

**REPORT OF THE PROCEEDINGS OF THE GIBRALTAR  
PARLIAMENT**

The Fourth Meeting of the Eleventh Parliament held in the Parliament Chamber on Thursday 18<sup>th</sup> September, 2008, 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,  
Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
Environment and Tourism  
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 3<sup>rd</sup> April 2008, were taken as read, approved and signed by Mr Speaker.

**DOCUMENTS LAID**

**HON CHIEF MINISTER:**

I have the honour to lay on the Table:

1. The Annual Report of the Gibraltar Police Authority for the year ended 31<sup>st</sup> March 2008;
2. The Audited Accounts of the Gibraltar Regulatory Authority for the year ended 31<sup>st</sup> March 2008; and
3. The Consolidated Fund Supplementary Funding – Statement No. 4 of 2007/2008.

Ordered to lie.

## **ORAL ANSWERS TO QUESTIONS**

The House recessed at 1.30 p.m.

The House resumed at 3.00 p.m.

Oral Answers to Questions continued.

## **ADJOURNMENT**

### **HON LT-COL E M BRITTO:**

I have the honour to move that this House do now adjourn to Wednesday 24<sup>th</sup> September 2008 at 9.30 a.m.

Question proposed.

### **HON F R PICARDO:**

I would just like to inform the House before this matter goes to a vote that I understand the Leader of the Opposition has written to Mr Speaker informing him that he will not be returning to Gibraltar until Thursday 25<sup>th</sup> September, because he will be attending the Labour Party Conference in the United Kingdom. I think it is proper that the House should be aware of that generally before it votes on the adjournment.

### **MR SPEAKER:**

Well, that is what the motion before me is. If the Leader of the Opposition is not able to put his own questions, I will permit somebody else.

### **HON LT-COL E M BRITTO:**

If I may, the Chief Minister is also attending the Labour Party Conference and will be back in Gibraltar in time to attend Parliament.

### **HON F R PICARDO:**

If I may just also put on the record, because obviously that is a matter of information for which I am grateful to the Minister for, the Chief Minister will be attending the Government reception on the night of Sunday 21<sup>st</sup> September at the Labour Party Conference, he will return to Gibraltar, as I understand it, on Monday. The Labour Party Conference does not end on Monday, it will not end in fact until the Wednesday. That is why anybody attending the Labour Party Conference would not be back in Gibraltar until the Thursday.

### **HON LT-COL E M BRITTO:**

I do not want to confuse the issue but I think the hon Member across the way is doing exactly that. The Chief Minister is attending the Party Conference and as a matter of attending the Party Conference is hosting a reception. He is not going to the UK to host a reception, he is going to attend and to host a reception. Attendance at the Conference, as the hon Member well knows, does not mean being there from day one to the last day. Some people prefer to do that and if the Leader of the Opposition prefers to do that, I mean I was not aware but I mean that is his choice and that is his prerogative. All I am saying is that the Chief Minister will be attending the Conference but has prioritised Parliament as being more important.

**HON F R PICARDO:**

I do not want to enter into a debate with the Minister on the motion about whether or not one should attend one, two, three or four days of the Party Conference. That is a matter for the Chief Minister, if he is going to attend for the Government, for the GSD, and for the Leader of the Opposition who is attending for the GSLP. What I did have to do, and I think it proper to do, was inform the public generally that the Leader of the Opposition would not be here on that day, and had informed the Chair of that already.

**MR SPEAKER:**

I do take that on board. Well again as the hon Member knows, I have no say in the fixing of the dates. I can only act as a conduit of information given that it is for the Government to decide how to conduct its business and I, as a servant of the House, have to make myself available and I will do so. Insofar as I have a discretion, I will allow the questions of which the Leader of the Opposition has given notice to be posed by any other Member in his stead on the day.

Question put.           The House voted.

For the Ayes:           The Hon C G Beltran  
                          The Hon Lt-Col E M Britto  
                          The Hon Mrs Y Del Agua  
                          The Hon D A Feetham  
                          The Hon L Montiel  
                          The Hon E J Reyes  
                          The Hon F J Vinet

For the Noes:           The Hon C A Bruzon  
                          The Hon N F Costa  
                          The Hon Dr J J Garcia  
                          The Hon G H Licudi  
                          The Hon S E Linares

The Hon F R Picardo

Absent from the Chamber:   The Hon P R Caruana  
                                  The Hon J J Holliday  
                                  The Hon J J Netto  
                                  The Hon J J Bossano

The motion was carried.

The adjournment of the House was taken at 6.45 p.m. on Thursday 18<sup>th</sup> September 2008.

**WEDNESDAY 24<sup>TH</sup> SEPTEMBER 2008**

The House resumed at 9.30 a.m.

**PRESENT:**

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

**GOVERNMENT:**

The Hon J J Holliday – Minister for Enterprise, Development,  
                                  Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
                                  Environment and Tourism  
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 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 P R Caruana QC – Chief Minister  
The Hon J J Bossano – Leader of the Opposition

**IN ATTENDANCE:**

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

**ORAL ANSWERS TO QUESTIONS (CONTINUED)**

**ADJOURNMENT**

**HON J J HOLLIDAY:**

I have the honour to move that this House do now adjourn to Thursday 25<sup>th</sup> September 2008, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 11.30 a.m. on Wednesday 24<sup>th</sup> September 2008.

**THURSDAY 25<sup>TH</sup> SEPTEMBER 2008**

The House resumed at 9.30 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, Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment and Tourism  
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

**ORAL ANSWERS TO QUESTIONS (CONTINUED)**

**WRITTEN ANSWERS TO QUESTIONS**

The Hon the Chief Minister tabled the questions asked for written answer submitted by the Hon F R Picardo and the Hon N F Costa.

**BILLS**

**FIRST AND SECOND READINGS**

**THE CREMATORIA ACT 2008**

**HON LT-COL E M BRITTO:**

I have the honour to move that a Bill for an Act to make provision for the management and operation of crematoria and for the regulation of cremations of human remains in Gibraltar, be read a first time.

Question put.

Agreed to.

**ADJOURNMENT**

**HON CHIEF MINISTER:**

I have the honour to move that this House do now adjourn to Wednesday 22<sup>nd</sup> October 2008, at 2.30 p.m.

Question put.

Agreed to.

The adjournment of the House was taken at 3.10 p.m. on Thursday 25<sup>th</sup> September 2008.

**WEDNESDAY 22<sup>ND</sup> OCTOBER 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,  
Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
Environment and Tourism  
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

**COMMUNICATIONS FROM THE CHAIR**

**MR SPEAKER:**

There are a number of persons outside in the precincts of this House, who are impeding the access of hon Members to this House. I myself experienced certain difficulty, the Clerk, I know, has been attempting to have the access to this House cleared. There is a ruling from my predecessor but one, the Hon Sir Robert Peliza, about the definition of precincts of the House, that ruling has not been complied with by the demonstrators outside, the Police authorities have not yet secured compliance with that

ruling. While demonstrators in the free society that we are, have every right to express their views, but they must be done in accordance with the parliamentary practices and the law, and it is my duty to uphold parliamentary practices, therefore this House will recess until the access to Parliament House is completely unobstructed. I hope this should not take more than ten minutes.

The House recessed at 2.35 p.m.

The House resumed at 3.00 p.m.

**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 Income Tax legislation on the Table.

Question put.                      Agreed to.

**DOCUMENTS LAID**

**HON CHIEF MINISTER:**

I have the honour to lay on the Table:

1. The Income Tax (Allowances, Deductions and Exemptions) (Amendment) Rules 2008;
2. The Income Tax (Deduction of Approved Expenditure on Premises in Tax Deductible Property Zone) (Amendment) Rules 2008;

3. The Home Purchase (Deductions) (Amendment) Rules 2008;
4. The Home Purchase (Special Deduction) (Amendment) Rules 2008;
5. The Rates of Tax (Amendment) Rules 2008.

Ordered to lie.

#### **STATEMENT BY THE HON S E LINARES**

#### **MR SPEAKER:**

The Hon Steven Linares sought my leave to make a statement arising from an exchange during the last Question Time. I have read his statement and I have given him leave to make that statement.

#### **HON S E LINARES:**

Thank you Mr Speaker. In relation to Question No. 424 of 2008, I would just like to make a short statement to put the record straight. In Question No. 424 of 2008 and in relation to rehabilitation, I stated that the answer the Minister then gave me was that there were none, no programmes and no educational courses. What the Minister actually said in answer to Question No. 155 of 2007, and the question referred specifically to juveniles sentenced, was that rehabilitation programmes are only considered appropriate and beneficial for offenders who are given lengthy prison sentences. I, therefore, and without Hansard in front of me, inferred from the answer that there were no programmes and no educational courses available generally. It is not my style to purposefully mislead this House, and since I do not consider myself infallible like other people do, I just wanted to make this statement to put the record straight.

## **BILLS**

### **FIRST AND SECOND READINGS**

#### **THE POLICE (AMENDMENT) ACT 2008**

#### **HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to amend the Police Act 2006, be read a first time.

Question put.                      Agreed to.

#### **SECOND READING**

#### **HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, the reasons for this Bill are that uncertainty entered into the minds of GSP officers as to whether they were, in fact, statutorily covered both with powers and the protection of statutes afforded to police officers whilst on the execution of their duty, whilst they were operating outside the MOD estate in support of the RGP. In the Police Ordinance, as it then was, Act as it is now called, before we introduced the new one in 2006, that contained the language that the present Police Act contains. In other words, no change of language was introduced from the old Police Act to the new Police Act. It was after that time that the GSP took up this issue about whether they were certain of statutory protection or cover or not. Before the new Constitution, when the Police Act referred to Governor in place of where it now does not, the Governor used to issue an annual certificate of some sort that was thought to cover the GSP in these circumstances. It is at least arguable that, in fact, it had no such effect. The purpose of this amendment is simply to recast section 78, which is the text in question, to make it clear

beyond peradventure that in the circumstances therein set out now, rather than before, before the new Constitution it would have been in whatever circumstances the Governor's certificate covered, which were xxxxxx, it was just a certificate of general application. So, section 78 is to be amended by this Bill so that it is clear that a GSP officer is deemed to be on duty, and that is the key concept in terms of invoking the protections of the Police Act, that a GSP officer is on duty in the circumstances listed in subsection (3)(i), (ii) and (iii) listed on either side of the pages of this Bill. Namely, firstly, when carrying out their lawful duties in relation to such areas of Gibraltar as are in possession, in the possession and under the control of the Ministry of Defence. In other words, when they are doing their primary function, which is to police the MOD estate. Secondly, when acting in support of the force, which is the term which in the Police Act means Royal Gibraltar Police Force, at the request of the Commissioner of Police. So whenever the Commissioner of Police requests the assistance of the GSP, outside the MOD estate, then those GSP officers that respond in support of the request of the Commissioner of Police, obtain the same statutory powers and statutory protection by virtue of our Police Act as RGP police officers do. Thirdly, in such other circumstances as may be prescribed by the Government in regulations. In case that there are any circumstances not covered by (i) and (ii), in which it is thought desirable or indeed necessary that GSP officers need the cover of statutory powers, and that they can be put into place through that mechanism. This Bill has been consulted with all interested parties, including the GSP Staff Association, and everyone has agreed that it does the trick of what is the concern that the Government was requested to address through such legislation. I therefore commend the Bill to the House.

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

**HON J J BOSSANO:**

To the extent that what this is doing is removing uncertainty and simply clarifying what has always been intended, clearly we have no problem with that and we will support it. One thing that I am not just very clear about is what is being removed, because it seems to me that what is being removed is something totally different from the explanation we are being given about what is being introduced, in the sense that the words that are being removed, which is "or for the security of which", that is an area for the security of which the Ministry of Defence has with the agreement of the Government assumed responsibility. Now, that suggests that in the existing law as it stands, there is provision for the Government, if it chooses, to ask the MOD to resume the responsibility of a particular territory, or a particular area, piece of land or whatever. That is now being removed and that does not seem to be the same kind of situation as the one we are making provision for, which is clarifying what is already intended to be the law. I do not recall any Government of Gibraltar ever asking the MOD to assume responsibility for the security of any part of Gibraltar, but I do not see why we are removing something which, in any case, cannot happen unless the Government of the day has a particular reason for needing the assistance of the MOD.

**HON CHIEF MINISTER:**

The hon Member has just more graphically described what I perhaps did in too much shorthand, which is the deficiency of the original. Subsection (2), as it originally stood, was the one that was thought to allow the Governor to issue a certificate which would empower GSP officers to support the RGP outside of the MOD estate. It was the realisation, I think initially by the GSP Staff Association on behalf of their members, who first came to the conclusion that for the very reasons that the hon Member has just said, that they did not think that this section gave the Governor vires. This section in these words simply did not mean that the Governor could sign a bit of paper providing



statutory cover for GSP officers when they are outside the MOD estate, precisely because of the reasons that the hon Member has just given. That it talks about security of areas of Gibraltar which was the agreement of the Government of Gibraltar with the MOD, but that is not the circumstance in which the certificates were being issued annually. This actually came to our attention when after the Constitution and after we amended the Police Act, this Governor was changed to Government. I entirely understand what the section was being used for at the time. So, I do not remember in 2006, so the next time that the Governor's annual certificate came to be renewed they could not send it to the Governor any more because it said "Government" now. So when the certificate was placed in front of me, I said, well under what section am I signing this? Then it was when we first understood ourselves why the GSP Association were saying to the MOD internally, and to the Deputy Governor before the new Constitution, look, we think that there is something iffy about the question of whether we have statutory protection and statutory cover for the exercise of our powers. It was in those circumstances, in response both to the view of the GSP Association who were expressing concern that they thought they did not have enough cover, coupled with our realisation when we were invited to sign the first certificate, that we came to the conclusion that really the language of the old subsection (2) did not cover, did not provide for the situation which was required. I think everybody eventually agreed with that, the Attorney General, the MOD itself, and this section is simply therefore trying to put into explicit words the purpose for which subsection (2) was being used before, even though it is, to put it at its most generously arguable, that subsection (2) could not have been used before for the purpose for which it was in fact being put. That is all that this section is doing.

Question put.           Agreed to.

The Bill was read a second time.

#### **HON CHIEF MINISTER:**

I have the honour to move that the Committee Stage and Third Reading of the Bill be taken later today.

Question put.           Agreed to.

#### **THE CREMATORIA ACT 2008**

#### **SECOND READING**

#### **HON LT-COL E M BRITTO:**

I have the honour to move that the Bill now be read a second time. Mr Speaker, the Bill before this Parliament contains five parts. Part I is straightforward and its two clauses provide for administrative matters, such as Title, Commencement and Interpretation of the Bill. With respect to clause 2, I should point out that at Committee Stage I shall be moving an amendment to clause 2, so that the current definition of "cremated human remains" is replaced by a definition of "human remains". This definition will be adopted throughout the Bill so as to make the Bill clearer. It should be noted that the new definition regards human remains to consist of a corpse or a still-born, and it is the cremation of these that will be regulated by this Act. Part 2 of the Bill provides a licensing regime for crematoria. An applicant for a licence to operate a crematorium must provide details relating to the site and the building. In addition, an approved engineer must certify that the building has been constructed in accordance with the plans and that after tests have been effected, he must certify that both local and EU legal requirements have been met. Clause 3 of the Bill further requires an applicant to provide details of its corporate ownership structure, and provides for the payment of a fee. The grant of a licence is discretionary and may be granted subject to conditions. Clause 3(3) sets out a non-exhaustive list of conditions which may be attached. These may include conditions regarding the monitoring of emissions and the types

of fuel that may be used, the material that may be used for caskets and the training requirements for staff. Clause 4 sets out further conditions that are of general application to operators of crematoria, and includes the need for approval for the use of appliances not covered by the existing licence. Clause 5 relates to the record keeping requirements that must be met by operators, and includes provision for the retention of records where the operator ceases cremating. Clause 6 relates to the interment of cremated human remains and whilst these may be interred in a public cemetery, it also acknowledges that interment is optional. Part 3 of the Bill sets out the procedure for the obtention of permission for a cremation. Applications have to be made to the Registrar of Births and Deaths under clause 9. Clause 9(2), sets out who may make an application, namely, (a) the executor or nearest surviving relative of the deceased, or a person duly authorised thereby; or (b) any person giving sufficient reason as to why the application is not made by a person referred to in paragraph (a) or the paragraph I have just read, the previous paragraph. Clause 9(3) requires that an application for cremation be accompanied by confirmation that there is no impediment to cremation. This confirmation will be evidenced by the certificate of a medical practitioner, the Coroner or the relevant overseas authorities as the case may be. Part 3 further provides for the necessary offences in connection with the application for cremation authorisation. Part 4 of the Bill permits the Registrar of Births and Deaths to apply for a court order permitting the cremation and subsequent interment of the remains in a public cemetery, of persons having no next of kin or whose next of kin have not assumed responsibility over the deceased. Under clause 20(1), no order will be issued where any of the following circumstances arise. (1) That the cremation was contrary to the wishes or religious beliefs of the deceased person, or that it is not practicable for the bodily remains to be cremated. At this point, I would point out that at Committee Stage I shall be moving an amendment to delete clause 20(1)(a), to clarify that a deceased person may be cremated unless there is evidence that that person did not wish to be cremated or that such an act would have been contrary to the deceased's religious beliefs. Part 5 of the Bill is entitled

“enforcement”, and clauses 21 through to 35 provide for the powers of entry, search and the retention of documents related to cremations. These powers will extend to persons whom the Minister has appointed under clause 21 and who will be issued with appropriate identity cards under clause 22. Mr Speaker, a number of offences are created. For example, under clause 30, refusal to comply with the requirement of an authorised officer. Under clause 31, hindering or obstructing an authorised officer. Clause 32, giving false or misleading information to an authorised officer. Clause 33, cremating or arranging for the cremation of falsely identified bodily remains. Clause 34, offences to dispose of falsely identified human remains. Clause 35, offences by bodies corporate. These are necessary for the due administration of the provisions of the Bill. At the Committee Stage I shall be moving amendments for the insertion of a new Part heading after clause 35, entitled “Part VI Miscellaneous”, and for a new clause 37. Clause 36 is a regulation making power which vests in the Minister. Clause 37, relates to the ashes of a deceased and this clause provides for the applicant for a cremation to indicate whether he wishes to keep these. In circumstances where the applicant does not wish to keep the ashes, the Registrar of Births and Deaths has two options. If the wishes of the deceased are known to him and if it is reasonable for him to comply with these, the Registrar will dispose of the ashes in accordance with the wishes of the deceased. In other cases, the Registrar may arrange for the interment of the ashes in a public cemetery. I have already given notice of one amendment and this notice has been circulated, and I will shortly be circulating a notice of further amendments. I have mentioned some of them just now and they are in total, if I have not miscounted, something like 25 different amendments. Together with the amendments, I will be circulating a marked up copy of the Bill to make it easier for Members on both sides of the House to follow these amendments. Mr Speaker, in order to give Opposition Members more time to study these large number of amendments, the Committee Stage and Third Reading of the Bill will not be taken today. I commend the Bill to the House.

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

**HON F R PICARDO:**

I am grateful for the Minister having indicated that we are going to have a little longer to consider the letter of the amendments that are to be moved. I note that from my understanding of what he has told us across the floor of the House, which is not the amendment of which notice has been given yet, that the definition of “cremated human remains” is to be changed and become the definition of “human remains”. I am trying cursorily to understand what that would do to the Bill, without having the opportunity of reading the marked up version, it may be this issue is dealt with there. I think it could give rise to some confusion which I am sure the Minister has considered and perhaps he can address. For example, in section 5 there is a reference to “the deceased” on a number of occasions at 5(1)(a), 5(1)(d). Then 5(1)(f) makes a reference to “cremated remains” rather than “cremated human remains”, and there is no definition of “cremated remains”. Maybe that is an error that needed to be rectified in any event, and that should have been “cremated human remains” to become now “human remains”. There is a reference in section 12 to “bodily remains”. My concern is that, of course, definitions are there to assist the person who is reading the Bill and this is an issue that goes just to the clarity of the legislation. With the words “cremated human remains”, when one is reading the Bill, one understands when reading a reference to that, that one is dealing with the remains post the process of cremation. When reading the words “human remains” that does not necessarily convey that moment of the post cremation and there could then be a misinterpretation between the words “the deceased”, “bodily remains” and “human remains”, none of which obviously refer to post cremation remains as they do now. Now that is why I think that the definition here, as it was, actually works quite well because it conjures in the mind of the person reading, immediately, when dealing with post cremation remains and when dealing with pre

cremation remains. I also note that the definition of “cremated human remains” includes a reference to the corpse of a human being and includes the corpse of a still-born child. None of the other references which I have alluded to, the deceased or bodily remains, includes a reference by definition to a still-born child. It may be that the Minister considers that is covered in any event and I do not want to get into any controversial issue as to the status of a still-born child, simply for the purposes of understanding the Bill, whether the Minister is satisfied that those references, references to “deceased” or references to “bodily remains”, not subject to definition, do include a still-born child or body of a still-born child also. Finally, in relation to section 20, section 21(a) which is being removed from what the Minister has told us, it suggests to me that what is going to remain is a regime whereby remains can be cremated, even if it is not clear that the contrary wishes of the deceased were that he should not be cremated. In other words, absent and obvious xxxxxx relief that the person did not wish cremation, although it is not practicable for the body to be cremated then there will be power under section 20 to cremate. Now in the Bill as originally drafted, there was a third limit the Minister noted, which is the one which is being removed, which was, in the absence of knowledge of the religious beliefs of the individual, then there would be no cremation in case that individual’s beliefs were contrary to cremation. Perhaps the Minister could tell us why it is that that decision has been made. It may be that that is the position generally in other states for the purposes of making the disposal of human remains more convenient to the state, in circumstances where it is not possible to determine the religious views of the person to be cremated. Those are our views  
*[Interruption]*

**HON LT-COL E M BRITTO:**

The first point made by the hon Member I think he will find is covered by the new definition of “human remains” which he will find says “means a corpse or a human being including the corpse of a still-born child, and cremated human remains shall

be construed accordingly". It is precisely because it was thought that the various references to "corpse" and "cremated human remains", and "human remains" and "bodily remains", could lead to confusion, that it was decided to standardise and do away with the original definition, and insert instead "human remains".

**HON F R PICARDO:**

xxxxxxxxxx will remain as references throughout?

**HON LT-COL E M BRITTO:**

Yes, the references throughout will be to the defined "human remains". I think the hon Member will find, once he has had a chance to read through the marked up copy, that it reads better and the meaning is clearer. That is precisely why this has been brought. I will leave it at that until he has had a chance to read it. The still-born child point I have covered, it is included in the definition. The amendment to clause 20, it was felt on further study of the Bill that clause 21(a), unless the wishes were known the body could not be cremated, that it was not really appropriate for the Government to put themselves in a position, or to put somebody else in the position, of having to interpret the desire or the thoughts of the deceased person. Secondly, that it made the position too tight in that, for example, if the body of an unknown person floated ashore, drowned at sea, or if a person without relatives or a person where there was dispute within the relatives of what the position was, that could be interpreted to mean that the wishes were not known. So it would be very difficult in many circumstances to actually cremate, so it was thought better to turn it round and put it the other way so that the expression had to be specific, otherwise it would be allowed.

**HON F R PICARDO:**

I appreciate that, I think that makes legislative sense. But I think then the message must go very clearly from this House, that what we are doing today, if people do not wish to be cremated they should make that wish very, very clear in order to ensure that the Government are not put in the position, those with the powers under the legislation are not put in the position of not having a very clear statement from an individual that could be misinterpreted as falling within the sort of bracket the Minister has referred to. I think that the message should go out loud and clear to anybody listening and to anybody who understands the legislation that is being made by this House, that they need to make provision, either in their wills or otherwise, if they do not wish to be cremated.

**HON LT-COL E M BRITTO:**

Yes, absolutely, I agree one hundred per cent. The Government agree with the hon Member, I reiterate the message he is sending out. The default position is that the person will be cremated or can be cremated, if the circumstances arise, if someone asks for the cremation. Remember, someone has to ask for the cremation in the first place but that the cremation will take place unless the person has specifically said, in a will or otherwise, that he or she does not want to be cremated. There has to be an application in the first place, otherwise it cannot. No one from the official side, from the Government side can take the initiative. There has to be an application by a member of the family or by the next of kin.

Question put.                      Agreed to.

The Bill was read a second time.

**HON LT-COL E M BRITTO:**

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

Question put.            Agreed to.

**COMMITTEE STAGE**

**HON CHIEF MINISTER:**

I have the honour to move that the House should now resolve itself into Committee to consider the Police (Amendment) Bill 2008, clause by clause.

**THE POLICE (AMENDMENT) BILL 2008**

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

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

**THIRD READING**

**HON CHIEF MINISTER:**

I have the honour to report that the Police (Amendment) Bill 2008 has been considered in Committee, and agreed to without amendment, and I now move that it be read a third time and passed.

Question put.

The Police (Amendment) Bill 2008 was agreed to and read a third time and passed.

**ADJOURNMENT**

**HON CHIEF MINISTER:**

I have the honour to move that the House do now adjourn to Monday 3<sup>rd</sup> November 2008, at 2.30 p.m.

Question put.            Agreed to.

The adjournment of the House was taken at 3.35 p.m. on Wednesday 22<sup>nd</sup> October 2008.

**MONDAY 3<sup>RD</sup> NOVEMBER 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,  
Technology and Transport and Deputy Chief Minister  
The Hon Lt-Col E M Britto OBE, ED – Minister for the  
Environment and Tourism  
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 Dr J J Garcia  
The Hon G H Licudi  
The Hon C A Bruzon  
The Hon N F Costa

**ABSENT:**

The Hon F R Picardo  
The Hon S E Linares

**IN ATTENDANCE:**

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

**BILLS**

**FIRST AND SECOND READINGS**

**THE PUBLIC FINANCE (CONTROL AND AUDIT)  
(AMENDMENT) ACT 2008**

**HON CHIEF MINISTER:**

I have the honour to move that a Bill for an Act to amend the Public Finance (Control and Audit) Act, be read a first time.

Question put.           Agreed to.

**SECOND READING**

**HON CHIEF MINISTER:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this short Bill amends section 33(2) of the Public Finance (Control and Audit) Act, in order to confer the power to reallocate monies between one development project and another of the same head of expenditure to the Minister responsible for finance instead of the Financial Secretary. This amendment brings section 33(2) into line with section 45(1), which confers the power to reallocate funds under the Improvement and Development Fund on the Minister responsible for finance. The Bill also amends sections 2(7), 28, 41 and 44 of the Public Finance (Control and Audit) Act, where it refers to sections of the repealed Gibraltar Constitution Order 1969, in order to refer to the equivalent provisions of the Gibraltar Constitution Order 2006. I commend the Bill to the House.

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

Question put.           Agreed to.

The Bill was read a second time.

**HON CHIEF MINISTER:**

I have the honour to move that the Committee Stage and Third Reading of the Bill be taken later today.

Question put.            Agreed to.

**THE TRANSPORT (AMENDMENT) ACT 2008**

**HON J J HOLLIDAY:**

I have the honour to move that a Bill for an Act to amend the Transport Act 1998, be read a first time.

Question put.            Agreed to.

**SECOND READING**

**HON J J HOLLIDAY:**

I have the honour to move that the Bill be read a second time. Mr Speaker, this Bill makes provision for the implementation in Gibraltar of Regulation EC No. 561/2006 of the European Parliament and of the Council, of 15<sup>th</sup> March 2006 on the harmonisation of certain social legislation relating to road transport, and amending Council Regulations EEC No. 3821/85 and EC No. 2135/98 and repealing Council Regulation EEC No. 3820/85 as amended, and Council Regulations EEC No. 3821/85 of 20<sup>th</sup> December 1985 of recording equipment in road transport, as amended. As Members of the House will know, EU Regulations are different from EU Directives in the sense that they are directly applicable. This means that they are law without further need for legislation. The reason why the Government is making provision for the implementation of these two regulations, therefore, is because EU Regulations occasionally require legislative intervention in respect of enforcement. In other words, this House needs to say whether

a breach of any regulation's obligation is to be treated as a breach of statutory duty, a criminal offence or a simple regulatory breach with administrative sanctions. The thrust of this Bill is therefore enforcement. Its aims are not to transpose the three regulations cited. Prior to going through the Bill on a clause by clause basis, I shall therefore say a few words about the EU Regulation itself.

Regulation EC No. 561 of 2006, applies to the carriage by road of goods by vehicles with a total mass exceeding 3.5 tonnes and to the transport by road of passengers by vehicles which are adapted for carrying more than nine persons. Some vehicles which fall into these categories are, however, exempt from regulation. In other words, vehicles used for carrying passengers on regular service, where the route covered by the service does not exceed 50 kilometres, are vehicles that do not need to be equipped with tachographs, but these regulations make provisions for control on the basis of service, timetable and duty rosters. Vehicles with a maximum speed not exceeding 40 kilometres per hour. Vehicles belonging to the Armed Forces, the civil defence services, fire services and forces responsible for maintaining public order, vehicles used for humanitarian aid, emergencies or rescue operations, breakdown vehicles, vehicles undergoing road tests for technical development, vehicles not exceeding the 3.5 tonnes used for non-commercial carriage of goods and vehicles which have an historic status and are used for non-commercial purposes. The Minister for Transport can also decide to grant other exemptions subject to individual conditions.

The legislation applies to all cross-border transport carried out exclusively within the territory of the Community, or between the Community, Switzerland and other countries party to the agreement of the European Economic Area, whereas the European agreement concerning the work of crews of vehicles engaged in international road transport, the AETR, applies to international road transport operations undertaken in part outside this area. This agreement applies to all vehicles registered in the AETR area, including the Community, for the

whole journey. It applies to vehicles registered in third countries which are not contracting parties to the AETR, only for the part of the journey in the AETR area, including the Community.

Driving time is subject to a number of rules. For example, the daily driving time should not exceed nine hours; twice a week may be extended to ten hours; the weekly driving time shall not exceed 56 hours; the total driving time during any two consecutive weeks shall not exceed 90 hours; the driver should record, as other work on the tachograph, any work time during which he is not driving, as well as any time spent driving a vehicle not falling within the scope of these regulations, and the journey time on a ferry or train when he has no access to a bunk or couchette; after driving for five or four and a half hours a driver shall take an uninterrupted break of no less than 45 minutes or 15 minutes, followed by 30 minutes over the same period; a driver may have at the most three reduced daily rest periods between any two weekly rest periods; in any two consecutive weeks, a driver may take only one reduced weekly rest period. In this case the reduction shall be compensated for by an equivalent period of rest taken en bloc before the end of the third week; where a driver chooses to do this, daily rest periods and reduced weekly rest periods may be taken in a vehicle, as long as the vehicle is stationary and has suitable sleeping facilities; when a driver takes a rest period, where the vehicle is transported by ferry or train, that period may be interrupted no more than twice for a maximum of one hour in total. The driver shall also have access to a bunk or couchette.

Transport undertakings or other bodies offering the same service must ensure that their drivers are able to comply with Regulation No. 3821/85/EEC on the tachograph. They may not award bonuses related to distances travelled or the amount of goods carried if that payment is such as to endanger road safety. They must ensure that transport time schedules are in line with this legislation and that data from digital tachographs are downloaded at the right time and kept for at least 12 months.

Transport undertakings are liable for infringements committed by drivers of the undertaking, except in cases where it cannot reasonably be held responsible, such as when a driver working for more than one transport undertaking has not provided sufficient information to the other of these undertakings, for them to be able to take the necessary measures to comply with this legislation.

The purpose of EU Regulation No. 3821/85/EEC is to complete and specify the working conditions applicable to drivers, particularly as regards driving time and rest periods and to ensure that these are observed through the obligation, to install and use recording equipment meeting strict standards in vehicles registered in Gibraltar or in a Member State which are used for the carriage of passengers or goods by road. Under the regulations, the competent authority must grant EU component type approval for any type of recording equipment to any model, record sheet or memory card which conforms to the requirements laid down in Annex I and Annex IB. Strict rules apply to the installation, inspection and use of the equipment. New vehicles which come into circulation must be equipped with a digital tachograph of the type specified in Annex IB, making it possible to record driving times on a memory card which replaces the record card sheets. For this reason Member States must issue memory cards to drivers. The recording equipment must be so designed that the driver memory card is locked in position on its proper insertion into the card reader. The relevant data will be automatically stored in the memory of the recording equipment. The release of the driver card may function only when the vehicle is stationary and after the relevant data has been stored on the driver card. The driver card makes it possible to store data on the driver's activities for a period of 28 days and of the vehicle for a period of one year. Should a driver card be full, the new data replaces the oldest data. The recording equipment must be capable of recording data relating to the driver's activity for a period of at least one year.



Turning to the substance of the Bill, clause 2 of the Bill sets out the scope, the reason for its inclusion here is to obviate the need for a long winded long title. Clause 3(2) of the Bill repeals section 36 to 41 of the Transport Act 1998. This section makes provision for the implementation of the EU Regulations as they exist in the previous incarnation. Both regulations have changed extensively and these sections now require updating. Clause 3(4) inserts a new Part IVA into the Transport Act 1988. New section 66A is an interpretation section. Its purpose is to define terms for the purpose of this Part only. Section 66B provides for a Part IVA to have effect with a view to securing the observance of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road, in order to protect the public against the risks which arise in cases where the drivers of motor vehicles are suffering from fatigue. The Minister is given the powers to make regulations for the substitution or adaptation of the provisions of this Part, or supplemental or incidental to the Part that is considered necessary or expedient to take account of the operation of any relevant Community provision. New section 66C makes it the statutory duty for drivers not to exceed certain hours. These include the driver, the duty for a driver on any working day not to drive the vehicle to which this Part of the Act applies for periods amounting in the aggregate to more than ten hours. There are provisions also made in respect of rest periods. The section gives the Minister the power to make regulations providing for exemption. New section 66D makes provisions for the installation and use of recording equipment. It makes it an offence punishable at level 5 on the standard scale, for the use of a vehicle to which this section applies unless there is, in the vehicle, recording equipment which has been installed in accordance with the Community Recording Equipment Regulation, complies with the relevant Annexes to that Regulation and is being used as provided by Articles 13 to 15 of that Regulation, or in which there is recording equipment which has been repaired otherwise than in accordance with the Community Recording Equipment Regulation. New section 66E is one of consequential importance. It makes it an offence for a person who with intent to deceive, forges, alters or uses any

seal on the recording equipment installed in, or designed for installation in a vehicle to which section 66D of the Act applies. New section 66F is of evidential importance. It makes provision for records produced by tachograph equipment to be admissible in evidence in a court of law. Section 66G is once again of consequential importance. It imposes an obligation on employees or service providers to transmit records to their employer or principal. Section 66H deals with the downloading of data from the vehicle unit. In particular, it provides the data to be downloaded from the tachograph unit. New section 66 I deals with the downloading of data from the driver's card. In particular an undertaking must ensure the data is downloaded from the card. New section 66J makes the enforcement officer have the power in certain circumstances to require an undertaking without delay. New section 66K makes it an offence for non-compliance with the data downloading requirements. New section 66L makes an obligation of undertaking to give enforcement officers access to downloaded data. New section 66M gives the Minister powers to make regulations in respect of records. New section 66N gives officers the power to inspect records and other documents. New section 66 O enables officers to retain and copy records and drivers card. New section 66P gives officers the power to enter any vehicle to which Part IVA applies, in order to inspect the vehicle and any recording equipment in or on it. The officers can inspect, remove, retain or copy any records found. New section 66Q makes provisions consequential to section 66 O and 66P. In particular it makes provision for a maximum period for which the records can be retained. New section 66R creates the offence of obstructing an officer in the context of his duties under Part IVA. New section 66S, describes the circumstances in which a person can commit an offence. New section 66T gives officers the power to seize documents where he suspects an offence against section 66S has been committed. New section 66U gives persons authorised by the Minister the power to prohibit the use of a vehicle where a contravention of the EU Regulation is suspected. New section 66V makes provision for the duration or removal of a prohibition to use the vehicle under section 66U. Under this section a prohibition may be removed

by an authorised person if he is satisfied that appropriate action has been taken to remove or remedy the circumstances in consequence of which the prohibition was imposed. New section 66W makes provision for offences for the non-compliance of the prohibition. Such a person is guilty of an offence and liable to summary conviction of a fine at level 5 on the standard scale. New section 66X makes provisions for regulations by the Minister to give effect to an international road transport agreement. New section 66Y makes provision for the Part to apply to the Crown, with the exemption of military vehicles included in the section provided for in the EU Regulation. New section 66Z makes provisions for offences by bodies corporate. This is a standard clause imposing liability on the officer of a company in the case of negligence or recklessness on their part.

Finally, new Schedule 3 facilitates compliance with the new Community Drivers' Hours Regulation. Finally, the Schedule defines historic status for the purpose of the new automatic exemption in the new Community Drivers' Hours Regulation for commercial vehicles, which have a historic status according to the legislation of the Member State in which they are being driven, and which are used for non-commercial carriage of passengers or goods. I commend the Bill to the House.

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

**HON G H LICUDI:**

We will be supporting this Bill. Its effect, as the Minister has explained, is to give full effect, and I note that those are the words used in the Bill to give full effect to certain regulations. The Regulations, as the Minister already has explained, already are directly applicable but they have to be given full effect in Gibraltar by providing for an enforcement mechanism locally, and that we note is the thrust of this legislation. The Minister

has explained that the effect is to implement in Gibraltar Regulation 561 of 2006 and 3821 of 1985. I would welcome the Minister's comments with regards to the fact that those regulations have already been given effect in part in Gibraltar legislation. As recently as September 2008, there was introduced the Transport (Recording Equipment Minimum Conditions) Regulations 2008, which in part gave effect to Council Regulation 561 of 2006 and 3821 of 1985, and I would welcome the Minister's comments about the interaction between those regulations and this Act, whether those regulations are now to be taken as having been implemented pursuant to any of the provisions of this particular Act, because they do directly affect the question of recording equipment, which is what this Act is all about. I note also that there are various provisions in this Act which deal with the power given to the Minister to make certain regulations, and in particular, whether those powers will be deemed to have been exercised with regard to the regulations which are already given effect in Gibraltar in September 2008. There are, as I have said, various powers given to the Minister to make regulations. Under the new section 66B(1), there is a general power given to the Minister to be exercised whenever the Minister may deem fit or appropriate to give effect to applicable Community rules. We would welcome clarification on whether there are any such regulations already in the pipeline as part and parcel of this Bill, or whether it is a power that is there simply to give effect to whenever Community rules are introduced from time to time, so that the Minister will have that power available to him. We would also ask for clarification with regard to the definition of "driver" in the new section 66B(4), which provides that this Part applies to any person which is referred to as a driver. That is to say, and in (a) a person who drives a vehicle to which this Part applies, in the course of his employment, that is to be referred to as an employee driver. A person may certainly be required to drive in the course of his employment and not be employed as a driver, he may be employed as something else, as a caretaker or anything else and have driving duties as part of his duties in the course of his employment. Is it intended that this Act and these provisions, the enforcement mechanism, apply to such a person

who drives in the course of his employment but who not necessarily is engaged as a driver, or who not necessarily may have duties which may involve driving in a majority of the cases of the time that he is engaged? The reason this is particularly important, in the context of this Bill, is because the new section 66C provides for permitted driving time and periods of duty. Some of those subsections restrict the time in which a driver is permitted to drive, the driving times. Other of those subsections provide restrictions in respect of the periods of duty of the particular person, the driver, who as I have said is defined as someone who drives in the course of his employment. I have noticed that the Minister has confirmed that part of the requirement is that there should be equipment whereby someone who falls within this Act, is required to record times when not driving. Clearly that is intended to show when he is on duty and what driving time is taken up during the times that he is on duty. But if someone is employed other than as a driver and has driving as part of his duties, will that person who drives in the course of his employment, if this applies, be required to log and record all those times when he is not driving, and will that person then come under the various duties which new section 66C provides as to what times and rest periods have to be taken when on duty? Not just when driving, because most of the sections, the new section 66C, provide to periods in relation to being on duty rather than driving. We would welcome clarification on that particular point. The question that immediately arises because the thrust of this legislation is enforcement, is precisely how it is going to be enforced and we would welcome the Minister's views on that. There is a great deal of power given under this Act, the new Act, will give a great deal of power to somebody who was appointed as an officer for the purpose of the enforcement mechanisms in this Act. An officer will be entitled to require certain things of drivers and of transport undertakings, including the requirement to download data, access to data records, to inspect records, the power of entry and detention of vehicles, the power to seize documents and to prohibit the driving of a particular vehicle, so there is very wide ranging powers given to someone who is appointed an officer under the Act. We would welcome confirmation of the

Minister as to how in practice it is intended that this should be given effect. Is there someone who is already an officer of the Motor Transport Department, for example, who is already engaged and who is earmarked to provide these enforcement measures? My understanding, is that there used to be someone employed to carry out these sorts of checks, but that person has since retired or has left the service and has not been replaced. I would welcome the Minister's clarification as to whether that is the case, and if so, whether somebody will be employed specifically with a dedicated duty to police and enforce the provisions of this particular Act. The new section 66C(13), and this is something that is repeated at various stages throughout the Act, provides that a person who is subject to the requirements imposed by Article 10(4) of the Community Drivers' Hours Regulation, and fails to take all reasonable steps to comply with that requirement, shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale. So what we have is the creation of offences by reference to requirements imposed by the regulation itself, without those requirements being spelt out in this particular Act. As I have said, this is a feature of numerous sections and subsections, where there are a number of references to the Community Drivers' Hours Regulation and the Community Recording Equipment Regulation. The concern that we have is that this Act creates offences in respect of matters which are not actually spelt out in Gibraltar legislation, are simply there by reference to Community legislation. The difficulty there is in people knowing exactly what the duties and the requirements of Gibraltar law are, and although we all accept that Community Regulations are part of Gibraltar law and directly applicable, and clearly given that ignorance of the law is no excuse in a court of law, it would be useful for people to know through Gibraltar legislation exactly what those requirements are. Therefore, I would welcome the Minister's views as to whether it is proposed to expand on all these requirements, which are simply there by reference to various articles in the regulation, which people then have to go and look up. Or, in the alternative, whether the Minister's Department proposes to prepare a booklet, because some of these regulations are complex, they provide technical issues

which may not be readily understandable to laypersons, and therefore it would be useful, if at the very least, a booklet setting out what the particular requirements of these regulations are, which are made available either to drivers or to transport undertakings, would be provided. Otherwise we have simply references to other pieces of legislation, Community rules, which are not readily available to someone who is looking at this Act, who would have to go and look elsewhere. With regard to the new section 66E(2), provides that a person guilty of an offence under subsection (1), shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to a fine not exceeding the statutory maximum. Is it intended that on conviction on indictment the only penalty available to the court should be imprisonment, or should there be also a monetary penalty available? If it is intended that a fine should also be available to the court, then perhaps that should be spelt out. But again I would welcome the Minister's views as to what the intention of that particular section is. One final matter, which perhaps is a matter which could be taken at Committee Stage but I raise it at this stage for the Minister to consider. The new section 66Y(1) provides that subject to subsection (2) this Part shall apply to vehicles and persons in the public service of the Crown. That is stated to be only subject to subsection (2) and it applies to all vehicles and persons who are public servants. Yet subsection (5) provides that this part shall not apply in the case of motor vehicles while being used for police or fire and rescue authority purposes. So on the face of this section, we have one provision that says it applies to all public servants, and another one that says it does not apply to the police or fire. Maybe it is simply a matter in subsection (1), to referring also subject to subsection (5) as well. But again, it is a matter I simply point out for the Minister to consider whether it is absolutely necessary or not. Those are my general comments on the Bill.

**HON CHIEF MINISTER:**

Yes, just on one or two of the points that the hon Member has made which have resonance and application more widely than just this Act. The hon Member has asked whether the Department, the Ministry, the Government will give publicity to the regulations, given his view that they are not otherwise readily available. Well, the decision of whether to provide a user guidance booklet, as for example the Government did in the case of seat belts, is of course a matter for the Department and the Ministry in question. However, the Government would not accept the premise, if indeed that is what he meant, which is itself not clear, that because this is a body of EU law, there is somehow less availability of it. In other words, EU Regulations are as much a part of the law of Gibraltar as an Act that we pass in this House, and they are no more or less accessible to people. They are available in both printed and, indeed, on line at any number of European Union websites. So the Government do not accept, if indeed that was the thought process that he had in mind, that there is any particular onus on the Government to bring the provisions of one particular source of Gibraltar law more sharply to the attention of citizens on the grounds that ignorance of it is no defence, than indeed any other.....

**HON G H LICUDI:**

Just for clarification, certainly it is not suggested that in any way, shape or form Community legislation is not as much a part of Gibraltar law as Acts of this Parliament. The only issue that was raised was in the context of offences being created simply by reference to requirements of Community legislation. Whilst we certainly accept that regulations should be readily available, for the sake of certainty and clarity, it would be desirable, simply desirable from our point of view, if the ingredients of the offence were clearly spelt out in the legislation that actually creates the offence.

**HON CHIEF MINISTER:**

No, that is precisely the point that I am addressing. Every EU Regulation has a need to create an enforcement mechanism, and almost every EU Regulation results in the Government having to come to this House to create a matrix of offences and penalties for breach thereof. That is usually the only thing that has to be done following the adoption of EU Regulations, which as the hon Member clearly knows, has direct application. So to say, because we are creating offences with penalties in respect of a body of EU law that flows from EU Regulations and which are not clearly visible on the face of the Bill, we ought to be doing something else to bring it to the attention of the citizen, applies not just to the Transport Act but indeed to every single EU Regulation of which there is a massive body. Governments of Gibraltar have been doing the equivalent of this, in terms of creating offences in support of regulations, since Gibraltar has been in the EU. In other words, all I am trying to say is that there is nothing specific about this particular subject matter, that would necessitate or justify what is a standard situation, and that is that there are two sources of EU law, one is Directives, which means that the law does not become binding in Gibraltar until we pass it in this House, both as to the substance of the law and to the regime for its enforcement and breach. Then there is a second body of EU law in Gibraltar, EU Regulations, which once they are adopted in the EU have direct application in Gibraltar and in the rest of the European Community territory. Of that second sort there is already a huge body, and in respect of that huge number of regulations, of which this is just one more, it has not been the case that we have, we or any previous Government, have given the matter a greater degree of publicity. I think it would be a very dangerous precedent, nobody else, no other country in the EU does it, because the idea is that citizens should come to see EU law as just part of the general body of law of the Community territories. Of course, it is not any less accessible to citizens, or indeed to legal practitioners, in Gibraltar law. Most people now go on line to find out what the law of Gibraltar is, following the Government very helpfully putting up to date laws and keeping them up to

date on line, and we go on line to find EU Regulations as well. If one does not want to go on line, they are also available in hard copy. None of which is to say that there will not be cases where departments feel that there is a particular need to bring the provisions of a particular law to the attention of citizens, perhaps because it affects a huge change of practice to a very large body of citizens. One example where we took the view that that was necessary, was with the seat belt legislation, because here was a body of law that affects almost every citizen in their day to day lives, and to simply say, well look, there it is in Directive so and so, is not particularly enlightening. It is not normal to do that when the people affected are in a particular industry or in a particular trade, as opposed to the community at large who can be expected either to take legal advice or to know because they are operating that industry, what a rule is. So on a case by case, it is up to each department whether they feel it falls into the category of situations where there should be a little booklet provided or not. Insofar as the point he made about section 66E(2) is concerned, I think it is generally understood that what legislation does is create a maximum sentence, and what section 66E(2) does is in effect say that the court can imprison for a term not exceeding two years, and that is the maximum that one is liable to. But he knows generally that the court has a discretion to impose any penalty it likes, either fine or imprisonment, subject to that maximum. So I do not think that there is any defect as such in the operational sense of that section.

**HON G H LICUDI:**

Would the Chief Minister give way just before he sits down on that last point? I accept that that is the general premise upon which legislation is interpreted, that a maximum sentencing power is provided. Anything that falls short of that sentencing power is available to the court. Of course, the implication of that in relation to this particular section is that on conviction on indictment the maximum imprisonment is two years, but it is also possible to impose a fine. Now a fine can be an unlimited fine, it

can be subject to a limit defined in the statutes, it could be £10,000 or £20,000, or could be by reference to one of the particular scales which is used by the Magistrates' Court, which is levels one to five of the standard scale. The implication, therefore, would appear to be that this allows an unlimited fine and that might be a dangerous position to take if, in fact, that is not intended. Therefore, if a fine is at all possible, then there should be a limit imposed on that fine.

**HON CHIEF MINISTER:**

Well, there would be no difficulty in inserting there. The only point that I was defending is that the court has inherent jurisdiction in respect of levels of penalty, including fines, the Supreme Court's fining power is set out in the Act establishing it. But there is no difficulty in pursuing the more usual drafting device, which is to xxxxx that I am sure the Minister will consider what the equivalent, not quite sure now what the equivalent is of two years, what scale, I will check on this what the equivalent is to that particular term of imprisonment. The final legalistic point, if I could deal with that, is the point he made about section 66Y, which was this business about application to the Crown. I am not sure, I may have misunderstood because I have only just returned into the Chamber and I am not sure that I heard the whole of his point. The purport of section 66Y(1) is that subject to subsection (2), this part of the Act does apply to the Crown and then section 66Y(2) says, but it does not apply to police, fire and rescue authority vehicles. That is section 66Y. So (1) says it does apply to the Crown and then (5) circumscribes that a little by excluding some Crown vehicles.

**HON G H LICUDI:**

Yes, but (1) says that it is only subject to subsection (2) and not subsection (5), that was the only point. To the extent that it is intended to circumscribe the application to officers of the Crown, by (5), then perhaps one should also refer to subsection (5).

**HON CHIEF MINISTER:**

Oh I see, I thought the point was more substantial that he was making. Well, I mean, I suppose the first couple of words in subsection (1) could have read, "subject as hereinafter provided" or something that does not suggest that the only circumscription is to be found in subsection (2), that there are other circumscriptions in subsection (5) as well. It would not be a problem for that to be amended in Committee to read, "subject as hereinafter provided", or "subject as herein provided" instead of the reference to subsection (2).

**HON J J HOLLIDAY:**

In order to try and clarify a couple of the points that were made earlier on in the hon Member's intervention, he referred to regulations that were passed in September in respect of the tachographs. I think, if I recall correctly, regulations at the time set up the framework for the tachographs, and although they are interlinked with some of the sections in this Bill, there were sections in that which required primary legislation and therefore it had to wait for the Bill to come to the House. However, they are very much interlinked. Then there was the point about whether there was intention to draft regulations in order to implement elements of this Act, and that is in fact correct. Regulations will be and are being drafted in order to proceed with the implementation of part of this Act, once the Act becomes law. Then he referred to section 66B in respect of drivers and whether this applied to just drivers who were employed as drivers and those who were drivers as part of their xxxxx. My own interpretation of this, is that it applies across the board, whether they are drivers that are employed as drivers, and whether they are drivers that are actually conducting the driving as a result of part of their duties when on employment. Then there is the point that the hon Member made in terms of enforcement. The enforcement, obviously, he made the point about the fact that we used to have one transport officer who is no longer in employment. I think there are a number of transport

officers within the Department of Transport that are not actually described as transport officers, but do undertake the role of transport officers and it will be these officers of the Department of Transport that will actually be undertaking the enforcement and the policing of this Act.

Question put.            Agreed to.

The Bill was read a second time.

**HON J J HOLLIDAY:**

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

Question put.            Agreed to.

**THE CONSUMER PROTECTION (UNFAIR TRADING) ACT 2008**

**HON J J NETTO:**

I have the honour to move that a Bill for an Act to implement the provisions of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices, be read a first time.

Question put.            Agreed to.

**SECOND READING**

**HON J J NETTO:**

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill transposes Directive 2005/29/EC on unfair business-to-consumer commercial practices. The

Directive aims to introduce uniform rules on consumer protection throughout the European Community. It applies to business-to-consumer practices. The Directive defines and prohibits unfair commercial practices and requires States to ensure that adequate means exist to enforce compliance. Turning to the Bill itself, Part 2 of the Bill provides the scope of application. Clause 3 of the Bill provides that the Act shall apply to business-to-consumer commercial practices in relation to the supply of services to consumers, occurring before, during and after a transaction in relation to a service. The Act does not apply to the promotion, sale or supply of goods to consumers. The Act is without prejudice to laws relating to health and safety or more specific laws, or rules applying in particular sectors. Clause 4 of the Bill permits the use of common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally. Part 3 of the Bill prohibits and defines what constitutes an unfair commercial practice. Commercial practice will be unfair if (1) they are contrary to the requirements of professional diligence and materially distorts, or are likely to materially distort, the behaviour of the average consumer; (2) they are misleading or aggressive as further defined in the Act; or (3) they are listed in Schedule 1, which contains a list of practices which would always be considered unfair. Part 4 of the Bill sets out what constitutes a misleading commercial practice. This includes misleading actions defined in clause 6, and misleading omissions defined in clause 7. Part 5 of the Bill sets out what constitutes aggressive commercial practices. Clause 8 of the Bill, defines aggressive commercial practices and clause 9 contains further criteria to be used in determining whether a practice is to be considered aggressive. Part 6 of the Bill provides for the consumer officer to encourage the control of unfair commercial practices by means of codes of conduct established by traders themselves. Part 7 concerns the enforcement of the Bill. Clause 11 provides for the appointment of a consumer officer to administer the provisions of the Act. The consumer officer is to consider any complaint that a commercial practice is contrary to the provisions of the Act, save where the complaint is frivolous or vexatious. The Minister may also designate persons who have the promotion of the interests

of consumers as their sole or principal aim. The person designated shall also have a duty to investigate complaints that commercial practices are unfair. A number of bodies may apply to the court for an injunction where they consider practices are unfair. These include the consumer officer, a person designated by the Minister or a consumer protection body from a European state. By virtue of clause 12, the court may in addition to making an injunction also impose a penalty on a trader. The penalty which may be imposed under the Bill includes a warning, a fine of up to ten per cent of the trader's turnover in Gibraltar, a fine of up to the statutory minimum for a summary offence, currently £5,000, removal of or limitation of any licence, permission or authorisation to trade in or from Gibraltar. Clause 13 sets out the consumer officer's power of investigation. Clause 14 places the burden of proof on the trader to prove that any claim made was inaccurate. Part 9 provides for the consequential amendments of existing enactments. This Bill sets out clearly what are considered to be unfair commercial practices by businesses providing services to consumers, and protects consumers from those practices. I commend the Bill to the House.

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

**HON DR J J GARCIA:**

Firstly let me say that the Opposition will be supporting the Bill. There is one question we would like clarified if the Minister is able to do that. That is, the Directive throughout refers to the word "products" and in the word "products" it includes services and goods, whereas the Bill that we have before the House refers only to services and not to goods. We are wondering whether the reason for that is because Gibraltar is not in the single market for goods, or whether there is another policy reason why the Government have chosen to go down this road.

We would like some clarification from the Minister and we will be supporting the Bill.

**HON CHIEF MINISTER:**

The legal base under which this measure has been adopted is the Community's Article 95. Article 95 applies to single market in goods. Gibraltar is not bound by EU measures that apply to single market in goods, and even in cases where we as a matter of policy would agree with an EU Directive, we are advised we would create a dangerous precedent if we look as if we are as a matter of obligation transposing a Directive which has no legal application to us. Therefore, pursuant to the case, the excise duty case, which so decided, we have no obligation to transpose in respect of goods but we do have an obligation to transpose in the case of services, which is why this Bill which is to transpose the Directive is limited to services. However, the hon Members should not by that deduce that we are opposed to the same regime in respect of goods. That will follow in what we could call domestic legislation, which does not look as if Gibraltar is abandoning the principle that we transpose as a matter of obligation what is an obligation, but we do not confuse what we do as a matter of obligation with what we do as a matter of choice. It is very important that we do not cross a line that creates a precedent against us of abandoning this business, that if it is adopted under an article from which Gibraltar is excluded, then that creates no obligation to Gibraltar. This is not a controversial area but if we create a precedent, the same argument could arise in a controversial area and it would be most unhelpful for anybody to be able to point back and say, "but you did it in relation to consumer protection". The Government are working on a wider consumer protection domestic not EU-driven, and many of these provisions, if not all of them indeed, will be clawed back in its application to goods as well as services. So this is limited to services only because it is a Bill to comply with an EU obligation, and the EU obligation only extends to services and does not extend to goods.



**HON C A BRUZON:**

Just a point for clarification. I always have a look at the definitions, and I have noticed that there is no definition for “consumer officer”. I just wondered whether that might be inserted if the Minister who proposes the Bill feels it is important. There is a definition of “the Minister” which means the Minister with responsibility for consumer affairs. But then there are a number of references to the consumer officer but this is not defined.

**HON J J NETTO:**

In relation to the second point by the Hon Mr Bruzon, in relation to the definition of the consumer officer, we can look at it in Committee in order to try and see whether we can insert it there. Following the first clarification from the Chief Minister, all I need to add is that I will be moving and I have circulated a paper, in which I will be moving a number of amendments at Committee Stage as well.

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.

**COMMITTEE STAGE**

**HON CHIEF MINISTER:**

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

1. The Public Finance (Control and Audit) (Amendment) Bill 2008;
2. The Transport (Amendment) Bill 2008;
3. The Crematoria Bill 2008;
4. The Consumer Protection (Unfair Trading) Bill 2008.

**THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) BILL 2008**

**Clauses 1 to 7** – were agreed to and stood part of the Bill.

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

**THE TRANSPORT (AMENDMENT) BILL 2008**

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

**Clause 3**

**HON CHIEF MINISTER:**

If the hon Member is still concerned, we could make that small amendment to section 66Y, which I think is clause 3 of the Bill. We would have no difficulty with instead of “subject to

subsection (2)", to say "subject to the other provisions of this section".

**HON G H LICUDI:**

Mr Chairman, we have no difficulty either with that or "subject to subsections (2) and (5)".

**HON CHIEF MINISTER:**

Yes, it is just that I have not checked whether there is anything else.

**HON G H LICUDI:**

No, there is nothing else.

**HON CHIEF MINISTER:**

There is not, then that version is probably simpler then. By adding the words "and (5)" after the "(2)". So it would read: "subject to subsections (2) and (5)".

**HON G H LICUDI:**

The other point was in relation to the question of conviction on indictment.

**HON CHIEF MINISTER:**

Yes, and that was subsection.....

**HON G H LICUDI:**

That was the new section 66E(2).....

**HON CHIEF MINISTER:**

Yes, and there if the hon Member feels it would improve the clarity, that could be made to read, "on conviction on indictment to imprisonment for a term not exceeding two years and to a fine", leaving it to the court. In other words, no maximum.

**HON G H LICUDI:**

It would be an unlimited fine that the court has power to grant.

**HON CHIEF MINISTER:**

I am sorry, can we make sure the Clerk's pen is keeping up with us. Yes, and "to a fine" after the words "two years".

**HON G H LICUDI:**

There is the same provision in the new section 66N(6)(b) which provides this also. The point I was making was not so much whether there was a need to refer to a fine but whether the Government wanted to limit in any way the financial penalty. If the Government decide that it is to be to an unlimited fine then, so be it.

**HON CHIEF MINISTER:**

I think, without the time to look at it, it is best to leave it to the court's discretion. It is up to the court to consider what level of fine it would accept instead of a term of imprisonment. I know

that that is not the usual formula, but I think if we leave it to the court's discretion then I do not think we can go wrong.

**HON G H LICUDI:**

Do I take it that the same amendment is being done to section 66N(6)?

**HON CHIEF MINISTER:**

Yes, we are quite content. It has to be said that this is a matter of drafting style. It is not actually necessary and the particular draftsman of this Bill has not thought it necessary to go on to make it clear that the court can impose a fine as well. So wherever it appears "on indictment" it can read "and to a fine". I do not know whether he is able to say that he has only spotted it in those two or whether he is able to say for certain that there are only those two instances.

**HON G H LICUDI:**

I have not seen it anywhere else but one cannot say for certain.

**HON CHIEF MINISTER:**

Well, can we then agree as a Committee that if it does appear anywhere else, it is "and to a fine" as well? I will get the legal draftsman to actually trawl the Bill.

**HON G H LICUDI:**

Well, there is a further reference which may be helpful or not, the new section 66S(4) actually refers to "imprisonment for two

years or to a fine, or to both". So there is one subsection that refers to "two years, or a fine or both" and the other section....

**HON CHIEF MINISTER:**

"Two years, or a fine or both" is just an unnecessarily long way of saying two years and a fine.

**HON G H LICUDI:**

It is what it actually says in this section, so just for consistency maybe the same wording should be used.

**HON CHIEF MINISTER:**

That would be acceptable. I agree that it would not be ideal for one piece of legislation to use two different stylistic ways of achieving the same objective. So we shall settle then, contrary to what we just said, we will use the formula of words in section 66S(4)(b), which is "exceeding two years" and after the word "years" we would add, "or to a fine, or to both", in the previous two cases which we have spotted.

**MR CHAIRMAN:**

Before we leave clause 3 may I invite the hon Members to look at the definition of "driver" at page 141 of the Bill, "reference to subsection 66B(5)". My copy of the Bill at page 146 ends at (4) and that is where the definition is. Maybe a cause for rectification?

**HON CHIEF MINISTER:**

Yes, I think that should be a reference to (4), thank you Mr Chairman.

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

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

**THE CREMATORIA BILL 2008**

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

**Clause 2**

**HON LT-COL E M BRITTO:**

I have given notice of a number of amendments starting with clause 2, where we delete the definition of “cremated human remains”. In the definition of “cremation approval”, for “bodily remains” we substitute “human remains”. In the definition “crematorium”, for “bodily remains” substitute “human remains”. After the definition of “crematorium” we insert a new definition for “human remains”. It reads: ““human remains” means a corpse of a human being (including a corpse of a still-born child) and “cremated human remains” shall be construed accordingly;” Finally for clause 2, we delete the definition of “public grave”.

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

**Clause 3**

**HON LT-COL E M BRITTO:**

I think we are looking at something like 40 different amendments and as they have been circulated several days ago, if Opposition Members are agreeable, maybe we could take the

amendments as read instead of having to delay the House by reading them one by one.

**MR CHAIRMAN:**

Yes, I think we can take the amendments as having been put and subject to any comments we will just move from there.

**HON G H LICUDI:**

Yes, we will be happy to take the amendments as read and as identified in red in the appended copy.

**HON LT-COL E M BRITTO:**

In sub clause (1), delete the words “, herself or itself”.

In sub clause (1) paragraph (f), delete the words “unless a different fee is required by the Minister,” and replace with the words “where the Minister has by regulations prescribed a fee,”.

In sub clause (3) paragraph (a), delete the words “to any discharges” and replace with the words “of any discharges”.

In sub clause (3) paragraph (d), delete the word “corpse” and replace with the words “human remains”.

In sub clause (3) paragraph (e), delete the words “any corpses” and replace with the words “human remains”.

In sub clause (3) paragraph (h), delete the word “crematoria” and replace with the word “crematorium”.

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

**Clause 4** – was agreed to and stood part of the Bill.

### **Clause 5**

#### **HON LT-COL E M BRITTO:**

In sub clause (1) paragraph (a), delete the words “identity number” and replace with the words “identity card number or passport number”.

In sub clause (1) paragraph (d), delete the words “identity number and mailing address of a person who had a kinship relation with the deceased, and who applied for the cremation” and replace with the words “identity card number or passport number and mailing address of the person who applied for the cremation and his relationship, if any, to the deceased”.

In sub clause (1) paragraph (i), delete the words “such other information as the Minister may from time to time prescribe by notice in the Gazette” and replace with the words “the Minister may by regulations add to or amend paragraphs (a) to (h)”.

Clause 5, as amended, was agreed to and stood part of the Bill.

**Clause 6** – was agreed to and stood part of the Bill.

### **Clause 7**

#### **HON LT-COL E M BRITTO:**

Delete the clause and replace with the following:

“7.(1) Subject to regulations made by the Minister under section 36, a person must not cremate human remains or assist in the cremation of human remains at any place other than –

- (a) at a crematorium approved under Part II; and

- (b) in accordance with any conditions attached to the approval.

- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or to both.”.

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

### **Clause 8**

#### **HON LT-COL E M BRITTO:**

In sub clause (1), delete the words “bodily remains” and replace with the words “human remains” on both occasions where it appears.

In sub clause (2), delete the words “A person responsible for any act or omission contrary to subsection (1) will be” and replace with the words “A person who contravenes subsection (1) is”.

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

### **Clause 9**

#### **HON LT-COL E M BRITTO:**

In sub clause (1), delete the words “bodily remains” and replace with the words “human remains”.

In sub clause (3) paragraph (b), insert the words “, in the prescribed form,” after the word “certificate” and delete the words “under the Coroner Act” after the word “Coroner”.

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

**Clause 10**

**HON LT-COL E M BRITTO:**

Delete the clause and replace with the following:

“10. A person who makes a false statement in an application for a cremation authorisation is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or to both.”

Clause 10, as amended, was agreed to and stood part of the Bill.

**Clause 11** – was agreed to and stood part of the Bill.

**Clause 12**

**HON LT-COL E M BRITTO:**

Delete the words “bodily remains” and replace with the words “human remains”.

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

**Clause 13**

**HON LT-COL E M BRITTO:**

Delete the clause and replace with the following:

“13. A person who makes a false statement in any application to which this Part relates, is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or to both.”

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

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

**Clause 15**

**HON LT-COL E M BRITTO:**

Delete the words “or she”.

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

**Clause 16**

**HON LT-COL E M BRITTO:**

Delete the clause and replace with the following:

“16. A person who makes a false statement in a certificate of a registered medical practitioner under section 14, is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or to both.”

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

**Clause 17**

**HON LT-COL E M BRITTO:**

Delete sub clause (1) and replace with the following:

“(1) Subject to the provisions of Part IV, a person who inters cremated human remains or assists in the interment of cremated human remains in a public cemetery unless the Superintendent of the Cemetery has

authorised the interment with the consent of the Registrar of Births and Deaths, is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.”.

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

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

**Clause 19**

**HON LT-COL E M BRITTO:**

In paragraph (a), delete the words “the remains of any person” and replace with the words “human remains”.

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

**Clause 20**

**HON LT-COL E M BRITTO:**

In sub clause (1), delete the words “bodily remains of the person unless he” and replace with the words “human remains unless the court or the Coroner, as the case may be,”

In sub clause (1), delete paragraph “(a)” and re-letter paragraphs “(b)” and “(c)” to read “(a)” and “(b)” respectively.

In sub clause (1) re-lettered paragraph (b), delete the words “bodily remains” and replace with the words “human remains”.

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

**Clauses 21 and 22** – were agreed to and stood part of the Bill.

**Clause 23**

**HON LT-COL E M BRITTO:**

Delete the words “or her”.

Clause 23, as amended, was agreed to and stood part of the Bill.

**Clause 24**

**HON LT-COL E M BRITTO:**

In sub clause (1), delete the words “or she”.

In sub clause (2) paragraph (a), delete the words “or her”.

Clause 24, as amended, was agreed to and stood part of the Bill.

**Clause 25**

**HON LT-COL E M BRITTO:**

Delete the words “or she”.

In paragraph (b), insert the words “and the Minister may by regulations make provision for the powers of the court in such circumstances” at the end of the paragraph.

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

**Clause 26** – was agreed to and stood part of the Bill.

**Clause 27**

**HON LT-COL E M BRITTO:**

In sub clause (1) paragraph (a), delete the words “or she”.

In sub clause (2), delete the words “or she”.

Clause 27, as amended, was agreed to and stood part of the Bill.

**Clause 28**

**HON LT-COL E M BRITTO:**

In sub clause (1) paragraph (a), delete the words “or herself”.

In sub clause (2) paragraph (a), delete the words “or herself”.

Clause 28, as amended, was agreed to and stood part of the Bill.

**Clause 29** – was agreed to and stood part of the Bill.

**Clause 30**

**HON LT-COL E M BRITTO:**

Delete the clause and replace with the following:

“30. A person who without reasonable excuse fails to comply with a requirement of an authorised officer under this Part, is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.”.

**HON G H LICUDI:**

Just on clause 30, just reading the section, “a person without reasonable excuse to comply with a requirement”, it does not seem to read right.

**HON LT-COL E M BRITTO:**

The amendment is “a person who without reasonable excuse fails to comply”.

**HON CHIEF MINISTER:**

It is printed twice.

**HON G H LICUDI:**

The copy that we have simply has “a person then must not refuse or fail” crossed off...

**HON CHIEF MINISTER:**

Is it reprinted again the whole section underneath?

**HON G H LICUDI:**

Oh right.

**HON CHIEF MINISTER:**

Which is itself an error.



**HON G H LICUDI:**

Yes, so I take it that we are just dealing with the second part of the amendment and the first 30 should just be deleted?

**HON CHIEF MINISTER:**

It should read “a person who without reasonable excuse”.

**HON G H LICUDI:**

“Fails to comply” as set out in the second 30.

**HON LT-COL E M BRITTO:**

And indeed, as written in the amendment as circulated.

**HON CHIEF MINISTER:**

That is not the only defect, the word “fails” is also missing, not just the word “who”.

**HON G H LICUDI:**

Yes, “fails” in the first part.

Clause 30, as amended, was agreed to and stood part of the Bill.

**Clause 31**

**HON LT-COL E M BRITTO:**

Delete the clause and replace with the following:

“31. A person who without reasonable excuse, hinders or obstructs an authorised officer exercising a power under this Part, is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.”.

Clause 31, as amended, was agreed to and stood part of the Bill.

**Clause 32**

**HON LT-COL E M BRITTO:**

In sub clause (3), delete the words “Any person found guilty of any act or omission contrary to this section” and replace with the words “A person who contravenes subsection (1) or (2) is guilty of an offence and”.

Clause 32, as amended, was agreed to and stood part of the Bill.

**Clause 33** – was agreed to and stood part of the Bill.

**Clause 34**

**HON LT-COL E M BRITTO:**

In the heading to the clause, delete the words “bodily remains” and replace with the words “human remains”.

In sub clause (1), delete the words “bodily remains” and replace with the words “human remains”.

In sub clause (2), delete the words “Any person found guilty of an act or omission contrary to this section” and replace with the words “A person who contravenes subsection (1)”.

Clause 34, as amended, was agreed to and stood part of the Bill.

**Clause 35** – was agreed to and stood part of the Bill.

**Clauses 35 and 36**

**HON LT-COL E M BRITTO:**

After clause 35 and before clause 36, insert the following part heading:

“PART VI  
MISCELLANEOUS”

The amendment, was agreed to and stood part of the Bill.

**Clause 36** – was agreed to and stood part of the Bill.

**New Clause 37**

**HON LT-COL E M BRITTO:**

After clause 36, insert:

“Custody etc. of cremated human remains.

37. (1) Cremated human remains shall be given into the charge of the person who applied for the cremation of those human remains unless at the time of the application he indicates otherwise.

(2) Any cremated human remains which are not claimed in accordance with subsection (1) shall be deemed to be in the possession of the Registrar of Births and Deaths who may -

- (a) if the deceased’s wishes are known and if the Registrar of Births and Deaths believes those wishes to be reasonable, dispose of the cremated human remains in accordance with those wishes; or
- (c) arrange for their interment in a public cemetery.”

New Clause 37, was agreed to and stood part of the Bill.

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

**THE CONSUMER PROTECTION (UNFAIR TRADING) BILL  
2008**

**Clause 1**

**HON J J NETTO:**

I have given notice here that in clause 1 the title is to be replaced with the following:

“Title and commencement.

1. This Act may be cited as the Consumer Protection (Unfair Trading) Act 2008 and comes into operation on the day of publication.”

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

**Clause 2**

**HON C A BRUZON:**

May I remind the Minister what I mentioned earlier concerning the definition of “consumer officer” which I think may be important.

**HON CHIEF MINISTER:**

Can I in full satisfaction of his concern refer him to section 11 of the Bill, which says that the Minister may appoint by notice in the Gazette a consumer officer to administer the provisions of this Act, and the rest of the section then goes on. So the term is in fact defined in the Act. It is an office which is created in the Act.

**HON J J NETTO:**

I also gave notice in my letter that in clause 2, after the definition of ““regulated profession”” to insert another definition which is, ““a service” includes but is not limited to, a service with respect to immovable property, rights or obligations.”.

**HON G H LICUDI:**

I note the explanation given by the Chief Minister in relation to clause 11 and the reference to the appointment of a consumer officer. In fact, there is a reference to consumer officer before that at clause 10. Should we not, and we say this simply by way of suggestion, actually have in the definitions section a definition of consumer officer which would simply say, “a consumer officer is such person as is appointed by the Minister under section 11”?

**HON CHIEF MINISTER:**

Well, we could have that but it is not necessary. It is an office created by the Act, there is nothing....., one could have a definition that says, “consumer officer means the person appointed under section 11”. It is unnecessary. Of course, we could have it but the question is, is the Bill deficient without it? The answer is no, it is not deficient without it because it is an office created.....The fact that it comes before the section creating is not deficient, it means that whoever comes to that

term has to look forward for the explanation rather than having, theoretically if he had read it as a novel, having already read it in his xxxxx. I have seen it done both ways, certainly, the Government have brought legislation to the House drafted as the hon Member suggests, I think he will find that, for example, most of the legislation establishing the Agencies speak of “the Authority” meaning the agency established under section 3, and that is repeated in the definitions section. But if it is something the hon Member feels so strongly about it that he wants to propose the amendment, we do not feel obliged to resist him.

**HON G H LICUDI:**

We agree that it is not, strictly speaking, necessary. It is clear who the reference to the consumer officer is but we feel that it would improve the Bill if we have a specific reference. I will ask my Colleague the Hon Mr Bruzon to propose the amendment.

**HON C A BRUZON:**

I propose to amend the definitions section with the inclusion of a definition of “consumer officer”.

**HON CHIEF MINISTER:**

I will help him with the drafting. Perhaps he might like to move a motion that reads: ““consumer officer” means the person appointed under section 11(1) of the Act.”

**MR CHAIRMAN:**

I have a motion proposed by the Hon Charles Bruzon. In the definitions section, which is clause 2 of the Bill, ““consumer officer” means the person appointed under section 11 of the Act.” Do we need to take a vote or are we all agreed on that?

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

**Clauses 3 to 13** – were agreed to and stood part of the Bill.

**Clause 14**

**HON J J NETTO:**

In clause 14 for “the burden of proof shall be on” substitute for “a court may, where it considers appropriate, require”.

**HON J J BOSSANO:**

Can we have an explanation as to why the Minister wants to remove the present wording and replace it with these words? Presumably he knows why he wants to do it.

**HON CHIEF MINISTER:**

Yes, I am just trying to find the article in the Directive. I can only assume that it has been spotted as language that did not correlate too well. Article 12.

**HON J J BOSSANO:**

Article 12, it talks about the Member State conferring upon the courts powers enabling them to do what this does.

**HON CHIEF MINISTER:**

Yes and that is why the amendment leaves it to the court rather than makes it mandatory on the trader. It is just an attempt to make the section language more closely correspond to the obligation under the Directive. However, it would not be a mis-transposition to impose the higher duty on traders. In other

words, to impose the burden of proof. As section 14 is now drafted.....

**HON J J BOSSANO:**

There is no choice on the trader.

**HON CHIEF MINISTER:**

Yes, the burden of proof shall lie on the trader.

**HON J J BOSSANO:**

Absolutely.

**HON CHIEF MINISTER:**

That is a higher burden than the Directive requires. The Directive requires, in article 12.....

**HON J J BOSSANO:**

However, in preambular paragraph 21 it acknowledges that it is for national law to determine the burden of proof at the same time. It says, “while it is for national law to determine the burden of proof, it is appropriate”.

**HON CHIEF MINISTER:**

Sorry, which recital is he looking at?

**HON J J BOSSANO:**

It is 21. The final sentence which starts, “while it is for national law”.

**HON CHIEF MINISTER:**

“Whilst it is for national law to determine the burden of proof it is appropriate to enable courts and admit to require traders to produce evidence as to the accuracy of factual claims they have made”. Well it is the contest really between ..... Sorry, someone was just whispering in my ear by way of further illustration that article 12 of the Directive requires the Member States, it says “Member States shall confer upon the courts or administrative authorities power enabling them in civil or administrative proceedings (a) to require the trader to furnish evidence as to the accuracy of factual claims”. So, yes, further to what I said earlier, it would be a sufficient transposition of the Directive that it reads as the amendment provides, but it would not be a breach, it would not be a mis-transposition of the Directive if this House wanted, as the draftsman originally intended when he drafted the Bill, that it should actually be imposed without, in other words, the court should be deprived of that opportunity of not requiring it.

**HON G H LICUDI:**

Should this not be a matter of policy rather than consideration by the courts and empowering the courts? Is it not a matter of policy whether a trader should be required or should not be required to have the burden of proof? One thing is as set out in the Directive, requiring a trader to furnish evidence, that is not the same as discharging, necessarily, a legal burden of proof. It is a matter of policy whether this Parliament decides that the trader shall have the burden of proof or not.

**HON CHIEF MINISTER:**

Yes, of course it is, but the element of recital, 21, that was pointed out earlier meaning that it is for Member States to establish the standard of the burden of proof, the standard of proof is described there as being on the balance of probability. That is the required standard as opposed to beyond reasonable doubt or some other standard. The burden is on whom does it lie? Well, it clearly lies on the trader. That is not in doubt in either formulation. The question simply is, it is a narrower point even than those two. The question is, does the trader always have to prove it or does he only have to prove it when the court requires him to prove it? Now, the Directive says that the Member States shall leave that decision to the courts, in article 12. Member States shall confer upon the courts power enabling them to require the trader to furnish evidence as to the accuracy of factual claims. I am just a little bit reluctant, on the hoof so to speak, to make good my initial view that it would not be a mis-transposition to deprive the courts of the article 12 discretion.

**HON J J BOSSANO:**

I think the logic of this surely is that the intention is that the courts should have the power, on the basis that if there is no burden of proof to prove the facts of a trader and the courts do not have the power, then it cannot be obtained. It seems to me that the intention is that this is a minimum requirement. At the very least the courts should be able to require it, so Member States cannot get away, in my view, without one or the other. But if they do the higher one, it seems to me there is no need to do the lower one. It is very unusual for the Community to require people to give less strong protection than they want to. It is not an unreasonable thing to say to a trader, if he says something works then he should be able to prove that it does.

**HON CHIEF MINISTER:**

Yes, if the hon Members feel that..... the Government do not have any objection to leaving it, in other words to withdrawing the amendment. There is an ancillary issue that is raised as to whether, if we withdraw the amendment, this regime applies even when one is not before the court. In other words, even before an administrative officer because we are removing the reference to the courts. But I do not think that is a great problem either. Look, it is inconceivable that a trader should make a claim and that it should be for somebody else and not him to have the burden of proving the accuracy of what the trader says. In other words, it cannot be for the consumer to prove that the trader's claim was not accurate. I think we would be quite happy to withdraw that particular amendment.

**HON J J BOSSANO:**

I think we would be happy with the original one which seems to us a bit stronger protection.

**MR CHAIRMAN:**

Well, we can combine the two, unless the court otherwise orders.

**HON CHIEF MINISTER:**

The Chairman is determined to keep the lawyers at work.

**MR CHAIRMAN:**

Where do we stand on that?

**HON CHIEF MINISTER:**

I think we withdraw the amendment for now.

Clause 14, as originally drafted, stands part of the Bill.

**Clause 15**

**HON J J NETTO:**

In clause 15, for the words ““or the Consumer Protection from Unfair Trading Act”” each time it appears, substitute for ““or the Consumer Protection (Unfair Trading) Act 2008”.”

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

**Clause 16**

**HON J J NETTO:**

Yes, my last amendment in clause 16. For “Consumer Protection Unfair Trading Act” each time it appears, substitute for “Consumer Protection (Unfair Trading) Act 2008”.

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

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

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

### **THIRD READING**

#### **HON CHIEF MINISTER:**

I have the honour to report that:

1. The Public Finance (Control and Audit) (Amendment) Bill 2008;
2. The Transport (Amendment) Bill 2008, with amendments;
3. The Crematoria Bill 2008, with amendments;
4. The Consumer Protection (Unfair Trading) Bill 2008, with amendments,

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

Question put.

The Public Finance (Control and Audit) (Amendment) Bill 2008;

The Transport (Amendment) Bill 2008;

The Crematoria Bill 2008;

The Consumer Protection (Unfair Trading) Bill 2008,

were agreed to and read a third time and passed.

### **ADJOURNMENT**

#### **HON CHIEF MINISTER:**

I have the honour to move that this House do now adjourn sine die.

Question put.

Agreed to.

The adjournment of the House was taken at 4.20 p.m. on Monday 3<sup>rd</sup> November 2008.