "value" is absent the same point does not remain good. It has got to be no more than 1,000 euros or where a single premium of no more than 2,500 euros is paid. The hon Member makes the point that if one pays in another currency one is not paying in euros and therefore one is outside of the law altogether. Well, I suppose a lawyer could take that point, whether it would be a good point or not. I have no objection in including it if the hon Members think that it adds a level of protection to the legislation. I do not want to sound unwilling to accept helpful amendments. I do not mind adding it. A life insurance contract with an annual premium is no more than. Actually, what I am going to do is not accept the hon Member's suggestion in this case without rejecting the reason why he gives it. If he is right then, of course, it is not just this legislation that it applies to but other legislation. We think that the Interpretation and General Clauses Act, or even the European Union Act, may have already been amended to include a provision with a deemed equivalent value clause. But if it has not, what I would like to do is think a little about the point the hon Member makes and if it is a good point we will deal with it at that level. In other words, we will put….. Yes, because otherwise we are going to have to have a formula that we put into every single piece of legislation. If there is an issue about whether legislation that says "euros" does not apply if one does the transaction in Turkish Lira, then ……. We cannot have a situation where the money laundering legislation only applies to transactions carried out in euros. I am not sure

that that is the effect of this, but if there is merit in flagging the point up and, for the avoidance of doubt, we decide that it should be saved, we would take that step in either the Interpretation and General Clauses Act or the EU Act, so that it covers all legislation past and future in which the same point may arise. Of course, if he is right, this is not the only legislation where it is going to arise. I am grateful to him for pointing it out and we will deal with it in another way.

HON F R PICARDO:

If it is helpful, the language that we are using is taken directly out of the Directive. In Article 10 of the Directive dealing with casinos, the reference is to a value of euro 2,000 or more. In Article 11.5.a, which is the premiums that we are referring to now, there is no reference to the value of, there is just a reference to the euro amount. So it may be that there are issues in the Directive itself, because not all the Member States have adopted the euro. There must be a mechanism in all the others where the Directive still binds.

HON CHIEF MINISTER:

We want to see how the UK and Denmark deal with this. Yes, I am just being reminded why in the case of the chips the word "value" is there. That is, of course, chips have no intrinsic face value. Chips are not worth 2,000 euros, they are bits of plastic that have a value of.

HON F R PICARDO:

They are I.O.U's.

HON CHIEF MINISTER:

Yes. But that does not derogate from the point that the hon Member has now made.

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

Clause 10 – was agreed to and stood part of the Bill.

Clause 11

HON CHIEF MINISTER:

In clause 11 in two places, page 1322, but if I can just make the argument and point out to the hon Member that it will apply also to the next clause so I do not have to repeat it. It just does not read, it reads, "the Minister may by Order published in the Gazette add, delete or amend the supervisory authorities", it just does not read. It is just for the purpose of the quality of the language that it should read "add to, delete from or amend the list of supervisory authorities". There is no substantive change, it just reads. Otherwise it reads "the Minister may by Order published in the Gazette add, delete or amend the supervisory authorities listed" and it just does not read well in English, that is all. It is the same point later when the Clerk calls the next clause.

Clause 11, as amended, stood part of the Bill.

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

Clause 13

HON CHIEF MINISTER:

Yes, here it is exactly the same point as in Clause 11. In section 20(6)(b), insert the word "to" after the word "add" and insert the word "from" after the word "debate".

Clause 13, as amended, stood part of the Bill.

Clause 14

HON CHIEF MINISTER:

In clause 14 which introduces this clause 20A(1), the reference to "10N" should read "10O".

Clause 14, as amended, stood part of the Bill.

Clauses 15 to 20 – were agreed to and stood part of the Bill.

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

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

THE TERRORISM (AMENDMENT) BILL 2007

Clauses 1 to 5 – were agreed to and stood part of the Bill.

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

THIRD READING

HON D A FEETHAM:

I have the honour to report that:

1. The Criminal Justice (Amendment) Bill 2007, with amendments;

2. The Terrorism (Amendment) Bill 2007,

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

Question put.

The Criminal Justice (Amendment) Bill 2007;
The Terrorism (Amendment) Bill 2007,

were agreed to and read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move, and in doing so I wish the hon Members a very Happy Christmas and a healthy New Year, that the House do now adjourn to Thursday 24th January 2008 at 2.30 p.m.

Question put. Agreed to.

MR SPEAKER:

With my own added Seasons Greetings to all the hon Members, to the Clerk and the Staff of this House and to your respective families. This House will now adjourn to Thursday 24th January 2008 at 2.30 p.m.

The adjournment of the House was taken at 11.50 a.m. on Friday 14th December 2007.

THURSDAY 24TH JANUARY 2008

The House resumed at 2.30 p.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development and Technology and Deputy Chief Minister
The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment, Traffic and Transport
The Hon F J Vinet – Minister for Housing
The Hon J J Netto – Minister for Family, Youth and Community Affairs
The Hon Mrs Y Del Agua – Minister for Health and Civil Protection
The Hon D A Feetham – Minister for Justice
The Hon L Montiel – Minister for Employment, Labour and Industrial Relations
The Hon C G Beltran – Minister for Education and Training
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

OPPOSITION:

The Hon J J Bossano – Leader of the Opposition
The Hon F R Picardo
The Hon Dr J J Garcia
The Hon G H Licudi
The Hon C A Bruzon
The Hon N F Costa
The Hon S E Linares

IN ATTENDANCE:

M L Farrell, Esq, RD – Clerk to the Parliament

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 a document on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table the Loan Agreement between the Government of Gibraltar and Barclays Bank PLC dated 20th December 2007.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) ACT 2007

HON J J NETTO:

I have the honour to move that a Bill for an Act to amend the Social Security (Closed Long-Term Benefits and Scheme) Act 1996 so as to make provision for use of former spouse's contributions and for a further right of election to pay arrears, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill seeks to make two amendments to the Social Security Closed Long-Term Benefits Scheme. The background to the further right of election to pay arrears is that prior to 6th January 1975, all employed persons who earned more than £500 per annum and self-employed persons were not liable to pay social insurance contributions, as from 6th January 1975 all such persons were required by law to become insured and pay social insurance contributions. Since those affected would most probably not have a complete contribution record when they reach pensionable age, provisions were made to allow them to pay the arrears of contributions at the rates from time to time in force, from the date they first became employed or self-employed until 5th January 1975. The provision to pay arrears of contributions also applied to those employed persons earning over £500 per annum, who opted to join the Social Insurance Scheme on 2nd July 1973 on a voluntary basis, but at the time did not take up the opportunity to pay their arrears of contribution. If passed, this amendment to the Act will be the fifth opportunity given by the GSD administration. In relation to the provision for the use of former spouse's contributions, it would be beneficial if I could briefly state what the current situation is and what is intended with the amendment to the Social Security Act. At present, a person may qualify for an old age pension based on his spouse's contribution record. When he or she reaches pensionable age their spouse is entitled to this benefit. However, as the law stands, a person whose marriage has been dissolved before he or she acquires entitlement to an old age pension, loses the right to claim this benefit on his or her former spouse's contribution record. The amendment to the Social Security (Closed Long-Term Benefit and Scheme) Act and the Social Security (Open Long-Term Benefits Scheme) Act, is intended to improve the position of divorced persons who have no right to a pension on their former spouse's contribution record, or are only entitled to a reduced pension on their own insurance record when they reach pensionable age. The amendments to section 7(b). The first amendment is essentially a re-enactment of the existing section 7(b), to allow those who opted out of making contributions under that Scheme a further opportunity to do so. An election to make such further contribution must be made by 1st June 2008. The new draft section 7(b) is in the same form as

the current section. Whereas the existing section gave a deadline of 22nd January 2005 for electing to make further contributions into the Closed Scheme, the Bill proposes a further deadline of until 1st June 2008. The deadline will allow sufficient time for the House to consider the Bill, and thereafter for those affected to decide whether to make contributions. The amendments only apply to those who fulfil the conditions in sub-clauses (1) and (2) of the proposed new section 7(b). In relation to the new section 12A, the second amendment represents an innovation. This Bill, if passed, will improve the position of current and future pensioners who are divorced and did not make social security contributions throughout the period of their marriage. As is inevitably the case with social security legislation, the formula for calculating the enhanced benefit is complicated, but I will try to explain this as easily as possible. Divorced pensioners may opt to have their pensions calculated by treating their ex-spouse's contributions during the period of the marriage as their own, albeit at half the standard rates. This will not affect the entitlement of the ex-spouse. The measure will apply regardless of sex, although its benefit will be felt mostly by those women who stayed at home to raise their children but have since divorced. As it is an innovation of importance to many in Gibraltar, it may assist if I go through the sub-clauses to explain the Scheme of the proposed provisions.

Sub-clause 1, this sets out the general scope of the new section. It applies to those persons whose marriages were terminated otherwise than by way of death. This includes those whose marriages were annulled. It defines them as the beneficiary. In sub-clause 2, the provision applies where the beneficiary does not qualify for the standard rate of the old age pension. The provision relates to the contributions made during the period of the marriage. The beneficiary may continue to have their pension calculated on their own insurance record, or they may elect to have it calculated by reference to those made by their ex-spouse during that period. It is an either or choice in respect of the entirety of contributions made during the period of the marriage, as will be made clear in sub-clause (6). In sub-clause 3, that defines the standard rate of the old age pensions. In sub-clause 4, that defines the beneficiaries, relevant contributions and the former spouse's relevant contributions. This provision makes clear that the contributions in issue, whoever made them, are in respect of the entire period of the marriage. The reference to "partly" within the period of the marriage means contributions for the year when the marriage started and ended. In sub-clause 5, this credits the former spouse's contributions to the beneficiary. In sub-clause 6, this adds together the contributions made by the beneficiary, excluding those falling wholly or partly within the period of the marriage, and those made by the ex-spouse including those made wholly or partly within the period of the marriage. This makes it clear that there can be no overlap. As I said earlier, it is an either or choice. The yearly average is the key part of calculating social security entitlement as is calculated on the basis of this total. In sub-clause 7, we then calculate a theoretical rate. This is the amount that the beneficiary would receive under normal principles on the basis of the total of her contributions and her ex-spouse's combined. However, insofar as the pension relates to the ex-spouse's contribution, it is to be only a half pension. This is only the theoretical rate as there is an adjustment to follow in sub-clause 8. In sub-clause 8, these provisions adjust the rate of pension so that only a half pension is paid in respect to the ex-spouse's contribution. We do this by first multiplying the theoretical rate by the proportion of it that is attributable to contributions actually made by the beneficiary. We then multiply the theoretical rate by the proportion attributable to the ex-spouse's contribution but divided in two, as only a half pension is payable in respect to those contributions. We then add the two together. In sub-clause 9, this legislation only applies in respect of the last marriage. In sub-clause 10, this makes it clear that if the legislation applies in respect of annulled marriages, and in sub-clause 11 it is the commencement. There is a minor amendment to the Bill as published by way of an erratum. In the proposed section 12A the cross reference in sub-clause (7) to the yearly average should be to sub-clause (6) and not to sub-clause (8). I would like to take this opportunity to give my personal thanks to my predecessor, the Hon Yvette Del Agua, and to all of my staff at

the Social Security Department for the hard work both in the formulation of the scheme and for the many hours work in reviewing the many applications received. I commend the Bill to the House.

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

HON N F COSTA:

I would like to take the opportunity to inform the Minister that the Opposition will be supporting the Bill. But I would also like to take the opportunity to seek a point of clarification from the Minister. That relates to the clauses in the Bill that state that persons will not be able to claim benefit in respect of any period prior to 1st July 2007. So, the query is, how have Government arrived at the figure of 1st July 2007? Why are people not entitled to claim this benefit as from the date they reach pensionable age?

HON J J BOSSANO:

I would also like to have something clarified. Am I correct in the explanation that has been given, that in fact, the spouse's contributions which are counted in a subsequent marriage, will in fact be counted twice then. For the divorced wife and for the current wife, is that the correct interpretation of what the Minister has said?

HON CHIEF MINISTER:

There is no provision in the Bill that prevents people from claiming in respect of a period before 1st July, except in the retrospective sense. In other words, the Government have introduced this from the date that we announced it as a policy in the Budget. This is the relevance of 1st July, it is the commencement date of the Budget provisions. But of course, the periods in respect of which one can claim credit go before 1st July. In other words, if somebody reaches pensionable age who divorced in 2005 or 2004, or 2003, that period is relevant. But there may already be people who are pensioners already in that situation. There may be a man or a woman who is already a pensioner, who got divorced several years or decades ago. They cannot claim retrospection of payments although the periods reckon as of 1st January. In other words, there is retrospection of reckonability for payments from now on but one cannot say, ah thank you very much, well I have been a pensioner for the last ten years, I therefore want ten years worth of retrospective payments on the basis of my ex-husband's contribution. So that is the position in respect of that. It does not count twice. In other words, a beneficiary who is most typically a woman who has divorced from her husband, can aggregate, can either get a pension based, if she has never had contributions of her own…….

HON J J BOSSANO:

That is not the question. The question is, given that at the moment a person that has divorced and remarried has his contributions as a married person counted, including the period when he was formerly married to somebody else, it therefore means that for that period when he was married to somebody else, which is now going to be counted for the first wife, it is already being counted for the second wife. Is that correct?

HON CHIEF MINISTER:

Yes, the beneficiary, in other words, the person seeking to benefit from the previous spouse's contribution, can aggregate her own contributions in respect of which a period……. No, I have understood the question, now let me answer it. She cannot claim credit in respect of her previous spouse's contribution in respect of a period in which she has her own

contributions. Then the question is not relevant to the Bill. Put it again.

HON J J BOSSANO:

My question, which I will now repeat for a fourth time, is in the light of the explanation given by the Minister, from what I know of social insurance elsewhere, the position is that when there is a situation where a contributor is married more than once, then the time that the person was married to one person counts towards the benefit of that person and then the time that person is married to someone else, counts towards the benefit of that second person. My understanding is that we are not doing that in this Bill here in the House, which is the standard system that exists elsewhere. What we are doing is that somebody who is a pensioner today, under the existing law, all the years of contributions count toward the spouse's pension based on the husband's contribution. Not just for the period of the marriage but throughout, so if it is somebody who gets a full pension, gets a married couples rate but the wife does not have to have been married with him from day one. Therefore, my question is, am I correct from this explanation that has been given of the way we are doing it here, that in fact, somebody that 20 years ago was married to somebody who subsequently divorced and consequently does not get the benefit of the husband's contribution because of the divorce, those husband's contributions have been paying a spouse's pension for somebody else, in the case of a second marriage. What we are going to be doing here is, that because we are allowing the first wife to claim this benefit retrospectively, even though it has been counted already for the pension of somebody else. In fact, the years of a person that is married and divorced and remarried get counted twice if he is married twice, and presumably, more than twice if he is married more. That is the correct interpretation.

HON CHIEF MINISTER:

Yes, of course. If the contributor marries again, there is a period in respect of which that man's one contribution will subsidise the pension paid to two women, his previous wife and his current wife. Yes. But there was a third point. There was, not able to claim before 1st July; counted twice, and I then put here, no backed, but I cannot remember what the point was.

HON J J BOSSANO:

Why it was retrospective to 1st July and not retrospective further back?

HON CHIEF MINISTER:

I see. Can I just say for the avoidance of doubt, when he stood up to repeat his question for what he said was a fourth time, which was actually the third and not the fourth, he said that he was speaking of the case of a woman who is a pensioner today. Let us be clear, this legislation does not apply only to people who are pensioners today. It also applies to people who become pensioners in the future. I just say that, I am not suggesting that he meant differently.

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 SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) (AMENDMENT) ACT 2007

HON J J NETTO:

I have the honour to move that a Bill for an Act to amend the Social Security (Open Long-Term Benefits Scheme) Act so as to make provision for use of a former spouse's contributions, 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, rather than make a repetition of my previous speech on the issue of the provision of the use of a former spouse's contributions, given that both things are identical, could it be taken as recorded in Hansard and thus save everyone from having to listen to the same sort speech I gave in the second reading of the previous Bill? 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 MEDICAL (GROUP PRACTICE SCHEME) (AMENDMENT) ACT 2007

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Act to amend the Medical (Group Practice Scheme) Act, be read a first time.

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, Part 3 of the Act currently deals with the Scheme Pharmacists Board and provides for, inter alia, the appointment of the Board and the procedure it must follow. The Government has taken a policy decision to do away with the concept of a Scheme Pharmacists Board to which pharmacies that wish to join the Scheme must apply. The Government is of the view that membership of the Scheme cannot continue being a closed shop. At present, a person who wants to open a pharmacy must (1) obtain a trade licence; and (2) apply to the Scheme Pharmacists Board to become a Scheme Member, in order to be able to dispense prescriptions issued under the Scheme. Therefore, a situation can arise whereby an applicant who satisfies the requirements and criteria of the Trade Licensing Authority, is granted a trade licence and proceeds to invest money in opening a new pharmacy, may find himself not being able to dispense prescriptions issued under the Scheme, because the Scheme Pharmacists Board may reject the application. It is the Government's view that if there is any justification in limiting the number of pharmacies in Gibraltar, this should be done at the time of registration and not when applying to become a Scheme member. The Government has decided to introduce a new regime, whereby a pharmacy registered in Gibraltar would be allowed to participate in the Scheme,

provided it complies with the requirements of new regulations being drafted. Mr Speaker, the first step in implementing this new regime is to replace the current Part 3 of the Act with a new Part 3 set out in the Bill. The new Part 3 gives the Minister the power to make regulations providing for Scheme pharmacists, and provides for all those things set out in paragraphs (a) to (h) in the new section 11. The second step will be to replace the current Medical Group Practice Scheme (Pharmaceutical Services) Regulations with new regulations, which will set out the standards and requirements pharmacies need to meet to participate in this Scheme. Finally, I would like to give notice that at Committee Stage I propose to move an amendment to clause 1 of the Bill, the reference to "2007" should be replaced with "2008". I commend the Bill to the House.

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

HON J J BOSSANO:

I would like some clarification as to whether this will affect the agreement that there is between the pharmacies and the Government, in terms of pay for the prescriptions. That is to say, as I recall, one of the arguments about limiting the number was that the pharmacies argued that if there was going to be more competition and more people sharing the health service prescription cake, then the cake would have to be bigger. Is that still a problem or has that problem been overcome?

HON MRS Y DEL AGUA:

No, the Bill that amends the actual Act does not affect what the hon Member has just described, and nor will the regulations that will be made under the Act.

HON J J BOSSANO:

My question is, given that the purpose of the exercise, as has been explained by the Minister, is that instead of there being a fixed number of participants in dispensing health service prescriptions, as I recall the argument about the fixed number, was that in the negotiation between the Government and the dispensing chemists, a fixed number was arrived at on the basis of the amount of money that would be available as a result of the prescription charges in the health service budget. Certainly, on more than one occasion the argument was used that if more people were allowed to share in that market, then the margins would have to be increased. I am asking whether that is something that has been a factor in this in terms of ….. Does it mean that the Government will now have to provide more money because there are going to be more?

HON MRS Y DEL AGUA:

No, that is not the case.

HON CHIEF MINISTER:

I think implicit in the philosophy of this legislation is the fact that one statutory tribunal, the Trade Licensing Tribunal, says "yes you can have a trade licence to be a pharmacy", thereby declaring that the needs of the community are not already satisfied. So somebody relying on that licence sets up a pharmacy, goes to the expenditure and then applies to another statutory tribunal to participate in the Group Practice Medical Scheme to dispense Health Centre prescriptions, and gets told by that other Board that he cannot be a member of the Group Scheme because the needs of the community are already satisfied. Well, it is just a nonsense, so the Government wants to look at that altogether and that really is, not that there is any need to have added that to the explanation that the Minister made, but it is just highlighting the point.

Question put. Agreed to.

The Bill was read a second time.

HON MRS Y DEL AGUA:

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

Question put. Agreed to.

THE COURT OF APPEAL (AMENDMENT) ACT 2007

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to amend the Court of Appeal Act, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill is consequential on the fact that the Governor no longer acts in his own discretion in relation to matters to do with the appointment of the Judiciary, and now has to act in accordance with the advice of the Judicial Service Commission. Clause 2 of the Bill, amends section 7 of the present Court of Appeal Act. Section 7 currently reads: "the Governor may appoint a Registrar and such other officers as may from time to time appear necessary for the administration of the Court of Appeal." The new section 7 will read: "the Governor, acting on the advice of the Judicial Service Commission, may appoint a Registrar of the Court of Appeal." Finally, I would like to give notice that at Committee Stage I propose to move an amendment. In clause 1 of the Bill, the reference to "2007" should be replaced with a reference to "2008". 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 D A FEETHAM:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2007;

2. The Social Security (Open Long-Term Benefits Scheme) (Amendment) Bill 2007;

3. The Medical (Group Practice Scheme) (Amendment) Bill 2007;

4. The Court of Appeal (Amendment) Bill 2007.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) BILL 2007

Clause 1

HON J J NETTO:

Mr Chairman, as I have indicated in my letter which I circulated, in clause 1 the first reference to "2007" should be replaced with "2008".

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

Clause 2

HON J J NETTO:

In relation to clause 2(3) which inserts a new section 12A of the Act, which is subsection (7), is amended by deleting "(8)" and replacing it with "(6)".

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 SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) (AMENDMENT) BILL 2007

Clause 1

HON J J NETTO:

Once again, as indicated in my letter, in clause 1 the first reference to "2007" shall be replaced with "2008".

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

Clause 2

HON J J NETTO:

Once again, in clause 2 which inserts a new section 18A to the Act, subsection (7) is amended by deleting "(8)" and replacing it with "(6)".

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 MEDICAL (GROUP PRACTICE SCHEME) (AMENDMENT) BILL 2007

Clause 1

HON MRS Y DEL AGUA:

In this clause the reference to "2007" should be replaced with "2008".

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 COURT OF APPEAL (AMENDMENT) BILL 2007

Clause 1

HON D A FEETHAM:

I move to amend in clause 1 so that "2007" should be amended to read "2008".

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.

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2007, with amendments;

2. The Social Security (Open Long-Term Benefits Scheme) (Amendment) Bill 2007, with amendments;

3. The Medical (Group Practice Scheme) (Amendment) Bill 2007, with an amendment;

4. The Court of Appeal (Amendment) Bill 2007, with an amendment,

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

Question put.

The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2007;

The Social Security (Open Long-Term Benefits Scheme) (Amendment) Bill 2007;

The Medical (Group Practice Scheme) (Amendment) Bill 2007;

The Court of Appeal (Amendment) Bill 2007,

were agreed to and read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

Mr Speaker, despite the presence in the Order Paper of a fifth Bill, I have the honour to move that the House do now adjourn sine die.

Question put. Agreed to.

The adjournment of the House sine die was taken at 3.15 p.m. on Thursday 24th January 2008.