REPORT OF THE PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

The Sixth Meeting of the Eleventh Parliament held in the Parliament Chamber on Tuesday 17th March 2009, 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

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the meeting held on 3rd December 2008 were taken as read, approved and signed by Mr Speaker.

CONDOLENCES

HON J J BOSSANO:

Mr Speaker, if I may before we proceed with the normal business of the House, can I just with your leave record our sadness at the loss of one of our Members. One who, in fact, joined the House 37 years ago with me, who subsequently changed his view as to where he should be in the House and who was recently in the House, and indeed, in the Election of the year 2000, quite remarkably in the context of what is now the established pattern of voting in Gibraltar, almost came just 48

votes short of actually gaining a seat in this House as an independent Member. Something which has not happened, I think, throughout the period of the House of Assembly, as it was since the 1968 Constitution was agreed, and which used to happen before under the 1954 Constitution. I think Reggie will be missed by all of us who worked with him in this House, and by all of us who knew him outside the House professionally as a doctor and as a friend and as a great guy to know. It is sad when we lose what we must see as a Member of this small, if polemical family.

HON LT-COL E M BRITTO:

Mr Speaker, on behalf of Members on this side of the House I would like to express similar feelings on the passing away of Reggie. I have known Reggie for many, many years, as far back probably when we were 11 or 12 years old. We have shared the hockey sticks, blows from each other's shins. I have been his patient, he has been my family doctor. I served with him on that side of the House with the AACR in Opposition for a while and then on this side of the House when he was there in Opposition with the GSLP. I once heard him described as a "lovable rogue" and I think that probably sums up the Reggie that we knew. He was one of a kind, he had many facets to his life and his career, some of which today he is probably prouder than others, but I think that the House will be saddened as a whole to have seen him go. He added that little extra spice, including falling asleep in the ante-room when he should have been in here, but we on this side express our sympathy to the widow and to his family. May he rest in peace.

HON CHIEF MINISTER:

Mr Speaker, as Leader of the House I propose that we should rise and spend a few seconds in silence in commemoration of our fallen Colleague.

MR SPEAKER:

If the House will rise for a minute.

A minute's silence was observed.

MR SPEAKER:

Thank you.

DOCUMENTS LAID

HON D A FEETHAM:

I have the honour to lay on the Table the Annual Report of the Gibraltar Prison Board for the year ended 31st December 2008.

Ordered to lie.

HON E J REYES:

I have the honour to lay on the Table the Annual Report and Audited Accounts of the Gibraltar Heritage Trust for the year ended 31st March 2008.

Ordered to lie.

ORAL ANSWERS TO QUESTIONS

The House recessed at 1.40 p.m.

The House resumed at 3.00 p.m.

Oral Answers to Questions continued

The House recessed at 5.25 p.m.

The House resumed at 5.45 p.m.

Oral Answers to Questions continued.

ADJOURNMENT

HON J J HOLLIDAY:

I have the honour to move that the House do now adjourn to Wednesday 18th March 2009, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 7.45 p.m. on Tuesday 17th March 2009.

WEDNESDAY 18TH MARCH 2009

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
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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)

The House recessed at 11.45 a.m.

The House resumed at 4.00 p.m.

Oral Answers to Questions continued.

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

In an outbreak of unusual harmony and cooperation across the floor of the House, I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the Public Finance (Borrowing Powers) (Amendment) Bill 2009.

Question put. Agreed to.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC FINANCE (BORROWING POWERS) (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I hasten to add that the Bill needs an amendment in order for it to achieve what the Government wants it to achieve, without it not achieving what the Government do not want it to achieve. The purpose of this Bill is not to allow the Government to borrow more in order to spend it, in excess of………

MR SPEAKER:

I hate to interrupt the Chief Minister, we have not had a First Reading I think?

HON CHIEF MINISTER:

I am anxious that the hon Member should not be late, Mr Speaker. I have the honour to move that a Bill for an Act to amend the Public Finance (Borrowing Powers) Act 2008, 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. As I was saying, I will need to move an amendment because the purpose of this Bill is not to enable the Government, it is not intended to be as the Bill would actually permit it to do, is not intended to be that the Government should be allowed to spend more borrowed money. But rather, that the Government net public debt, that is to say the difference between the amount that they have borrowed and the amount that they have in reserve, should not exceed this net public debt. For example, if the Government wanted to borrow £300 million, if £200 million of those were not spent but placed in reserve, in a cash reserve in the Consolidated Fund, net public debt would be £100 million, and that is the figure that should not exceed to. As the Bill is presently drafted, inadvertently, it would enable the Government almost to borrow and spend unlimited amounts of money, because we would borrow it and at the time that we borrow it we would put it in the liquid reserves, it would then comply with the formula for calculation of public debt, but thereafter we could spend it, because the control in the Bill as presently drafted is around the concept of we shall not draw down or borrow additional money, if the effect of that additional borrowing or drawing down is to raise the public debt above the ceiling. So as the Bill is drafted we could borrow the money, put it into the reserves, at that point we have complied with the Bill because the net may not exceed £200 million. Then we can

spend it without it being spending increasing the public debt by additional new borrowings, because the control in the existing Act is not by reference to spending, it is by reference to further drawings if one of the circumstances set out in the Act is not met. Now, the Bill therefore, as I will move to amend it in a moment, amends the Public Finance (Borrowing Powers)……… in order to provide for the statutory limit on new borrowing to be based on net public debt, rather than on aggregate that is gross public debt. This is in line with the way that public debt is measured in the United Kingdom and elsewhere. This, in effect, means that any unused borrowing held by the Government as part of its cash reserves, will be taken into account and offset against the gross public debt for the purposes of establishing the limit on new borrowing under the Act. The amendment is therefore not designed to increase the funding available to the Government through borrowing. It is designed primarily but not exclusively. It also has a liquidity management issue dimension, but it is designed primarily to enable the Government to continue meeting the needs of savers, and particularly pensioners, who are dependent on interest income from their savings through the issue of Government debentures. We are now very close to the ceiling. Members will be aware that market interest rates are now at or near zero per cent for low risk cash deposits, and investments in the Government made a special issue of monthly income debentures for pensioners paying minimum interest rates of 3.5 per cent and a special three year fixed term debenture paying a fixed rate of 4.25 per cent. A minimum of two per cent was also introduced for other monthly income debentures to assist all other savers during the current unprecedented worldwide financial crisis. The three year fixed interest term debenture paid 4.25 per cent, has, as we have heard in Question Time just now, attracted over £58 million of pensioner deposits, whilst deposits in the monthly 3.5 per cent debentures now stands at £68 million. The new statutory limit based on net public debt will enable the Government to continue to issue these Government debentures and continue to protect savers in our community. The Bill also provides the Government with specific powers to enter into interest rate swap transactions for the purposes of managing debt interest payments. With the volatility of short-term interest rates and the possibility of locking in to longer term and historically low interest rates, this amendment will enable the Government to take advantage of such opportunities and to manage its debt interest payments accordingly. I will be moving, and unfortunately I appear to have left it behind in the office, a marked up copy of the Act but I will be moving, ah, it has been sent to me. I will be moving an amendment of which I have a copy here, but I can just refer to it whilst it is still here. I will be moving an amendment to clause 2(4) of the Bill, which amends section 3 of the principal Act, by inserting after paragraph (a) the following sub-paragraph "(aa) in subsection (1) insert after the words "public debt" the words "nor without the leave of the House by Resolution to draw on the cash reserves in manner"." Now, I do not know if the hon Member has got a copy of the Act in front of him. Well, I will try and talk him through the effect of the amendment in relation to the Act which he does not have and, unfortunately, I do not have a spare copy to give him. A copy is being printed for him. Well in that case we might take this opportunity just to circulate the letter of amendment whilst that arrives. The amendment that I will be moving will insert, does he now have the Act in front of him? Perhaps I could just talk him through the principles of the amendment, which he should be able to follow without the language in front of him, and then we will go over it again. At the moment the power to borrow is expressed in the following terms. Subject to the provisions of this Act, the Government may with the prior approval of the Minister, from time to time, in addition to any other sums of money that it is for the time being authorised to borrow under any other law, borrow any sum or sums of money provided that the Government shall not draw down or incur any additional public debt that will cause (1) the aggregate public debt to exceed the higher of £200,000 and then xxxxx That aggregate public debt is going to become net public debt under the principal Bill. Now, with that amendment by itself it opens the door to unlimited borrowing because the Government can borrow £1 billion, put initially £800 million in the cash reserves of the Government, so that it does not breach the £200 million rule and as soon as that is done, without need to further borrow from

the bank, it could spend the £800 million. That is not the intention. It is not the intention of this amendment to enable the Government to borrow more money to spend it without the sanction of this House. Therefore, we want now under the amendment that I have moved by letter, for that paragraph to read, "provided that the Government shall not draw down or incur any public debt, nor without the leave of the House by Resolution draw on the cash reserves in manner". In other words, we cannot draw on the cash reserves in manner that increases the net public debt in excess of the £200 million that is provided for in the Act. So we can borrow more than £200 million and it has got to go into the cash reserves of the Government, and it cannot come out of the cash reserves of the Government if the effect of it would be to increase the net public debt over £200 million. So we can actually borrow more money from debenture holders, if we reach the £200 million even though we have not spent it we can carry on issuing debentures to local people, and we have got the ability to manage and to borrow from one place to pay back to another, the Treasury management, but we cannot spend any of the borrowed money without the leave of the House, if the effect of it would be to increase the net public debt, the real public debt if I could call it that, over £200 million. I do not know if without indicating at this stage, whether he agrees or does not agree with the proposal. Can he indicate whether at least I have communicated the meaning of the amendment that I hope to move and is set out in the letter? The other thing that the amendment will do is that in the same subclause, it will add the words in substitution for the words in subsection 1(i), for the words "the Aggregate Public Debt to exceed the higher of", we would substitute the words "the Net Public Debt after borrowing or drawing to exceed the higher of". The reason for that is that a defect has been identified in the original language of the original Act, which is that actually the borrowing, at the time that the borrowing takes place, the money is still in the bank and the bank needs to know whether this is permissible or not permissible public borrowing. But it is not until the money reaches the cash reserves that it can be done in a way that does not breach the borrowing limits. So at the moment it says, "subject to the provisions of this Act the Government may with the approval of xxxxxx from time to time in addition to any other sums of money, that is for the time being authorised to borrow under law, borrow any sum or sums of money provided that the Government shall not draw down or incur any additional public debt that would cause". There we would add the words "Net Public Debt after such borrowing or drawing to exceed the higher of". In other words, that so long as the borrowing goes straight to the Government reserves and is then not spent, is not drawn out of the reserve, if the effect is to take the net public debt above £200 million, then it is permissible under the Act to borrow money, even at the time that one goes to the bank to pull out the money, public debt is already at £200 million, because it is going to flow to a place where it does not count because it is not part of the definition of "net". Namely, straight into the cash reserves of the Government. Those are the two amendments which are described in the letter. The Bill itself also alters the definition of, I think it changes the definition of "liquid reserves" and it now calls it "Cash Reserves", which people in the Treasury think is a better term, "Cash Reserves means the total amount of cash held by the Government in the Consolidated Fund and the Improvement and Development Fund." Then, consequentially on that, the definition of "Net Public Debt" means the Aggregate Public Debt, which is the gross public debt less the Cash Reserves. Now, whilst still speaking on the principles of the Bill, I can then just describe the regime to the hon Members. As the Act now stands, without any amendment, without either the Bill or the letter amending the Bill, as the Act now stands, the Government cannot owe anybody more than £200 million, even if those £200 million that it owes somebody are sitting in the Government's cash reserves and have not spent any of it, so that the net public debt is nil. So, as that position stands, when the gross public debt, because the Act presently speaks of gross public debt, not net public debt, when the gross public debt reaches £200 million, if any pensioner came to the Government and said, "I would like to invest some money in debentures in the Government", the Government would have to say, "no because I cannot increase the gross public debt above the £200 million". Even if it is not to spend the money, even if it is to put it in the Government cash

reserves. Now, I am sure the hon Member will wish to make the point, well why then not issue the debentures to the Gibraltar Savings Bank, where it does not count as public debt? The answer is that it cannot be done through the Gibraltar Savings Bank whilst the Government is offering interest rates which are so much higher than the Savings Bank can attract on its deposits later, without plunging the Savings Bank into a loss. At the moment, if the Savings Bank were to issue the debentures, and is borrowing the money from elderly people at 4.25 per cent, and then when the Savings Bank itself places those monies, it is unable to get more than 0.25 per cent, which is what the Bank of England is paying now in cash or less, then there is around a 4 per cent loss, which the Government can sustain if they want to as a matter of social policy engineering, but would plunge the Savings Bank into certain and permanent loss. The hon Member may think, well so what, the Government believe that the Savings Bank should not incur in losses, I do not think it has ever incurred a loss, and if the Government is to fund higher than market investment savings returns for any category of local residents, then that should be done in the name of the Government, which is one of the reasons why the Savings Bank debentures were closed back in October or November last year, and all debentures have now been issued in the name of the Government. But not only for that reason. One of the things that underpins the Government's policy decision to give people a higher than market interest rate on their savings through these debentures, is in effect the Government borrowing from them instead of from banks. In other words, if borrowing from the bank was going to cost me, just for the sake of it, three or four per cent, why give that three or four per cent to the bank when I can give the three or four per cent to the pensioners, and to others, and use them as a source of borrowing. But for that the borrowing has got to be in the name of the Government so that then it is useable public debt. If the debenture is issued by the Savings Bank, the Government would then have to borrow the money from the Savings Bank, which the Government do not do. So those are the two reasons why the Government want to do this. The other amendment introduced to the Bill, which has nothing to do with quantum of borrowing limit, is the desire of the Financial Secretary for clarity, which is not present in the Act at the moment, to enter into interest rate swap agreements, to fixed interest rates, which are neither permitted nor prohibited by legislation and it is thought desirable that they should be specifically permitted so that no lawyer that has to issue an opinion on behalf of a bank or a swap company, is in any doubt in his opinion about the validity, legality, the competence, the locus of the Government, the xxxx of the Government, to enter into these interest rate swap agreements, which as the hon Member knows is a means of trading one interest rate obligation for another in a way that for the payment of a premium, enables one to fix one's own interest rate liabilities on one's debt. Mr Speaker, I commend the Bill to the House and will deal with the hon Member's points, obviously when he has made them.

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

HON J J BOSSANO:

I hate to have to do this because after the harmony that had been reflected in the suspension of Standing Orders, I have to say to the Chief Minister that on the basis of the original Bill we were going to be voting against this, and that I am not sure that the argument that he has put for the amendments have persuaded me that we should change our position. Let me say that the last argument he used, for example, one cannot do this with the Savings Bank, one of the reasons being that if borrowing from the public, it is useable public debt. Well look, he spent a lot of time telling us that he cannot use it, so he can use up to £200 million.

HON CHIEF MINISTER:

Up to the £200 million.

HON J J BOSSANO:

Yes, but up to the £200 million we do not need the amendment. We only need the amendment to go over the £200 million, and therefore, to have a no ceiling it can be done in the Savings Bank and if is true, as it is, that on the basis that the interest that is being offered is above the market rate, that means that there is a gap between what the Consolidated Fund can earn on that money, in reality the difference is that instead of that gap showing in the Savings Bank, the gap would show in the Consolidated fund. That is to say, the Consolidated Fund would have as a charge on the Consolidated Fund the public debt. So, in fact, if the Chief Minister sells £100 million of Government Pensioner Debentures at 4.5 per cent, puts the £100 million in the Consolidated Fund and then deposits the £100 million, because he is not allowed to use it, at 0.5 per cent, then there will be a gap of 4 per cent, exactly the same gap that there would be in the Savings Bank, except that he would need to transfer the money to bridge that gap from the Consolidated Fund to the Savings Bank. So it seems to me a very convoluted system, which in practical terms, on the basis of the effect on Government finances, whether the gap is in the Savings Bank or the gap in the Consolidated Fund, at the end of the day it is still the same gap, if he cannot use the money. But of course, he would not be able to use the money at all in the Savings Bank because he would need to change the law from what it said the last time that it cannot be used. But he can use the money, notwithstanding the fact that it is not the intention to use it, by having a Resolution of the House, which the Government can at any time pass by Government majority.

HON CHIEF MINISTER:

That would need a change to statutory limits.

HON J J BOSSANO:

Absolutely, but changing the statutory limits is, in fact, I think, requiring him to explain why it was so desirable in April and it ceases to be desirable so soon after.

HON CHIEF MINISTER:

No, there was no intention of doing it now, it's a power for the future.

HON J J BOSSANO:

Yes, the hon Member went to enormous lengths in the debate in April. As I pointed out to him then, he did not require to convince me that there were merits in raising the level of the public debt. I am in favour of it, but he went to enormous lengths to show how prudent we were being by not using the net public debt, by using the gross public debt. So, therefore, all that he has done today is to say, well look, we want to keep on linking the money we borrow to spend to the gross public debt, which is the argument of the last time, and the only reason why we are changing it to the net public debt is because we want to keep on borrowing more money than we want to spend, and we want to do it through the Government Consolidated Fund, as opposed to the Savings Bank. Well, we think it should be done through the Savings Bank and that the effect on the Government finances would be the same. I have to tell him that I have serious doubts, although I am not 100 per cent sure, because I have not seen the amendment until now. But I have to tell him that I have serious doubts as to whether, in fact, what he is suggesting here, is compatible with the provisions of the Constitution, because he is saying that the money will go into the Consolidated Fund, from which it cannot be spent without the approval of the House by a Resolution, and the Constitution is very specific that money cannot be spent from the

Consolidated Fund without a Public Finance Bill, which is a budget.

HON CHIEF MINISTER:

Xxxxxxxx as well.

HON J J BOSSANO:

Well, what does he want a Resolution for? I mean, we have already got a requirement that in order to spend money from the Consolidated Fund, or from the Improvement and Development Fund, we have to have the Bill that empowers Government spending. Now we are saying that if that Government spending produces an excess of £200 million of real public debt, shall we say, as opposed to theoretical public debt, because it is non-useable public debt that we are talking about, then effectively, the ceiling with all this formula that was created in April last year and on which the Chief Minister spent so much time extolling the virtues of the formula, can simply be overridden by a Resolution. Well look, why create mechanisms which can simply………, we have got a law that says we can do one thing and now we are passing another law that says that we can break the first law by Resolution of the House, even though the law will still continue to say that the ceiling is £200 million, and even though the amendment is supposed to ensure that the money is used, or rather, the money is not useable without a Resolution of the House and accompanied, so we are told now, by a budget which effectively would draw money from the Consolidated Fund or the Improvement and Development Fund. Well, there is no other way of drawing money from the Consolidated Fund, with the approval of this House, other than to have an Appropriation or a Supplementary Appropriation Bill, which the Chief Minister has previously described as being covered by the same rules of the budget, in terms of, if he will remember, him being able to speak when the Financial Secretary was still here and he used to say that the Supplementary Appropriation Bill was really a continuation of the Appropriation Bill. So the expenditure of money, the drawing out of money from the Consolidated Fund or the Improvement and Development Fund under the Constitution, requires the passing by Parliament of an Appropriation Act, or a Supplementary Appropriation Act after the original Act for that financial year. Now we are saying that it can be done by Resolution of the House, even though we have been told, although the law does not say that, that this will not negate the requirement for an Appropriation Bill. I really think that in order to achieve a laudable objective of allowing unlimited numbers of pensioners to put away unlimited millions of pounds in 4.5 per cent debentures, well, the reality of it is that the Bill does something else which might not have been intended but it does it. The Bill, as originally drafted and as drafted with the amendment proposed today, which frankly I think it is difficult to do full justice to without even having an inkling that this was on the way, means that with immediate effect the reality of it is that without the amendment, as the Bill published six weeks ago, which is what we have been looking at for six weeks, what it created was a situation where the estimated Consolidated Fund balance of £69.5 million could immediately be added to the £200 million, and the Government could therefore borrow up to £269 million, with the Bill as it stood in the six weeks that we have had it. Now, I think if the amendment is now bringing in a new situation in which the £69 million is added by virtue of this definition of net debt, which is the gross debt of £200 million minus the cash reserves of £69 million, so now the fact that we have got £69 million means that the debt drops. Let us call it £70 million for ease of arithmetic, because there is £500,000 in the Improvement and Development Fund which also counts. So we have got £70 million in cash, the Chief Minister borrows £200 million but he passes this amendment which now means that the debt is £130 million, so he goes and borrows another £70 million, which he then puts in the reserves which then drops. So every time he borrows £1 million and puts it in cash, the debt goes up by £1 million but the moment the cash is in it comes down by £1 million.

HON CHIEF MINISTER:

Exactly, that is why………

HON J J BOSSANO:

Yes, but the amendment only says that that can carry on happening except that he cannot make use of the money other than by coming here and passing a Resolution to spend it. So, in fact, the only thing that the amendment is doing is preventing him from spending that money, but it does not prevent the cycle of saying, well look, I have now got £69 million, even the problem that he said about the bank and the amendment that was being brought in because there was a problem with the money being in the bank as opposed to being in the Consolidated Fund. Look, if he has got £70 million in cash now, provided he borrows in lumps of £70 million, then he can borrow at nine o'clock in the morning, put it in the Consolidated Fund and then at five minutes past nine he can borrow another £70 million. That is the cycle. The only thing the amendment is doing is saying, yes, the cycle is going to be that but with the distinction that the money is sitting there, so presumably it is borrowed and then it is deposited in the bank in the name of the Consolidated Fund or the Improvement and Development Fund, which immediately reduces the public debt, which immediately is then increased.

HON CHIEF MINISTER:

Yes, it reduces the gross public debt by depositing it in the cash reserves.

HON J J BOSSANO:

That is right, therefore it has no longer reached the ceiling of £200 million. So now he is able to borrow more to reach that ceiling. But the moment he reaches the ceiling, since he has been putting what he has been borrowing in the bank, the ceiling goes up and down almost by the minute.

HON CHIEF MINISTER:

There is no gross, under this amendment there is no gross ceiling. The ceiling is in respect of net. This is why I used the £1,800,000,000 example, to get it out of the numbers near £200 million. Certainly under this amendment, the Government could borrow £1 billion and so long as it leaves £800 million in a cash deposit account and not spend it, it has not breached the ceiling because the ceiling is £200 million of net, the one minus the eight.

HON J J BOSSANO:

Yes, and in fact, the only thing that the amendment that is being brought to the House today does, is in fact to say that if he has borrowed £1 billion and he has got £800 million, he cannot spend £1 million out of that £800 million because that would breach the £200 million ceiling, unless a Resolution of the House approves either the change in the ceiling or the expenditure of the money. It seems to me to be the expenditure of the money, the way the amendment is drafted, because the change of the ceiling would require, in my view, that we bring a Bill to the House to amend the Borrowing Powers Act. In my view, in any event, the situation originally without this amendment would have been completely untenable in another respect, in that I do not think, in fact, the money could have been spent, even if the hon Member had not brought this amendment, for the very simple reason that the moment that he spends the money, the net debt goes up. As I read the Bill, it is not that the net debt is calculated exclusively at the time of the borrowing.

HON CHIEF MINISTER:

No, I thought I had explained this point to him in my own presentation, but obviously not clearly. As the Act presently stands, the Act not the Bill, it is phrased in a way that would not have had the effect that he is just describing as impacting to make this amendment unnecessary, because as section 3 of the Act now stands, what happens when the public debt exceeds £200 million, or more likely, when the £200 million has been history and some of the other controlled mechanisms impact, 40 per cent of Gross Domestic Product, or 80 per cent of Consolidated Fund revenue, or the annual debt service ratio, to exceed 8 per cent, is not that we have to repay debt to bring it back down to live within these parameters. It is that we cannot draw down more debt. In other words, we cannot go to the bank and say lend me more. In other words, we cannot make the matter worse. So, if for example, as is very likely to be the case next year, because with the gross at the moment the only one of these things that are impacting is the £200 million and the 80 per cent of Consolidated Fund recurrent revenue. I think recurrent revenue this year is forecast to turn out at about £250 something, 80 per cent of that I think is about £190 something million, so that would be……… But next year Consolidated Fund revenue may have risen to the level, or if not next year the year after, when that 80 per cent will permit.

HON J J BOSSANO:

Higher than the £200 million, then?

HON CHIEF MINISTER:

Yes. Then we will be able to borrow more than £200 million, and at that point the £200 million is left in history for ever and becomes a redundant figure. But then of course, five years from now Consolidated Fund revenue may fall. Well, as presently drafted, section 3 does not mean that one has got to go to the bank and say, we have got to pay some public debt back because it is now more than 80 per cent of my Consolidated Fund. What it says is that one cannot borrow still more, but one can spend everything that one has borrowed before the control mechanisms impact, because the impact of the control mechanism is that one cannot draw further, not that one has to pay down debt in order to bring it back within the criteria. So, that is why it was necessary to add this business of curtailing the ability to draw from cash reserves, so that Government could not borrow the money, have it stashed there and then spend it later, when the control mechanism……… I would not need to borrow more money. I would already have it. The £1 billion would be in the bank, not in the bank, £1 billion would be in the Consolidated Fund, and so long as it was within the net public debt control mechanism on the day that the Government borrows the £1 billion, it does not matter what happens later. I can always spend it because the control, the restriction was only ever not to borrow more, which is why the amendment is necessary in order to say no. Never mind how much money one has got in the Consolidated Fund from borrowed sources, and it does not matter when one borrows it, one cannot spend it, one cannot reduce the public reserves, the cash reserves of the Government below a figure, the effect of which would be when subtracted from the gross public debt, a net public debt figure of £200 million. The amendment is precisely to shackle the Government and make sure that they cannot use this Bill, except by Resolution of the House, which is a different point. If the hon Member thinks that it should not be a Resolution of the House that it should require a formal amendment, that is a different argument and a different issue. The whole purpose of the amendment is to make it clear that the Government cannot, however much they borrow and however much they put in the cash reserves, spend any of that money if the effect of taking that money out of cash reserves, where it is always available to pay straight back to the bank if needed, would be that the net amount of liability exceeds the £200 million which is the unchanged, useable, spendable borrowing power that the House intended the Government should be limited to. But without that clause we would be able to borrow £1 billion, say to

the bank yes it is perfectly intra vires, because the £800 million is going straight into the cash reserve. I put it in the cash reserve and three months later I am free to spend it. Why? Because I no longer have to go and borrow more in order to avoid breaching either the £200 million or anything else. I am not sure that I have explained myself very clearly.

HON J J BOSSANO:

Yes, it is quite clear. That is because of the original Bill as it stands.

HON CHIEF MINISTER:

Correct.

HON J J BOSSANO:

Well, I accept that, my understanding was that when I looked at this, this in itself did not create the mechanism but, in fact, I did not check the original one where, the way that it was drafted when we passed it in April, effectively only introduced a control at the time of borrowing. I have to say, I suppose the Government have an urgency about this, presumably because of the level of the money that is coming in, because otherwise it is something that requires, I think, further thought. I think at this stage we will not vote against it in the light of the further explanation, but I do not think we can go 100 per cent of the way in supporting it without giving the matter further consideration.

HON CHIEF MINISTER:

As long as the hon Member acknowledges that it does not enable the Government to spend more borrowed money. The hon Member might still not support the measure, but he should not withhold his support on the view, which I think he has made clear is not his position, that he disapproving of this because he thinks that it means that I can spend more borrowed money.

HON J J BOSSANO:

Well, I certainly thought that as it stood at the beginning.

HON CHIEF MINISTER:

Yes, it was only when I was preparing for the Bill that I realised that this did not work because it gave us much more leeway than we wanted.

HON J J BOSSANO:

Well, I am grateful for the further clarification but I think at this stage we have to abstain because, frankly, what cures the problem is the amendment we have had today, and frankly, on the basis of looking at it in the short time available, I cannot say I am 100 per cent convinced. I may be nearly convinced but not 100 per cent.

HON CHIEF MINISTER:

Well, I think it is still worthwhile just for the sake of the debate and the record, and without keeping him much longer, just comment on one or two of the points that he has made, even in the knowledge that he is not going to support the Bill. The first point to remember is that £200 million is not a magical figure for ever. The £200 million will probably cease to be the public debt ceiling next year, as soon as 80 per cent of Consolidated Fund revenue exceeds more than £200 million, and we are going to be very close to that next year. The second point is that the UK borrowing guidelines for Overseas Territories is on the basis of

this amended Bill. In other words, it is on the basis of net public debt and not gross public debt. We could have written the Bill originally in this way. We could have written the thing that we debated back in April, we could have drafted it in this way. But we then did not understand the liquidity issues that there would be, the debenture issues that there would be and things of that sort, otherwise we might well have done. I just want to make the point that this is net public debt. Figures are well within the Overseas Territories borrowing guidelines. This is not one law breaching another, this is amending the first law. So it is not that we are now passing a second law that says something which constitutes a breach of the first law, we are amending that first law in a way that alters something that it used to say, so that the first law no longer says it. The hon Member gave the impression that we were passing legislation that conflicted with the first law, in a way that both would remain on the statute book and that, of course, is not the case. I do want to say something about the hon Member's point, whether this overrode the constitutional requirement for an Appropriation Bill. Not only does it not, but indeed it could not, and if it purported to, which it does not, it would be wholly ineffective, ultra vires and inoperable, because as he knows, our Constitution is primary and overriding legislation which takes precedence over any Bill that we might pass in this House. But that is not the correct interpretation of the requirement for a Resolution. The Public Finance (Control and Audit) Act, in the implementation of the Constitution, requires an Appropriation Bill before money can be spent out of the Consolidated Fund. In other words, I cannot spend £700 or £1,000 on painting this building unless there is voted monies in the Appropriation Bill, which we debate at Budget time, that gives me access to £1,000 for that purpose, or for a Head that allows me to extend it to that purpose, and that will continue to be the case. The Government will not be able to spend money on anything, whether it is from cash reserves, or whether it is from anything, from borrowed funds, unless there is an Appropriation Bill authorised by this House. That is not what this Bill does. This Bill does not deal with that mechanism. This Bill is not about the authorising of expenditure, it is about the authorising of cash management. In other words, the effect of this Bill is this. Even if we had the authority of the House to spend money under an Appropriation Bill, we could not fund that authorised expenditure from this source if the effect were, from reserves, if the effect were to reduce the reserves by £200 million. In other words, it is a funding issue not an expenditure issue. I am not sure whether perhaps that choice of words makes clearer the distinction. If he wants me to give way at any point during this explanation I am happy to do so. This Resolution would not be a Resolution authorising expenditure. It would be a Resolution authorising the Government to increase the net public debt above the £200 million today, for example. But it would still need to be covered. The purpose for which the Government wanted to do that would still have to be covered by an Appropriation Bill of the House. I just did not want the hon Member, even though he has already indicated he will not support the Bill, I do not want him to think that this is a parallel or alternative appropriation mechanism in respect of expenditure. This is the amount of cash available to the Government with which to fund authorised expenditure. If it has originated in borrowed money, if it is relying on borrowed money, it cannot be funded from the Consolidated Fund reserve, unless the effect of doing so would be to leave the net public debt at £200 million or less. So it is not an alternative to, it does not authorise expenditure, it authorises the use of particular monies to pay for expenditure, which must have been authorised by the normal Appropriation Bill mechanism of the House. I do not think this Bill as amended is any less prudent than the original one. The prudence comes from the amount of public debt in relation to the size of the economy and the affordability of the public debt, and that remains at £200 million. So I do not think as amended the Bill puts the Government in a less prudent frame of mind. I do not agree that it does not matter where the gap is. I think it does matter, I think a gap in the Consolidated Fund is just another form of Government expenditure, for the Government to be running a Savings Bank showing a loss is capable of being misinterpreted and regarded, perhaps, as symptomatic of something relevant to confidence in the Savings Bank. I honestly do not think it is the same and he should not underestimate the extent to which that was a factor in the

Government's minds. So whilst obviously it would have been nicer to have the hon Members' support, the important thing is that this does not enable the Government to borrow and spend more. It enables the Government to borrow more, not spend it, put it in a savings account, in order to be able to carry on issuing debentures at favourable interest rates, to pensioners and others in Gibraltar. I commend the Bill, at least to those sitting on this side of the House, and I also commend it to the Members sitting opposite, although I understand they are not going to accept my commendation.

Question put. The House voted.

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

Abstained:
The Hon J J Bossano
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

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

ORAL ANSWERS TO QUESTIONS (CONTINUED)

WRITTEN ANSWERS TO QUESTIONS

The Hon the Chief Minister laid on the Table the questions and answers numbered W1/2009 to W54/2009 inclusive.

The House recessed at 7.15 p.m.

The House resumed at 7.30 p.m.

BILLS

FIRST AND SECOND READINGS

THE INCOME TAX (AMENDMENT TO THE INCOME TAX) (ALLOWANCES, DEDUCTIONS AND EXEMPTIONS) RULES 1992) ACT 2008

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Income Tax (Allowances, Deductions and Exemptions) Rules 1992, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Income Tax (Allowances, Deductions and Exemptions) the ADE Rules as they are called, in order to give effect to 2008 Budget measures. The reason why it is done by legislation and not by regulations is that taxation measures with retrospective effect require to be done by primary legislation and not by subsidiary legislation. The first amendment is to rule 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules. The change means that in relation to life insurance policies there continues to be an allowance available, but it will be in respect of this financial year started 1st July 2008, restricted to one seventh of the assessable income as opposed to the previous one sixth of assessable income. The allowances in respect of policies made on or after 3rd June 2008, or in relation to the amount of any increase made on or after that date to pre-existing policies, will be limited. The allowance in relation to such policies will be limited to the basic rate of tax, namely 17 per cent. The amendments to rule 22 of the rules, relate to deductions arising from the payment of mortgage loan interest. The changes will mean that any mortgage loan interest deduction will be limited to loans of up to a maximum of £300,000 and any amount in excess of that maximum will be subject to a one tenth reduction for every year of assessment, until the eligible loan is reduced to £300,000. This reduction will apply to loans made on or before 30th June 2008 and which are secured on the current property and in the name of a current borrower. As both sets of amendments have retrospective effect, back to the time of their announcement during the 2008 Budget, it is necessary to undertake the changes by means of primary as opposed to secondary legislation. I commend the Bill to the House, which does no more than give statutory effect to those Budget measures which I announced in my Budget last year.

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

HON DR J J GARCIA:

What I am going to say in relation to this Bill really applies to all these sets of Bills which are implementing Budget measures. I will say this only once so as not to repeat the same thing three or four times in relation to each Bill. As I have said and as the Chief Minister has said, the Bill is implementing measures which were announced at Budget time in June, and where we accept the principle that it may be necessary, certainly at times, to amend our laws in March to do things which were announced last June, where the law to implement a Budget measure has perhaps not been made properly or whatever. But I think it is necessary for us to place on record that what we are against is taking this length of time to provide the necessary legislative cover for the measures which were announced at the Budget time. Having said that, we will nonetheless be supporting the Bills and voting in favour. So that applies to all the Budget Bills.

HON CHIEF MINISTER:

Well, of course the Government too would very much prefer it not to take this long but this is just a symptom of the huge pressure that there is on a limited drafting resource. It is not that the Government want to take this long, there is a huge amount of legislation drafting in the pipeline, there are a limited number of people, there have been a lot of people coming and going, departures from the drafting unit, the LSU, and this is the earliest……… We are as frustrated as the hon Members. Actually, it does not really have a severe impact because it can be done retrospective to the start of the financial year and people are aware of it. It does not do anybody any injustice but I agree, it would be more desirable for this to be done more promptly and not so many months down the road. So, I have nothing further to add.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to move that the Committee stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE PENSIONS (WIDOWS AND ORPHANS) (AMENDMENT)ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Pensions (Widows and Orphans) 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 amendment to the Pensions (Widows and Orphans) Act provides for the increase in widows and orphans pensions, which are payable under the Act to dependants of deceased Civil Servants, taking account of all periods of public service by the deceased, irrespective of any break in service. This increase will have retrospective effect to 1st July 2007. A similar provision for the uprating of existing pensions payable to all retired Civil Servants under the Pensions Act was approved by this House under the Pensions (Amendment) (No. 2) Regulations 2007. In other words, when implementing the announcement that Civil Servants' pensions would in future ignore past breaks in service, it was overlooked that a similar amendment needed to be introduced in respect of increase in widows and orphans pensions, which are payable under the Act to dependants of deceased Civil Servants. In other words, WOPS where that Bill applies, and there was in other words an insufficiently broad amendment to cover all the intended beneficiaries of the measure, and that is what this Bill does. In other words, it extends the ignoring of breaks in service to widows and orphans of deceased Civil Servants who had they been alive, would have had their pensions entitlement recalculated on the basis of ignoring their past breaks in service. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to move that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) ACT 2008

HON J J NETTO:

I have the honour to move that a Bill for an Act to amend the Social Security (Closed Long-Term Benefits and Scheme) Act 1996, 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 short Bill amends the Social Security (Closed Long-Term Benefits and Scheme) Act in two ways. The first change is an increase of 3.9 per cent in the amount of pension benefit payable to persons under this Scheme. This reflects the increased payment that has already been paid to such persons as from 1st April 2008. The second change reflects the fact that for a number of years now, pension benefits under this Scheme have been paid on a monthly as opposed to a weekly basis. This change regularises that position. Both sets of changes will be deemed to have come into operation on 1st April 2008. I commend this Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Member agree.

Question put. Agreed to.

THE SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) (AMENDMENT) ACT 2008

HON J J NETTO:

I have the honour to move that a Bill for an Act to amend the Social Security (Open Long-Term Benefits Scheme) Act 1997, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I beg to move that the Bill for the Social Security (Open Long-Term Benefits Scheme) (Amendment) Act 2008, be read second time. Mr Speaker, this short Bill amends the Social Security (Open Long-Term Benefits Scheme) Act in two ways. The first change is an increase of 3.9 per cent in the amount of pension benefits payable to persons under this Scheme. This reflects the increased payment that has already been paid to such persons as from 1st April 2008. The second change reflects the fact that for a number of years now, pension benefits under this Scheme have been paid on a monthly as opposed to weekly basis. This change regularises our position. Both sets of changes will be deemed to have come into operation on 1st April 2008. I commend this Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON J J NETTO:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Member agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Income Tax (Amendment to the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992) Bill 2008;
2. The Pensions (Widows and Orphans) (Amendment) Bill 2009;
3. The Public Finance (Borrowing Powers) (Amendment) Bill 2009;
4. The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2008;
5. The Social Security (Open Long-Term Benefits Scheme) (Amendment) Bill 2008.

THE INCOME TAX (AMENDMENT TO THE INCOME TAX (ALLOWANCES, DEDUCTIONS AND EXEMPTIONS) RULES, 1992) BILL 2008

Clause 1

HON CHIEF MINISTER:

Actually, Mr Chairman, on reflection, given that in Committee we go backwards and forwards, there was actually an amendment that we could have made to the first Bill, the Income Tax one. That is that in clause 1 it does say that it should be known as the So and So Act 2008, and I suppose that should now be the So and So Act 2009 in clause 1 of the Bill.

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

Clause 2 – was agreed to and stood part of the Bill.

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

THE PENSIONS (WIDOWS AND ORPHANS) (AMENDMENT) BILL 2009

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

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

THE PUBLIC FINANCE (BORROWING POWERS) (AMENDMENT) BILL 2009

Clause 1 – stood part of the Bill.

Clause 2

HON CHIEF MINISTER:

The amendments set out in the letter, as I was saying prematurely a moment or two ago, I think we have spoken to both of them. I am perfectly happy if the hon Members, who in any case are not going to support the legislation, take the amendments to the Bill set out in my letter of 18th March, as read.

Clause 2, as amended, stood part of the Bill.

The Long Title – stood part of the Bill.

THE SOCIAL SECURITY (CLOSED LONG-TERM BENEFITS AND SCHEME) (AMENDMENT) BILL 2008

Clause 1

HON J J NETTO:

Mr Chairman, thanks for reminding me of the amendment. This is under the Title and Commencement, insert the word "come" so that it reads, "This Act may be cited as the Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Act 2008 and shall be deemed to have come into operation on 1st April 2008."

MR CHAIRMAN:

I suppose the year is to be amended as well.

HON J J NETTO:

Yes, 2009.

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

Clause 2 – was agreed to and stood part of the Bill.

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

THE SOCIAL SECURITY (OPEN LONG-TERM BENEFITS SCHEME) (AMENDMENT) BILL 2008

Clause 1

MR CHAIRMAN:

I suppose we should amend the year.

HON J J NETTO:

Yes, that will be 2009.

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

Clause 2

HON J J NETTO:

In clause 2(c), for section 18(3) substitute section 18A(3). In clause 2(f), for section 34, substitute section 34(2)(a).

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Income Tax (Amendment to the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992) Bill 2008, with an amendment;

2. The Pensions (Widows and Orphans) (Amendment) Bill 2009;

3. The Public Finance (Borrowing Powers) (Amendment) Bill 2009, with amendments;

4. The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2008, with amendments;

5. The Social Security (Open Long-Term Benefits Scheme) (Amendment) 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 Income Tax (Amendment to the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992) Bill 2008;

The Pensions (Widows and Orphans) (Amendment) Bill 2009;

The Social Security (Closed Long-Term Benefits and Scheme) (Amendment) Bill 2008;

The Social Security (Open Long-Term Benefits Scheme) (Amendment) Bill 2008;

were agreed to and read a third time and passed.

The Public Finance (Borrowing Powers) (Amendment) Bill 2009,

The House voted.

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

Abstained: 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 J J Bossano

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Thursday 2nd April 2009, at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 8.00 p.m. on Wednesday 18th March 2009.

THURSDAY 2ND APRIL 2009

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 C A Bruzon
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon G H Licudi

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table:

1. The Agreement between the Government of the United States of America and the Government of Gibraltar for the exchange of information relating to taxes, which I had the honour to sign in London on Tuesday with the Treasury Secretary, Mr Tim Hitchens;

2. The Annual Accounts of the Government of Gibraltar for the year ended 31st March 2008.

Ordered to lie.

HON J J HOLLIDAY:

I have the honour to lay on the Table the Report and Audited Accounts of the Gibraltar Electricity Authority for the year ending 31st March 2008.

Ordered to lie.

MR SPEAKER:

I have the honour to report that in accordance with Standing Order 12(3), the Report of the Principal Auditor on the Annual Accounts of the Government of Gibraltar for the year ended 31st March 2008 has been submitted to Parliament, and I now rule that it has been laid on the Table.

BILLS

FIRST AND SECOND READINGS

THE FINANCIAL SERVICES (BANKING) (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Financial Services (Banking) Act to restrict applications for authorisation and to grant the Minister certain powers in relation thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill amends section 23, headed "additional criteria for licences" of the Financial Services (Banking) Act by inserting after section 23(3)(h) new sub-paragraphs (i) and (j) and new subsections (3A) and (3B). New sub-paragraph (i) provides that the consent of the Minister with responsibility for financial services is required for the issue of a banking authorisation to an entity where more than 20 per cent of the share capital or other voting rights are not owned by a credit institution licensed in the EEA. The policy objective of this amendment is to recognise the fact that it is a matter of macro-economic policy whether entities who are not themselves banks should be allowed to establish banks in Gibraltar. This goes to the very root of the Government's ability to protect the existing banking fraternity, as a matter of policy and quite apart from the regulatory input once licensed. But the question whether entities who are not themselves banks should be allowed to form banks in Gibraltar, goes to the very core of what sort of finance centre Gibraltar wants to be and, therefore, is a macro-economic question and goes to the core of the Government's ability to maximise the protection, through the policies that it pursues, of Gibraltar's jurisdictional reputation and with it the willingness of other banking institutions to carry out business from Gibraltar. So, the effect of the amendment is that if an applicant for a banking licence in Gibraltar has shareholders holding more than 20 per cent of the shares that are not a licensed credit institution, such an entity could not be licensed by the FSC without the Government's consent. But of course, the corollary to that is not true. In other words, the Government cannot require the issue of a licence. So the Financial Services Commission would still need to be satisfied that all its normal

licensing criteria were complied with. This does not detract in any sense from the judgements that the Financial Services Commission has to make, but because of the macro-economic jurisdictional public interest implications at stake, there is a dual key approach. In other words, both the Financial Services Commission and the Government of Gibraltar would need to be content for such an entity to be licensed. Under new paragraph (j), the Minister's consent is required for the issue of a banking authorisation where the applicant is not the branch of a credit institution in the United Kingdom or another EEA State. This is a slightly different point. Clearly branches of credit institutions in the UK or another EEA State, have the European Union right to establish branches in Gibraltar. Therefore, no impediment of this dual key type is possible. But for other banks, particularly in this era of global financial instability, where a bank failure is no longer just a threat to other banks through the investor depositor compensation scheme, but actually places in jeopardy the international economic reputation of the country, and possibly even results in claims for the Government of the country concerned to bail out depositors of failed financial institutions, which would ultimately mean the Government of Gibraltar and not the Financial Services Commission, the Government believe that at this point in time it is not appropriate for the Financial Services Commission by itself to decide the nature of institution that should set up as a bank in Gibraltar. So the Financial Services Commission will continue to exercise the primary function from a licensing point of view, to decide whether a bank should be licensed or not. If the Financial Services Commission decides, as it may do today, that an applicant should not be licensed then that is the end of the matter. But even if the Financial Services Commission think that an entity should be licensed, under this amendment the Gibraltar Government's consent would also be required because ultimately, letting the wrong banks into Gibraltar can threaten not just the international reputation and therefore the economic prospects of Gibraltar, but ultimately as has been seen in countries like Ireland and Iceland, and other small countries that sustain finance centres and banking centres which are disproportionately large to their Gross Domestic Product, it can actually put the finances on the economics of the entire country in jeopardy. Given that magnitude of macro-economic interest, it is not in the Government's view appropriate that such decisions should be exercised only by the licensing and regulatory authority, which is rightly in the context of licensing and regulation separate and independent of the Government. Therefore, as a response, and this is a much gentler response than many countries around the world have made to the global financial crisis, this is the Gibraltar Government's response that we want a degree of Governmental oversight about who enters our economic market place in the area of banking, because there are many deep and wide public interests of Gibraltar that have to be protected, and it is the Government of Gibraltar that has the primary function to do so, and those judgements should not be made by unaccountable bodies, not accountable to the electorate and not accountable to this Parliament for the consequences of allowing the wrong sort of businesses into this community. New subsection (3A) provides that the Minister is entitled to withhold his consent under section 23, if he considers it is in the public interests to do so. Subsection (3B) provides that the provisions of new sub-paragraphs (i) and (j) shall apply to all authorisations definitively issued after the day when these new sub-paragraphs come into operation, including applications submitted prior to that date. In other words, this change of law will apply to all applications currently in the pipeline and not just to applications submitted after the coming into effect of this law. Finally, the Bill also inserts after section 74, restrictions on the use of the word "bank". A new section 74A which provides that the consent of the Minister is required for the use of a name by an authorised credit institution, other than a name derived from the name of those of its shareholders that are a credit institution or the group of companies of which such shareholder forms part. Let me just explain that in non legalistic layman's terms. The Government do not believe that at this moment in time, where the world financial system is where it is, and where the status of tax havens and finance centres and on and offshore finance centres, in respect of which there is pretty little distinction going on right now, it is not appropriate that we should have in Gibraltar banks, other than banks by the name of recognisable

banking institutions. In other words, we do not want a bank called Caruana and Co and we do not want a bank called ABC Limited and Vinet and Co. In other words, this is not the time for Gibraltar to be lowering the public perception of the quality of our banks, but rather a time for us to be raising the public perception of the quality of our banks. Therefore, accordingly, it will not be possible to form a bank in Gibraltar with a name that does not simply reflect the name of its banking parent, without the consent of the Minister, and where there are banks that are joint ventures between banking institutions and non banking institutions, only the name of the banking institution will be able to be reflected in the name of the joint venture. So that the name of the non banking joint venturer cannot feature as the name of a bank in Gibraltar. That is the effect of that third amendment to the Bill, which the Government consider are necessary to ensure that the Government has available to it the power to steer Gibraltar as successfully and painlessly as possible through the turmoil currently afflicting large areas of the global financial system. I commend the Bill to the House.

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

HON F R PICARDO:

Yes, we have heard what it is that the Government has to say in respect of this Bill. I do not think the Chief Minister has said anything to the House which has persuaded those of us on this side that the regulator is not already an appropriate gate keeper, or has behaved as an appropriate gate keeper, in respect of all the macro-economic issues which the Chief Minister rightly says are issues, in particular in the cognizance of the Government, but which are also surely issues which are in the cognizance of the regulator. In fact, this is not a Bill which deals with applicants from outside the EU in the context in which it deals with applicants for new banking licences. It is a Bill that deals with applicants from outside the European Economic Area, which includes countries, of course, outside of the EU and which includes countries like Iceland, which is the country which the Chief Minister has referred to in his presentation of the Bill. But having said that, we will respect the fact that the Government believe that this is a power which it requires in these economic times. The Government will, of course, have more information at its disposal in respect of issues which may be relevant than we do, and for that reason we will vote in favour of the Bill. Although we are not entirely persuaded that there is not already in place a regulatory framework which would protect Gibraltar from all the issues that the Chief Minister has referred to.

HON CHIEF MINISTER:

Well, I cannot persuade him beyond supporting the Bill. The degree of conviction with which he supports it is a matter of secondary importance. Although, of course, I would very much have preferred it to be out of full conviction. But in any case, I am grateful for the recognition of the fact that this is something on which the Government's judgement, perhaps, should be allowed to prevail. If I could just say to him, look the regulator of which the Gibraltar Government thinks very highly, is indeed an appropriate gate keeper for Gibraltar's public interest in regulation. We are very fortunate to have a very good regulatory resource in Gibraltar, and the combination of the Government's policy and the regulator's policy, I think in tandem, are good for the development of Gibraltar's finance centre. However, the reason for this is not that we lack confidence in the regulator qua regulator it is that there are consequences that flow from a regulatory decision, which are non regulatory in nature and which impinge upon the Government's responsibility for the macro socio economic fortunes of this whole country. It is neither right to the citizenry at large, nor indeed is it fair to the regulator, that he should have to exercise his regulatory competence having in mind wider considerations than that which he is statutorily charged to bear in mind. It is for those reasons that the Government think that the Government should not palm off on the regulator responsibility for decisions which, really, the Government should

be willing to take and explain, and defend and account for in this House if they should go wrong. So, I would urge the hon Members not to think that the Government move this out of any lack of confidence in the regulator, simply out of the fact that there are implications for regulatory output in the current climate, which have consequences far wider, deeper and beyond the normal regulatory implications Not least for other banks, whose willingness to remain in Gibraltar could be decided by reference, for example, to whether they think that they are unduly exposed, through the Depositor Guarantee Scheme, to the activities of banks that they regard as less reputable than themselves. So there are wide issues here which affect not just the integrity of future business and the threat that it provides to us, but indeed, are desired to sustain comfortably in Gibraltar, comfortably on their part, remaining in Gibraltar the existing members of our banking fraternity. The hon Member, just to finish, also mentioned the fact that this Bill deals not just with the EU but EEA entities. The reason for that is, as I am sure he knows but may have forgotten, is that the EU provisions apply to EEA states as well as EU States, by virtue of a bilateral agreement between the EU and those EEA states. So, EEA states which are not members of the EU are nevertheless entitled under all of these Single Market Passporting Directives, to the same rights as EEA countries, which is why this Bill cannot be drafted otherwise, because we are not at liberty to discriminate against them. But still, I am grateful for the hon Members' support for the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE INSURANCE COMPANIES (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to transpose, in part, into the law of Gibraltar Directive 2005/68/EC, of the European Parliament and of the Council, of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC and 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC; to transfer the powers and functions of the Commissioner of Insurance to a Commission of Insurance and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before the House is really a substitution for an existing set of regulations that became the final piece of legislation required to fully transpose the European Union Reinsurance Directive that came into force on 10th December 2005. Member States were required to implement this Directive by 10th December 2007. The transposition of the Directive was achieved in Gibraltar by amendments to a number of existing regulations, and the introduction of one new set of regulations made under the Insurance Companies Act. That bundle of regulations included the Insurance Companies (Reinsurance Directive) Regulations, that were conceived as a temporary measure by way of transposition, to ensure Gibraltar's compliance with the Directive by the transposition date. The Bill, once passed, will thus revoke those regulations, namely the Insurance Companies (Reinsurance Directive) Regulations. The Directive deals primarily with the authorisation and supervision of reinsurance undertakings. Before 2005, there were no Directives specifically relating to the prudential

supervision of reinsurance business. In Gibraltar the Insurance Companies Act and its subsidiary legislation have broadly carried over the requirements of the existing direct insurance Directives to insurance companies whose business was restricted to reinsurance. The Directive creates a single European reinsurance market, based on a harmonised prudential framework similar to the one existing for direct insurance. It strengthens the international competitiveness of European reinsurance companies. Reinsurance is an important risk mitigating instrument. It plays a vital role in the primary insurance company's risk and capital management and contributes to enhancing the size and competitiveness of insurance markets. The Directive requires a reinsurer to be an incorporated company and to hold an EU-wide authorisation to carry on its reinsurance business. A reinsurer that seeks authorisation needs to satisfy its supervisory authority about its intended operations. These are to be run by reputable persons with professional qualifications, or experience to manage the risks that are proposed to be covered. The reinsurer must maintain at all times a solvency margin in respect of its entire business, which has to consist of assets free of any foreseeable liabilities. A reinsurer that is licensed in Gibraltar will, as required by the Directive, possess an authorisation that would be valid for the entire European Union, without the need for further authorisation by host Member States. The Government's approach to the transposition of the Directive has been one of using a minimum implementation approach, wherever allowed and appropriate. In other words, where the Directive offered an option, the principle of taking the softest approach has been used, to ensure that Gibraltar remains competitive with other European Union jurisdictions, and attractive for the setting up of reinsurance businesses in Gibraltar. The Financial Services Commission has supported this approach which does not compromise our insurance industry's best practice standards. The Insurance Companies Act contains an extensive and rigorous authorisation and supervisory regime for insurance companies, and this in keeping with the requirements of the Directive, is now being extended to reinsurance companies in respect of the principal areas listed in the Bill's Explanatory Memorandum, and which are restrictions on the right to conduct insurance business, method of application for authorisation, issue of licences, grounds for refusal of authorisation, notification of qualifying holdings, approval of directors, managers and controlling shareholders, requirement to establish adequate technical reserves, adequacy and localisation of assets covering technical reserves, requirement to maintain solvency margins, margins of solvency to be covered by eligible assets, determination of required margins of solvency, amount of the guarantee fund and minimum guarantee fund, requirement to prepare annual accounts, failure to maintain adequate technical reserves, submission of financial recovery plan when financial position is threatened, conditions and procedure for transfer of business, powers of intervention and issued directions, branches that do not comply with legal provisions, grounds for withdrawal of authorisation, winding-up of insurance businesses, the right to apply to the court against decisions taken and cooperation and exchange of information between supervisory authorities. Finally, the Bill amends provisions in the Act to provide for the introduction of the Commission of Insurance, to replace the Commissioner of Insurance as the competent authority for the authorisation and supervision of insurance and reinsurance companies in Gibraltar and for change in the short title of the Act. The hon Members will have noticed by now that the Government is trying to gather up together all the financial services legislation, by prefixing all the names of all the legislation with the words "Financial Services" with then the subject matter in brackets, to facilitate the discovery of legislation by citizens and other professional advisers who may have need and cause to research our legislation, perhaps from abroad on the Government's website. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE GIBRALTAR ELECTRICITY AUTHORITY (AMENDMENT) ACT 2009

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends section 3 of the Gibraltar Electricity Authority Act 2003, by providing the Authority with specific powers to enter into hedging transactions in order to manage its fuel costs. The recent unprecedented volatility in prices of fuel and the uncertainty this creates from a budget perspective for both the Authority and the Government, have highlighted the need for the Authority to manage its exposure to fuel prices and stabilise its fuel costs. Commodity swap transactions and options for the purpose of hedging against the fluctuation in the price of fuel provides a useful mechanism for the management of this exposure. Although the Gibraltar Electricity Authority is able to enter into such hedging transactions under the general powers given to it under the Act, in pursuance of this objective to maintain an efficient and economical system of supply of electricity, this Bill provides it with specific powers in this respect. I commend the Bill to the House.

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

HON CHIEF MINISTER:

Perhaps I could just add very briefly that the moving of this Bill by the Government should not be interpreted to signify that the Government had any doubts about the Authority's ability to do this. It is just that when the Government want to enter into these contracts, it is usual for the Government's counterpart to seek a local legal opinion about whether the Government has the vires to do it, and lawyers giving those opinions sometimes worry about there not being a specific power to do so. So this is written into our laws, not because we think that without it we could not do it, but in order for lawyers advising Government's counterparties in such hedge contract, to be absolutely able to point to a statutory specific provision and that is the point.

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, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Financial Services (Banking) (Amendment) Bill 2009;
2. The Insurance Companies (Amendment) Bill 2009;
3. The Gibraltar Electricity Authority (Amendment) Bill 2009.

THE FINANCIAL SERVICES (BANKING) (AMENDMENT) BILL 2009

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

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

THE INSURANCE COMPANIES (AMENDMENT) BILL 2009

Clauses 1 to 8 – were agreed to and stood part of the Bill.

Clause 9

HON CHIEF MINISTER:

I have given notice of an amendment to section 23(2) which is an occasion in which there is omitted from the list of amendments to Commission. My letter says "section 23(2) is amended by substituting "Commission" for "Supervisor"," my text of the Bill does not actually say "Supervisor", it says "Commissioner", my text of the current Act. But in any event, the intention is that whatever word is there should be replaced by the word "Commission". So, section 23(2) of the Bill be amended so that the reference is to "Commission" rather than to "Commissioner", which the Bill has done wholesale, but that is just an occasion that was omitted from the Bill.

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

Clauses 10 to 54 – were agreed to and stood part of the Bill.

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

THE GIBRALTAR ELECTRICITY AUTHORITY (AMENDMENT) BILL 2009

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:

1. The Financial Services (Banking) (Amendment) Bill 2009;
2. The Insurance Companies (Amendment) Bill 2009;
3. The Gibraltar Electricity Authority (Amendment) Bill 2009,

have been considered in Committee and agreed, with amendments in the case of the Insurance Companies

(Amendment) Bill 2009, and I now move that they be read a third time and passed.

Question put.

The Financial Services (Banking) (Amendment) Bill 2009;

The Insurance Companies (Amendment) Bill 2009;

The Gibraltar Electricity Authority (Amendment) Bill 2009,

were 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 Wednesday 29th April 2009, at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 3.15 p.m. on Thursday 2nd April 2009.

WEDNESDAY 29TH APRIL 2009

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
The Hon S E Linares

ABSENT:

The Hon F R Picardo

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table:

1. The Draft Estimates of Revenue and Expenditure 2009/2010;
2. The Import Duty (Integrated Tariff) (Amendment) Regulations 2009;
3. The Import Duty (Franchise) (Amendment) Regulations 2009.

Ordered to lie.

HON J J HOLLIDAY:

I have the honour to lay on the Table the Air Traffic Survey Report 2008.

Ordered to lie.

HON LT-COL E M BRITTO:

I have the honour to lay on the Table:

1. The Tourist Survey Report 2008;
2. The Hotel Occupancy Survey Report 2008.

Ordered to lie.

HON E J REYES:

I have the honour to lay on the Table the Report and Audited Accounts of the Gibraltar Sports and Leisure Authority for the year ended 31st March 2008.

Ordered to lie.

MR SPEAKER:

I have the honour to report that in accordance with Standing Order 12(3), the Ombudsman's Annual Report for the year ended 31st December 2008 has been submitted to Parliament, and I now rule that it has been laid on the Table.

BILLS

FIRST AND SECOND READINGS

THE FINANCIAL SERVICES (AUDITORS) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to transpose in part into the law of Gibraltar Directive 2006/43/EC of the

European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC, and matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill transposes Directive 2006/43/EC as amended and follows the Directive's language and content. The Bill applies to statutory audit firms and their professional bodies, and to audits of all entities already required to have an audit of annual accounts or consolidated accounts under Gibraltar law, as required by Article 2.1 of the Directive. These include companies, credit institutions, that is banks and building societies and insurance undertakings. There are additional requirements for companies classified as public interest entities, and for public interest entities audit firms. The key provisions of the bill are the following. An updated educational curriculum for auditors, which must now include knowledge of international accounting standards and international standards on auditing; opening up the ownership of audit firms to individuals who are statutory auditors, and to audit firms in any Member State; and updated registration system for auditors and audit firms; defined basic professional ethic principles auditors; a legal underpinning for auditors independence, including a duty for the statutory auditor or audit firm to document factors which might affect his or its independence, and the safeguards adopted in that respect; and obligation for audit fees, or rather, a requirement that audit fees should not be influenced by any factor that undermines independence; requirements to use international standards on auditing for all statutory audits, once those standards have been endorsed under the EU cometology procedure. The Government will only be allowed to impose additional standards for the financial years ending before 29th June 2010. The Bill also provides for the possibility of a common audit report for financial statements that have been prepared on the basis of international standards on auditing. The Bill provides for the introduction of a requirement that Gibraltar should have an audit quality assurance system that complies with defined principles. The Bill also provides for common rules concerning the appointment and the resignation of statutory auditors and audit firms. In addition, the Bill imposes further requirements on the statutory audit of public interest entities. Public interest entities and these provisions include the introduction of an annual transparency report for audit firms to cover, for example, information on their governance, the rotation of key audit partners at least every seven years, some requirements to report certain matters to audit committees and a restriction on auditors taking up key management positions in entities that they have audited. A quality assurance review must be undertaken at least once very three years of audit firms who audit public interest entities. Clause 42 provides for the introduction of a requirement for some public interest entities to have in place an audit committee, or a body performing equivalent functions. That is to say, an internal mechanism to oversee the audit function of that organisation. The Bill aims to reinforce public oversight of the audit profession and to encourage regulatory cooperation, both within the EU and third countries. The basis of common criteria for the public oversight system, cooperation between our competent authorities and that of other regulatory bodies that constitute the home country regulator of audit firms; mutual recognition between Member States of regulatory arrangements; the establishment of procedures for exchange of information between Gibraltar and other Member States oversight bodies carrying out investigations; common rules on registration, approval and supervision; and the regulation of the passing of auditing working papers to competent authorities in third countries. The Bill recognises that the requirements of the Directive regarding qualification and training may be difficult to operate at a local

level in Gibraltar, because we do not have facilities for the training of auditors. As a result, clause 6(2) provides that any natural person approved under the provisions of the Directive by the competent authority of an EEA State, is deemed to be approved by the Gibraltar competent authority to provide statutory audit services in Gibraltar. On the production of professional ethics by the Minister under clause 21, the Bill provides in subsection (3) that in default of any regulations being made on the matter, the professional ethics applying to statutory auditors and audit firms immediately prior to the coming into force of the Bill, shall continue to apply. The effect of this is to preserve the status quo ante, notwithstanding the repeal which this Bill also does of the existing Act of 1989. Below is a concise description of the points of the bill which are as follows.

Clause 5 requires the competent authority to notify other Member States in which an auditor is registered if the approval of that auditor is withdrawn for any reason. Clause 8 lists those subjects which will be examined in the test of theoretical knowledge that auditors are required to sit. The Bill leaves open the option for the Minister to set up an independent Gibraltar test or maintain the status quo. Clause 4 limits the additional requirements to be imposed on statutory auditors from other Member States who wish to practise in Gibraltar. They can be required to do no more than pass an aptitude test on their knowledge of Gibraltar laws and regulations applying to audit. The Bill retains the Directive option for the Minister regarding how to proceed in this respect. Clause 45 sets out the requirements for the arrangements for recognition of auditors from third countries who wish to register as statutory auditors in Gibraltar. Provision has been made in the Bill for these arrangements and for the requirement of reciprocity. The Bill contains a number of new requirements for the public register which go beyond those in the current Act. The Bill, therefore, requires the competent authority to maintain a register that meets the new requirements. Specifically under clause 16 of the Bill, the register of auditors will have to include individual registration numbers for all statutory auditors. Under clause 15, it must be available electronically to the public and it must also list the other Member States in which each auditor is registered as a statutory auditor. Clause 15 provides an exception to this protection, an exception to protect information on the register from disclosure to mitigate a threat to the personal security of auditors. The Bill achieves this by giving the competent authority the duty to obtain Government approval before anybody is so exempted. Under clause 16, a register must be kept of third country auditors who sign reports to third country companies, whose transferrable securities are admitted to trading on that Member State's regulated markets. They must be clearly marked as such in the register. The Directive, and therefore the Bill, require the register to be an electronic database, accessible, as I have said, electronically by the public. Many of the requirements regarding professional ethics in the Directive are already substantially covered through the provisions of section 6 of the Financial Services (Auditors Registration and Approval) Act of 1989, which in turn piggy backed onto the UK's and other Member States' regulatory regimes. However, the Minister retains the power to make separate provision. The requirement in clause 23 for the outgoing auditor to provide all relevant information to the incoming auditor is not established in existing Gibraltar or UK law. The requirement in clause 23 regarding confidentiality and professional secrecy is currently met by section 6 of the 1989 Act. Under clause 25, fees for statutory audits must not be influenced or determined by the provision of additional services to the audit entity, and neither can they be based on any form of contingency. These are measures designed to ensure the independence of auditors from the companies that they are auditing. Clause 26 requires statutory auditors and audit firms to carry out audits in compliance with international audit standards adopted by the European Commission. Clause 27 sets out provisions for statutory audits of the consolidated accounts of a group of undertakings. Clauses 29, 30 and 33 set up the requirements of the Directive for the system of quality assurance, investigations and penalties and for public oversight. At present in Gibraltar quality assurance inspections are not undertaken by the board set up under the 1989 Act. Article 33 of the Directive requires each Member State to designate one

entity responsible for ensuring cooperation with other Member States. Clause 34 of the Bill vests this power in the Minister. Under clauses 36 and 37, the competent authority must be subject to a duty to fulfil the various obligations to cooperate with other Member States' competent authorities. The approach in the Bill to the implementation of these provisions is not to seek to regulate all contacts with other Member States but to allow for the most pragmatic and efficient approach to cooperation between Gibraltar bodies and their counterparts in UK and elsewhere in the EU, while providing a legal framework as a fall back to ensure that this happens in line with the requirements of the Directives. Under clause 39, statutory auditors, whether individual or firms, can only be dismissed where there are proper grounds to do so, and this is an important new element of the scheme of this Directive, which is somehow to broaden and deepen in the context of changes and globalisation and threats to the financial system, to try and make auditors more independent of the companies that they audit, less behold xxxxxx to them unless drawn to the company by a commercial relationship with them. One of the ways in which that is done is by limiting the grounds upon which a company can sack their auditors. In other words, auditors are no longer at jeopardy if they threaten to blow the whistle on the company. Furthermore, under clause 38 of the Bill, the statutory auditor or audit firm must be appointed by the general meeting of shareholders, or by the members of the audited entity. Clauses 40 to 44 of the Bill set out special requirements for the statutory audits of what are called "public interest entities". These are entities that are deemed to have higher visibility and/or are economically more important, and it is considered that investors require a higher degree of protection when investing in these entities. The Directive, therefore, imposes stricter requirements on the statutory audit of their annual or consolidated accounts. The definition of "public interest entities" as applied by the Directive in Article 2.13 covers the following. Entities which have issued transferrable securities admitted to trading on a regulated market by a Member State. Credit institutions, that is banks and building societies, and insurance undertaking which may be companies, friendly societies, or industrial and provident societies. So those are the mandatory public interest entities and the Bill also allows the Minister to designate other entities as public interest entities, if they are significant public relevance because of the nature of their business, their size or the number of their employees. Clause 40 provides that the Minister may, subject to certain conditions, exempt some types of public interest entity from one or more of the requirements of Chapter 10 of the Directive. The reasoning behind this is that public interest entities that are not listed on the regulated markets are known to attract more sophisticated investors, with a greater awareness of the level of risk related with these alternative markets, and therefore thought to be worthy of consideration for a slightly lighter touch regime that would normally apply to public interest entities, of which they are nevertheless an example. Clause 42 requires that audit firms who audit public interest entities publish annually on their websites the specified information about the operation of the firm. To make this provision enforceable, the requirements that all such entities have a website has also been included in the Bill. Clause 42 provides that all public interest entities must have an audit committee, which meets the composition, function and requirements set out in the Bill. Clause 42 sets out specific composition of requirements for audit committees. In particular, at least one member of the committee must be independent, and one member of the committee must have competence in accounting and/or auditing. In addition, there must be determined whether such audit committees are to be composed solely of non-executives and how they are to be appointed. The clause sets out specific functional requirements for audit committees, without prejudice to any other responsibilities or to the responsibility of others. These requirements are that the audit committees shall, amongst other things, monitor the financial reporting process, monitor the effectiveness of the company's internal control, internal audit, where applicable, and risk management systems, monitor the statutory audit of the annual and consolidated accounts and review and monitor the independence of the statutory auditor or audit firm. Interesting that this is an internal body of the entity being audited that must have its own internal independent body charged with oversight,

internally, of anything to do with its own auditing. So a big company is required to have an audit committee, staffed with people whose only function, well not whose only function, whose function is, they are allowed to have others, but whose function is statutorily to manage, control and monitor and oversee all the audit functions to which that company is subject, ensure it remains independent and ensure that it remains effective and informative and reliable. Clause 43 requires that the auditors of public interest entities make disclosure of various matters to the audit committee around their independence. Clause 44 requires those audit firms, who audit public interest entities, to be subject to more frequent quality assurance inspections than those who do not. These are quality assurance inspections of the auditors. In other words, if one audits a public interest entity, firms that audit public interest entities are themselves subject to more frequent quality assurance inspections than audit firms who do not audit public interest entities. Clause 48 requires control of the passing of audit papers to the authorities on non EU countries. We have no such restriction in Gibraltar, so in order to implement the Directive, the Bill imposes new restrictions, with appropriate exemptions for the circumstances in which the Directive provides for information to be transferred. The Bill also sets out the circumstances in which this can happen. Article 49 is transposed by Bills that are on the Order Paper, but which cannot be taken in the House today. In other words, full compliance with this Directive is not achieved uniquely by this Bill, but it will also require the passage by this House of the Bills for the Companies (Accounts) (Amendment) (No. 2) Bill 2009 and the Companies (Consolidated Accounts) (Amendment) (No. 2) Bill 2009, both of which are on the Order Paper but cannot be taken today because of the six week rule. Those provide for amendments to our transposition of the Fourth and Seventh Company Law Directives, and they are provisions of those Directives that are impacted by this Directive which we are mainly, in large part, transposing today but there are these small parts which are by amendment to other Acts, which are effected by Bills that we will take in this House in due course. The effect of these amendments are to impose requirements on the disclosure of auditor remuneration and we will deal with those in due course when we come to speak to those Bills on another day. There are provisions in Article 49 about enforcement and sanctions and penalties, and finally, clause 49 repeals the Financial Services (Auditors Approval and Registration) Act of 1989. The reason is twofold. Firstly, that Act transposes Directive 84/253, which is revoked by Article 50 of the Directive in hand. Secondly, amendments to the 1989 Act, would have been far too fundamental and wide ranging to make anything else workable. So rather than do it by amendment to the existing Act, we have done it by repeal and new Act. Finally, hon Members will see that I have given notice of amendments to be taken at the Committee Stage. For the ease of the House, I have divided the amendments into two annexes attached to the letter. Annex 1 are entirely of a typographical, printing, typing correction of mistakes in the spelling of words, the use of capital letters, things of that sort. Annex 2, none of them are particularly significant but are not of that nature. So, with the approval of the House, when it comes to Committee Stage speaking of these amendments, I would propose not to speak individually to the amendments in Annex 1, and to limit my comments to the amendments to Annex 2, but the amendments to Annex 1 are, of course, moved. I commend the Bill to the House, which is to transpose a Directive for the non transposition of which infraction proceedings are currently outstanding.

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

HON G H LICUDI:

We will be supporting this piece of legislation. There is just one point on which I would ask the hon mover to provide some clarification. In relation to clause 31, which deals with appeals from a decision of the competent authority, that provides that appeals shall lie on a point of law only to the Supreme Court, and that the Chief Justice may make rules. Presumably the procedure for the appeal will be governed by those rules. Is it

envisaged that those rules will come into play and into force at the same time, or is it something that will happen subsequently? If it will happen subsequently, what will happen in the meantime, are any appeals possible?

HON CHIEF MINISTER:

I do not know the answer to the hon Member's question, except that it is one that I have often asked myself. There is a tradition in Gibraltar, which we have hitherto respected, and that is that Ministers do not use their subsidiary making powers to make rules of court, because it is thought, it is not necessarily, but it is thought better and more elegant, well just better in all its definitions, that judges should make their own rules for their own procedures in the courts. But of course, nor can the Government direct judges to make such rules. So, I suppose, given that there have to be rules, because this right of appeal is a requirement of the Directive, I suppose if the Chief Justice did not make court rules, that has never been the case in the past, but I suppose if a Chief Justice just refused to do so, ultimately the Government would have to intervene by using its subsidiary making powers to do so, because Gibraltar would be in breach of the Directive if it did not. But I think the Chief Justice is very quick, it does not require a lot of these things. Very often I think it just involves extending the existing rules, or adapting existing rules. So there is theoretically, which is his question, there is theoretically a possibility that between the date of commencement of this Act and the Chief Justice having an opportunity to doing these rules, somebody may wish to lodge an appeal, I imagine that the Chief Justice would just issue, in those circumstances would just issue guidance, or we just hand down some for of …… So, it is an interesting scenario. I think it is worth, in reliance on this issue, which is one that as I say I have often thought about myself, I do not think it is worth abandoning the tradition that the executive does not legislate rules of court, and leaving that only to a last resort if it became necessary to do so. I think that is probably good practice to carry on doing it in that way. I will give way.

HON G H LICUDI:

Simply to clarify that by the question we were not suggesting that the Government should intervene, and we do believe that this is an appropriate exercise of the Chief Justice's powers. We just wanted to know the practical implications.

Question put. Agreed to.
The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE CREMATORIA (AMENDMENT) ACT 2009

HON LT-COL E M BRITTO:

I have the honour to move that a Bill for an Act to amend the Crematoria Act 2008, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT-COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before this Parliament essentially contains two clauses. Clause 1 is straightforward and provides for the title and commencement of the Bill. Clause 2 is made up of five sub clauses. Sub clause 1 introduces the amendments to the Crematoria Act 2008. Sub clause 2 deletes the definition of

a "registered medical practitioner" from section 2 of the 2008 Act. This amendment reflects the fact that subsequent amendments remove references to registered medical practitioners from the Act. Sub clause 3 clarifies that it is an offence to export, or indeed to assist in the exportation of human remains for the purpose of their cremation outside Gibraltar, unless there is a cremation authorisation in place. A person found guilty of such an offence would be liable to a fine at level 5 on the standard scale, or up to six months imprisonment, or both. The offence can be tried in the Magistrates' Court. Sub clause 4 replaces (a) of section 9(3) of the 2008 Act with a new paragraph. This simplifies the procedure to be allowed with regard to the medical certification required by the Act, before permission can be given to cremate human remains. Notice that there is no impediment to cremation will now be given by the medical practitioner who certifies the death, under the Births and Deaths Registration Act. Sub clause 5 deletes sections 14, 15 and 16 of the 2008 Act. These sections are no longer required as they relate to certification by registered medical practitioners, other than under the Births and Deaths Registration Act. Mr Speaker, I commend the Bill to the House.

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

HON G H LICUDI:

The Minister has explained that by clause 2, sub clause 2, the definition of "registered medical practitioner" is removed, and by sub clause 5, certain sections are deleted. The mover has indicated that these sections are no longer required, but we would welcome an explanation as to why it is that it is no longer required. The procedure which had been adopted and approved by this House, as recently as November of last year, so this is a very recent Act of Parliament, was that there was indeed a requirement for that second certification by a medical practitioner that there was no impediment to cremation, and that person had to be someone distinct from the medical practitioner that actually certifies the death. If these sections are deleted and that separate certification is no longer required, there must be an underlying reason why it is thought appropriate. Is it a matter of change of policy, or for practical considerations? What is the underlying reason why it is thought necessary so soon in the life of this Act to make this deletion?

HON LT-COL E M BRITTO:

Yes, indeed, the hon Member is correct the original Act as we passed it envisaged the necessity of a second doctor or a second signature. It was subsequently decided as a matter of policy that this was more cumbersome and it was unnecessary because it was not required by the Directive. The requirement had been based on the UK legislation, which requires a second doctor. The Directive itself does not require it, so it was decided to remove it. Secondly, the requirements that the second doctor was required to supply in his certification have been included into the death certificate. So we now have the death certificate………. So it was decided that the requirements on the doctor for the second certificate could be incorporated into the first certificate, or the original certificate of death. Additionally, we also became aware that we had not been aware prior to the Act being passed, that in Spain the legislation has been transposed according to the EU Directive, and therefore, the second signature was not required. So the requirements of the Gibraltar legislation for two signatures could be circumvented, simply by taking the body to be cremated in Spain. So taking all circumstances into account, it was decided to do as the Bill before the House now seeks to do.

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 later today, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Financial Services (Auditors) Bill 2009;

2. The Crematoria (Amendment) Bill 2009.

THE FINANCIAL SERVICES (AUDITORS) BILL 2009

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

Clause 2

HON CHIEF MINISTER:

I move all the amendments set out in Annex 1 of my letter of notice, so I will not move any of them as we come to them. But I will move separately the ones in Annex 2.

MR CHAIRMAN:

I shall bear that in mind. Clause 2 has an amendment.

Clause 2, as amended, stands part of the Bill.

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

Clause 11

MR CHAIRMAN:

There is an amendment proposed to clause 11 in Annex 1. Clause 11, as amended, was agreed to and stood part of the Bill.

Clauses 12 to 18 – were agreed to and stood part of the Bill.

Clause 19

MR CHAIRMAN:

There is an amendment proposed to clause 19 in Annex 1.

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

Clauses 20 and 21 – were agreed to and stood part of the Bill.

Clause 22

MR CHAIRMAN:

There is an amendment proposed to clause 22 in Annex 1.

Clause 22, as amended, was agreed to and stood part of the Bill.

Clauses 23 and 24 – were agreed to and stood part of the Bill.

Clause 25

HON CHIEF MINISTER:

Yes, I propose there an amendment to clause 25 which is not fundamental in nature, but rather to provide directly in this Act what the present clause as drafted required the Minister to provide by regulations. In other words, as the Bill was drafted, it says "the Minister shall make regulations to ensure that fees for statutory audits are not influenced or determined by the provisions of additional services to the audited entities, and are not based on any form of contingency", and the amendment is simply to provide that here and now by saying, "fees for statutory audits shall not be influenced or determined by the provisions of additional services and shall not be based on any form of contingency". In other words, to do directly in this Act what the Directive requires and which was going to be done by regulations, but really the regulations could not do very much more than that anyway. That is the amendment.

HON G H LICUDI:

Is it our understanding then that the regulations were not going to be more wide-ranging than the statutory provision, other than repeating what it said in the statute and, therefore, there is no need for them to be made at all?

HON CHIEF MINISTER:

Should there be a need, upon which I have not yet been advised, should there be need to embellish on this by providing more specific detail, that would have to be done by regulations under the Act. But doing it this way means that immediately the Act is a compliance with the Directive. If we do it in the way that the Bill originally proposed, transposition of the Directive would not have been completely achieved until those regulations had been drawn up and published. So this is sufficient to represent effective transposition but does not exclude the possibility of regulations should it subsequently transpire that there is more nitty gritty required than is provided here. This is the language of the Directive, these words are replicated in the Directive.

HON G H LICUDI:

If it is envisaged that there is a possibility of regulations, and it is not being discarded at this stage, might there not be a problem in that the statutory Act must provide the ability to make regulations for certain purposes? In those circumstances, would it not be better for the clause, section, when it is passed to provide as in the amendment, and in addition, say something like, "the Minister may also make regulations" or "may make further regulations" or having an empowerment to make regulations, which is generally necessary?

HON CHIEF MINISTER:

Yes, that is indeed necessary but there is a general regulation-making power in section 51 which is thought to be wide enough. In clause 51, "the Minister may by regulation prescribe anything required to be prescribed and generally do anything requiring to be done pursuant to the provisions of this Act". I am told that that language is wide enough to cover precisely the scenario that the hon Member has just described.

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

Clause 26

MR CHAIRMAN:

There is an amendment proposed to clause 26 in Annex 1.

Clause 26, as amended, was agreed to and stood part of the Bill.

Clause 27

MR CHAIRMAN:

There are three amendments proposed to clause 27 in Annex 1.

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

Clause 28

HON CHIEF MINISTER:

I do not know why this one is in this list it might easily have been in the other list. The Bill presently reads, "in exceptional circumstances the competent authority may require the signature referred to in subsection (1) not be disclosed", and the amendment is simply to insert after "not" the word "to". So that is a typing omission. But more substantially, by deleting the word "known" and its substitution by the words "made known by the audit firm" and this is not a typographical amendment, it is just nonsensical. At the moment it reads, "in any case, the names of the person involved shall be known to the competent authority". Well, that is just an erroneous statement of fact. What it means is, in any case the name of the person involved shall be made known by the audit firm to the competent authority. Section 28 is the one that says that if there are security threats, information about the auditor need not be disclosed publicly on the website. Then this says, but in those cases the name of the person involved shall be known to the competent authority. Well, I am not sure that is English. What does it mean "shall be known to"? So the amendment is to make it sensible. In any such case the names of the persons involved, that is to say, the names of the person involved in auditing public interest entities, whose names are not published on the website for security reasons, nevertheless the audit firm has to make the names known to the competent authority. So it is by deleting the word "known" and writing it out in longhand by substituting for the word "known" the words "made known by the audit firm".

HON G H LICUDI:

Is the hon Member referring to clause 28 which is headed "audit reporting"?

HON CHIEF MINISTER:

I am. I am speaking to clause 28(2).

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 G H LICUDI:

In relation to clause 30 there is an amendment proposed in 30(1). It is clear from the Bill that there is a word missing before "any person entered" and what is proposed is the word "when". Would the hon Member agree that the word "when" carries with it an element of inevitability that something is going to happen, it is just a question of when it is going to happen rather than where? Apart from the first sub clause which is "dies", which we know will happen and therefore "when" might be appropriate, the rest, failing to pay a fee is wound up. Is it really appropriate to say "when" somebody is wound up this would happen, or should it not say if this happens then this is the result?

HON CHIEF MINISTER:

Well, I do not want to get stuck in to a sort of entirely semantic discussion with the hon Member unnecessarily. This section is providing for circumstances when something has happened. "When" the following things happen the competent authority shall do, I have seen the word "where" used. I have seen the word "where" used instead of "when". "Where" any person entered in the register dies. I do not mind changing it to "where". "Whenever" I do not think it is strictly necessary but I am perfectly happy, if the hon Member thinks the legislation would look or read better. I would accept "where", "whenever" does not mean the same as "when". If he wants to propose "where" I will accept it. If he does not feel a need to propose it, we will settle for "when". As he chooses. Or simply to say "if".

HON G H LICUDI:

The only problem with "if" is in relation to "dies", which "if" a person dies.

HON CHIEF MINISTER:

"If" any person dies, well that is alright, that is the only one that is bound to happen to everybody at some stage. I would urge the hon Member not to become too concerned about this. I would accept "where" or "if".

HON G H LICUDI:

We leave it in the Chief Minister's hands.

HON CHIEF MINISTER:

I am advised by my law draftsman to propose "when". I am already risking a rap over the knuckles when I get back to the office by agreeing to accept another word, but I shall run the gauntlet in the interests of consensus.

HON G H LICUDI:

I would suggest "where".

HON CHIEF MINISTER:

Yes.

MR CHAIRMAN:

I think "when" is correctly described on the happening of an event as a time, and that is when the section comes in place.

HON CHIEF MINISTER:

Can I encourage the hon Member to leave this with me and we leave it at this for now, and if somebody says to me that he was right and we were wrong, then we will move an amendment at a later date. I am obliged to him.

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

Clauses 31 and 32 – were agreed to and stood part of the Bill.

Clause 33

MR CHAIRMAN:

There is an amendment proposed to clause 33 in Annex 1.

Clause 33, as amended, was agreed to and stood part of the Bill.

Clause 34 – was agreed to and stood part of the Bill.

Clause 35

MR CHAIRMAN:

There is an amendment proposed to clause 35 in Annex 1.

Clause 35, as amended, was agreed to and stood part of the Bill.

Clause 36

HON CHIEF MINISTER:

In clause 36, I am proposing an amendment by inserting after the words "whenever necessary" the words "for the purposes of carrying out its responsibilities under this Act". In other words, that there has to be some curtailment to the concept of necessity, it just cannot be for any old reason and whenever the Minister fancies, the competent authority fancies, rather. It has got to be necessary in the context of the carrying out of the responsibilities under this Act to ensure that there is not deemed to be a discretion which is not necessary for carrying out the requirements of the Act. So in a sense it is a curtailing amendment rather than an amendment to expand power. It is an amendment to curtail the extent of the power contained in the section.

Clause 36, as amended, was agreed to and stood part of the Bill.

Clauses 37 and 38 – were agreed to and stood part of the Bill.

Clause 39

HON CHIEF MINISTER:

In clause 39, I would like to propose that instead of the words "prior to" we use the single word "of". So that instead of reading "audited entities and the statutory auditor or audit firm shall inform the competent authority prior to the dismissal", it should read "audited entities and the statutory auditor or audit firm shall inform the competent authority of the dismissal". It is not possible for an audit firm to inform the competent authority of a resignation prior to it happening, because the auditor may not have prior notice. So there is an obligation to inform of not prior to.

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

Clauses 40 and 41 – were agreed to and stood part of the Bill.

Clause 42

HON CHIEF MINISTER:

In clause 42, in addition to the one in Annex 1, I would like to propose that we insert the words "one member" after the words "be independent and". That can be explained to the hon Member the reason for this. As it reads at the moment which is, "one member of the audit committee shall be independent and shall have competence", it means, unintentionally, that the same individual has got to be both independent and have audit competence. Whereas the Directive actually requires that one member shall be independent and another member shall have competence. The amendment is designed to make sure that independence and competence do not have to coincide in the same person. It is enough if one person is independent and a different person has audit competence.

MR CHAIRMAN:

There is a further amendment in Annex 2 to clause 42.

HON CHIEF MINISTER:

Oh Yes, I am grateful. Yes, in sub clause (7), I propose that we amend it by substituting for the words "in the EEA State in which the entity to be audited is registered", delete those words and substitute "Gibraltar". In other words, what has happened here is that the draftsman has literally transcribed into the Bill what is an instruction to Member States under the Directive. So the Directive says, Member States shall ensure certain things in the EEA State in which the entity is to be registered, but that in our case means Gibraltar. So our law should say "Gibraltar" and not just regurgitate the instruction, if the hon Member can follow the point I am making.

Clause 42, as amended, was agreed to and stood part of the Bill.

Clauses 43 to 45 – were agreed to and stood part of the Bill.

Clause 46

MR CHAIRMAN:

There are three amendments to clause 46 in Annex 1.

Clause 46, as amended, was agreed to and stood part of the Bill.

Clause 47

HON CHIEF MINISTER:

In clause 47(2), I am proposing the following amendment. Namely the deletion of the first sentence and also inserting after the words "on the matter" the words "pursuant to article 46(2) of the Directive". So deleting the sentence that reads, "in order to ensure uniform application of subsection (1), the equivalence referred to therein shall be assessed by the European Commission in cooperation with the Minister", which is again another repetition of a comment in the Directive which does not require transposition. That simply says that the Commission shall from time to time assess what needs to be done to ensure uniform application of subsection (1), and when it does so it is binding on Member States. So the first sentence is deleted but we add at the end of the sub clause (2) after the word "matter", the words "pursuant to article 46(2) of the Directive". So that it reads, "the competent authority may assess the equivalence referred to in subsection (1) or rely on the assessments carried out by other EEA States as long as the European Commission has not taken a decision on the matter pursuant to article 46(2) of the Directive", which is the article number that gives the Commission the right to make such assessments.

Clause 47, as amended, was agreed to and stood part of the Bill.

Clause 48

MR CHAIRMAN:

There is an amendment to clause 48 in Annex 1.

Clause 48, as amended, was agreed to and stood part of the Bill.

Heading to clause 49

MR CHAIRMAN:

There is an amendment to the heading of clause 49 in Annex 1.

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

Clauses 50 to 52 – were agreed to and stood part of the Bill.

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

THE CREMATORIA (AMENDMENT) BILL 2009

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:

1. The Financial Services (Auditors) Bill 2009;

2. The Crematoria (Amendment) Bill 2009,

have been considered in Committee and agreed to, with amendments in the case of the Financial Services (Auditors) Bill, and I now move that they be read a third time and passed.

Question put.

The Financial Services (Auditors) Bill 2009;

The Crematoria (Amendment) Bill 2009;

were 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 18th May 2009 at 2.30 p.m.

Question put. Agreed to.

HON J J BOSSANO:

Can I ask whether we are likely to get the Employment Survey Report at the next meeting, because it has not been included in this session?

HON CHIEF MINISTER:

I do not know. I do not know at what stage of preparation it is and I do not know at what stage it was published last year. Is it overdue?

HON J J BOSSANO:

We normally get it before we get to the Estimates, that is the point.

HON CHIEF MINISTER:

I will check to see when it was done last year and where it is now.

The adjournment of the House was taken at 3.45 p.m. on Wednesday 29th April 2009.

MONDAY 18TH MAY 2009

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

SUSPENSION OF STANDING ORDERS

HON D A FEETHAM:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Private Members' Motion.

Question put. Agreed to.

PRIVATE MEMBERS' MOTION

HON D A FEETHAM:

I have the honour to move the motion standing in my name which reads as follows.

> "That this Parliament do give leave for the introduction by me of a Private Members' Bill, namely a Bill for an Act to amend the Criminal Offences Act."

Mr Speaker, without at this stage wishing to speak on the merits of the Bill, I would like to say a few words on the scope of the Bill and the reasons for its presentation at this stage. The main purpose behind the Bill is to equalise the age of consent for homosexual and heterosexual activity and intercourse, by setting the age of consent at 16, which is the age of consent for heterosexual, and indeed, for sexual activity between women since 1882. The reason why the Bill sets the age of consent at

16 will be explained fully during the course of my speech on the Bill if Parliament grants me leave. Suffice it to say at this stage, that quite apart from any other consideration, raising the age of consent to 17 or 18 would be fraught with legal and practical difficulties which could lead, I put it no higher than that, to potential human rights challenges from heterosexuals and lesbian women affected by such a move. The House need only consider the position of a married 16 or 17 year old to understand some of the difficulties involved. Additionally, the vast majority of members of the Council of Europe have ages of consent between 13 and 16 years old, including Spain at 13, Italy at 14, France at 15 and Portugal and the United Kingdom, excluding Northern Ireland, at 16. Only Turkey, the Ukraine and with some exceptions Malta, have ages of consent set at 18. The Bill achieves equalisation by introducing gender neutrality in relation to the existing sexual offences and defences in Part 12 of the Criminal Offences Act. It does so by using the term "person" instead of "man" and doing away with the offence of buggery. It also introduces the concept of unlawful sexual activity in children short of penetration, which is a lacuna in our existing legislation. The upshot is that any sexual activity or intercourse, whether homosexual or heterosexual, between persons over the age of 16 will not be an offence if consensual. My personal view is that the need to equalise the age of consent is a consequence of the adoption of the 2007 Constitution, and introduction in particular in that Constitution, for the very first time, of a prohibition in section 14 of discrimination on ground of, and I quote, "sex or other status or such other grounds as the European Court of Human Rights may from time to time determine to be discriminatory". In addition, other provisions of the Constitution require the courts locally to have regard to European Court of Human Rights jurisprudence. According to the jurisprudence of the European Court of Human Rights, sex includes sexual orientation and for the very first time the 2007 Constitution imported into constitutional law in Gibraltar any further grounds for discrimination developed by that European Court. The European Court of Human Rights has ruled that inequality in age of consent is discriminatory in breach of the Convention, unless, and this is the key, there is objective and reasonable justification and unless there is a reasonable relationship of proportionality between the means employed, that is, the legislative difference in treatment and the justification for it. Whilst it is certainly true, the contracting States and by analogy Gibraltar, enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment, attempts to justify inequality in the ages of consent on a wide range of grounds, some of which I shall deal with during my course of my speech on the Bill, have not succeeded. In my opinion, therefore, treating homosexual men differently to heterosexuals and lesbian women in the same age group, is unlikely to be reasonably justifiable and very probably infringes the European Convention of Human Rights and is also unconstitutional. I may be wrong, but that is my view and that is my judgement. In good conscience I cannot ignore that view and that judgement, and I feel that legislative change to remedy this situation is appropriate and is appropriate now. I recognise, however, that reducing the age of consent for homosexual activity is a matter that may go against some of the hon Members' consciences, and this Private Members' Bill is an opportunity for hon Members to have a free vote on this issue. I am very grateful to my ministerial colleagues for indicating that they will support this motion, and thus allow this matter to come before the House for debate and consideration. It is a sign of huge maturity on the part of my ministerial colleagues and this Government, and a credit to its democratic credentials that Ministers are willing to accept that there are some issues affecting personal consciences, on which even members of the same Government have strong individual and differing views, and that hon Members should be allowed to ventilate and express those views and have a free vote on them in the context of a Private Members' Bill. I hope that Parliament as a whole takes the same view and that hon Members will vote in favour of the motion. I would also like to say a few words on the limited scope of the amendments to Part 12 and their timing. The Bill does not seek to amend antiquated provisions relating to sex with so-called defectives and idiots and imbeciles. I fully accept that these are not terms that are acceptable in modern 21st

century legislation. There are a number of reasons why I have not attempted to introduce further amendments to this Act at this stage by way of a Private Members' Bill. This is a Private Members' Bill intended to focus on the principle or the discreet issue, of whether the age of consent for heterosexuals and homosexuals should be equalised, together with amendments to other anomalous offences arising out of the unequal ages of consent. Reform of the laws on sexual relations with persons with disabilities, or the abuse of positions of trust is a complex area, which could not have been undertaken in the context of a Private Members' Bill by merely making minor amendments to sections 100, together with sections 109 to 111 of the Criminal Offences Act. As I have said in the past, the Government is committed to a root and branch reform of all our substantive criminal laws, the laws of evidence and criminal procedures. Part of that exercise involves the introduction of a new Crimes Bill which codifies, modernises and strengthens all our criminal offences. That Bill will replace the Criminal Offences Act in its entirety and will deal with these wider issues in a systematic and thorough way. It is a huge piece of legislation and requires major policy decisions by the Government on a number of issues. Nonetheless, we expect to be able to publish the Bill later this year. In addition, both the judiciary and the Bar Council have asked for the commencement of some of the criminal reforms to be delayed for a number of months after the Bills are published, in order to allow the profession time to retrain and become familiar with these reforms. It follows that even if the Government are ready to publish the Crimes Bill this year, and I fully expect that to be the case, with a few exceptions it will not be until next year that the reforms will commence. In the light of the view that I have expressed in support of the motion, on the potential constitutionality of our existing legislation, I believe that Parliament should act now. For all these reasons, I commend the motion to the House.

Question proposed.

HON F R PICARDO:

There are a number of issues which arise in consideration of this motion. First of all, it is important to understand the substantive matters in issue. The nature of the obligation to equalise the age of consent for homosexual and heterosexual individuals, so that sexual orientation is not a source for discriminatory treatment. Secondly, it is almost in our view equally important, to understand the procedure that is being used to introduce a Bill into this House for consideration of the substantive purpose in issue. Let us start understanding the substantive issue. On this side of the House the Opposition understands the requirement to equalise the sexual age of consent for all citizens, regardless of sexual orientation, is now not a matter of conscience but a matter of international legal obligation, in our view, and of constitutional legal obligation. This is not a personal matter, it is not a private matter and it is not a conscience issue, as the Government would have us believe. It is clearly a legal obligation, both in international law and we agree with the Minister, a constitutional obligation under national law. No state party to the European Convention of Human Rights has the right or the luxury to opt out of either the provisions or the judgements resulting from that Convention. Each and every signatory to that Convention is legally bound to uphold the fundamental rights set out in that instrument. It is established that we are protected by the principles in the European Convention by the United Kingdom's signature of the same which has been extended to Gibraltar. As such, Gibraltar is no exception, and the Gibraltar Government is no exception, to the requirement that all the fundamental freedoms should be upheld. The case law emanating from the European Court of Human Rights, in consideration of the principles of the Convention, point clearly in the direction of this obligation on behalf of the United Kingdom, who as we are all aware is the contracting party responsible for the implementation of the Convention in Gibraltar. In addition, there are clear pronouncements in April 2008 from the Council of the Europe Committee of Ministers on the age of consent. At that time the Committee confirmed in its reply to a question on the position of

Gibraltar that discrimination on the grounds of sexual orientation is not compatible with its message of tolerance and non discrimination in all European societies, and it referred to having been informed by the United Kingdom that there was a review on-going in Gibraltar of the law in place, and encouraged the United Kingdom, not Gibraltar, the Committee encouraged the United Kingdom to resolve this matter in the near future. I am very pleased that we are able in this Parliament today to be considering the process for resolution of this matter. Furthermore, the suggestion has been expressed by some that conscience enters the equation on the basis that it may be a legal argument along the lines there is a justification on reasonable and objective grounds for not equalising. Well, our view is that that is clearly judicially incorrect. The language of reasonable and objective grounds enters the debate locally in a Government press release in October 2007, No. 234 of 2007, in which the Government said "the European Convention of Human Rights does not prohibit unequal ages of consent for heterosexual and homosexual sex. It does so only if no objective and reasonable justification for the difference in treatment can be shown. The Gibraltar Government will announce its decision on this matter once it has taken a view about whether an objective and reasonable justification, valid in law, can be made. If it cannot be made, the ages of consent will be equalised in compliance with the Convention." Those are the words in the Government press release, and that was the position of the Government in October 2007. We have not yet heard any analysis from the Government resolving whether in its view as a Government, there can be an objective and reasonable justification valid in law to show that unequal ages of consent can be justified under the European Convention. We have heard the opinions of the hon Member, with which I associate myself. Our view is that the law on discrimination cannot be justified on any such grounds. That is clearly also the opinion of the Minister for Justice and what remains unclear is the position of the Government as a collective. In the case of SL versus Austria in 2003, the European Court clearly stated in paragraph 44 of its judgement, if hon Members wish to look at it later, that there was a predisposed bias on the part of a heterosexual majority against a homosexual minority, and that these negative attitudes cannot of themselves be considered by the court to amount to sufficient justification for the differential treatment, any more than similar negative attitudes towards those of a different race, origin or colour. It is our view that what is today being sold to us as a matter of the conscience of the Minister, which forces him to bring this legislation, leaves the Government as a whole, as a collective, in a position that is little different to the situation that the European Court of Human Rights described in that statement. We come to this view on the basis of our understanding of the law and the considered opinion of no less an authority than Professor Robert Wintepute, the professor of human rights law at King's College at the University of London. For those who do not know him, Professor Wintepute is a widely acknowledged and highly regarded foremost authority on international law on sexual orientation. He has acted as an official expert himself for the United Kingdom at EU level on these issues. His opinion confirms our view that Gibraltar has no less an obligation in law to equalise the age of consent, and challenges the view that there are reasonable and objective grounds for failing to equalise. His view is that it is absolutely clear that Gibraltar's unequal ages of consent are a form of discrimination, based on sexual orientation, that violates Article 14 of the European Convention of Human Rights, combined with Article 8 on respect for private life. This principle was first stated in 1997 by the former European Commission of Human Rights in its non-binding report in Sutherland versus the United Kingdom, with which I am sure the hon Member is aware. The opinion in that case was suspended whilst the United Kingdom itself took steps to change the law for England, Wales, Scotland and Northern Ireland. The United Kingdom Government finally succeeded in 2000, which meant that the reasoning of the European Commission of Human Rights in the Sutherland case was not confirmed by the court. The court did not have a chance to agree with the reason in Sutherland until the 9th January 2003 in SL versus Austria and LV versus Austria, which are almost identical judgements, which rejected the Austrian Government's contention that different ages, higher ages for consent for male

male sexual activity were objectionably and reasonably justifiable. I make no apology for taking the House through these steps because I think it is important to understand why it is that our view, in concurring with the Minister, is that these are legal obligations. Therefore, given that it is clear that this is an international and, we agree, national, constitutional obligation, the Opposition therefore unanimously rejects the suggestion that it is right to present an amendment to no less than the Criminal Offences Act, amongst the provisions of which is a move to equalise the age of consent, although it is not the only provision, through the instrument of a Private Members' Bill. By doing so, in our view, the Government are crudely failing to live up to its own institutional obligation with regard to our own Constitution and international law, by avoiding sponsoring this requirement to equalise the age of consent. Who, if not Government, should be demonstrating the necessity of not only upholding but also respecting our own Constitution and the relevant international obligations. In a recent interview on this subject on GBC, the Hon Mr Feetham was right to say that rights and obligations of the European Convention are not an a-la-carte menu. He is right that we cannot choose which obligations we like and which we do not, and choose to implement only those that are of convenience. We cannot choose as a Parliament which parts of our Constitution we uphold and which we disregard on grounds of conscience or strong opinions. By not bringing this Bill as a Government, that is the message we are sending out to the whole world as the Government of Gibraltar. On this basis, therefore, the Opposition unanimously opposes the device of introducing this Bill by way of motion for a Private Members' Bill. It is not lost on us that Mr Caruana himself, in the debate on the decriminalisation of homosexual acts in 1992, rightly, in our view, said, and I am quoting him from Hansard at page 22, "whilst indeed the subject matter of that amendment", which was the amendment decriminalising, "is a matter of conscience and a matter of morality, precisely because it is a matter of personal morality we do not consider that it is an appropriate matter to be regulated by the criminal law of the land, and that in supporting the amendment, as I am sure is the case of the Government, it is not a comment on homosexuality or anything of the sort, it is a comment as to whether it is a matter that should be regulated and regulated as it used to be in the Criminal Offences Ordinance, as it presently stands by the law of the land. We take the view that it is not a matter that ought to be so regulated", and then he allowed his side of the House a free vote on an issue of conscience on that amendment Bill, but it was clear that that was a Bill presented by the Government, and not by way of Private Members' Bill at that time. Having said all that, we make no bones about the fact that we fully support the equalisation of the age of consent, as part and parcel of what should be Gibraltar's respectful approach to international law and its own Constitution, and indeed, as a move which ought and must be taken by Government itself, and not fobbed off on one of its individual members in this manner. In short, we support equality for our sexual minority citizens but we oppose this mechanism of implementing the obligation into our law for the reasons I have already stated. I want to move on now to the narrow procedural issue.

In Press Release No. 84 of 2009, this 30th April, the Government stated that it has approved the presentation in Parliament by Daniel Feetham of a Private Members' Bill to amend the Criminal Offences Act, to modernise certain aspects of Gibraltar's sexual offences, including the equalisation of the sexual age of consent, so that it should be the same for heterosexual and homosexual sex. The Government added, that the Bill is moved by Mr Feetham as a Private Members' Bill and not as a Government Bill, so that every Member of the House should be totally free to vote thereon, in accordance with their personal conviction. We do not agree that a vote in conscience can only be had if the Bill is moved as a Private Members' Bill. We believe it would have been proper for the Bill to have come as a Government Bill and for the Government to have allowed a free vote even then. That is the case in other Parliaments also. In fact, on the devise of the Private Members' Bill, which the Leader of the House will recall I brought on the issue of the Rehabilitation of Offenders Act, he will recall that he said this to me. This is in page 90 of the relevant Hansard, "the hon Member knows that in that other country where they are so

much more civilised", and that is the United Kingdom because we had a take on that, "it is almost unknown for a Private Members' Bill to reach the statute book. So I would not wish him to give the impression that our Parliament is deficient in that it is difficult for Opposition Members to promote legislation. In the mother of all Parliaments, as they like to think of themselves, it is almost impossible. Indeed, I think that they have a raffle once a term to see who has the right to move a Private Members' Bill, and then it gets a five minute hearing and gets voted down at the first opportunity. I think I made it clear to the hon Member that if the hon Member makes legislative suggestions, even if we do not want it to be done by them in a particular way, for example, in this case for the reasons I have already given, look, we are perfectly happy to be prompted, and if somebody makes a decent suggestion, gives us a decent idea, the Government do not have a reason that pride forbids us from considering simply because somebody else has had the idea and not ourselves. That is not the Government's position". So clearly the Chief Minister's attitude was that legislation should not come by way of Private Members' Bill. Indeed, his colleague Mr Britto said in the course of the same debate, and these are Mr Britto's words on that Bill, "that the Government were the legislators". Well, as I told him then, I think that that is wrong. We are all the legislators in this Parliament and that is why this Bill should be a Government Bill, because we as legislators have a collective obligation in the implementation of international law, or at the very least, in the implementation of our Constitution. Having said that, let me say two things to wrap up on this aspect of this matter. The first is to restate our commitment, despite the manner in which this is being done, to the principle of equalisation. The second is to highlight also that this Bill does not just deal with equalisation it deals with many other things too. We believe that there are also problems in some of the other matters being dealt with in the legislation, but I accept that those are matters to debate when we have a detailed debate on the Bill.

Now, finally, as to process. I have the Bill that was circulated already with the Gazette. That Bill has been circulated with square brackets to notify that it is a Private Members' Bill. It has been given a number and it appears printed and circulated in the usual way that Bills are. In my view, this Bill has been circulated too early. This is not yet a Bill, this is a draft of a Bill. I am grateful that we have all had it in circulation from the Gazette, but we could have all had it as we have other drafts by e-mail. I do not accept, for the purposes of the debate, on how this Bill is to progress, that this Bill has been published on 7th May 2009. What has been published and circulated on 7th May 2009 is a draft of a Bill, which the Parliament, if it gives leave, will then have printed, published and circulated in the usual way with the relevant Gazette. I do not think it is possible for time to start to run in respect of the six week constitutional period, which is in effect a sort of community consultation period, from the 7th May 2009. I see that it is also apparently, it was circulated to us by the Legislation Support Unit, I would be grateful if the hon Member would tell us if this Bill has been drafted by LSU, or whether it is his own drafting work. If it is drafted by LSU, the short point is to ask whether when the Opposition presents a Private Members' Bill, we are also able to avail ourselves of the services of the LSU in drafting those Bills, or whether as we have in the past, we are responsible for that preparation ourselves, and to use in presentation or the prompting process that we have sometimes used before when we wish to highlight a matter where legislation should be, perhaps, brought or considered? That is our position. I would say only this in closing. Our view must be emphasised to be one of complete concurrence with the hon Member as to what the nature of these obligations are, what the natures of our obligations as Parliamentarians are, and to emphasise the fact that these are obligations and not matters of choice or conscience.

HON CHIEF MINISTER:

Yes, I just want to address one or two of the more technical, legalistic points that the hon Member has made, because I do not want to confuse this debate for the debate on the Bill itself, and of the principles that the Bill invokes. First of all, I have to

say that on the question of the Austria case and whether there is an indisputable European Convention of Human Rights and, therefore, Gibraltar Constitution obligation to equalise the ages of consent, in the way proposed by this Private Members' Bill, I think it is important to note that the matter is not as categorically clear as either he, or indeed, my learned colleague the Minister for Justice in moving this Private Members' Bill, have concluded. I would concede that the possibility, the task of establishing to the satisfaction of the yardstick established by the European Court of Human Rights, of the objective and reasonable justification is set very high, and that it is harder to establish the test than to fail in the establishment of the test. I think that would be a reasonable concession to make, in the same way as I think it is wrong for the hon Member to suppose that there are no circumstances which would be reasonably and objectively justifiable, because if that were the case, then the European Court of Human Rights would not have made that exception in giving its ruling. It was not the European Court's view that there were no circumstances in which in a country in which there was a heterosexual majority and a homosexual minority, which is probably the case in most countries, that this exception was not available, because otherwise the exception would have been meaningless written into the judgement.

HON F R PICARDO:

They just said that those majorities did not make it up.

HON CHIEF MINISTER:

I understand that the fact that the majority holds a view which is different to the minority, is not itself capable of amounting to a meeting of the test. That is absolutely correct and logically so, and correctly so, otherwise the minority could never establish a breach of human rights, because the majority view would always be thought to be legally justifiable, which clearly it cannot be. So, I just limit myself to making the point. Certainly, it is also true that in the case in question, that is to say, the case involving an individual bringing a legal action, which nobody has brought against the Government of Gibraltar, alleging that the Austrian Government was in breach of its Constitution, for almost exactly the same reasons, not equalising, as he has said, what the Courts found was, in the case of Austria and the particular arguments brought applying to Austria, as articulated in that case by Austria, did not amount in that case, in that society, in that country, to an objective reason. That is a very long way from having found as a matter of jurisprudence that it is incapable of being so in the different circumstances of a small community like Gibraltar, and I express no view on the likelihood of success. I have acknowledged that it is a difficult test to meet, and the only point that I am seeking to make now is the very narrow one that the hon Member either must not overstate the definitiveness of the Court's ruling, and it certainly does not mean that this is an open and shut issue, and all dis-equal ages of consent are necessarily a violation of the European xxxxxx. It still requires an assessment of the circumstances of each case and an adjudication of whether in the circumstances of that case, there is a reasonable and objective justification. An issue about which there will be many different positions. I acknowledge that, and if the position of a Government in a country comes down on one side of that assessment, and there are citizens in that country who think that the Government is wrong, well, they are open in any country, particularly in ours where it would also be in breach of the Constitution, never mind the Convention which is an international Treaty. Here we have the advantage that we can do these things in our Supreme Court on Main Street. Well, that is all somebody has to do if they think that the Government's failure to date to do this, as a matter of Government policy and Government legislation is unconstitutional, we are in the very happy position of citizens not having to incur the money, the time and the difficulty and expense of going to Brussels, or wherever the Court is, Strasbourg or wherever it is, the European Court of Human Rights, but that they can do it down here on the Main Street, almost within hearing distance of my office. Of course, I will give way to the hon Member.

HON F R PICARDO:

I appreciate that clarification. I think it is fair to say that the question of reasonableness and objectivity has not been tested for Gibraltar. But having said that, I think he would agree with me that a lot of the rulings of the European Court of Human Rights deal with sections which are identical or similar to constitutions where that is relevant throughout the magnum of European signatories to the Convention, and that we take interpretation of the judgements of other countries to be almost binding, and certainly guiding, in respect of those obligations. But the reason for standing up to intervene is to ask him what his determination is as Leader of the House, and on this issue we are, I hope not very partisan, this is an issue which I think we need to consider because it is a human rights issue, what his opinion is as Leader of the House and as leader of his Government, given his press release in 2007 saying that they were going to consider whether it was possible, as a Government, to obtain a valid reason in law which was reasonably and objectionably justifiable, whether the failure to pronounce himself or his Government on that since then, and the move now by one of his Ministers to present this by way of Private Members' Bill, whether the view has been taken that it is not possible in the circumstances of this society, to present a reason valid in law, reasonably and objectively that these issues can continue to be discriminatory in Gibraltar?

HON CHIEF MINISTER:

I have been as generous to the hon Member's position as I can be, without prompting, in my address. I have conceded to him that the task is harder rather than easier, but that he cannot go so far as to say that it is open and shut. It is no point saying that the wording of the legislation has already been adjudicated in other countries. It is not the wording that has to be adjudicated, it is the societal circumstances to establish whether in that particular society it is possible to regard it as objectively justifiable. Obviously, one is always talking about the same wording. One's ages of consent are either equal or unequal, there are not that many words in which to make a thing equal or unequal. The issue is not the wording and the adjudication of the wording by courts in other countries, but whether the arguments put forward, the circumstances of the society putting forward the arguments, amount to a reasonable and objectively reasonable justification or not. On this motion to bring a Private Members' Bill, it is not appropriate for the hon Member to ask me a question. This is not Question Time. What I can say to him is that in all the Question Times that he has had, when the Opposition have put forward hundreds and hundreds and hundreds of questions, he has not asked me this. I do not know whether that is a reflection of his interest in the matter, but that he should now ask me that question despite his great constitutional concerns about it, that he should only ask me that question prompted by a Bill that emanates from this side of the House, by way of Private Members' Bill, and that in the appropriate forum to ask me questions about Government policy he has chosen never to do so, in all the years that he has been in this House, I think speaks for itself. The position that I have articulated back in, I think, 1994 or 1995, 1992, is entirely in consonance with my views today. Whatever one's views might be about lowering the age of consent, it is clearly inappropriate that homosexual behaviour should be criminalised in the way that our law used to do it. Look, the issue about criminalisation is not an issue about whether one thinks homosexuality should be criminal or non criminal. It is about whether one thinks the age should be lowered from 18 to 16. That is the issue, and there is no point, there are others out there who do this, the moment one has a view about lowering of age, one is homophobic. One is homophobic regardless of what one's views might be generally about the subject if one believes that it is inappropriate, if one were to believe that it is inappropriate to reduce the age from 18 to 16. I do not share that judgemental approach. I think they are wholly separate issues. Therefore, I do not know what the point was that the hon Member remitting me to what I said, but my position in that respect has not changed if we were voting today. If the law had not been changed back in 1992 or 1994 and we were voting today on the

decriminalisation of homosexual activity, I would vote in favour of its decriminalisation. That has nothing to do with the issue before us, in my judgement, nothing at all to do with the issue before us at the moment. I do not know what the hon Members have in mind. I mean, they are clearly committed to the principle underlying this Bill, and I suppose that given the strength with which they feel it, they will regard the mechanism by which it is brought about as entirely secondary in nature. Well, I do not know whether the position of the hon Members is that they think that this is such an injustice to 16 and 17 year old homosexuals, but that they are willing to continue to inflict it on them simply because they think that the law is going to be changed by an Act of this House, but which has been brought in a particular way by a Private Members' Bill as opposed to a Government one. Immediately after he says that, of course we are all legislators. It is wrong for the Government to say, as Mr Britto, my hon Colleague is alleged to have said, which I do not have any doubt, I just do not remember him saying it. But no doubt that he did. The hon Member is reading from Hansard. It is wrong because we are all legislators here. Well, look, if we are all legislators here it is for the good and for the bad. Therefore, I do not see why the hon Members should worry so much about the mechanism which brings about a result which they clearly think is an injustice. They even think it is an illegality. But they are concerned about the form, even though it would be voted, if passed it would be voted by the House, made up of legislatures which we are legislators, which we all are. It suggests to me that the hon Members in those circumstances would be more interested, like the Jesuits, a bit more interest in form over substance. Well, that is a matter for them and they will have to explain the position. They have not given an indication, and indeed it is quite right that they should not give an indication, how they intend to vote on the Bill in due course. The Bill is not before the House today and that is entirely a matter for them. Of course, just as he sought to move a Bill, I do not remember what the subject matter was.

HON F R PICARDO:

Rehabilitation of Offenders.

HON CHIEF MINISTER:

Ah yes, rehabilitation. The hon Member believed that the rehabilitation of offenders, and the absence of what probably was the five year xxxxx or something, but that was important enough to him to move a Private Members' Bill. Well, he has never sought to move a Private Members' Bill on this issue, despite having, apparently, manifesto commitments, I cannot remember if they were formal manifesto commitments, despite belonging to a party that has expressed, in the past, clear views on this issue. Well, I withdraw the question about the specific manifesto commitment because I do not remember if they have ever converted their views into a manifesto commitment. So if he asks no questions, he does not exercise his right to move Private Members' Bills when as a legislature he could have, because he clearly disagrees with our views that we should not bring Private Members' Bills, and then when a Member of the House does, he quibbles with the form. Well, I think all that is telling too. At the end of the day, people have got to decide whether they wish the law to be changed, or whether they wish to attach more importance to the form in which it is done. Once a Private Members' Bill is passed, if it is passed, it has exactly the same statutory effect as any other Bill. It is just the law of the land. Well, I think that that was all that I want to say at this stage on the motion. I think that whatever might be the views of individuals, on either side of the House, I do even know if everybody on that side of the House agrees on this measure, I am assuming absolutely nothing, that it is right that an issue which has a degree of public profile should be debated in this House, and that this Parliament should consider what it considers the laws of Gibraltar should be. On that score, I and other Members of the Government will support the motion.

HON G H LICUDI:

I will deal only with a couple of matters which have arisen in the course of this debate and not with the issues that my honourable and learned colleague, Mr Picardo, has dealt with. Just on the last point raised by the Chief Minister, which is the question of form. He says that when a Member of this House brings a Private Members' Bill, he, meaning Mr Picardo, quibbles with the form. Does he not realise that we are not talking of a Private Members' Bill brought by any ordinary Member of the House? This is a Government Minister, and not only a Government Minister but the Minister for Justice, who brings legislation to this House *(end of tape)* it appears in the Order Paper as a Bill being presented, not by Daniel Feetham as an individual, a Bill for an Act to amend the Criminal Offences Act, the Hon the Minister for Justice, so this appears on the Order Paper as a Bill being presented, albeit a Private Member's Bill, as a ministerial Bill.

MR SPEAKER:

May I interrupt the hon Member? I did see that on Friday afternoon and this morning I contacted the Clerk to correct him. This has now been amended as far as the record goes, and certainly the papers I have now show it as a motion by the Hon Daniel Feetham. So it has been rectified since I saw that Order Paper.

HON G H LICUDI:

I am grateful for that because I was in two minds as to whether to raise a Point of Order. It is not so much the motion, it is the revised agenda which appears even today as hon Members have come to this House. Each revised agenda in relation to Bills, the listing of the Bills, this is a Bill that is actually listed in the Order Paper as a Bill.

MR SPEAKER:

It should not be.

HON G H LICUDI:

It is not a Bill and it is a listed as a Bill to amend the Criminal Offences Act being moved by the Hon Minister for Justice.

HON CHIEF MINISTER:

Can the hon Member give way very briefly, I will not interrupt his flow? It must be obvious to the hon Member that it is an error on the part of those who have prepared those documents. He can make as much fuss of it as he wants, it is clearly an error.

MR SPEAKER:

I think it is agreed.

HON CHIEF MINISTER:

Well, if it is agreed what is the point of making the point?

MR SPEAKER:

Well, I am saying it is an error, when it came to my notice I did tell the Clerk that it ought to be rectified.

HON D A FEETHAM:

The Clerk telephoned me this morning and I said to him that it was clearly a mistake, that it should not be Minister for Justice but should be in my name in my own person.

HON G H LICUDI:

Again the hon Member misses the point. It appears as a Bill in the Order Paper as a Bill when it is not even a Bill, and because it is obvious to us, let me answer the point that the hon Member has made.

MR SPEAKER:

I accept responsibility for the error on that.

HON G H LICUDI:

We accept that and because it has always been obvious to us that it is an error, we have not raised it as a Point of Order. But when Mr Speaker has just mentioned that he corrected this, I have simply pointed out that it also appears in the agenda for Bills. But the point is that it appears with the name of the Hon the Minister for Justice. Quite apart from the other issues that the Hon Mr Picardo has raised about the publication, and this is not something that is an error of this House or the Clerk, this is a publication as a Third Supplement to the Gibraltar Gazette. Has this been done in error as well, and whose error is that? Does Order 28 of Standing Orders not say that Bills are to be published six weeks before they are debated, and does that not pre-suppose that a Bill can only be published if it is a Bill? If it is not a Bill it cannot be published, it does not exist as a Bill. There is no Bill to be published until this House gives leave, and that is what we are debating today, whether or not to give leave for this Bill to exist, physically exist as a Bill and thereafter be published. What does not exist cannot be published as something that it is not. That is my point, but those are points of procedure, formal points, but it arises from the Chief Minister's point that we are quibbling with form. This is not just quibbling with form. This is quibbling with a procedure that has been adopted by this Government, and more particularly, by the Hon the Minister for Justice. It is a grave matter, a very grave matter for the Hon the Minister for Justice to get up in this House and say the current state of our laws is unconstitutional. It infringes section 14 of our Constitution. It is a grave matter for the Hon the Minister for Justice to rise in this House and to tell this House and the whole of Gibraltar, "the current state of our laws infringes our international obligations, infringes the obligations that we have under the European Convention of Human Rights", and it is a serious matter for the hon Member to acknowledge what the jurisprudence has been in the European Court of Human Rights and by the European Commission with the case of Sutherland that he is familiar with and which I will be referring to in a moment. But it seems that this is not taken seriously by the Government. For one of their own to actually accuse the Government of acting unconstitutionally is unprecedented, we certainly have never come across that situation before, and we certainly have never seen this front bench, front benchers in Spain, front benchers in England, in any other democracy, where a member of the front benches rises to present a Private Members' Motion on a Bill and accuses its own Government of acting unconstitutionally. What is more serious about this is that even after that charge has been made, and even after the Chief Minister has heard the comments and concerns expressed by Mr Picardo, we on this side of the House, and I am certain the whole of Gibraltar, are still none the wiser as to the Government's position. The Chief Minister has been directly asked a poignant question, what is the Government's position? Do the Government consider that there is an objective and reasonable justification whereby we, Gibraltar, would not be in breach of the European Convention of Human Rights, and we are still none the wiser? When the Government announced, as they did and as Mr Picardo has already referred, in its statement in October 2007, just after the General Elections, that "the

Gibraltar Government will announce its decision on this matter once it has taken a view whether an objective and reasonable justification valid in law can be made". One may be forgiven for thinking that the bringing before this House of a Private Members' Bill to debate that precise issue, that precise point, whether Gibraltar law infringes international obligations, whether Gibraltar law on equalisation of ages of consent is inconsistent with the Gibraltar Constitution, and one assumes that the Chief Minister would have known what Mr Feetham was going to say and the accusation that was going to be made against this Government, and even that has not prompted this Government to come clean. Even that has not prompted this Government, the fact that this debate is before the House, has not prompted this Government to rise and to tell us exactly where it stands. On this issue of objective justification, the Chief Minister says, yes, he acknowledges that the task is harder rather than easier to make this objective justification. Well hard tasks and difficult decisions is what being in Government is all about, and what this Government have done is quite simply opted for the route of a cop out, essentially. It has transferred the responsibility of compliance with international obligations, of compliance with Gibraltar's Constitution, to one of its own but under the guise of a Private Members' Bill, because it does not want to commit itself or take a decision. Hard decisions are what separate the men from the boys, and a Government that is not prepared to take hard decisions is simply unfit to govern. A Government that is not prepared, that shies away from its responsibilities, is past its sell-by date and it is about time the hon Members………

HON CHIEF MINISTER:

Xxxxxxx out of the way xxxxxx.

HON G H LICUDI:

Grateful for that comment.

MR SPEAKER:

Order, Order.

HON CHIEF MINISTER:

I apologise, I withdraw the suggestion of the leadership comment.

MR SPEAKER:

Order, Order, the Hon Gilbert Licudi is on his feet.

HON G H LICUDI:

I have had to give way to the Chief Minister.

MR SPEAKER:

I have called him to Order.

HON G H LICUDI:

The Chief Minister has also said that the matter is not settled, clearly contrary to the views, as I have already stated, of the Minister for Justice, and certainly all Members of this side of the House. Does he not accept that the position has been so well settled that other Governments have acted on decisions and reports made by the European Court and the European Commission, so why does this Government not take such a decisive stand? In the case of Sutherland, which has been mentioned already, the report of the European Commission said, "consequently the Commission finds that no", no emphasised, "no objective and reasonable justification exists for

the maintenance of a higher minimum age of consent to male homosexual than to heterosexual acts". This was a conclusive report by the Commission. It might be non binding but the UK certainly took note of it, the case was suspended whilst the UK took measures to introduce legislation to remove what the Commission had found was clearly a discriminatory practice. In 1997, 1998, 2000, it introduced legislation. Three times it was defeated in the House of Lords and the UK Government took the politically mature and responsible position that compliance with international obligations was of such paramount importance that it had to take the unprecedented step, or the unusual and rare step, of using the Parliament Act to overrule a decision of the House of Lords. That is how seriously the UK Government took this issue, and that is the extent of the cop out and the sheer political irresponsibility of this Government. When it comes to looking at the Bill, we will look at the various clauses. But it is right to say at this stage, that the debate so far has concentrated on the issue of the age of consent. The mover of the motion, the Hon Mr Feetham, in his address gave the impression that there were a number of other proposed amendments to the legislation, almost as if these were consequential amendments to the legislation, and therefore justified in bringing these matters as part of this particular Private Members' Bill. We would ask the Government to reflect on that because even if we were to accept that it was right to bring this as a matter of Private Members' Bill, which we do not and we have already said we are against that particular form, we still need an explanation as to why other aspects of changes to the legislation are thought necessary or appropriate to be brought by Private Members' Bill, particularly by one on that side of the House. Just to take one example, it is proposed to amend section 103 of the Criminal Offences Act and that is what creates the offence of rape, so that where it says, "a man who rapes a woman" it is substituted by "a man who rapes a person". The question for this Government is, what on earth has this got to do with the age of consent? How on earth does it matter whether the age of consent is 18 or 16? If rape is wrong, it is not a matter of conscience how people vote. If it is necessary to introduce legislation on the question of rape, rape is rape and it does not matter what the question of the age is. The whole of the Bill, the whole of the proposed Bill is littererd with amendments such as that, such as intercourse with a girl, other offences which are created by the Criminal Offences Act in respect of offences with women are now offences against men, which in reality have very little to do with the age of consent. So I would ask the Government to reflect as to why it is necessary to bring those amendments. But the central point, the central allegation is what has been made on this side of the House already, that this is a matter of political responsibility, should be a matter of policy, should be a matter that the Government should stand up on its own two feet and should face the challenge, the international challenge. It has decided not to face that challenge, it has decided in an act of we say political cowardice, simply to shift it to the Hon Mr Feetham.

HON J J BOSSANO:

I do not pretend to be an expert on the question of Jesuits but I would like to assure the Chief Minister that we are not seeking to emulate the conduct of Jesuits in the decision that we have taken not to support this motion. Let me say that if he thinks it is a contradiction being, in principle, in favour with complying with our international obligations, and also being, in principle, of the view that the responsibility for complying with international obligations primarily rests on the Government of the day, then I do not see what that contradiction is. Now, we are unable to establish whether the Government have in fact come to a conclusion that it has an international obligation which is inescapable, because that is what they promised they would announce when they had concluded their analysis, and apparently since October 2007 either they have not concluded their analysis, or they decided that they would not announce it until we asked them a question why they did not announce it. Well, having announced their intention to do it, I am astonished that he should have been waiting patiently for two years for a question from this side. If they had tipped me about it I would have put the question to get him out of his misery. He does not

want to say whether they have come to the conclusion or not, but perhaps I am interpreting wrongly what he has said. From the nature of the way that he addressed this issue, which was to say, well look, my reading, and I think he was giving a view not only as a politician, but presumably because of his legal expertise, which I acknowledge I do not share, is that it may be more likely to be very hard than to be very easy to meet the criteria that allows the distinctive treatment, let us not call it discrimination. The distinctive treatment between men who are homosexual and men who are heterosexual in this particular area, but it is not impossible, because if it were impossible why put the provision there in the first place? If it is not impossible, then why has it not been tested whether there is sufficient cause here in Gibraltar? I therefore conclude that the Government collectively has not been able to reach a clear cut position that either it is possible or it is impossible. We have heard one view from the mover of the motion saying it is impossible, shared by my Colleague on my right when he contributed to the debate, and a view which I am not qualified to pass judgement on, but I must say that the argument sounded logical without knowing enough about the law or how the law is interpreted by the courts to be able to say that I agree with one interpretation or the other. But it certainly seems logically to me that to put a provision which makes something possible, must by implication mean that there can be circumstances when it is possible, otherwise it would be a totally redundant provision. If indeed it is a controversial issue, then maybe we need to look further into this argument. But in any event, although the mover of the motion in his own contribution mentioned that harmonising at 17, or harmonising at 18 might produce other breaches of human rights, and other people taking legal action against the Government, I can only suppose that that conclusion is the result of having looked at those possibilities. But given that it is the conclusion of the Member who in his private capacity, not in his official capacity, either as a Minister for Justice or Minister for anything else for that matter, or as part of the collective responsibility of Government has come to the conclusion, I do not know if that is just a personal opinion, but certainly, I would put it that the objection to the Bill, because I do not know whether the definition of Jesuistic conduct would apply to voting in favour of the motion to permit the Bill to come to the House and then voting against the Bill when it gets here ……. It does not apply in that direction, I see, Jesuits are very peculiar people I must say. I suppose it must show a certain leaning towards one side of the House, that it can apply to doing it in one direction and not in the other. Be that as it may, I would put it that even those who feel uncomfortable with the idea of reducing the age to 16 cannot possibly be uncomfortable about the idea of a uniform age at any other level. That is to say, if it was a situation where it was a tenable proposition to have an age higher than 16 applying to both, it might well be that those who have today reservations about the age of 16 would have no reservations. Certainly, it is difficult to understand why the level of judgement or maturity should be considered to be higher in one is heterosexual than if one is homosexual, and that therefore, one can be deemed to be responsible for one's actions if one gives consent if one has got one sexual orientation, but one is supposed to need protection against giving consent if one is of another sexual orientation, which essentially would appear to be the rationale, other than the fact that we are all products of our own culture and societies and the values that we have been taught since we were small. Therefore we are not capable, any of us are capable, of totally independent truly objective judgement. Therefore, this is an important issue which we have an obligation to implement. We believe, honestly, that the Government by saying it is going to be a Private Members' Bill, have perhaps tried to avoid having to take a position on this. But if it is indeed the case that there is, as the law now stands, a breach of the Constitution, and if somebody took it into their heads to go to the Supreme Court and ask for a ruling, there would be no question about it. I do not see how the Government, if there was a ruling tomorrow from the Supreme Court, as the Chief Minister suggested, that nobody has tested this but that it is capable of being tested because one need not even have go to the European Court of Human Rights. If one argues, as the mover has done, that this is in breach of the Constitution of Gibraltar, the new Constitution of Gibraltar with its human rights chapter, if somebody went

tomorrow to the Supreme Court, the case was admitted and they won the case, then presumably the Government would not say, "well look, I am not prepared to correct the inconstitutionality unless I can find a volunteer in the ranks of the Government, or for that matter maybe opening it to this side, a volunteer in the ranks of the Opposition, to bring a Private Members' Bill and move a motion to bring that Bill. So we are going to vote against the motion because we believe it is the Government's responsibility to correct something that needs correcting if there is no doubt about that. But I believe that I would be happier if it was, as possible as it is in things like the interpretation of the law, to get to in terms of certainty. Perhaps there is no way of getting………

HON CHIEF MINISTER:

If the hon Member would give way to me on just that narrow point which I was in any case looking for an opportunity to ask him for way? He said something a few seconds ago which led me to believe that he may wrongly think that this language about not having unequal ages of consent is actually in the Convention of Human Rights. It is not. What there is in the Convention of Human Rights is general anti-discriminatory language on many grounds in that list, including sex and sexual orientation. It is the court in a case called the Austria case for short, because it involved the Government of Austria, who said in its ruling, in its view, the correct interpretation of the words "in the Convention" mean, even though they do not say, that one cannot have unequal ages of consent. It is not as if the Convention says that one cannot have unequal ages of consent unless there is a reasonable objective. All of that is in the judgement of the Court interpreting general anti-discriminatory language. So it is always a matter of interpretation. It is a question of whether the Court, in the case of Gibraltar, would find that we are within the Austria situation or whether we have been able to distinguish ourselves from the Austria situation. That is the position.

HON J J BOSSANO:

I am grateful for that explanation because then it seems to me even less clear cut that he indicated at the beginning in his original contribution. We are not going to support the motion because we do not think it should be brought as a Private Members' Bill, and we certainly think much greater thought needs to be given, if the Government decide to support the motion, to exactly what we are going to be doing here, given the explanations that have been provided, the fact that it is quite obvious that the Government have not been able to come down clearly on one side of this analysis in which they have been engaged since October 2007, and that if the analysis was clear cut, in my view they could have brought, and they would have brought and they should have brought a public Bill to correct a public responsibility. If in that public Bill what was required actually was something that any individual Member of the House in conscience felt was fundamentally opposed to his basic beliefs, then clearly that person could not be required to have to vote against his personal beliefs in an issue like this, where there are more than sufficient votes, I imagine, to get the Bill passed. But it could have easily been done equally with the Government vote and I would ask the Government to think about it further, in the light of the explanations that have been exchanged on both sides, but if they proceed with the motion I am afraid we will have to vote against.

HON D A FETTHAM:

Thank you. If I may start by responding to some of the points made by the Hon Mr Gilbert Licudi. Mr Licudi made the point that he was none the wiser what the Government's position is in relation to this particular issue. Well, for all the purported support that all the hon Members that have spoken on the motion have shown in relation to human rights, and on the question of whether there ought to be equalisation, they have sought to place technical form above substance and principle in circumstances where the Hon Mr Picardo has said that we are

all legislators, and in circumstances where they are politically committed to the issue of equalisation, and the one glaring omission from all their speeches, and I do not agree with the Chief Minister on this particular point, is that they have not said out publicly today whether if the motion is carried, they are going to be voting in favour or against the Private Members' Bill. Now, I think it is the height of political hypocrisy for Mr Licudi to accuse the Government of not making its position clear when they themselves have not made the position clear on the question of substance and principle and have hidden behind technicalities and form. Mr Licudi says that Government is about taking tough decisions. Absolutely right, it is about taking tough decisions, and that is why on this side of the House, on the debate of the new Constitution, we all gave clear guidance to the people of Gibraltar that they should vote yes, when Members opposite went from yes to no to maybe to vote your conscience. Mr Speaker, it will not have been lost, the irony will not have been lost on those listening to this debate that, in fact, my view is that it is as a consequence of the 2007 Constitution that very probably, those are the words that I use and I will return to that in a moment, the unamended legislation infringes the Constitution. In fact, if people had voted no to the new Constitution, the position would have been as under the 1969 Constitution, where I believe the obligations were not as a matter of domestic law. Of course, yes, then there will be a breach of the European Convention of Human Rights but that would have entailed somebody taking a claim in the European Court of Human Rights against the United Kingdom, and then obviously there would have been consequences as a result of that. But as a matter of domestic law, what in my view changes the position is the new Constitution and the new provisions introduced, and in particular this new section which says that new grounds developed, in relation to discrimination by the European Court of Human Rights, are discriminatory as a matter of local law. I have not said, as Mr Licudi claims that I have said, that the legislation is unconstitutional. No, I have not said that. What I have, and I quote, "is that it is unlikely that the legislation is reasonably justifiable. That it very probably infringes the European Convention of Human Rights". That is the wording that I have used. I have not in the course of my speech attempted to be as categorical as the hon Member misleads the public………

HON G H LICUDI:

I cannot allow on a Point of Order another allegation of misleading this House and the public to go unchallenged. The words that the hon Member used was, "my personal view is that there is a need to equalise". That arises because of the Constitution and then because of the European Convention of Human Rights. So his personal view is, unquestionably, that this is unconstitutional and in breach of the European Convention of Human Rights. If that is not his position and if he is trying to wrangle himself out of that hole that he has put the whole Government in, let him say so rather than accuse us of misleading.

HON D A FEETHAM:

Of course it is my personal position that I believe that very probably our local legislation is in breach of the European Convention of Human Rights and the Constitution, but I have never sought to be as categorical as the hon Gentleman has said that I have been, and to the extent that that is what he has said in Parliament today, which it is, he is misleading the public at large because he should not, about what I have said in my speech, because it is a matter of record what I have said in my speech and I have used the words "is unlikely to be reasonably justifiable and very probably infringes", not a categorical exposition of the law as the hon Gentleman says that I have been. The hon Gentleman has also not understood the amendments, or he has not read the Bill and understood the amendments that I have sought to make in the Private Members' Bill. Mr Speaker, the whole point about dealing with all these sections relating to rape, the sections relating to defences, whether somebody can raise a defence of reasonable

belief if he is under the age of 24, is in fact to make it gender neutral. That is why some of these other sections needed also to be amended so that they could be gender neutral and, therefore, we could make the equalisation in fact work. Otherwise, it would not work, that is the whole point about amending.

HON G H LICUDI:

Would the Minister give way just on that narrow point? Just for clarification as to what I said, and I specifically chose the example of rape because it is a particularly relevant example. In the offence of rape, as the Minister and everybody knows, it is unlawful sexual intercourse without consent. Therefore the question of lowering the age of consent is completely irrelevant and immaterial to an offence which relies on lack of consent. Therefore that is an example of one particular offence that has nothing to do with the age of consent. I just raise it for clarification so that the Minister does not………

HON D A FEETHAM:

Well, he is wrong and he is wrong for this reason. The offence of rape at the moment is man on girl. If we are going to equalise it could also be man on man. That is why it has to be made gender neutral and that is why we have got to amend that particular section. It ought to be obvious to somebody of his experience and his call. That is the reason why we cannot just simply, in order to equalise and make it work, deal with the age limits and change, for instance, the ones that say 18 to 16. In fact, we could not because of course that would still be potentially discriminatory, because it is not only 18 for homosexual men, it is also 18 in circumstances where more limitations than in fact with heterosexuals of the same age. So, it was not as simple as just dealing with the question of the age limits, one had to deal with the other sections as well and that is the reason why I have dealt with this, in the way that I have done so. Of course it is possible for a Government to introduce a Bill, say on one hundred issues, as indeed the Crimes Bill will deal with, because it is going to be dealing with a wide range of issues, and give Members on this side a free vote on one issue. It is possible, it is difficult but it is possible. What is the point of, in fact, having a Government Bill on one issue when the Government have no position as a Government on that issue and the Government intend to give all its Members a free vote, and in circumstances where its position has been consistent in relation to this area since 1992? There is absolutely no point, that is the whole reason why this is brought by way of a Private Members' Bill. I bring it and it allows Members on this side and on that side of the House to vote in favour or to vote against, in accordance with their own personal convictions. Mr Picardo made a number of points that I would also like to address, and in fact Mr Licudi. I do not agree, and I think what the hon Gentlemen are doing is in fact confusing the question of publication with the question of whether I as a matter of leave from this House am allowed to proceed with the Bill, and proceed to the First Reading of the Bill. Standing Order No. 28 provides as follows, "no Bill shall be read a first time until the expiry of six weeks after the date in which the Bill was published in the Gazette, except where the Chief Minister certifies in writing under his hand that consideration of the Bill is too urgent to permit such delay". The question then of whether a Member of this House can introduce a Private Members' Bill, is dealt with under Standing Order 25, and in particular, Standing Order 25(1). The question of whether one publishes the Bill is a separate issue as to whether one can introduce the Bill, because all that Standing Order 28 does and all that Standing Order 28 provides for is for there to be a six week period, from the moment the Bill is actually gazetted, to the moment the Bill can be read a first time. So we do not agree that somehow it is only after one is given leave by Parliament to introduce the Private Members' Bill, that after that point one must then publish the Bill. Both are separate issues and in my view time begins to run from the moment that the Bill was published two weeks go.

HON G H LICUDI:

Would the Minister give way on that point? I am grateful. This is an important point and it is perhaps a matter that Mr Speaker may wish to look at and reflect on. Standing Order 28, as the Minister has rightly said, starts "no Bill shall be read a first time until the expiration of six weeks after the date on which the Bill was published". The Bill is with a capital "B" which pre-supposes that it does exist as a Bill. But it goes further than that because Order 28 actually pre-supposes that the Bill is capable of being read a first time. All it does is impose a time limit as to when it can be read a first time. If the Bill cannot be read a first time at all, then surely Order 28 cannot apply. No Bill shall be read a first time and then we have the proviso, provided it is published for six weeks then it can be read a first time.

HON CHIEF MINISTER:

If the hon Member will give way to me before he finishes his note?

HON G H LICUDI:

I am happy to finish.

HON CHIEF MINISTER:

Well, just before he finishes.

HON G H LICUDI:

Well, it is a Point of Order anyway, so. I mean, I have not raised it as a Point of Order but the point really is whether if the Minister is right and this Bill had been published three months ago, and no leave has been given under Order 28, it suggests one reading could be that it could be read a first time, because six weeks have passed. Now the argument would be that then one would have to go back to Order 25 and read it in conjunction with Order 28, one cannot introduce the Bill. But the better reading I would suggest is that Order 25 has to come first. One has to have permission, the leave of the House, to introduce the Bill and then it becomes capable of being read a first time, but not until the expiration of six weeks after publication, and that is all that Order 28 does, provide when it can be read a first time. I am happy to give way to the Chief Minister.

HON CHIEF MINISTER:

I really do feel that the hon Member is simply confusing the concept of publication with the concept of introduction. They are not the same things. Look, anybody can, provided they can persuade the Government and the Government printer to allow them to do so, sort of publish something called a Bill in the Gazette. What Standing Order 25 says is that before a Private Member can introduce a Bill, meaning introducing the Bill into this House, as the legislature, it has to have the leave of the House, which my Colleague is seeking today. Then it says in Standing Order 28, something quite different, and that is that one cannot take the first reading of a Bill until it has been published in the Gazette for six weeks, unless I certify the contrary. So, the question of the six weeks is completely different. The six weeks relates to when we can take the first reading in this House, that is Standing Order 28, and Standing Order 25 says that one cannot introduce a Bill into this House, it cannot get onto the Order Paper until one has the leave of the House. But neither of those mean that one cannot have published this a year ago if one wanted to. There is no nexus between the concept of publication, on the one hand, the context of introduction of the Bill into the House of the other, or the concept of taking the first reading on the third hand, which is the provision of………They all have different requirements. One cannot take the first reading until it has been published for six

weeks. One cannot introduce the Bill into the House until one has got the permission of the House by motion, separate requirements. But neither of those dictates when one can publish the Bill, for the purposes of giving notice to the world that this is what one wishes to do. If one gets leave to introduce it, motion, and if one gives six weeks notice or the Chief Minister certifies whatever he has got to certify, I do not remember, the exceptional importance or whatever. That is how we see it on the Government side.

HON F R PICARDO:

If the Chief Minister would give way? I think this is a very important technical debate which will have life after this particular debate. We must not lose sight of the fact that it is not just Standing Orders that govern this issue. There is provision in respect of Bills in the Constitution. Section 35 of the Constitution states, as hon Members will be aware, "that every Bill shall be published in the Gazette and the Parliament shall not proceed upon any Bill until the expiration of six weeks after the date on which the Bill was so published, unless the Chief Minister…." Now, what has been published in the Gazette? First of all, there are two different dates. Some hon Colleagues have the Bill dated, or the document headed "Bill Private Members'" dated 30th April. We also have a publication date of 7th May, so it has been published and circulated twice as a matter of fact. We have got both of these documents headed "Bill" with us. What has been circulated? What has been circulated, and I also venture to pose the question, I think it is important in the context of what we are discussing, who has paid for the printing and the publication? The document that has been circulated is a draft Bill. It is not, in my respectful submission to the Parliament, a Bill. When the Government publishes a Bill, it is a Bill the moment the Government signs it to go, because the Government do not need leave to create a Bill. The moment the Government decide that it should go to the printers and is published it is a Bill. When is the document that Mr Feetham presents to the House today a Bill? In my submission this Bill has no life as a Bill, it is only a draft Bill until the Parliament says that it can go. This document becomes a Bill with the Government vote, when the Government votes the motion in favour, and the document has been circulated as a draft Bill, for it must be that, becomes a Bill with the consent of the House. It is then to be published and circulated and the six weeks are to run from then. We are talking really about the minutia of when the Bill will be before the House for consideration. We have looked already at the agenda for today and we have considered the fact that the hon Member's name there should be his own name it should not be his ministerial designation. I think there is agreement across the House in that respect and I accept absolutely no responsibility attaches to the hon Member for that. But the Bill is on the Order Paper, whether in the hon Gentleman's name or in the hon Gentleman's ministerial designation, as a Bill that cannot be proceeded with for first reading until the 11th June. Procedurally, with the greatest of respect to the House and to the Clerk, I do not believe that the Bill can be on the Order Paper for it is not yet a Bill.

HON CHIEF MINISTER:

Can the hon Member give way a second?

MR SPEAKER:

I do not wish to interrupt the Chief Minister but I think he has given way to the Hon Mr Picardo, the Chief Minister has not replied to that. In any event, I have got to go back ……

HON CHIEF MINISTER:

I hear what the hon Member says, but it is still a confusion of the concept of publication and introduction. Look, perhaps just if I could reduce it to semantics. Section 25(1) starts by saying,

"any Member may move for leave to introduce a Bill". Therefore, it has to be a Bill before one introduces it, and indeed before one seeks leave to introduce it, because otherwise it would be impossible to comply with the argument. It is a Bill before one introduces it because one needs leave to introduce a Bill. Ergo, it was a Bill before one introduced it and before one sought leave to introduce it. It is just ordinary meaning of the word in the English language. There is a difference, which the hon Members are ignoring, between publication and introduction. Otherwise, for the hon Members to be right, Standing Order 25(1) could not read as it reads, it would have to read, "any Member who wants to introduce a Bill needs the House and needs to attach a draft non-Bill, must not use the "b" word, a draft piece of paper with lots of writing on it which will only become a Bill after the House has given him permission to move it". That is not what the Standing Order says. The Standing Order calls it a Bill with a capital "B" before it is introduced in the context of the need to seek leave to introduce it.

HON F R PICARDO:

I am grateful to the Chief Minister. The section of the Constitution which takes precedence over our Standing Orders, calls it a bill with a small "b".

HON CHIEF MINISTER:

Oh I see.

HON F R PICARDO:

The Constitution takes precedence.

HON CHIEF MINISTER:

So is this a bill with a small "b"?

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

As opposed to a Bill with a big "B". Oh I see, that is the distinction.

HON F R PICARDO:

That is right. See, there is therefore an issue that I think needs to be addressed.

HON CHIEF MINISTER:

Well we xxxxxx Standing Orders xxxxxx that there is a capital "B" in it.

HON F R PICARDO:

Perhaps we should because I think this debate is about the precedence of the Constitution, so perhaps we should. Mr Speaker, it is not clear, in my view, that we can simply flippantly take the view that the publication that has already occurred, and it has occurred twice, we know not why, on 30th April and 7th May, can constitute the publication of a Bill. There is no definition in the Interpretation and General Clauses Act of "Bill" which would have been useful. The consequences of deciding that any document circulated by any Member will have been a

published Bill for six weeks, may not simply be to allow consideration of this Bill to be given by the House as a Bill once it is introduced by Government majority through the motion today. It may be that somebody can publish something seven weeks before Parliament meets. Parliament gives leave in its session seven weeks later and can that Bill, for which Parliament has only given leave on that day then go through its three stages? That might make sense in the case of Government Bills, because Government Bills require no leave, so the minute that they are published and they go from the Minister's desk and is signed, they are a Bill. My interpretation, which I believe and I commend to the House simply as the safest interpretation, for the Members of the House and for members of the Community, would be that in respect of Private Members' Bills, reading the Standing Orders in keeping with the Constitution and what it is that the Constitution is designed to do, will be to consider the moment of the introduction into the House of the Bill, when the leave is given, to be the moment that the document, the draft Bill, has life as a Bill and then requires publication.

HON CHIEF MINISTER:

I do not think that there can be any merit whatsoever in the hon Member's attempt to draw a distinction between Bill with a capital "B" and bill with a small "b". The Constitution uses a small "b" for bill throughout, even when it is talking about an Appropriation Bill. Therefore, this idea that because our Standing Order uses a capital "B" it must mean something different to what the Constitution says, the fact that the Constitution uses a small "b" is irrelevant because the Constitution as a matter of style uses a small "b" throughout when it refers to all Bills in all circumstances. Therefore, the choice of a capital "B" is arguable, I suppose. If the hon Member really wants to be …… and this matter is going to become as semantic as this, if the hon Member is saying that there is some constitutional difference between Bill with a capital "B" and bill with a small "b" because the Constitution uses one or the other, he would logically have to argue that the entirety of our Standing Orders are unconstitutional, because the Constitution speaks of Bills with a small "b" and, therefore, any document that speaks of Bills with a capital "B" must necessarily be unconstitutional. I hasten to add that it is not an argument that I am recommending to the hon Members, I think it would be an absurd argument. But I am just trying to highlight the fact that he cannot draw the sort of forensic value that he was seeking to draw, from the fact that the Constitution uses bill with a small "b" and this is Bill with a large "B".

HON F R PICARDO:

I am grateful for that. I am not trying to draw that distinction, but there are natural consequences in what is happening here which we need to understand as a Parliament. The green paper with a draft Bill on it has been published and circulated twice. On 30th April………

HON D A FEETHAM:

Does he want me to explain why?

HON F R PICARDO:

Yes, it is of little consequence to the argument they are going to make, but I am quite happy to hear.

HON D A FEETHAM:

He is absolutely right it was published twice, and the reason for it was because of Standing Order 38. In fact, although I did not think that Standing Order 38 actually applies, out of an abundance of caution and to prevent hon Members from raising too many technical points, but of course I was not successful

anyway, I decided to publish it twice, because Standing Order 38 says, "when any Bill shall be proposed which may affect or benefit some particular person, association, corporate body, notice shall be given to all parties concerned of the general nature and objects of such Bill, by publication in the Gazette, and every such Bill, not being a Government measure, shall be published in two successive numbers of the Gazette." Now, I took the view that this was not a Bill that benefitted a particular person, association or corporate body. But as I say, out of an abundance of caution, in order to prevent any more technical points arising in the future, I decided to publish it twice. That is the reason for it.

HON F R PICARDO:

I am grateful to the Minister, I could not agree more with him. This is not a Bill that benefits a particular person, association or body. It is a Bill, as we view it, which implements international and national legal obligations. So we would not have that debate with him. But understanding this, this section emphasised the fact that this is not a Government measure. Who has published this document? It has been published by the Hon Daniel Feetham not by the Ministry for Justice, not by the Government, not by the Minister for Justice. Therefore, the cost of publication and circulation is a cost which is met by the Member that does this. When I introduced a Private Members' Bill for discussion by motion, I simply ensured that hon Members had a copy of the document that I wished would become a Bill, attached to the document that I circulated then with my motion. I believe that would have been sufficient notice to the House, and could be published by way of press release, for people to understand what the debate of the House was to embark upon, dealt with. I do not think that having circulated this twice it now has life as a Bill. I believe that the right position would be, and I will give way to the hon Gentleman as soon as I finish this phrase, that upon permission or leave being given by the House for this to be introduced as a Bill, big "B", small "b", it is then circulated at Government cost, or at the cost of the House, in the proper way. In the sense that it then becomes a Bill.

HON CHIEF MINISTER:

If he will give way now it would be convenient. Thank you. This is precisely the point. The point that he is now making about cost, and I shall look at it very carefully about who should pay for this, my personal view is that the hon Member should pay. But he cannot make the distinction that he has just made. In other words, it is a matter, I suppose, for Government policy at the end of the day, because the rules are equally silent about who pays even after the House has given a Member leave to introduce. I mean, the hon Member is assuming that he did it in a much better way because he circulated photocopies. But if the House had given him leave, he would still have had to publish in the Gazette and it would have begged the same question, with or without leave, it does not matter. In the case of a Private Members' Bill, when it is published in the Gazette who should pay? The mover of the Bill or the Government, for want of a better phrase? I do not know what the answer to that question is, but I will certainly look into it and make sure. But I do not think it is relevant to the issue of whether the House should give leave to move the motion or not. There may be a proper question there upon which the Government need to take a policy decision, so that the next time the hon Members issue a Private Members' Bill, and he would now argue if the Government pays for it on this occasion that he is entitled to publish it in the Gazette at Government expense, even before and notwithstanding that he might never get leave. But these are issues that the Government have to consider and, clearly, there has to be a uniform rule for everybody. But I have to admit to the hon Member that it is not an issue upon which anybody had invited me to focus my mind, and I am grateful to him for having done so.

HON F R PICARDO:

The point is this I think this is a matter not just for the Government. I think this is a matter for the Parliament, and I think it is an issue on which Mr Speaker's considered ruling may be required, in my view, because when we are able to proceed with Bills, the method for publication of draft Bills et cetera, is a matter, I think, for Standing Orders and for the Parliament.

HON CHIEF MINISTER:

That is a different issue. The question of who pays is a question for the publisher of the Gazette. Well not who, because it should be whatever the Government decide is a matter of policy in that regard, has to apply to all Members of Parliament on both sides. The question whether the mover of a Private Members' Bill, either before or after, or in either case or both cases, should pay for the cost of publishing the Bill in the Gazette, whether it is subsequently refused leave or not, is a policy decision for the Government which requires to be made and it has to be even handed and equal and the same for all Members of Parliament. I will certainly concede that, but it is not for this House, unless it does so through legislation of course, to dictate what that policy should be.

HON F R PICARDO:

Or amending Standing Orders.

HON CHIEF MINISTER:

No, Standing Orders regulate the proceedings of this House, not the Government as publisher of the Gazette.

MR SPEAKER:

I think we must get some order back into this debate. Right now the Hon Fabian Picardo has been given way to by the Chief Minister. Can I call on the Hon Fabian Picardo to round up his remarks, so that the Chief Minister can deal with his and then the Hon Gilbert Licudi and then the mover of the Bill. We have got as far as that.

HON F R PICARDO:

I accept the issue in relation to payments but in my submission we need to have clarity for the sake of the whole community and Members, whatever side of the House they may be on at any particular time, on when time starts to run on these issues. I think we are pretty clear on when time starts to run on a Government Bill, I think we need clarity, there may be some difference of opinion which is clear today as to when time starts to run on a Private Members' Bill, and I think there needs to be clarity on that issue and I would call on Mr Speaker to provide that clarity, so that whenever we get to consideration of the Bill, it is the proper time so that there cannot be any challenge subsequently to the way that the Bill has been dealt with by any party. We all assume that the parties most interested in these matters are the parties that are in favour of equalisation of the age of consent. It may be that the parties that are not in favour of equalisation, if the Bill were to come and be introduced in the House and were to pass all stages in the House, might then want to take an action to say that the Bill is not been properly passed. That is just one potential avenue where we need to ensure that there is certainty in respect of the manner in which we now progress in respect of this Bill, or any other future Private Members' Bill.

HON CHIEF MINISTER:

But there is certainty. It is the basic precept of our system of law that what is not prohibited is permitted. The Rules of the House are clear. It is only the hon Members in their argumentation that are suggesting that there is some requirement for clarity, as if there was some ambiguity. There is no ambiguity. There is a rule that speaks about not being able to introduce a Bill into this House without leave, and that must be complied with. There is a different rule that says that one cannot take the first reading in this House until we have had six weeks notice, and there is no requirement in the rule of this House as to having to publish. In other words, that the six weeks have to be after the leave and not before the leave. Therefore, there is no ambiguity, there is no lack of clarity, it is permissible because it is not prohibited. The rules simply do not say what the hon Member appears …… I do not know whether he wants it to say one thing or another, but I do not suppose that it matters from his perspective. But I do not think that there is that……… If a Member of the House wishes to take the cost risk of publishing something in the Gazette, before he has had leave to introduce it in this House, I think that he is free to do so. Indeed there may be good reasons why he should be free to do so, because it may be that it is right that through publication in the Gazette, the public at large has an opportunity to know what it is that Parliament subsequently decides to approve or not approve the hon Member to bring a public Bill in. Why should the public be kept in ignorance of the content of a Private Members' Bill through non-publication, which will never be published, according to the hon Member's view, apparently, unless the House authorises its introduction. When the mere fact that the House might refuse to give leave to introduce it, may itself be a matter of information that the public at large is entitled to have access to. So he could have a different view. All I am saying on my feet, on this last rounding up occasion, is that we do not share the view that there is lack of clarity. That we think there is complete clarity on the rules properly interpreted.

HON G H LICUDI:

We note and acknowledge that the Members opposite are clearly of the view that there is no lack of clarity. But the Members opposite, the Chief Minister, will no doubt acknowledge that it is of absolute paramount importance that there should be complete certainty in relation to this matter, and not just a difference of views with us being reasonably certain and the Government being as reasonably certain on the other side. There is a need for absolute certainty because Mr Picardo has mentioned the possibility of something like this being challenged. There is a more fundamental point. What this motion seeks to do is introduce a Bill which if passed will give rise to changes to the criminal law and introduce new criminal offences. So let us imagine the situation where somebody is charged with one of these criminal offences, and decides to take the point that under the Constitution the Parliament was prohibited from proceeding with this Bill because it was not at the time a Bill when it was published, because the Constitution section 35 says, "every Bill shall be published in the Gazette and the Parliament shall not proceed upon any Bill". So if this is not a Bill, as a matter of fact, if this is not in fact a Bill and this is in fact proceeded with, there is an argument that this Parliament has acted ultra vires to the Constitution.

MR SPEAKER:

Can any court of law question the workings of Parliament? If I sign a certificate saying this Bill has been properly been enacted that is the end of the matter. There is no court of law which has questioned passage of a Bill in this Parliament. The enrolled act rule.

HON G H LICUDI:

Surely the Constitution is the supreme law of the land. I am just saying that we should avoid the possibility of anybody being

able to take this point. The point that the Chief Minister says is that, Standing Order 25 says, "any member may move for leave to introduce a Bill", that must mean that a Bill exists before one can introduce it. That is quite simply a matter of interpretation and our interpretation is quite different, that a Bill is only capable of being a Bill and capable of being introduced once leave is given by this House. Let me give the hon Member an analogy. Those of us who practise in the law will be well familiar with the procedure for applying for judicial review, when an application for leave to apply for judicial review must be made. It cannot possibly be said that there is an application for judicial review before the court before leave is given. Therefore the document, the application itself, does not exist without the leave of the court. In the same way in this particular case, the document, the Bill itself as a Bill cannot possible exist without leave being given under Standing Order………

HON CHIEF MINISTER:

That is a false example. I mean, there is a rule there that says that one may not proceed along a certain path without the leave of the court. So one may not proceed along the path. There is no rule here that says. But the equivalent of that would be a rule here that says one may not publish a Bill until one has had leave to introduce it into the House. He is not comparing apples with apples, he is comparing an apple with a pear.

HON G H LICUDI:

That is certainly not the position that we take on this side. The question really is that for the purposes of Standing Order 28, when it refers to a Bill what does it actually refer to? Any document that any of us might choose to call a Bill, because any of us can ask for a document or something to be published.

HON CHIEF MINISTER:

Any document which purports to bring about a change to the laws of the land is a Bill to promote a change to the law of the land, absolutely. There is nothing magical about this formula this is just a matter of practice of the Government. It does not say anywhere in the law that in order for a Bill to be capable of being a Bill and being effective and passed by Parliament it has got to have a big Bill at the top and then a little four underneath and all this mumbo jumbo underneath. This is just the practice that has evolved. Any document which contains a written proposal to change the law or to introduce a new law is a Bill for an Act to introduce a new law, absolutely. Sorry he asked a question, I do not know if it was rhetorical, he might have been rhetorical.

HON G H LICUDI:

I am happy for the Chief Minister to set out the Government's position and they have set out the Government's position. All we are saying is that there is a need for absolute certainty on the interpretation of Standing Order 25, because it has an effect on Standing Order 28. That in itself has an effect as to when the Bill can be read a first time, and that in itself has an effect on whether the passing of legislation is constitutional or not. That is a simple point.

HON D A FEETHAM:

Just to deal with one point that the Hon Mr Licudi has just raised, which is this question of exposing the whole process to some form of judicial review simply because it is a Private Member's Bill and not a Government Bill. In fact, I remind the hon Gentleman that when in 1967 the United Kingdom decriminalised homosexual sex between men, it was actually done by way of a Private Members' Bill. That is the way it was done. In the United Kingdom, in 1967, it was done by way of a

Private Members' Bill amongst a huge wave of controversy in the country and in Parliament at the time. So it is not unusual and, certainly, it is not a one off as the hon Gentleman can see. Just, and I do not want to dwell on this question of Standing Order 25, but in fact, if one looks at Standing Order 25(2), we will see that it says, "notice of motion under this order shall be given". In other words, we do not get to the point at which the Bill is before Parliament. It is a notice of motion stage. "Notice of motion under this order shall be given by delivering a copy of the Bill". That is what it says, not the draft Bill or the Bill or the future Bill, it is the Bill. The position could not, in my respectful view, be clearer than in fact it is. Finally, in answer to the point that the Hon Mr Picardo made about the Bill, the amendments to this Act have all been drafted by myself.

Question put. The House voted.

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

For the Noes:
The Hon J J Bossano
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

The motion was accordingly passed.

HON CHIEF MINISTER:

Well, it is clear the whole of the Government have voted in favour and the whole of the Opposition have voted against. No need to call for a poll?

MR SPEAKER:

Well I have taken the sound but any Member who wishes a division to be taken, we take a division. Does any Member wish to ask for a division to be taken?

HON CHIEF MINISTER:

It is not necessary, they will indicate that they have all said "no", that is all.

MR SPEAKER:

I think that the voice has carried.

HON CHIEF MINISTER:

Okay.

HON F R PICARDO:

I just think it is proper at this stage of the proceedings, but if I can just indicate to the House, very quickly because I think it is in everybody's interest, that there is a formal definition of "Bill" in the equivalent of Stroud's judicial dictionary which I will circulate to Members and to Mr Speaker, so that they can make up their mind as to what the issue is. I will read it very quickly, it is three lines.

MR SPEAKER:

The debate is closed now.

HON F R PICARDO:

I am sure, but if it is in the interests of………

HON CHIEF MINISTER:

Is it a debate or consultant's ruling?

HON F R PICARDO:

I do not know what the Chief Minister thinks that everything is to be reduced to laughter when it does not suit him, but does the hon Gentleman want to know what it is? It may help him. We are trying to reach a formal agreement or a formal understanding of when a Bill is a Bill.

MR SPEAKER:

If the hon Member can satisfy my curiosity.

HON F R PICARDO:

Well, it says this, and this is a very quick internet search of what the definition is.

MR SPEAKER:

No debate please, just give us the answer.

HON F R PICARDO:

Anyway, it says, simply that a Bill is a formally introduced piece of legislation, a proposed law requiring the approval of both Houses and the signature of the President to enact. See also the words "engrossed Bill et cetera". So Mr Speaker, formally introduced legislation.

MR SPEAKER:

Thank you. Next item please.

BILLS

FIRST AND SECOND READINGS

THE CARE AGENCY ACT 2009

HON J J NETTO:

I have the honour to move that a Bill for an Act to make provision for the delivery of services to members of the community who are, or who are adjudged to be, in need of social care and in that regard to establish the Care Agency; and to transfer the functions of both the Social Services Agency and the Elderly Care Agency to the Care Agency; and for matters connected thereto, 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, in my Budget address I set out one of the new policy initiatives that related to the future role of the Social Services Agency, the Elderly Care Agency and Bruce's Farm. One may recall I acknowledged that all three institutions have played an enormously important role in providing essential services to the community, and in some cases in actually saving the lives of many individuals. However, the Government feel that we ought to try and move away from the classification or stigmatisation of people by means of labels that are attached to them. In these cases they are referred to as "elderly", "social" or "addictive". The Care Agency Bill is the first tangible step towards recognition that a person who requires help does so as an individual to whom society has a responsibility to assist. The title of the Act and the Agency which is created is therefore entitled the Care Agency, since care is the common thread that binds all the users as well as the providers. The format of the Bill is one which this Parliament is familiar with and which has worked well in the past. The obvious departures from the Act lies in the amalgamation of the duties and responsibilities. Like its predecessor, the Care Agency will be a corporate body, clause 4, whose day to day running will be overseen by a chief executive officer, clause 10. The establishment of a management board is provided for in clause 11, and professional advisory committees will be set up pursuant to clause 12. This will provide professional and technical advice to the Agency, the chief executive officer and the board of management. The remaining clauses concern the day to day housekeeping matters that such entities require, such as provision for the filing of annual accounts, auditing, commencement of the financial year et cetera. Where the Bill departs from its predecessors is in clauses 23 to 25. These provide the mechanism by which the transfer of the two existing statutory bodies, namely the Social Services Agency and the Elderly Care Agency, will pass into the new entity. Accordingly, the two legislative instruments that created those bodies are said to be repealed. One body that is not mentioned in this Bill is the Bruce's Farm. Bruce's Farm has been run by the New Hope Trust. Bruce's Farm and the staff employed by the Trust will be employed by the Care Agency. Since the Trust is not a creature of statute there is no legislation that needs to be addressed by the Bill. Before commending the Bill, I wish to reiterate what I have said in my Budget address. Namely, that this is not an exercise to try and cut back on the levels of employment or in the level of expenditure in any of the three current organisations. The aim is to better use the resources available in a new fused agency, and one that does not stigmatise service users depending on their personal situation. So I will provide this assurance to the unions and staff members. Once again, I would like to give my sincere thanks to all the individuals who have given a tremendous amount of their time to help others in their time of need. Their contribution over the years shows the altruistic nature of their character and a glaring example for others to emulate. I would like to say that one of such characters happens to be in the public gallery today. I commend the Bill to Parliament.

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

HON N F COSTA:

On this side of the House we see no reason to suppose at this stage that the amalgamation of the different agencies will result in an improvement in the current system, or that the current service users will derive any benefit or a greater benefit. Given that this is not a manifesto commitment on this side of the House and given that we have said on previous occasions that we would conduct a root and branch review of social services when in Government, we will be abstaining on this Bill with a capital "B".

Question put. The House voted.

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

Abstained:
The Hon J J Bossano
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

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, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause, namely, the Care Agency Bill 2009.

THE CARE AGENCY BILL 2009

Clauses 1 to 25 – stood part of the Bill.

The Long Title – stood part of the Bill.

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Care Agency Bill 2009 has been considered in Committee and agreed to, without amendments, and I now move that it be read a third time and passed.

Question put.

The Care Agency Bill 2009.

The House voted.

For the Ayes:
The Hon C G Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon J J Holliday

The Hon L Montiel
The Hon J J Netto
The Hon E J Reyes
The Hon F J Vinet

Abstained: The Hon J J Bossano
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

The Bill was read a third time and passed.

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 documents on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table the Report of the Principal Auditor on the accounts of the Elderly Care Agency for the financial year ended 31st March 2008 and the Annual Report of the Elderly Care Agency, which I lay pursuant to section 15(5) of the Elderly Care Agency Act 1999. Mr Speaker, in moving it there seems to have been some confusion, I have got my copy here to lay, the House appears not to have been informed. It is just so that the hon Members have the information sooner rather than later, otherwise they would have had to wait until the next meeting of the House. I have arranged, obviously, for the House to be sent copies for circulation tomorrow morning.

Ordered to lie.

ADJOURNMENT

HON CHIEF MINISTER:

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

HON J J BOSSANO:

Can I ask the Chief Minister if he can give us some indication of when we are likely to meet for the Budget? Well he probably knows already because I understand the UN Secretariat was in touch with him that the date for the Gibraltar question to be on the floor of the C24 is either the 9th or the 16th, and since he is not going, the UN has been kind enough to give me the choice they give him normally. I would therefore obviously like to know whether either of those two dates are likely to conflict, because I respect his policy of not going and I expect that he will respect mine of still going. I would not like to have to cancel the trip because it coincides with the Budget. But he knows the dates that they have got pencilled in for the Gibraltar question which is either the 9th or the 16th.

HON CHIEF MINISTER:

Well, I cannot give him an indication because I have not yet fixed the dates for the Budget sessions themselves. Nor is it acceptable to the Government that the Parliamentary calendar should depend on absences of Opposition Members. What I

can tell the hon Member is that there is no question of my fixing the dates simply because he is away. If I can accommodate him I will, if I cannot I will not and I will let him know at the earliest opportunity whether it will be possible, because of course, there are other absences as well that I have to accommodate.

HON J J BOSSANO:

It is just that, obviously, the sooner I can get back to them suggesting one or the other date, the easier it is for everybody concerned. If he can tell me it definitely will not be on the 9th then I can go ahead and arrange for the 9th.

HON CHIEF MINISTER:

It will not be both because it normally does not take a week, the Parliamentary debate.

HON J J BOSSANO:

But I was asked when I was over there in the Seminar and I could not give them an answer. Therefore, that is why I am raising it now.

HON CHIEF MINISTER:

Well, I will try and give him the earliest possible indication of which of the two it will not be.

Question put. Agreed to.

The adjournment of the House was taken at 4.50 p.m. on Monday 18th May 2009.

REPORT OF THE PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

The Seventh Meeting of the Eleventh Parliament held in the Parliament Chamber on Wednesday 10th June 2009, at 10.10 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for 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 17th March 2009 were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table the Interest Swap Agreement with the Royal Bank of Scotland dated 20th May 2009, pursuant to section 12 of the Public Finance (Borrowing Powers) Act 2008.

Ordered to lie.

ORAL ANSWERS TO QUESTIONS

The House recessed at 1.15 p.m.

The House resumed at 2.30 p.m.

Oral Answers to Questions continued.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Thursday 11th June 2009 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 4.37 p.m. on Wednesday 10th June 2009.

THURSDAY 11TH JUNE 2009

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)

The House recessed at 11.35 a.m

The House resumed at 2.30 p.m.

Oral Answers to Questions continued.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Friday 12th June 2009 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 7.20 p.m. on Thursday 11th June 2009.

FRIDAY 12TH JUNE 2009

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 C A Bruzon
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon G H Licudi

IN ATTENDANCE:

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

ORAL ANSWERS TO QUESTIONS (CONTINUED)

WRITTEN ANSWERS TO QUESTIONS

HON CHIEF MINISTER:

Mr Speaker, I have the honour to table the answers to the written questions numbered W55/2009 to W110/2009 inclusive.

BILLS

FIRST AND SECOND READINGS

THE IMPORTS AND EXPORTS (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend, with retrospective effect, the Imports and Exports Act 1986 and regulations made under that Act in relation to the import duty payable on petrol, diesel and cigarettes, be read a first time.

Question put. Agreed to.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Thursday 18th June 2009 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 10.40 a.m. on Friday 12th June 2009.

THURSDAY 18TH JUNE 2009

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 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 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 S E Linares

ABSENT:

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 C G Beltran – Minister for Education and Training

The Hon C A Bruzon
The Hon N F Costa

IN ATTENDANCE:

P E Martinez, Esq – Clerk to the Parliament (Acting)

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move to suspend Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of a report on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table the Gibraltar Annual Policing Plan 2009/2010.

Ordered to lie.

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Private Members' Bill.

Question put. Agreed to.

PRIVATE MEMBERS' BILL

FIRST AND SECOND READINGS

THE CRIMINAL OFFENCES (AMENDMENT) ACT 2009

HON D A FEETHAM:

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

Question put. The House voted.

HON CHIEF MINISTER:

Was that the Opposition voting against the First Reading?

MR SPEAKER:

I heard a "no" but I took the voice as a majority carried.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the main purpose behind the Bill is to equalise the age of consent for homosexual and heterosexual activity and intercourse, by setting the age of consent at 16, which is the age of consent for heterosexual and lesbian sex for at least 120 years. The Bill achieves equalisation by introducing gender neutrality in relation to the existing sexual offences and defences in Part 12 of the Criminal Offences Act. It does so by using the term "person" instead of "man" and "woman" and doing away with the offence of buggery. The introduction of gender neutrality can be seen, for example, in the offence of rape, which is amended by simply replacing the word "woman" with the word "person" so that a man can also be a victim of rape. The offence of gross indecency in public is retained but made gender neutral and limited to acts done in public not private. The only new concept introduced by the Bill is the concept of sexual activity which is defined in section 99A, in order to create a new offence of unlawful sexual intercourse with children and other vulnerable groups, short of sexual intercourse, which is a lacuna in our existing legislation. The hon Members who have read Part 12 of the Criminal Offences Act will have noted that the majority of the offences against children are limited to intercourse, and this Bill simply extends those offences to sexual activity. These are the only new offences introduced by the Bill. The upshot is that any sexual activity or intercourse, whether homosexual or heterosexual, between persons over the age of 16, will not be an offence if consensual and sexual intercourse and sexual activity with children under the age of 16 will be an offence subject to the same gender neutral defences that have historically existed. Section 117(3) of the Criminal Offences Act contains an error as it refers to the age of "14" as the lawful age for marriage. It is, in fact, 16 unless special dispensation is obtained from the Supreme Court, and the error is accordingly corrected in this Private Members' Bill. Section 180, which is gross indecency with children, is also amended by raising the relevant age from "14" to "16" in line with the rest of existing Part 12 and, indeed, section 1 of the UK Indecency with Children Act 1960. Why do we need to change the law? During the course of the motion for the introduction of this Private Members' Bill, I said that my personal view is that the need to equalise the age of consent is a consequence of the adoption of the 2007 Constitution, and that I would explain my reasons fully during the course of the debate on the Bill. Although, of course, the European Convention of Human Rights was ratified on Gibraltar's behalf, at Gibraltar's request, a number of years ago, and to that extent Gibraltar through the United Kingdom agreed to be bound by judgements of the European Court of Human Rights, pre-2007 those decisions were not binding on the courts in Gibraltar, and also the individual rights and freedoms afforded by the 1969 Constitution, differed from the Convention significantly. The 2007 Constitution, which I am proud to say this side of the House supported in the Referendum, not only extended many of the individual rights and freedoms to bring them in line with the Convention, but for the very first time section 14 introduced a prohibition of discrimination on the grounds of, and I quote, "sex or other status, or such other grounds as the European Court of Human Rights may from time to time determine to be discriminatory". In addition, other provisions, for example section 18(3) of the new Constitution, require the courts locally to have regard, to not only the judgements of the European Court of Human Rights but also opinions of the European Commission of Human Rights, amongst others. In other words, since 2007, it is no longer a question of someone in Gibraltar aggrieved by potential discrimination covered by the Convention, having to make a claim against the United Kingdom in the European Court of Human Rights, because if that claim exists under the Convention it is justiceable here in Gibraltar, in our courts, by virtue of section 14 of the new Constitution. Moreover, for a right under the Convention to be engaged, a person need not necessarily be prosecuted under any criminal legislation that is alleged to be discriminatory. That much, in my view, is clear from the European Commission Decision in Sutherland against the United Kingdom, where it afforded victim

status and, therefore, the necessary standing to take the case to the European Court of Human Rights, to a homosexual person who had not been convicted under the law which he sought to challenge, namely section 1 of the UK Sexual Offences Act 1967, which was subsequently repealed. The Commission found that the very existence of legislation criminalising the applicant's sexual preferences, potentially constituted a violation of his right in respect for private life. It is therefore clear to me that the legal provisions penalising homosexual men in the principal act, are liable to humans rights challenge, leaving aside the issue of whether that challenge would be successful or not, even if no prosecutions were brought against individuals. That is the context in which I now turn to outline more fully the views that I expressed during the debate on the motion.

The seminal decision is that the European Court of Human Rights in L& V against Austria, or what is commonly called "the Austria Case". In that case two Austrian men challenged article 209 of the Austrian Criminal Code, and their convictions thereunder. Article 209 of the Austrian Criminal Code provided that it was an offence for a man aged more than 19 to have sex with a man between the ages of 14 and 18. Significantly, just as in Gibraltar, heterosexual or lesbian acts between adults and adolescents in the same age bracket were not punishable. Prima facie, therefore, the court held that article 8 and article 14 of the Convention, on the right to privacy and the right not to be discriminated against on the grounds of sexual orientation, was engaged. Importantly, in the context of this debate, that in itself was not considered to be determinative and would not be determinative in any challenge to our legislation. The key issue was and is whether there was objective and reasonable justification for the interference with the right to private life or the discrimination, and even if there was, was there reasonable relationship of proportionality between the means employed, that is, the legislative difference in treatment and the justification for it. Indeed, it was also recognised that contracting states enjoy, "a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment". The justification advanced by Austria was that the object of the law was to protect the sexual development of male adolescents, and that the article was necessary to avoid, and I quote, "a dangerous strain being placed by homosexual experiences upon the sexual development of young males". The court's treatment of that justification is significant because it represents a significant plank, in my view, in the case against lowering the age of consent for homosexuals, if I am guided by representations that have been made to my office. Whilst the court did accept that protecting the sexual development of male adolescents was a legitimate aim, Austria did not satisfy it that that was a justification for the difference of treatment between male and female adolescents. It noted that the Convention was a living instrument which had to be interpreted in the light of present day conditions. By the mid 1990s it had become clear from the preponderance of expert evidence, that the theory that adolescents could be recruited to homosexuality had been disproved. It also noted that equality of treatment in respect of the age of consent is now recognised by the majority of member states of the Council of Europe. Accordingly, it held that Austria had failed to provide the weighty and convincing reasons required by article 8 in conjunction with article 14, to justify the difference in treatment enshrined in their legislation. I accept, and I hope that I have shown in my careful analysis, that the effect of the Austria case is not that unequal ages of consent must always be considered to infringe the Convention, but its effect is that such unequal ages will, in my view, be exceedingly difficult to justify in practice. In my view, there would have to be convincing medical or psychological evidence to support such a justification. However, it is difficult to see how it would be possible to justify such differences when respected organisations, such as the World Health Organisation, the British and American Medical Associations, the Royal College of Psychiatrists and the American Psychiatric Association do not support the thesis that one should treat boys and girls differently on developmental grounds, or because they are more susceptible to influence from older men. I have certainly not seen sufficient medical or psychological evidence to support a different proposition. In all the years following or being involved

in politics, I have tested political decisions, whether mine or anyone else's, by the twin principles of social and civil justice, and I do not believe that our current legislation satisfies these principles. I also cannot divorce myself from my views as a lawyer, who has practised both here in Gibraltar and in England and Wales for many years. Whilst I recognise that my view is not the only view and I may be wrong, it is nonetheless my view and my conscience, therefore, dictates that I should do something about this. Why does my Bill reduce the age of consent for homosexuals to 16? If my analysis, which I have tried to carefully set out, is correct, then the consequences of that is that there is a real risk that these provisions, that the provisions treating homosexuals worse than heterosexuals and lesbians are unconstitutional. I emphasise the word "worse" because it is the fact that homosexuals can be prosecuted for having sex at 16 or 17, when other young people of that same age group cannot, that makes the provisions treating homosexuals differently challengeable. The hon Gentlemen opposite in fact go further and say there is absolutely no doubt that these provisions are unconstitutional. That is precisely why they spent a considerable amount of time arguing that the Government should have introduced this Bill as a Government Bill. If their analysis is correct, then there is a duty to correct the position today and not wait until tomorrow, or the day after, or in three months time after a consultation process. The hon Gentlemen cannot run with the hares and hunt with the hounds and be all things to all men. They have to follow their own arguments logically through. If the issue came before the court tomorrow, and the hon Gentlemen were right on the legal argument, and the court applied a blue pencil test, as it did in the women jury case, it would do so by lowering the age of consent for homosexual men to place them on a par with the age of consent for heterosexuals and lesbians, not the other way round and that is what this Bill does. But, it is worth emphasising that the age of consent for heterosexuals and lesbians has been 16 in Gibraltar since it was an enshrined statute in 1888, and probably earlier. For over 120 years there has been no popular movement in Gibraltar to increase the age of consent. Let us be clear, the predominant reason why if we increase the age of consent to 18 at this stage, would be in order to avoid lowering the age of consent for homosexual men. No other reason. That, in my view, is not right as a matter of principle and conscience. If we are to have genuine debate on whether sex at 16 or 17 should be criminalised, because that is what we are talking about, let us do so from a position of equality for everyone. Let us do so from a position where we treat every 16 and 17 year old in exactly the same way and let us not have a debate that is motivated predominantly by our inability to accept a reduction in the age of consent for homosexual men. The focus should not be on young homosexual men. The focus should be on the well-being of young people in general. I genuinely do not believe that that focus is possible whilst there is an over-focus on the position of homosexual men, and there will always be an over-focus on the position of homosexual men, while the ages of consent remain unequal, because many people, and that includes members of my family, will not be able to extricate themselves from considering this debate from the perspective of whether it is right for a young man to have homosexual relations at 16, rather than from the perspective of 16 years old generally. Lowering the age of consent for homosexual men does not close the door on any popular movement to raise the age of consent for young people generally. As a democrat I welcome that debate, but I believe that it is a debate that should start from the premise of equality for all young people, regardless of sexual orientation. However, I make no bones about it, I do not believe that the increase is either workable or desirable. For a start, it would take Gibraltar in the opposite direction of travel to the rest of Europe in respect of these matters. Strongly Catholic countries have equal ages of consent below 16. That includes Spain at 13, Italiy at 14, France at 15 and Portugal at 16. Only Turkey, the Ukraine and, with some exceptions, Malta, have ages of consent set at 18. Only Ireland, Northern Ireland and Cyprus have ages of consent at 17. Consider the practical and legal difficulties. The age at which people can get married has been 16, or 15 with a court order, for decades. This is also the position in the UK. Any increase in the age of consent would necessitate an increase in the age at which people can get

married. For a start, we would need to carve out exceptions for those who are already legally married, for I do not expect hon Members to pass any legislation that imposes a ban on sexual activity on anyone that is legally married. Although I have to say, after hearing some of the arguments that I have heard both on the motion and, I anticipate, on this Bill, nothing would surprise me. Similarly, consider those who are not married but in a steady relationship, who now found that his or her ability to have heterosexual sex or sexual activity had been curtailed overnight and retrospectively. I believe that these people could complain that under article 8 of the Convention their private life had been interfered with. That is particularly so if that increase occurs in the context of trying to avoid a reduction in the age of consent for homosexual men. What about young married couples, possibly servicemen married to 17 year old girls? Indeed, there are in Gibraltar such people, coming to Gibraltar from the UK where the age of consent is 16. What should we do, require them to refrain from having sexual intercourse whilst in Gibraltar? Or would there be a two tier system of a different sort, whereby they would be exempt from prosecutions whilst locals would be liable to prosecution for having sexual intercourse. In my judgement, one would need to carve out so many exceptions that any legislation would quickly begin to resemble a piece of Swiss cheese. But there is a more fundamental objection to increasing the age of consent. It involves consideration of the boundaries between the role of our criminal justice system on the one hand, and the roles of family and parents and the values of individuals on the other. I have three children, I may not want them to have sex at 16 but neither do I want them to be criminalised for it. I say that, not from the point of view of any parent who would not wish to see their children criminalised for breaking the law, but because I genuinely do not believe that a young person should be criminalised for having sex at 16 or 17. Nor do I think that an 18, 19 or 20 year old should be criminalised for having sex with a 16 or 17 year old. Young people have enough pressures for the criminal justice system to add more pressures to them. Illegality may also be an obstacle to young people seeking professional advice, or participation in community support groups, which are in themselves important sources. For instance, of safe sex information. Within the next few months we will be introducing the Crimes Bill, which will include, amongst other things, a sexual offenders register. Do we really want to risk a 19 or 20 year old being prosecuted and then stigmatised on a register for having unlawful sexual intercourse with a 16 or 17 year old. It would be a sad day for me personally, as the mover of such reforms, if just one young person ends up on the register in these circumstances. I mention 19 and 20 years olds because these things have to be tested by considering extreme and undesirable consequences, because they are possible consequences. The reality is that there has to be a defining age, and therefore, one cannot allow oneself to be blinded by the sceptre of the 40 year old having sex with a 16 or 17 year old, because for the sake of preventing one perceived injustice, one may create two or three others. Let us not forget that for over 120 years it has been possible, legally possible, for a 40 year old man, or for a 40 year old woman, for that matter, to have sex with a 16 year old girl and there has never been a popular movement to raise the age of consent, because we have all accepted that there is a difference between ordinary standards of decency and morality on the one hand, and criminality on the other. They are not always the same. It is also not logical to say that young people do not get prosecuted anyway. If no one gets prosecuted, why do we need to increase the age of consent? Difficult as I know that being a parent is, and it is very difficult, the criminal law should not be a substitute for my own responsibilities as a father, and I do not accept the argument that we should increase the law, a law that we do not enforce, simply to make my task as a father easier, which is an argument that has also been put to me. For all those reasons I would commend the Bill to the House.

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

HON J J NETTO:

Mr Speaker, today is one of those rare moments in the life of our Parliament where we are invited to discuss and decide on the merits or otherwise of a Private Members' Bill. A Bill which by its very nature is controversial. This will require each and every Member of the House to decide for themselves, in accordance with their own conscience. In essence, what we have to consider is whether or not as legislators we should equalise the age of consent for sex between homosexual and heterosexuals at the age of 16. No doubt, in addressing our minds to this issue, each of us will have reasons and arguments that will drive our thinking in this matter to a conclusion. In standing up in favour of the Bill, what I am trying to achieve is to explain how I have arrived at this decision, and explain the issues that I have considered that make me draw the conclusion I have. Needless to say, I am keen to consider the soundness of any opposing views with an open mind, and likewise appeal to all Members to do likewise. In conditioning my mind to undertake a review of the arguments in favour and against in this matter, I have taken to paraphrase part of the prayer that is recited at the beginning of a session of Parliament. This would be that, "grant that we laying aside all private interests, prejudice and partial affections, the result of all our counsels may be to the glory and the good of our city". What then are the primary arguments against equalisation? I believe that there are five main ones. (1), more young men are likely to be exposed to older sexual predators. (2), young men will be more likely to experiment with homosexual activity, and are likely to be seduced and converted to an unwanted homosexual lifestyle. (3), young men will be encouraged in homosexual activity at an earlier age. (4), because young men will be encouraged to have sex at an earlier age, this will lead to higher rates of HIV infections. (5), homosexuality is pathological, therefore the longer it is delayed the better. In relation to item one, that is, more young men are likely to be exposed to older sexual predators, I would like to comment as follows. I have not seen in the literature reviewed nor peer reviewed empirical evidence whatsoever to support this position. However, these views have been challenged by the research carried out by Davies et al 1992 entitled "The Sexual Behaviour of Young Gay Men in England and Wales", which remains one of the largest studies into the sexual behaviour of young gay men in the world with over 1,000 participants. In this comprehensive study it stated: (1) 98 per cent of respondents reported that the first homosexual experience was consensual; and (2) 92.6 per cent respondents' first homosexual experience was with a partner of the same age or slightly older. This research indicates quite strongly that the overwhelming preference for young gay men is for a partner in their peer group. In addition to these comments, neither is there any evidence locally of cases going to court that would justify the comment of "older predators", or indeed, any police or social workers report on the matter. Therefore, the continuation of these arguments on the basis of no evidence simply reinforces negative stereotypes about homosexuality unnecessarily. Moving on to the second argument against equalisation, which is young men will be more likely to experiment with homosexual activity and are likely to be seduced and converted to an unwanted homosexual lifestyle, let me say again that adherence of these arguments seems unable to draw on any peer reviewed empirical research for substantiation. In any case, this idea has been challenged by the findings tabled by Rosario et al 1996, in one of the largest studies of the psycho-sexual development of lesbians and gay people. The research showed that the mean age for initial awareness of sexual orientation was eleven years. The mean age for active consideration of a gay/lesbian identity soon followed at a mean age of twelve and a half years. The mean age at which participants became certain of their identity as gay/lesbian was fourteen and a half years. Other previous studies which show similar results include Bell and Bainberg 1978, Bell et al 1981, Calithia 1979, Chapham and Branock 1987, Joseph et al 1991, Mace and Cochrane 1988, Macdonald 1982 and Sahir and Robbins 1973. When these results are viewed in the light of the data from the project Sigma Studies Davies et al 1992, namely, that early homosexual experience tends to be desired, consensual and conducted with a partner from ones own age group, the argument that "young men are likely to be seduced and converted" is not one that can be

maintained alongside the research findings alluded to, just now. Despite there being substantial differences of opinion in the scientific community as to whether the origins of sexual orientation are genetic, biological or social, or a combination thereof, the notion that sexual orientation is malleable and subject to influence in the late childhood/early teenage years has been widely rejected. Notwithstanding the wide differences of opinion as to the precise xxxxxx of sexual orientation, the vast majority of scientists and relevant professional bodies, for instance, the American Psychological Association, the American Psychiatric Association, the American Medical Association, the British Medical Association and the World Health Organisation, share the view that sexual orientation is shaped and fixed at an earlier age. Moving on to the third objection, which is young men will be encouraged to engage in homosexual activity at an earlier age, again there is no peer reviewed empirical research that I have found which supports this view. People who hold these ideas seem to pre-suppose that lowering the age of consent for homosexuals at 16 would automatically provide a licence for sex. It seems to me that homosexual people at the age of 16, 17, 18, 19, 20, or whatever will have sex when they are personally ready to have sex. In other words, they will behave the same as heterosexual and lesbians, which is, when they feel ready to do so. The idea that we should have separate, discriminatory legislation for young homosexual persons, which would give them a guilt-ridden mentality and possibly exclusion from safe sex education, is not in my mind a justifiable and consistent view with people of other sexual orientation. The fourth argument against equalisation of the age of consent for sex at 16 is because young men will be encouraged to have sex at an earlier age and this will lead to higher rates of HIV infections. Here, the first problem with the statement made is one of logic, given that homosexual behaviour and homosexuality, per se, ironically blend or fuse together with risk behaviour. Of course, they are by no means the same thing, nor does one thing follow from the other. Different people with different sexual orientation will indulge in high-risk sex and the vast majority, regardless of sexual orientation, will have safe sex. HIV is a virus that attacks the body's immune system, which was originally thought to be associated with homosexual activity. However, this has proven not to be the case as heterosexuals have contracted AIDS, both through unprotected activity or through blood transfusion. The last argument against the equalisation of the age of consent is, homosexuality is pathological, therefore the longer it is delayed the better. This viewpoint has been repudiated by most, if not all of the major professional and scientific research bodies, psychologists, psychiatrists, clinical, social and mental health professionals agree that homosexuality is neither mental nor emotional pathology. In 1973 the American Psychiatric Association, the world's largest and perhaps the most respected peak body of mental health professionals, removed homosexuality from its diagnostic and statistical manual of mental disorder. According to the American Psychiatric Association, for a mental condition to be considered a psychiatric disorder, it should either regularly cause emotional distress or be regularly associated with a clinically significant impairment of social functioning. The APA experts found that homosexuality does not meet this criteria. They recognise that a significant portion of gay and lesbian people are clearly satisfied with their sexual orientation and showed no sign of psychopathology. It was also found that homosexuals are able to function effectively in society, and those who sought treatment often did so for reasons other than their homosexuality. Clearly, I am not a qualified psychiatrist or professional in the field that would allow me to make an objective pronouncement on this matter. But what is irrefutable is that those who are and abide by the highest independent standards of professional research in its methodology seem to agree with the APA. In 1994, the editorial of the British Medical Association Journal, The Lancet US Edition, Volume 343 No. 8891, endorsed the introduction of a non-discriminatory age of consent of 16 years in Britain. The editorial made three main arguments to support this stance. Firstly, illegality prevents young gay men from seeking professional advice and from participating in community-based support groups. That is, in important and trusted sources of safer sex information. Secondly, the bulk of studies into adolescent sexuality showed

that the mean age of first homosexual experience is well below 16, almost invariably with a peer within two age difference. Thirdly, as the editorial concludes, “parents of young homosexuals are right to be concerned about their sons, not least because of the damage to their emotional health that can arise from bigotry and discrimination”. It should be noted that when the UK debated the issue of equalisation at 16, this initiative was supported by Bernardo’s, Save the Children, the National Society for the Prevention of Cruelty to Children, the British Association of Social Workers, the National Association of Probation Officers, the Family Welfare Association and the National Youth Agency. I have not seen any substantial evidence of a professional or scientific nature, to support a higher age of consent for young homosexual men. The evidence seems to support the position that the age of consent should be equalised on the grounds that the current position is not only discriminatory against young gay men, but it is harmful in inhibiting their access to educational, health and welfare services at a time when they need them most. As politicians and as legislators we are being paid in part for thinking the argument through and not for substituting thought processes for a mere checklist on outstanding legislation. We should examine the substance of the issues raised and how they appeared in the European Convention of Human Rights. Once we have done that, then each of us in this House should decide for themselves.

Mr Speaker, my honourable, learned friend, Mr Feetham, has extensively dealt in his speech with legal aspects associated with the European Convention of Human Rights, therefore, I will not cover this important area once again. Alternatively, I will focus on the merits of the European Convention of Human Rights. It seems to me that if anyone is going to object to equalisation on the basis of “for the protection of health or morals”, that such a defence is fraught with great difficulties. As I have already stated, on the grounds of health there is not any peer reviewed empirical research that will uphold such a charge. With regard to morals, well morality certainly means different things in different places and different things over a period of time in the same place. As we are aware, morality is one of the most contentious things to define. In any case, what is the valid moral argument for discriminating between 16 and 17 year old homosexual persons against heterosexual, lesbians and homosexuals as from 18 years. Much of the statements which today we see in the European Convention of Human Rights, the American Constitution, the UN Constitution, the EU Constitution and other bodies in relation to freedom, equality, the limits of the law, individual rights and such like matters, emanates from the great ideas of people like Thomas Payne, John Stewart-Mill, Isaiah Berlin and many others. With Mr Speaker’s indulgence, I would like to quote a short paragraph from John Stewart-Mill’s book on liberty, first edited in 1859, that is, one hundred and fifty years ago. He says, “the object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with individuals in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their numbers is self-protection. That the only purpose for which power can be rightly exercised over any member of a civilised community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightly be compelled to do or forebear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or in treating him but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, he is independent, is of right absolute, over himself, over his own body and mind, the individual is sovereign”. It will not have gone unnoticed, by Members of this House, Mill’s reference to “harm”, especially to those who are lawyers. Indeed, it was Mill who first

coined the phrase “the harm principle”. This being the road that the only justification for preventing an individual acting in a particular way, is if it will otherwise cause harm to someone else. This is sometimes known as “the liberty principle”. It seems likely to me that John Stewart-Mill would have defended equalisation on the age of consent right across sexual orientation on general libertarian ground, insisting that the consent of the participating parties is morally sufficient, as long as harm to third parties is avoided. “Do as you will in your private life”, he might have said, “neither the law nor public opinion should be brought to bear unless, say, violations of assignable duties occur”. Despite the fact that I am not a liberal and that the utilitarianism, in my view, to have certain deficiencies and contradictions, nevertheless there is much good judgement in Mill’s book on liberty that I would recommend to everyone to read in this House.

Since my honourable and learned friend, Mr Feetham, published his Bill, there have been much welcome views on the matter in the press. Here, again, some of the arguments about equalising the age of consent stem from the view that homosexuality is unnatural. This is a view that sex is morally permissible only if it occurs within the institution of marriage and the act is not deliberately rendered incompatible with human reproduction. Under this view, all sexual activities that occur outside the institution of marriage, and all expressions that are deliberately incompatible with human reproduction, be seen as unnatural and thus immoral. The construction of this argument needs to be criticised for their underlying presupposition which is based on an historical perception of human nature, an unchanging, unlimited perception of the proper place of sex within that nature. A view of one acceptable form of family and a narrow perception of the function of human sexual activity. Rather than delivering moral theory from an objective analysis of human nature, those who make claims about what is natural for humans often seem to choose those elements of our nature which correspond to their own preconceptions about how we ought to behave. The problem for someone considering how to vote, arises from an extrapolation of a loosely defined meaning of unnatural behaviour of homosexual acts with natural law. But of course, the term “natural law” is ambiguous. Are we to apply an Aristotelian doctrine of natural law? A stoic interpretation? An early Christian one? A later day one? An Islamic one? A Thomas Hobbs reinterpretation or a liberal one? I am not *xxxxxx* of value to judge contemporary jurisprudence, but this cannot be done subjectively or from the partial affection that I paraphrase from the House prayer.

In conclusion, I believe that as politicians one of the crucial considerations in this matter is how do we deal with difference and diversity in our society. My standpoint is that despite not being myself homosexual or bisexual, I do recognise that throughout the history of civilisations, to the most early ones, homosexuality has existed and will continue to exist. I also believe that in a modern, democratic and secular society, self-regarding actions of a consensual nature that do not harm third parties should not be discriminated upon and that our laws should abide by the principle of equality. Therefore, it is for this reason that I will be voting in favour of the Private Members’ Bill.

HON L MONTIEL:

Mr Speaker, I will not go over any of the grounds that my honourable friend the Minister for Family Affairs has covered. Indeed, I think my honourable friend the Minister for Justice has already eloquently outlined the historical and legal background and established the case for equalising the age of consent to 16. I am not a lawyer but on this particular issue I trust his judgement. More importantly, I support this Bill because I believe it to be right, irrespective of that legal position. The Bill before this House is designed to establish in law our legal obligation to achieve equality between all individuals in matters of sex. This can only be achieved by recognising each individual’s human rights. The proposition in this Bill is that the equalisation of the age of consent should be set at 16 for homosexual men, as it has been for everyone else for over a century. As could easily be anticipated, such a proposition is a

controversial issue amongst some in our community. There are people who genuinely and honestly oppose this on religious and moral grounds. That is fine, but there are those who, as always, will recklessly exploit this for nothing more than political opportunism. The reality, however, is that the values of the modern, civilised, diverse and pluralistic society such as ours, should be vested in the cultural upbringing, but in a small community such as ours, our strengths must also be based on tolerance and mutual respect. This is not possible to sustain unless we adhere to the principle of equality and respect for human rights. Notwithstanding this, I cannot accept the assumption by many that the equal rights amendment constitutes states sanctioning encouragement to engage in gay sex in the mid teen years. Or for that matter, the notion that if something is not banned then it is encouraged. Equalising the age of consent to 17, 18 or 20 will indeed put us in compliance with our legal responsibilities, but in effect, would criminalise those groups in our society who until today would have been acting in accordance with the law, in particular, this applies to heterosexuals and lesbians who have always enjoyed this right and who have never been legally or politically challenged in our community. I do not consider that by supporting this amendment I am in any way or form undermining family life or encouraging our youth to engage in gay sex. I am well aware that our youth, for whom I have the greatest respect, is open-minded and discerning. I therefore endorse and support the amendment.

HON E J REYES:

Mr Speaker, as my hon Colleague the mover of this Bill has already explained, the main purpose behind the Bill is to equalise the age of consent for homosexual and heterosexual activity and intercourse. It is proposed to achieve this by setting the age of consent at 16, which is indeed the age of consent for heterosexual and lesbian sex as enshrined in our statutes for the last 120 years. Hardly ever has any criticism been aired publicly over the many years that our laws have established the age of consent at 16, and it is only now that the homosexual age of consent is being equalised that new opinions are being raised in certain quarters. I believe it is necessary to rid ourselves of the emotional problem that comes with respecting people for what they are. If it has been legal at 16 for heterosexuals and lesbians to have consensual sex, then, from my point of view, it should be so for everyone else, that is, to include homosexuals. The Bill before this House is designed to establish in law our legal obligation to achieve equality between all individuals in matters of sex and I believe that this can only be achieved by recognising each individual's human rights. Therefore, what has been legal for nearly all citizens now has to be extended to also include homosexual men. I must respect that there are people who genuinely and honestly oppose this on religious and moral grounds, but however, I cannot impose these religious values upon those who may not voluntarily wish to embrace it. As has already been said, the reality is that the values of a modern, civilised, diverse and pluralistic society such as ours should be vested in our cultural upbringing. However, in a small community such as ours, our strength must also be based upon tolerance and mutual respect. This is not possible to sustain unless we adhere to the principle of equality and respect for human rights. I also cannot accept the assumption held by some that the equal rights amendments constitute state sanctioned encouragement for men to engage in gay sex during their mid teens. Or for that matter, the notion that if something is not banned then it is necessarily encouraged. Like some of my colleagues, I do not consider that by supporting this amendment I am undermining family life. Any increase in the age of consent would necessitate an increase in the age at which people can get married, and as has already been stated, we would need to carve out an exception for those who are already legally married. As a parent I may also not want my children to have sex at 16, but neither do I want them to be criminalised for it. I believe it is my duty as a parent to teach values of love and its ultimate and most intimate expressions through sex and marriage. Therefore, it is up to parents to teach moral values to their children and not hide behind legal statutes so as to establish an age when they can rid themselves of certain

parental responsibilities. Therefore, I will be endorsing and supporting this Bill.

HON J J BOSSANO:

Mr Speaker, our position on the Bill is, of course, that the Bill should not be here because we opposed granting leave of the House for this Bill to be introduced. When we argued that it should be a Government responsibility, it was on the basis that if it was a requirement under the Constitution, then it could not be up to a private Member to comply with the Constitution. The position that was explained by the Chief Minister was that, in fact, the view that there was a legal requirement to equalise, either as a result of the Constitution or as a result of this court case that keeps on being quoted, was not shared by everybody within the Government, and that the only way to establish it beyond doubt was for somebody to actually challenge the existing law, go to court and get the courts to rule, because it was only the courts that could actually determine whether the Constitution, in fact, was being breached by the law as it stands. Independent of whether there is a legal obligation or a constitutional obligation, I have not heard anybody argue that there is a fundamental reason why they are opposed to equal ages. It seems to me that the people who are opposed, are opposed as a result of having to have equal ages, the age for homosexuals being reduced to 16. Therefore, what has created, presumably, this problem of conscience within the Government that has required the matter being shifted from a public responsibility of the Government to a private responsibility of one member of the Government supported, as far as we can establish at the moment, by three other members of the Government, is the fact that the equalisation is taking place at 16, or intended to take place at 16. But, of course, we know now that there are four people in this Parliament who feel very strongly that it should be 16. We do not know how many people there are in the rest of Gibraltar that feel strongly at 16, or anybody else. I know that we have had an erudite philosophical description of the need for it at 16, but that may not wash with all the people who do not share the hon Member's views, and who have not had the benefit of reading Mills or any of the other philosophers on this question. But as far as we are concerned, we have assumed, because we have not heard anything to the contrary, that in fact there is nobody in this House that is saying in principle, "I believe that the age for homosexual and the age for heterosexual has to be different" and giving reasons why it has to be different. The problem arises that, in equalising, a choice has to be made as to whether we equalise at 16, at 17, at 18, or for that matter at any other age, because it is the lack of equalisation that is allegedly in breach of the Constitution and allegedly in breach of our obligations under the Human Rights Covenant. Therefore, it seems to us that the correct thing to do is to listen to the views of others before we form a view ourselves on this issue, and there are many others who feel very strongly about it. This is recognised by the people who have spoken in favour and argued against those who disagree with them. As far as we are concerned, we do not support that it should be done as a Private Members' Bill. We do not think that a Private Members' Bill is the only thing that is able to give people the right to have a free vote. The Government can decide to bring a Bill and decide to make it a free vote, if that is what they want to do. In any event, as far as we are concerned, at the moment, of the people sitting on the Government benches, we know that there are four who are in favour. We do not know whether there are people who are against or people who are undecided, but it is clear from the answers to my questions that the Leader of the House, the Chief Minister, made the point, I think quite legitimately, that on this issue there was not unanimity within the Government and that different people had different views, and that this can happen on this side of the House and it can happen on other issues as well. Therefore, the point is, of course, that it is not just amongst the 17 of us that there may be different views but amongst the people outside who elect us and put us here. The differences seem to be more about at which age equalisation should take place, as to whether there is a fundamental reason why the ages should not be the same. So we will not support the Bill for those reasons. Therefore, as far as we are concerned, the

position that we hold is the position reflected in my motion which is that we take it as read that we are not against the principle of equalisation per se, but that there are people who hold strong views at which age that should take place and that we should take those views into account and give wider participation for people to put whatever arguments they may have, which are not being put here, before the matter is proceeded with. That is why I brought the motion, and I am surprised that with the motion on the Order Paper the Government have chosen to suspend Standing Orders, using the Government vote, as opposed to a private Member, in order to bring this forward. But so be it, if that is what they want to do that is their prerogative.

HON CHIEF MINISTER:

Mr Speaker, I think there are elements of this that are worthy of comment. First of all, whatever my personal views on this matter I welcome this House debating things about which there is disagreement, about which there is disagreement on one side of the House and, indeed, disagreement on the other side of the House and disagreement between the two sides of the House. That, in my view, does not happen, and this is about as far as I can agree with most of the sentiments expressed on this issue by my friend, Mr Netto. But on that I do agree with him that it is a pity that there is not more discussion of controversial subjects of this sort in this sort of way. That is why, regardless of what might be my views, and as Leader of the House I thought it appropriate to facilitate a debate on a Private Members' Bill, regardless of the Government's position on the matter and regardless, beyond that, of my position on the matter. But of course, this is a debate, much as the hon Member opposite has tried to make it something else, arising on the reading of a Private Members' Bill, but it is not a debate about the general mechanics of equalisation. It is not a debate about whether it is right to be done by a Private Members' Bill even though that is how it was done in the UK to legalise homosexual acts, at all, for everybody, let alone lowering the age from 18 to 16. So, clearly, in the UK Parliament they do not share the hon Member's view that this is a Government obligation only to be achieved by a Private Members' Bill. Nor is it a debate about the virtues only recently and novelly subscribed to by the Leader of the Opposition. I have never seen him as obsessed with consultation ever before in all the years that I have opposed him politically. I have never before heard him launch any argument on the basis of the need or desirability of consulting anybody about anything. But still, I suppose, I personally do not subscribe to the view that old dogs can learn new tricks, but I suppose it is always possible that I am wrong on that, although I do not think so in this case. This is a Bill, not for any of those things, this is a Bill which proposes to lower the age of homosexual consent, sex, to 16. That is the question before the House and the answer to that is either "yes I agree" or "no I do not agree". All this business about whether it is right or wrong to discriminate, whether it should be that the discrimination should be eliminated by harmonising at 17 or harmonising at 18 is one huge red herring. That is not the question before the House. The question before the House is what is contained in the Bill and the question that is contained in the Bill, as moved by the proposer, is that it should be 16. What I am going to vote on is not whether I should think it should be at 17 or at 18 or 26 or not at all, but whether I approve and therefore support, or disapprove and therefore do not support the measure before the House, which is that it should be 16. Everything else is just a manoeuvre by the hon Members opposite to avoid, as always, forming a position on things that they are required as Parliamentarians to form a position about. Look, they have a long track record of doing that. The hon Members systematically put what they regard as the political potential, the political opportunism, the political manipulation, before their principles on any question. The Constitution was the biggest example of it, where the Leader of the Opposition has made it his political trademark to advocate for Gibraltar's self-government. When he had an opportunity to provide guidance to the electorate on the Constitution that has delivered most advancement in self-government to Gibraltar ever, he actually encouraged people to vote against because he thought that that way he would damage electorally the Government. I think he is

doing it again today on this issue. I welcome it because I am not going to support this Bill and any help that I can get, even from the hon Members opposite, to have the greatest number of people who do not support the Bill, the better, so thanks very much. But look, there is nobody in Gibraltar, I say this with no scientific justification but with almost political certainty that I am right, there is nobody in Gibraltar today who thinks that the GSLP is not perfectly clear, and the Liberals, I mean the Liberals for goodness sake, there is nobody in Gibraltar to think that every single Member of that side of the House does not already clearly believe that the homosexual age of consent should be 16. Everybody in Gibraltar knows that that is what they think, that it should be 16, and everybody in Gibraltar knows that they do not think that the heterosexual age of consent should be raised to 17 or 18. But the implication of them not declaring today that they think that the homosexual age, given that they think that there needs to be equalisation, and they do not think it should be at 16 because they do not support this Bill, then they must think it must be at 17 or 18. Presumably not higher, which necessarily means that they think that the current heterosexual age of consent, which has been 18 for 120 years or more, should be lowered. The other way round, should be raised from 16. So, they must think by not voting for equalisation at 16, that the heterosexual age of consent should be raised from the current 16 to 17 or 18. There is nobody in Gibraltar who thinks that they honestly believe that and they do not honestly believe that it should stay at 16 and that should be it. Therefore, everybody in Gibraltar will once again have a confirmation of what they already know, is that they put political manipulation above principle, above their political ideology and once again abandon their traditional leftist politician ideological principles, which would require them……… Look I am delighted to have their support in this matter today, but I think it is still worthy of comment that they are betraying once again everything that they say to their natural voters they stand in and believe in, everything. It is yet another example of the lack of political rigour, of the lack of credibility of the principles that they espouse. They are only interested in machination, they are only interested in tactic, they are only interested in manoeuvre, they are only interested in trying to see if they can cause the Government difficulty in a mischievous……… So the Government is divided. Well, let us not let them off the hook, let us just say no, even consultation, we will even appeal to the xxxxxx, how does one spell "consultation". I doubt there is anybody on that side who knows how to spell the word, let alone be committed to it as a matter of political ideology. Well, so be it. There is no difficulty on this side of the House. I had already recognised that this is an issue of conscience, as I did many years ago when the hon Members moved their legislation to decriminalise homosexual activity in Gibraltar, and that honourable Members were free on this side of the House to support, or not to support the Private Members' Bill entirely as they chose. Originally the argument was that because it was……… The Hon Mr Picardo started the debate on the motion for leave to bring to this House………, on the basis that this was so clearly an unconstitutional law that the Government were just hiding by not taking responsibility for changing the law to read consistently with the European Convention of Human Rights, and that we were basically hiding behind Mr Feetham's Private Members' Bill. Well, what has happened to that? Now all of a sudden it is consultation, so it is not so clear any more. Well, fine, I understand that. I understand the distinction that he has drawn, with which I agree. The fact that he thinks that unequal ages of consent is unconstitutional, does not mean that I have to believe it has to be equalised at 16. But I am coupling this point with my previous one. There is nobody in Gibraltar that will believe for three seconds that the hon Member thinks, genuinely thinks, that it should be equalised at any age other than 16. Everybody in Gibraltar will believe that they are just engaged in political posturing. As they did in the Constitution and as they do as a matter of system, on almost every important issue that comes to be decided for this community. Now, I personally will not be supporting this Bill either. I think I have my position clear on that. I believe that……… Perhaps I should just deal with one or two of the xxxxxx. It is just as well that my friend Mr Netto, I am almost certain that I heard him say somewhere during his very interesting and very well prepared presentation, that he was not of course an expert on these

matters. I suppose it is just as well that he is not an expert on these matters, it sounded, like all one-sided arguments, very expert. Now, I am afraid that Mr John Stewart-Mill is too libertine for me, but I suppose this liberty principle and this sovereign individual principle, which as I understood it appears to mean that one should be allowed to do anything that does not cause harm to anybody else, presumably, by the same logic, would lead Mr Mill to think that there is nothing wrong with suicide, nothing wrong with drug consumption and nothing wrong with euthanasia. None of who do any harm to other people. Civilised societies are not organised on the basis that the collective disinterests itself from what individuals do to themselves. That is not a civilised society, that is a planet of six billion one-man republics and six billion one-man anarchies. It leads to lack of solidarity and it leads to lack of common standards of behaviour and lack of common values, although I understand that values and morality are subjective, I accept that. I accept that as a matter of intellectual rigour. So, interesting as I am sure the book would be, as a work of fiction as far as I am concerned, like so many good works of fiction it is not a philosophy of life that is likely to appeal to me. Perhaps because it simply challenges too many of the things that I subjectively hold to be of importance to me. But, of course, that does not mean to say that they are so for everybody. I believe that in this House, absent supervening legal compulsion, we should only legislation what we believe is good for this community. This is not an esoteric debate, this is not a lawyers conference about the concept of discrimination. As legislators we are in this House to do, on behalf of this community, what we think is good for this community and is not bad for this community. I accept that, in the context of the European Union and international treaties and multi-lateral standard setting, there are circumstances in which that judgement is taken out of one's hands because one has supervening legal compulsion. Well, I just do not accept that that supervening legal compulsion has been properly or at all established in this case. I mean, is it not ironical, is it not ironic that somebody has thought fit to challenge the constitutionality of our Housing Regulations, which deny joint tenancies to a homosexual couple, but have not thought fit to go to the same court to challenge something, which if it were wrong would violate a principal provision of our Constitution, to challenge whether the age of consent is constitutional or unconstitutional. I mean, look, for people simply in a country governed by the rule of law, the people who establish legal principles are not lawyers, however experienced they think they might be, or people expressing an opinion, although both sorts of opinion, whether legal or not, are perfectly valid to be had and to be published. But in a country governed by the rule of law, the constitutionality or unconstitutionality of something, whether something breaches or does not breach a supervening legal compulsion, is for the courts to decide. There are associations in Gibraltar that appear to sponsor and support, that appear to feel very strongly about this, the Gay Rights Movement, whose support and sponsor litigation on housing regulations, but have never taken any interest or steps to challenge, as they can do, not by going to Brussels or Strasbourg or to these very expensive courts, here, 290 something Main Street. A £50 writ is all that is needed to issue, and if they choose their claimant cleverly, they can probably get legal aid to do it and then have the Government pay for their legal challenge. Yet no one has chosen to do it so I just do not accept this idea that there is clarity about the legal position or legal compulsion. There is clarity when a court of competent jurisdiction tells me that I am obliged to do it. Until that happens doing it is not by legal compulsion. It is by voluntary act on the part of the Government and I am not willing to do that because I just think that it is not the right thing for the youth of Gibraltar. This is not about……… There have been other legal challenges to the Constitution. I mean, why does somebody feel that they should challenge the constitutionality of the fact that women did not have to serve on juries as a matter of compulsion? Yet there has been no challenge to this. People have challenged whether the Landlord and Tenant Ordinance is expropriatory of landlords' rights. No one has challenged this. It is relatively easy, thank goodness, in Gibraltar, because we have in effect the European Convention of Human Rights repeated in our Constitution. Therefore, as part of the law of this land of Gibraltar, it is relatively easy to challenge these matters. But no

one has sought to do so. Therefore, I do not accept that supervening legal compulsion has been established and, therefore, I believe that it is a matter of choice, and because it is a matter of choice and of conscience, I fully respect the views of colleagues and others across the floor, if they express the view that they think it should or should not be, or should be raised and should not be lowered, but that is where we are. This Bill and the views that I am expressing about it are about it. This Bill is not about homosexuality. This Bill is about whether we think the age of consent for homosexual sex should be lowered to 16. One does not have to be homophobic to believe that it should not be lowered to 16. These are different questions. Some people may have the same view on both questions, but it does not necessarily follow, as a matter of morality or intellect, or anything, that because one thinks one thing one must think the other. In other words, because one is anti homosexuals one must be anti lowering the age to 16, and because one is pro homosexuals, or rather, not homophobic, then one has got to support the lowering of the age to 16. These things simply do not follow. The question is do young people truly exercise consent? I mean, consent is informed by many facets. Consent is not just about is there somebody putting a pistol to one's head obliging them to make a particular choice. Well that is obviously a denial of consent but it is not the only way that full, genuine consent is absent. Consent is also about understanding. It is also about information, it is also about enlightenment as to the implications of choices that are being made. The question then arises, are young people at the age of 16 really equipped to exercise that consent freely in that wider sense? I know, of course, that it has been 120 years that it has been the age for heterosexual sex for 16. Therefore, the easy answer to my point is, well why can they not exercise consent freely for homosexual sex but they can exercise it freely for heterosexual sex? That is a non sequitur as well. I am not being invited today to express a view about whether I think the heterosexual age is rightly established at 16. What I can say is that it is easier to leave the homosexual age of consent at 18 than it is now, after 120 years, to drag the other one up. The fact that I am not willing to drag the other one up today, does not mean that I am therefore obliged to support, because I think I have the option, at least until a difference is established, to continue to discriminate. Not all discrimination is bad. This idea that the word "discrimination" equals badness, some discriminations are bad because they are illegal but not all forms of discrimination are illegal. There is discrimination in everything. There is discrimination in the Income Tax legislation, not from a sexual basis but on the basis……… All systems in life are based on the fact that different people in different circumstances are treated in different ways. Some discriminations have been made illegal. The question arises whether this particular form of discrimination has been made illegal or not. That is the crux of the matter and I have already expressed a view that until there is a court of competent jurisdiction that says the contrary, there is no established supervening legal compulsion. Therefore, to me the issue is not one as opposed to the other. I do not have to choose between leaving the heterosexual one at 16 or lowering the homosexual one. There is only one question before the House today and that is lowering the homosexual. There is no proposal before the House today to raise the consent age for heterosexual sex. Mr Speaker, therefore, as I think I have made it clear in the past, whilst respecting on the substance of the matter, I am afraid they have already heard me, it is clear from what I said that I do not respect their position on the tactics and the strategy, and I think that they are being unfaithful to their views and that they are being unfaithful to their political ideology, and that they are being unfaithful to their political principles. So, I certainly do not respect that but I certainly respect their views. If they were to stand up and say "I think it should be 16, I think it should be 17, I think it should be 18, I do not think it should be equalised", I would respect them as much as I respect Colleagues on this side of the House that have also expressed their views. This is an issue which is bound, like all issues of conscience, to raise disagreements of this sort. I, who am the guardian, as Head of the Government for the time being, of the social interests of this community, I do not believe, I cannot identify any gain, any advantage, any goodness, any well-being, any advancement of the interests of this society that is brought about by lowering the age of consent for homosexual sex from

18 to 16. In addition to that, I have my personal views based on religious conviction, which are both a different and a parallel matter. Therefore, I will not be supporting the Bill.

HON F J VINET:

Mr Speaker, I concur wholeheartedly with the views expressed by the Chief Minister, not least on the smokescreen created by the Opposition, which I think at best is simply an excuse to wriggle out of expressing a view on the substance of the Bill. I respect the opinions expressed by my Colleagues who are supporting the Bill, but they are not views that I personally share. In my opinion the alleged possible unconstitutionality of the current legislation is debateable and is not clear cut. On that basis and as a matter of conscience, I cannot support the Bill.

HON MRS Y DEL AGUA:

Mr Speaker, I will be voting against the Bill. Just to very clearly say that is basically on a matter of strong personal conviction and a matter of conscience.

HON D A FEETHAM:

Mr Speaker, in the aftermath of the debate on the motion to introduce the Bill, I said that, in fact, I foreshadowed that the Opposition stance on the Bill would turn into yet another disgraceful debacle comparable to their now infamous, yes, no, maybe, vote your conscience position on the new Constitution. I have sadly been proved right. At every single stage, be it on the motion to introduce the Bill, as in fact now on the Bill proper, they have done everything possible to place obstacles before this Bill. It started with Mr Picardo's little "b" big "B" argument, which shall forever remain etched in my mind for what I can only describe as their simplicity, both simple and stupid in equal measure. It then moved on to, well, the Bill had been published inappropriately because it should have been published after the introduction of the Bill, then the private public arguments and now what is really a political gem of an argument, that we need to consult. I think that Mr Licudi, during the debate on the motion, described the Government's failure to introduce this Bill as a Government Bill as a cop out. Well, there cannot be a greater cop out in my view, than the position that the Opposition are taking in relation to this Bill today. If I had been a fly on the wall in the meeting where this particular policy had been agreed upon by the Opposition Members, the principal argument in its favour would have probably been, "let us say that we want to consult so that we do not have to adopt a position publicly, so that then we do not offend any section of the community". It is the hon Members wanting to be all things to all men. It is absolutely disgraceful, absolutely disgraceful. It is also an abject failure to provide leadership. What really amazes me is the hon Gentleman's propensity to turn on a sixpence, because it was their policy, it is their policy to equalise the age of consent not the Governments. The Government have made no secret of the fact that they do not have a collective policy on the issue. Yet when the Opposition get the first opportunity in this Parliament to come out unequivocally in favour of a measure that does precisely that, equalisation, they fail their own constituents, their own people that voted for them at the last election. That is what they are doing. But really what makes this an absolutely monumental act of political hypocrisy, not just lack of leadership, is the fact that on the debate on the motion their principal argument was, "this is a constitutional obligation, ergo, it should have been brought as a Government Bill and the Government are failing in their legal responsibility by not bringing it as a Government Bill". Well, if they are right in relation to that argument, if the constitutional position is as certain as they say that it is and I have shied away from that proposition myself, even though I have expressed strong views on it. But I have shied away from that proposition. Well, if that is the case, they have got a duty to act, not tomorrow or the day afterwards, or whenever this consultation process that they say should be taking place ends, there is a duty to act now and if necessary have a consultation process after we equalise,

because that is the constitutional position according to the hon Gentlemen. Mr Speaker, let us also call a spade a spade. The predominant reason why hon Members suggest a consultation process at this stage is because there are those who wish to avoid lowering the age of consent for homosexual men. That is the reason. That is the reality. There has never been a popular movement over the last 120 years to raise the age of consent for heterosexuals and lesbians, and the first opportunity that this House gets to vote to bring homosexuals in line with the long-standing general age of consent, the hon Members and the Leader of the Opposition want to consult. They want to consult on whether gay men should have sex at 16, or whether the age of consent should be increased to avoid that situation. That is the reality. Does he not realise that this makes a mockery, an absolute mockery of the very same principle of equalisation that he says underpins his motion. The hon Gentleman once said that he made Margaret Thatcher look as if she was in kindergarden. All I can say is that Margaret Thatcher would have been proud of his stance today.

Question put. The House divided.

For the Ayes:
The Hon D A Feetham
The Hon L Montiel
The Hon J J Netto
The Hon E J Reyes

For the Noes:
The Hon J J Bossano
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon Dr J J Garcia
The Hon G H Licudi
The Hon S E Linares
The Hon F R Picardo
The Hon F J Vinet

The Bill was not read a second time.

ADJOURNMENT

HON CHIEF MINISTER:

I am obliged to the hon Members opposite. I have the honour to move that this House do now adjourn to Thursday 25th June 2009, at 9.30 a.m. when the House will take the First and Second Readings of the Appropriation Bill.

Question put. Agreed to.

The adjournment of the House was taken at 11.15 a.m. on Thursday 18th June 2009.

THURSDAY 25TH JUNE 2009

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 F R Picardo
The Hon Dr J J Garcia
The Hon C A Bruzon
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon J J Bossano – Leader of the Opposition
The Hon G H Licudi

IN ATTENDANCE:

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

HON CHIEF MINISTER:

Before commencing today's formal order of business, the House is aware that the Leader of the Opposition is not present in the House on account of an illness on the part of his wife. I am sure the whole House would wish to join me and other Members of the Government in wishing Mrs Bossano a speedy and complete recovery. I shall certainly miss my annual economic spar with the Leader of the Opposition this year, but I am certain that there will be other occasions to resume it. The important thing right now is that he should care to his wife's needs and that she should make the speediest and fullest recovery.

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 documents on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table:

1. The Consolidated Fund Supplementary Funding – Statement No. 1 of 2008/2009;

2. The Consolidated Fund Pay Settlements – Statement No. 2 of 2008/2009;

3. The Consolidated Fund Reallocations – Statement No. 3 of 2008/2009;

4. The Improvement and Development Fund Reallocations – Statement No. 1 of 2008/2009;

5. The Statement of Supplementary Estimates No. 1 of 2008/2009.

Ordered to lie.

HON L MONTIEL:

I have the honour to lay on the Table the Employment Survey Report for the period ended October 2008.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE APPROPRIATION ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to appropriate sums of money to the service of the year ending on the 31st day of March 2010, 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, it is an honour for me to present my fourteenth Budget of Government revenue and expenditure and to report to the House on the state of public finances, the public sector, the economy at large, the Government's capital investment programme, the global environment in which our economy is operating, the impacts and challenges that it provides, how we are faring and what the Government are doing in response. Last year I alluded to the credit crunch, the high oil prices and the then uncertainty about whether the world would plunge into recession. Everyone will have followed in the press the financial and economic events that have unfolded in most of the world in the last twelve months. The world has plunged into one of the deepest recessions in living memory. Its length is not yet determined. The global financial system has been gripped by a credit crunch resulting from a loss of confidence between banks, concern about the quality of the covenant of borrowers and the need for banks to conserve and rebuild their capital bases. The result has been a huge reduction in the amount of

credit available in the markets, and where it has been available, a very significant increase in its cost. The combined effect of global recession and credit crunch has fuelled a very significant reduction in consumer demand and investment, and thus in economic activity in almost all sectors of all countries of the global economy. As everyone in Gibraltar has seen in the press and knows, this in turn has caused huge rises in job losses and unemployment around the world, and the public finances of most governments to deteriorate sharply. In Gibraltar this has not been the case. Even though we are not immune to what is happening elsewhere, and there has been some negative impact on our economy, albeit on a scale that does not represent a serious challenge to it. Indeed, our economy in Gibraltar has continued to grow at a healthy rate and the number of jobs in our economy has also continued to grow to record levels. Such minor employment dislocation as there is can be readily absorbed by other employers. The prospects for our economy remains sound and stable, including in the short-term. In recent months, I have commented that the world is a different and changing place following all of these events, and that those small economies that did not recognise that and change with it would pay a heavy price. We have been foretelling that change for nearly a decade and repositioning our economy accordingly. We are, therefore, well placed and prepared to continue to do so in response to further change, and indeed, to benefit from it. In Gibraltar's case, we have also faced during the last twelve months the effects of the weakening of sterling, especially against the dollar and the euro, recently recovered in part. One of the things that we are doing to maximise our vigilance for any early signs of adverse impact of the global economic environment on our own economy, is to keep a much closer eye on indicators of very current economic activity. Traditionally, we have followed our indicators on a quarterly, or even annual basis and often after the event. We are now analysing and assessing many indicators of current levels of activity on a monthly basis, so that we get and can react to any sign of ill effect at the earliest possible opportunity. I will be sharing some of these with the House in this address. So, and despite what is going on in the world around us, our economy continues to grow and remains in very good shape, reflecting its diversity, efficiency and resilience. Employment remains at record levels and job security has not significantly deteriorated. Public finances remain healthy, solid and stable, and all this is very positive in the current global economic environment. Equally positive to our economic outlook has been the Government's victory in the European Courts in the tax case, which, as foreseen, has reaffirmed Gibraltar's freedom to have its own tax system, separate and different to the United Kingdom's. This is absolutely essential to our continued economic, and thus social and political viability as a small country. We are similarly confident of success in the appeal brought by Spain. As I have already said publicly, that appeal is very long on politics and short on legal merit. The bringing of that appeal by Spain, in circumstances which the Commission itself thought not worthwhile, and the language, terms and tone in which it has been unnecessarily formulated, is an act motivated exclusively by political desire on Spain's part. As this House knows, this Government believe in the value of and remain committed to political dialogue with Spain. However, it is equally true that there is unlikely to be any significant, meaningful or enduring improvement in relations between Gibraltar and Spain, until the Spanish establishment is able to rid itself of precisely the instinctively hostile and offensive mindset to which the fact, language, tone and terms of its tax case appeal stands as a monument of very recent creation. Confident of our position, Government will now press on with deploying the tax changes in manner to which I will speak later in this address. Our vision and plans for our economy, and for the development of our city and our society have not changed from those that I outlined in some detail last year, and of which I will today provide the House with a progress report.

As I have said, our economy has continued to grow despite the global economic and financial environment. In the year to 31st March 2008, the economy grew by a further 8.8 per cent to £804 million. In the year ending 31st March 2009, that is to say, the financial year just ended, it is provisionally estimated to have grown by nearly 6 per cent to £850 million. Current economic

indicators all point to continuing significant growth in the economy during the current period of time. Employment reached new record levels in October 2008, when the figure stood at 20,509, an increase of 4.1 per cent, or 813 jobs over the October 2007 figure. The level of imports, excluding petroleum, increased in 2008 to December by 5.7 per cent to £450 million. The Government's overall recurrent revenue and expenditure budget was again in surplus for the year just ended March 2009, to the tune of £17 million, or 6 per cent of recurrent overall expenditure. Net of non-recurrent exceptional items of expenditure, the surplus was £15 million. Net public debt as at 31st March 2009, stood at £62.5 million, or just 7.5 per cent of the estimated Gross Domestic Product as at that date of £850 million, as I have just indicated. Government revenue in the year just ended all continues to indicate the continuing healthy state of the economy that I am explaining to the House. Government revenue from personal income tax rose to a record £109 million, an increase of 6.5 per cent, thanks to the increase in the number of jobs in the economy, and despite the impact of significant tax cuts introduced in recent years. Government's revenue from company tax rose to a record £25.8 million, a 6.5 per cent increase over the previous year. Government revenue from import duties also rose to a record £47.3 million, an increase of 11.5 per cent over the previous year. Government revenue from social insurance contributions also stood at a record £50 million, an increase of nearly 21 per cent, which includes nine months of the 10 per cent increased rate announced in the Budget last year. Gaming tax receipts held steady at £9.8 million, practically the same as the previous record year. This summary of Government revenue focuses on the principal items, which are also those that reflect and thus indicate levels of economic activity. They demonstrate the resilience of the economy and of public finances in the face of global economic and financial conditions.

I said earlier that the economy was continuing to grow even now, and that the Government were micro-monitoring the available statistical indicators of current levels of economic activity and employment. These show that the economy broadly continues to perform in accordance with the indicators that I have just explained in respect of the financial year ended. During January to June 2009, import duty levels do not indicate any material decline in imports. PAYE yields, which indicate both employment levels and represent the largest source of Government revenue as well, also point to employment and fiscal resilience. The yield from PAYE rose in each of the last two quarters of the last financial year. The fourth quarter, in relation to the third, and both of them in relation to the same quarter of the previous year, also rose. The yield during the period comprising the first two months of this year, that is, April and May 2009, is up on the same period last year, and the yield for the twelve month rolling year to the end of May 2009, shows an increase of 6 per cent. Similarly, current collection of social insurance contributions, excluding Government employees, which hon Members know is not accounted until the end of the year, and certainly will show no decrease, shows that employment levels are being, at least maintained, if not, even further increased. The yield in the last quarter of the last financial year rose in relation to the penultimate quarter and both were significantly higher than the corresponding quarters of the previous year. The yield in the period April and May 2009, was higher than the same period last year, and the rolling twelve month period ending May 2009 was showing an increase of 14.31 per cent. These very current indicators justify our confidence that the economy is even now continuing to grow and to generate still greater number of jobs.

I turn now to an assessment of the Government's revenue and expenditure in the last financial year, just ended on 31st March 2009. The Consolidated Fund revenue and expenditure budget was in surplus by £16.7 million, struck after £2.3 million of non-recurrent exceptional expenditure. This exception expenditure was £1.9 million on the Chief Justice's tribunal and £350,000 spent in an unsuccessful attempt to find a compatible bone marrow donor in Gibraltar for a very sick baby. I hope that this House will agree that in our economically prosperous small country, this last item is an appropriate way to spend surplus funds, which in other countries may have been thought to be

disproportionate. I am sure that this House will consider such occurrences as a positive and valuable distinguishing characteristic of this caring community, and a mark of its collective solidarity with individuals in extreme need. The £16.7 million Consolidated Fund surplus achieved, compares favourably to the £11.4 million that we had estimated at the start of the year, and the £15.7 million that we achieved in the previous year. Consolidated Fund revenue came in at £243.6 million, an £11.7 million, or 5 per cent increase over the previous year's revenue, and against the £231.8 million that we had estimated. The main drivers of this increase in Consolidated Fund revenue were as follows: income tax, I will give the hon Members the figures both as against the figure that we had estimated, and also against the actual figure incurred in the previous year. So income tax last year was £3.3 million higher than we had estimated and £6.7 million more than in the previous year. Company tax was £1.8 million higher than we had estimated at the beginning of the year it would be, but £1.5 million higher than it had been the previous financial year. Import duty was £4.3 million higher than we had estimated at the start of the year, but £4.9 million higher than it had been in the previous year. Gaming tax was £400,000 lower than we had estimated at the start of the year, but still £800,000 higher than it had been in the previous year. Rates was £400,000 higher than we estimated and £800,000 higher than in the previous financial year. Consolidated Fund expenditure came in at £226.9 million, inclusive of the exceptional expenditure that I have mentioned. Against the previous years £216.2 million, an increase of Consolidated Fund expenditure year on year of £10.7 million or 5 per cent. Or, if one strips out the exceptional expenditure, which is of course, non recurrent in nature, then the increase was £8.4 million or less than 4 per cent increase on the previous year's expenditure, and against an estimate at the start of the year of £220.5 million. Therefore, having curtailed public expenditure increase in the Consolidated Fund to less of a recurrent nature to less than 4 per cent, we believe that this represents reasonably good budgetary discipline and cost control by departments. The main drivers for the increases in Consolidated Fund recurrent expenditure against actual expenditure in 2007/2008, were as follows. In other words, these are the items that have in the main contributed to the higher spend in the Consolidated Fund in the financial year just ended, compared to what it had been in the previous financial year, that is, the financial year ended March 2008. Those were: payroll £2 million, reflecting pay rises; disposal of refuse £500,000; contribution to the Elderly Care Agency £600,000; contribution to the Social Services Agency £600,000; payments to the Gibraltar Electricity Authority £2 million, other departments, items just in excess of £100,000, there are more of a smaller amount, £6.2 million; and against all of that, we net savings made by other departments of £4.9 million, which produces the net figure of £7 million out of the £8.4 million that was spent over and above what had been spent the previous year. Those are, therefore, the main items that drove public expenditure growth in the Consolidated Fund last year. Hon Members will then see that they basically amount to payroll, externally driven contractual costs, money spent in improving and developing the social services and payments needed by the Electricity Authority, which are also driven by the world oil prices. Accordingly, revenue in the Consolidated Fund last year was £11.8 million and expenditure £6.4 million higher than had been estimated at the start of the year, thus producing a surplus of £16.7 million, £5.4 million higher than the surplus that we had estimated we would produce at the start of the financial year. The £16.7 million surplus represents a cushion of 7.4 per cent of Consolidated Fund recurrent expenditure. However, stripping out the £2.3 million of exceptional expenditure, the £19 million recurrent budget surplus achieved represents an even healthier 8.5 per cent cushion over recurrent Consolidated Fund expenditure. In addition, last year we transferred £18.5 million from the Savings Bank surplus account to the Consolidated account, or Government reserves. While the Consolidated Fund accounts only for Government departments, the figures which I give every year and which I will now give for the overall Government revenue and expenditure, includes, in addition to Government departments, all statutory agencies and authorities for whose finances the Government are ultimately liable. These are, therefore, the Government's preferred statistics since they

reflect its real overall fiscal position. In other words, it is the overall Government revenue and expenditure figures and not the Consolidated Fund revenue and expenditure figures that provide the House and Gibraltar at large with the full picture of all sources of Government revenue, and all sources of public sector expenditure which produces the bottom line of the state of public finances. When we are discussing in this House, because we are required to do so by law and by the Constitution, when we debate the figures in the Consolidated Fund, we are in effect discussing only a proportion of the Government's fiscal position but not the whole picture of the Government's fiscal position. It is the overall discussion that produces that overall picture. So, with that reminder to the House of why I give both sets of figures, the overall Government revenue in the year just ended on 31st March 2009, was £304.5 million. As the House knows, this of course excludes the hypothecated revenue of special funds, such as the Statutory Benefits Fund's revenue from social insurance contributions, and the revenue of the Savings Bank and all other monies that are not available to the Government for general expenditure, or defray or reduce expenditure for which the Consolidated Fund would otherwise be responsible. So these are revenues which are in the Government's control and which the Government are able to decide how they are spent or not spent. The overall revenue figure of £304.5 million in 2008/2009, compares with a figure of £281.6 million in the previous year ended March 2008, and this represents a year on year increase of £22.9 million, or 8.1 per cent increase in overall Government revenue last year. The main drivers for this overall revenue increase were as follows, the Consolidated Fund items, which accounted for an increase of £11.7 million, as we have already seen. The Gibraltar Health Authority's share of social insurance contributions and other GHA revenue, which increased by £8.6 million, and increased revenue of the Gibraltar Electricity Authority, driven amongst other things by increase in electricity tariffs. Other more minor contributors were a £2 million reduction in the revenue of the Gibraltar Development Corporation and a £600,000 increase in the revenue of the Sport and Leisure Authority. The main sources of overall Government revenue and the previous year's comparator were as follows. Last year the Consolidated Fund achieved revenue of £243.6 million compared to the previous year's £231.9 million. The Gibraltar Health Authority achieved revenues of £37.4 million, against the previous year's £28.8 million. The Gibraltar Electricity Authority achieved revenues of £21 million against the previous year's figure of £17 million. The Elderly Care Agency achieved revenue of £700,000 against last year's same figure. The Gibraltar Development Corporation achieved revenue of £1.2 million against the previous year's £3.2 million. That is a fall, and the Sports and Leisure Authority achieved revenue of £600,000 against the previous year's zero. Adding up both of those columns, produce last year's achieved £304.5 million and also produce the previous year's achieved, £281.6 million of revenue. Overall Government expenditure was £289.6 million, inclusive of, or £287.3 million exclusive of the £2.3 million of exceptional expenditure to which I have referred. The overall expenditure was incurred in the following entities with previous year comparators. Government occupational pensions last year cost £21.4 million, compared to the previous year's £20.4 million. Interest on the public debt cost £5.6 million compared to the previous year's £5.4 million. Social insurance contributions, which the Government pay as an employer, cost £3.4 million compared to the previous year's £2.9 million. Other Consolidated Fund charges saw a small reduction of £1.7 million last year compared to £2 million the previous year. Wages and salaries expenditure rose to £63.9 million last year compared to £61.9 million the previous year. Contracted services rose to £25.2 million expenditure last year compared to £22.8 million the previous year. Other departmental costs rose to £30.8 million compared to the previous year's £29.5 million. Contributions to the Statutory Benefits Fund fell, or rather, were maintained at the £10 million that they had been the previous year. That produces the Consolidated Fund increased expenditure to £162 million last year compared to the £154.9 million the previous year. The Gibraltar Health Authority incurred expenditure last year of £67 million compared to the previous year's £60.3 million. The Gibraltar Electricity Authority incurred expenditure last year of £32.6 million compared to the previous year's £26.7

million, and that is mainly the result of rising fuel prices. The Social Services Agency incurred expenditure of £5.4 million compared to the previous year's £4.8 million. The Elderly Care Agency incurred £7.5 million compared to the previous year's £6.9 million. The Sports and Leisure Authority rose to £2.5 million from £2 million, and the Gibraltar Development Corporation rose slightly to £6.6 million of expenditure, compared to the previous £6.4 million. The Social Assistance Fund maintained its expenditure at £3.7 million, and as the House has heard, exceptional non-recurrent items of expenditure were £2.3 million, there had been no such items the previous year. These figures show a year on year increase in overall expenditure of £23.9 million. That is, 9 per cent driven principally by higher health spending, £6.7 million, higher fuel costs in the Gibraltar Electricity Authority, as a result of oil price rises, £5.9 million, and the exceptional expenditure of £2.3 million. So, of the £23.9 million that in the overall sense, not in the Consolidated Fund sense, the Government spent last year £23.4 million more than it had done the previous year. Health Authority costs account for £6.7 million, GEA costs account for £5.9 million, mainly oil, and the exceptional expenditure accounts for £2.3 million. The House may be interested in the following synoptic analysis of overall Government expenditure. Occupational pensions was £21.4 million, accounting for 7.35 per cent of overall Government expenditure. Payroll costs were £121.2 million, accounting for 41.92 per cent of overall Government expenditure. Interest on the public debt was £5.6 million accounting for just 1.92 per cent of overall Government expenditure. Contracted services, that is to say, services performed for the Government by outside contractors, was £25.2 million, representing 8.7 per cent of overall Government expenditure. Other department costs, in all the other departments put together, were £116.2 million, accounting for 40.11 per cent of Government expenditure. So divided into occupational pensions, wages and salaries, interest on public debt, contracted services and other costs, that is the split of the £289.6 million of overall Government expenditure. Accordingly, the overall revenue and expenditure position last year, in other words the budget surplus of all public sector revenue and expenditure, was in surplus by £14.9, £15 million, which is 5.2 per cent of recurrent overall expenditure. Or, if one excludes the exceptional expenditure, it was a surplus of £17.2 million which would be 6 per cent of overall recurrent expenditure. The House will no doubt wish to take note that at a time when the budgets of most governments around Europe have fallen into severe deficits as a result of the global economic crisis, the fiscal position, the budget of the Government of Gibraltar, remains in healthy surplus.

I turn now to the recurrent revenue and expenditure budget for the current year. In other words, strictly speaking, the debate that we are having on the Appropriation Bill, which is what this House is doing technically, although it becomes the state of the nation debate. What this House is technically doing is debating the Appropriation Bill, which is the amount of money that the Government want to spend this year in the Consolidated Fund. But in keeping with the way I dealt with it last year, after I have gone through that, just to comply with the statutory niceties, I will then do the same in respect of the overall position so that the House can be aware of that too. For the current financial year, which started on 1st April 2009, we are estimating Consolidated Fund recurrent revenue of £249 million, which conservatively estimates a rise of £5.5 million or 2.3 per cent over last year's revenue. Personally I will be surprised if it were not much higher than that. Consolidated Fund recurrent expenditure is estimated at just £230 million, including a supplementary expenditure provision of £8.5 million, compared to £224.6 million that was spent last year. So we are estimating an increase in Consolidated Fund expenditure of £5.4 million, or 2.4 per cent. Those figures produce a scenario in which we are estimating a Consolidated Fund surplus in the current financial year of £19 million. As I said last year, we estimate revenue conservatively because we cannot continue to assume exponential increases in jobs, in the economy, year in, year out. If we do not succeed in limiting expenditure increases at a historically very ambitious 2.4 per cent, as I have just explained, any excess will likely be met from revenues being higher than estimated, failing which, there

will of course be a degradation of the estimated budget surplus of £19 million. But we are trying and in part succeeding, where possible, to instil a culture of budgetary discipline, with expenditure rises focussed on policy driven, planned and programmed service improvements or expansion, rather than simply allowing public expenditure to be departmentally xxxxxx across all fronts, in a way which simply results in unnecessary rises in public expenditure. The main expenditure rises in the Consolidated Fund are expected to be seen in interest charges on net public debt, which is estimated to be up by £3 million reflecting the estimated rise in net public debt and the net cost of carrying aggregate public debt as cash reserves, where interest earned on deposits will be less than interest paid to borrow the money. Also, payroll costs, £5 million, reflecting the annual pay review and some increased recruitment in the Care Agency, previously the Elderly Care and Social Services Agencies, to staff the recently announced extra elderly care residential places. This year we are reducing the contribution to the Statutory Benefits Fund from £10 million to £8.5 million to reflect two things. The increase in revenue of that Fund from rising social insurance contributions, but also there is no net reduction in the amount of money that the Consolidated Fund is paying into the Statutory Benefits Fund, because we have cancelled the management charge of £1.5 million, that until last year the Statutory Benefits Fund was paying to the Consolidated Fund. So what was happening in previous years was that the Government were paying £10 million into the Statutory Benefits Fund, and the Statutory Benefits Fund was paying back £1.5 million of that to the Government as a management charge to the Treasury for managing the Fund. So what we have done this year is said we have netted that off and we are just paying the £8.5 million, which is the net sum that used to stay in the Statutory Benefits Fund anyway. At the overall level, recurrent expenditure is estimated to rise then from £287.3 million last year to £295.6 million. So recurrent expenditure is estimated to rise from £287.3 million last year to £295.6 million this year, an increase of £8.3 million or 2.9 per cent. As I said earlier, there is a supplementary expenditure vote of £8.5 million in addition to the estimated increase of £8.3 million, from which to meet pay review and other expenditure that may turn out to have been underestimated. We are estimating overall revenue of £314.6 million, up by £10.1 million or 3.3 per cent. We are, therefore, estimating an overall recurrent revenue and expenditure budget surplus, also, and I say also because it happens to coincide with the Consolidated Fund estimated budget surplus, of £19 million. Although the extent of the achievability of the £19 million surplus in the overall figure will, of course, depend largely on three things. One, revenues being no lower than estimated, and, obviously, expenditure being not much higher than estimated, and the two principal items that drive expenditure rises in a way that the Government cannot really control, is the effect or rising oil prices on the Gibraltar Electricity Authority, on the one hand, and expenditure on demand-led medical services and medicines in the GHA, which is really an amount that decides itself, given that Ministers are not able to prescribe or not prescribe medicines *xxxxxx* the levels of medical treatment. Therefore, the hon Members will see from that, that we are expecting notwithstanding the continuing global recession the length of which is indeterminate, in the sense that nobody can agree when it will end, whether it has begun to end, whether or not there are green shoots, brown shoots, withered shoots, no shoots at all, shoots growing into the ground sort of up into the air, regardless of all of that pack, we are nevertheless estimating that the economy of Gibraltar will continue to react and respond and perform positively, as it has done during 2008 and in the latter part of 2007, when the world was already in the grips of the global recession.

I turn, therefore, now to the Government's capital expenditure. I have explained in this House before how the Government in 1996 embarked on a capital investment programme to specifically modernise and transform Gibraltar and its public amenities and services. The vast bulk of this has been funded by investing a part of the increasing Government revenues each year, as reflected in its annual budget surpluses, through to Gibraltar's increasingly successful and prosperous economy. So, net public debt has risen very little. In all, during the last twelve years we have invested a total of £427 million on capital

projects, of which £278 million has been incurred through the Improvement and Development Fund, and £149 million has been incurred through Government-owned companies. Even though the Budget book forecasts last year's spend on capital projects to have been £41.83 million, it was in fact slightly lower at £39.86 million. The reason for that is that it was, at the time that the Budget book was printed, it is only a forecast and as time passes those figures harden. Some years they harden up and some years they harden down. So where the book says, in the pink pages at the back, the total Improvement and Development Fund spend of £41.83 million, it actually came in at £39.86 million. That is £14.86 million more than originally estimated and £7.8 million more than we spent the previous year, that is, in the year ending March 2008. Hon Members know, as we say every year at this time, that we make provision for capital spending, how much actually gets spent depends on progress on building sites, sometimes progress is faster, sometimes progress is slower, and whether we spend more or less than estimated is something that is decided on a site by site and project by project basis on the ground. £10.6 million was spent on Head 101 which is effectively departmental recurrent capital expenditure. In other words, these are capital sums of money which departments tend to have to spend every year. For example, money spent on fixing houses, money spent on fixing schools, maintenance, this is effectively recurrent capital expenditure. £2.14 million was spent on Head 102 which is central public administration and essential services, which is also effectively departmental recurrent capital expenditure. Indeed, hon Members will notice from the Budget book that to reflect these facts, in other words, to reflect the fact that Heads 101 and 102 are both really departmental recurrent expenditure of an annual basis, for this year they have been amalgamated into just one head, Head 101. So with effect from this year there is one Head 101 which contains all what is effectively recurrent departmental annual capital spend, and one head, Head 102, that contains all capital projects. This really will enable the House in the most simplest way to see the difference between what is the usual annual sum of spend on departmental capital expenditure, routine stuff, which they will find in Head 101, and really what are the Government one-off projects, which they will now find in Head 102. Expenditure on projects last year, so last year it was in Head 103, this year it is in Head 102, but last year in Head 103, was £27.19 million. The main items of which were insulation of OESCO Station £1.2 million, Upper Town renewal £1.8 million, street beautification £1.78 million, MOD and other relocations £15.27 million, the new prison £3 million and the new air terminal £2.7 million. In my Budget speech last year, I said that Government and Gibraltar stand on the threshold of an unprecedented phase of public investment in our city, its infrastructure and amenities, the scale and breadth of which will transform Gibraltar and ensure its future as a modern and prosperous European city well into the foreseeable future. So, for the current financial year, we are estimating a spend of around £105 million, which comprises £11 million in Head 101, departmental recurrent capital expenditure; and around £95 million on projects, all of which are on-going. The main ones are these: beautification projects £2.8 million; new roads, the tunnel and the Dudley Ward project £28.2 million; relocations £18 million; the new prison £2.5 million; the new air terminal £24 million; the new women's hostel £1.6 million; the new law courts phase 1 £1.5 million and the new rental housing, which is funded by equity injection into Gibraltar Investment Holdings Limited, therefore equity investment, is £15 million. These projects have a balance to complete beyond those figures of £55.6 million in future years. How much of the £105 million is actually spent during this year will depend on the level of departmental spend and on the progress on site of the various projects. These figures represent the best estimates of the project managers of how much they believe will be incurred this year. Whatever is not spent this year will be spent next year, as the work progresses. Last year's Improvement and Development Fund's spend of £39.86 million was funded as to £10.8 million from the proceeds of assets sales, which had been estimated at £9.5 million, £1 million from grants and reimbursements and the balance of £28 million from reserves, of which around £8 million had the effect of increasing the net public debt and, of course, that includes £16.7 million budget surplus earned during the previous year. So this is an

illustration of what I said a few moments ago, that the Government had funded much of its capital investment programme from spending that year's budget surplus. So last year the Improvement and Development Fund spent just short of £40 million. Nearly £11 million of that came from the proceeds of assets sales. Another £1 million came from grants and disbursements. In effect, £16.7 million came through the Reserve Account as the spending of the budget surplus that we had incurred last year, leaving around £8 million to be funded from an increase in the net public debt. That explains how we recycle a year's budget surplus, and in effect, we convert it into capital spend in that year. But last year, in addition to the Improvement and Development Fund's spend of just short of £40 million, a further £70 million was spent through Government-owned companies, making a total for the year of £109.6 million. That is the amount of capital expenditure that the Government invested last year, both through the Improvement and Development Fund and its wholly owned companies. The £70 million spent on capital projects by companies were on the following projects. The Mid-harbour Reclamation £2 million; the review of all of Gibraltar's infrastructure, that is, water, electricity, sewage distribution network, all of which is underground and very unsexy, is £1.2 million; the airport works £5.1 million; Upper Town property regeneration £1.9 million; the new rental housing estate £4.6 million; the refurbishment of the retrenchment block £1.4 million; the Leisure Centre £2.3 million; and 150 The Strand, London, £2.7 million; car parks, building of multi-storey car parks £1.2 million; other minor projects £2.6 million; Waterport Terraces construction £23.3 million; Nelson's, Cumberland and Bayview affordable housing scheme construction £21.6 million. The last two home ownership projects will, of course, produce capital receipts as properties are completed and sold to their buyers. So that is in part a cash flow exercise, the cash comes back, goes out as it is being built, will come back, but not in full necessarily, as we sell the properties. That depends on how profitable or loss-making the development ends up being for the Government company. So not all of the £70 million is expenditure of the sort that will not be recouped by the Government. There is just one more thing I would like to say to the House, this year's estimated spend in the Improvement and Development Fund of £105 million, we are estimating will be funding from the following sources. £8.2 million from asset sales; £500,000 from grants and reimbursements; and the contributions from the reserves and loans, including this year's estimated budget surplus of £19 million, of around £96 million. The latter may be lower if asset sales produce more than £8.2 million, which is a distinct possibility. So, obviously, funding is done first of all from the proceeds of sales, then it is done from reserves and then it is done from increasing net borrowing. In addition to these projects, Gibraltar Car Parks Limited, a wholly owned Government company, is currently building a 1,000 space multi-storey car park at Devil's Tower Road, which is costing it around £16 million, and will start the building of other car parks around Gibraltar using its own revenues and bank project financing facilities.

I now turn to say something about Government reserves and Government debt. As this House knows, the Government have always maintained and continue to maintain, and will continue to maintain an economically very prudent approach to public debt. Public debt is used to fund capital investment projects and never recurrent spending. In many countries around Europe and the world today, government borrowing is used to fund annual budget deficits. This does not happen in Gibraltar, not least because our budgets have been and remain in permanent structural surplus, year after year. The question of funding deficit budgets, therefore, simply does not arise here. Net public debt, that is, Government borrowing less Government cash reserves, stood as at 31st March 2009 at £62.5 million, not the £67.649 million that it shows in the summary at the front of the Budget book, which again, was the forecast figure which is now hardened since that book was published. So at 31st March 2009, net public debt, which is the figure which appears on probably the third or fourth page there, of the Budget book at £67.649 million is, in fact, £62.5 million. This is up from £42.6 million the previous year, reflecting the increased capital spend that I have just explained. So net public debt rose last year by

£20 million. At £62.5 million net public debt stands at less than 7.5 per cent of 2008/2009 GDP, assuming that the economy last year grew by just 5 per cent. To put this figure into historical context, the House will wish to be reminded of the following figures. Fifteen years ago, in 1995, net public debt stood higher at £78 million than it is today at £62.5 million, when the GDP, when the size of the economy then was only £340 million, and it then represented 23 per cent of GDP. So, now, which the figure is £78 million, representing only 7.5 per cent of GDP, the size of the net public debt as measured in the economically proper way, as a proportion of GDP, is in effect a third of the level at which it stood as far back as 1995, when the economy was much less than half the size. This, despite the expenditure of nearly £450 million on capital projects as I have just explained. So, the current figure of £62.5 million is very low by all usual measurement of public debt, and, indeed, historically for Gibraltar. In the UK, for example, it is currently 47 per cent of GDP compared to our 7.5 per cent, and it is scheduled to rise to 70 per cent and higher, given the current fiscal position of most governments around Europe. That is the economically sensible, relevant and appropriate way of measuring public debt. Given the further rise in capital spend this year, we are estimating that at 31st March 2010, that is at the end of this year just started, net public debt will stand at £116 million, assuming that the economy grows by as little as 3 per cent in the current year, and that will still only represent 13 per cent of GDP. In other words, still very low, and even in the most unlikely event that in 2009/2010, that is in the current year, our economy sees no growth at all, net public debt as estimated at the end of March 2010 will still represent just 13.6 per cent of our Gross Domestic Product. Even with the Government's extensive capital investment programme, even with the Government's pipeline of extensive capital investment programme, we do not envisage that net public debt will rise above 20 per cent of GDP, which is economically still lower than it was in 1995, when it was 23 per cent. As the House is aware from legislation that it has recently passed, the level of public debt permissible by statute has changed from a formula based on the gross debt, to the same formula but based on the net debt. In other words, what the Government can borrow is not limited to a particular figure, but rather limited by a maximum permissible difference between what it borrows and what it has in cash reserves in its own piggy banks. Moving to this more normal and economically more relevant measure of public debt and its limitation, whether by law, as in our case, or by policy, as is the case in most other countries, has enabled the Government to do three things without significantly degrading its fiscal position or any aspect of public finances. Firstly, it has enabled the Government to provide savings opportunities to local savers, through Government Debentures at rates which they could not obtain in the present market, or in any reasonably foreseeable likely market conditions. Without the change, the Government would have reached its statutory ceiling of gross debt and would not have been able to carry on issuing Government Debentures to local savers. Secondly, the Government have been able to take full advantage of the excellent borrowing terms secured on £150 million of bank medium-term revolving credit facility, astutely negotiated prior to the credit crunch, and coupled with current low interest rates and the use of credit swap agreements, to lock into historically low interest rates. Thirdly, the Government has been able to assure itself of sufficient liquidity, including potential funding for its capital projects programme, despite the current very tight conditions in the banking sector reflecting the credit crunch, and at lower cost than is currently available in the credit market, even for valued covenants like the Gibraltar Government's. These three things provide stability and certainty of Government's liquidity on funding requirements, at reduced cost, whilst simultaneously providing generous interest rate opportunities to local savers. Some of these arrangements post-date the printing of the Budget book, and I would therefore like to provide the House with restated figures of gross debt and cash reserves. There is no increase in net public debt because the monies that have been borrowed, that have been drawn down by the Government, pursuant to the arrangements I have just described, have simply been added to the Government's cash reserves. So, if we increase the aggregate debt and increase the Government reserve by the same amount, which is done by borrowing and putting into the reserve, the net debt,

which is the difference between the two, does not change. So I will give the revised forecast figures as at 31st March 2009 first. The gross debt as at 31st March 2009 was £191.5 million. The cash reserves were £129 million, producing a net debt of the £62.5 million that I have just given. The estimated figures for the financial year just started, that is to say, the estimate for the financial year to 31st March 2010, changes as follows. Gross debt is estimated will rise to £350 million. Government's cash reserves will rise, it is estimated, to £234.6 million. Net debt, in other words, the amount that the Government really owes, will rise to £115.4 million, the £116 million that I have just explained. Those are the figures that produce the very comfortable liquidity position that the Government have secured for themselves despite the current credit market conditions, and that cost much less than it would cost now to enter into gross debt of that level. The Government have further taken steps to ensure that they are taking no risk in this strategy, that they might lose borrowed money through the failure of the financial institution with which reserves are placed on deposit, whilst retaining liability to repay the lending back. In other words, if the Government borrowed £50 million from company A, from bank A, and placed it on deposit with bank B, if bank B then went bust the Government would lose £50 million but would still remain liable to repay the loan of £50 million that they took from bank A. In order to eliminate that risk, we have done the following. We have done that by placing the monies borrowed on deposit with the same bank from which the monies were borrowed, on contractual terms that include the contractual right of set-off. In other words, if the bank with which we place the deposit, and Government therefore lose the money on deposit, the Government's obligation to repay the debt is similarly extinguished in the same amount because of the contractual right of set-off that we have established. So, if we borrow £50 million from bank A and we place it with the same bank A on deposit, in terms that give us the right of set-off, if bank A fails, we lose the £50 million but we also do not have to pay the £50 million borrowings, so the taxpayer is net in the same position. In addition, we have placed funds borrowed from savers through debentures on deposit in an account of the Gibraltar Government that we have opened directly at the Bank of England. Therefore, through these two novel devices, the Government have ensured that their reserves are not in jeopardy of any financial institution failing in a way that might make the net debt in effect rise, because gross debt would no longer be covered by the large cash reserves if some of the cash reserves were lost in a failing bank. I have no doubt that there are local authorities in the United Kingdom, and other governments throughout Europe, that had wished that they had done the same just 12 or 18 months ago. At present, the Government have opened an issue of 4.25 per cent debentures maturing in December 2011, purchasable at par but open only to pensioners. The Government want to extend this saving opportunity scheme and facility to all residents of Gibraltar, including those who are not pensioners. Accordingly, the Government will today open for sale an issue of debentures at par, paying 4 per cent interest or base rate, whichever is the higher, per annum. Interest will be payable monthly, the debenture will mature on 30th June 2012 and the capital cannot be withdrawn before that date. The issue is limited to a maximum of £100,000 per individual. Any current holder of Government or Savings Bank Monthly Debentures may transfer into this new higher rate issue immediately. As a safeguard to savers against an unexpected rise in interest rates above 4 per cent during the next three years, the Government will pay interest rate at base rate if that should be higher than 4 per cent. This same safeguard will be extended to the current issue of Pensioner 4.25 per cent Debentures, including to the existing holders of that debenture issue. This means that savers who purchase these debentures will not find themselves locked in at unfavourable interest rates if market interest rates should unexpectedly rise during the next three years.

I turn now to some of the things that the Government intend to do to increase further the transparency and control of public finances available to this House. The House will be aware that since 1996 this Government have taken unprecedented steps to ensure that all statistics and information relating to all aspects of public finances are available to this House and are before it at Budget time. It was not always so. Already we have restored

100 per cent of Government revenue and expenditure to the appropriation mechanism of the House, and the revenues and expenditure of all Government controlled agencies and authorities appear as an annex in the Budget book that supports the Appropriation Bill. The Budget book has been restructured over the years, to maximise the coherence and accessibility of the information provided in it. There has been a consolidation of all the Social Insurance Fund into a single Statutory Benefit Fund, and the Government borrowing legislation has been modernised and reformed. All Government cash reserves are now held in a single Consolidated Fund reserve. In short, transparency and accountability to this House, and beyond it to the public at large, have been transformed. But there is still more that can and will be done this year. We will bring an amendment to the Public Finance (Control and Audit) Act this year, that will treat the revenue of Government controlled agencies and authorities as Government revenue, and their expenditure as Government expenditure for all the purposes of the Act, and thus bring them within the appropriation mechanism of this House, as if they were Government departments. Let me illustrate what that means. At the moment, although the Gibraltar Health Authority budget of £60 million is an annex at the back of the book, and the hon Members can see how much we expect to spend on health and on the items this year, this House is not voting or controlling that expenditure because the only item in relation to health that this House is controlling through the appropriation mechanism, is the amount of the contribution that the Consolidated Fund will make to the Gibraltar Health Authority. But the House is not in any sense giving permission to the Gibraltar Health Authority for any of the £67 million that it is spending. So on and so forth with the Gibraltar Electricity Authority and all the other authorities. The change that we are proposing is to bring all of those authorities and agencies into the remit of the Public Finance (Control and Audit) Act, so that even though it is not required by the Constitution, it forms part of Government's expenditure and, therefore, will require the permission of this House through the appropriation mechanism, before it can be spent. In this way, and in terms of the way I have had to split the debate into Consolidated Fund and overall Government revenue and expenditure, in effect, what this will mean is that the overall revenue and expenditure of the Government will be brought subject to the appropriation mechanism of the House and not just the Consolidated Fund as is required by the Constitution and by the Act that I have mentioned. The Government will also begin publication this year of a new report dedicated exclusively to the publication of a range of new economic and public finance statistics, which today are not available in easily referable form, even if all the information is technically in the public domain. We shall be publishing shortly the list of statistics that will be included in this new publication, that will be known as "the national economic statistics". While on this subject, I should alert the House to a helpful change in the 2008 Employment Survey, which has just been tabled and which they will not, therefore, have had an opportunity to notice. Well, two changes really. The first is that the Gibraltar Government is disaggregated from the Ministry of Defence, which means that users of the Survey will be able to distinguish clearly between the two. The second is that the Gibraltar Government part of what used to be called "the official sector", has been renamed "the public sector". In other words, the public sector now includes only the Gibraltar public sector. In other words, that part of the public sector which is Gibraltar Government, funded by the Gibraltar Government and the Gibraltar taxpayer, which the MOD is not. The MOD is a department of State of the UK Government and not really, therefore, part of the local Gibraltar public sector. So, we have separated the MOD from Government and then we have expanded the newly defined public sector to include not just the Government, in other words, not just Government departments but also all Government controlled agencies and authorities and all Government wholly owned companies, because that in a sense is the picture of the part of the economy, the part of the employment market that depends on, if I could call it that, the Government directly or indirectly. In other words, the Government act not just through Government departments, but also through agencies, through authorities and also through Government owned companies. That is the full picture and that is how public sector is now

defined in the newly reconstituted Employment Survey for this year. As I say, so now there are three distinct categories. One, public sector as just defined; two, private sector, which always was there; and three, MOD. But because we have taken Government owned companies and some agencies and authorities that were previously in the private sector into the definition of Government public sector, there has been a transfer of employment, in effect, from the private sector into the public sector because employment through Government companies and the like, that were previously accounted for under the private sector, are now accounted for under the public sector. This, of course, will not please those out there in the community that are obsessed with the level of employment in the public sector and feel that it should decrease as a matter of ideological knee-jerkism.

Moving on to the public sector, and seamlessly therefore, from that point to what I want to say about it. There is a complete misconception, routinely and ritualistically regurgitated by certain elements in the private sector, that the public sector is getting bigger, or is too big. The last Chamber of Commerce Annual Report, published only a few days ago, uses the word "bloated". This analysis is simply incorrect. First, it ignores the fact that in order to provide a safe, undriven by profit motives, comprehensive and universal service to all in society, regardless of means, there are some services that can only be effectively provided by the public sector. For example, policy administration, education, health, social services, a police service, other law enforcement, a fire service, a judicial service, protection of the environment, tax collection, amongst many others. The Government, therefore, reject the notion implicit in some of these statements that the public sector is somehow a bad thing, or that it is not productive. It delivers very necessary outputs, without which there can be no civilised society. Nor do Government believe that history in Gibraltar or elsewhere shows that services delivered by the public sector are necessarily more expensive than services that have been transferred into the private sector. Secondly, as I have explained on numerous occasions before, the public sector is not getting bigger, and is not getting more expensive by any economically literate, relevant measure of those two things. Those that comment publicly on such things have an obligation to have regard for normal macro-economic principles of measurement and not simply think of a rising figure in absolute abstract terms, which is economically irrelevant and inappropriate. In 1988, when the total number of jobs in the economy was 12,995, the number of Gibraltar Government jobs was 4,028, representing 31 per cent of the total. In 1996, the Government accounted for 2,118 jobs out of a total in the economy of 12,975, representing 21 per cent. As at October 2008, the Government accounts for 3,998 jobs out of a total of 20,509 jobs in the economy, representing just 19.5 per cent of all the jobs in this community. The lowest that it has ever been, ever. This, despite the transfer of hundreds of jobs from the private sector into the public sector statistics, in the way and for the reasons that I explained a few moments ago, when explaining the changes in the employment statistics, and also despite the fact that since 1996, many Government funded jobs in private trusts, the Dr Giraldi Trust, the Mount Alvernia Trust and SOS, which were in effect Government funded labour posts, but which were included in the private sector and not in the public sector, have since been transparently brought into the public sector. Despite all of that, the share of employment in the Government sector, as a proportion of all employment in the economy, is at the lowest percentage proportion that it has ever been. Therefore, commentators please note, the public sector as measured in one of the ways that it is measured by economists, in terms of the proportion of overall jobs in the economy, is not getting bigger, it is getting smaller. It is not getting bloated, it is debloating. Secondly, and by the way, hon Members may wish to know that, for example, in the United Kingdom the figure stands at 20 per cent. Moving on to another measure, in 1988 Government payroll costs as a proportion of total Government revenue was 38 per cent. In 1999 it was 38 per cent and in 2009 it is still 38 per cent. Therefore, the cost to the Government of its employees as a proportion of its revenue, understanding that the cost of payroll rises as revenue also rises, is not getting bigger. It is not bloatifying or debloatifying.

It is the same. It is also wrongly said that public expenditure is too high and needs to be cut. In 1988, Government expenditure as a proportion of GDP was 45 per cent. In 2000, it was 35 per cent and in 2009 it stands at 34 per cent. In the UK it stands at 38 per cent. Public expenditure, as a proportion of GDP, which is the economically meaningful and relevant way of measuring these things, is therefore falling and not rising. This, despite huge extra recruitment expenditure by the Government in the last ten years, on expanding, modernising and improving and bringing into the 21st century, our health, social and education services. This expanding and improving our health, social and education services, is just one of the ways that the Government distribute throughout the whole community the fruits of Gibraltar's economic prosperity. We think it is a good thing to do, not a bad thing to do, even though it means rising and raising public expenditure. If Government were funding this from rising taxes, the call for expenditure cuts would at least be understandable. But at the same time as increasing public expenditure on improving care services, we have also delivered huge cuts in personal and corporate taxation. Another of the ways in which the Government distribute the fruits of economic prosperity. So, when people talk about the public sector being too big, or public expenditure being too high, they have to see the issue in the context of the growing and developing Gibraltar of which it forms a part. The fact is that in economically meaningful terms, the public sector is getting smaller, not bigger, and public expenditure is falling, not rising. A quite different debate is whether regardless of its size and whether it is getting bigger or smaller, the public sector needs to change some of its practices to delivery better efficiency and value for money to the taxpayers. That is undoubtedly true, and trade unions have no difficulty in acknowledging that and embracing a spirit of change. Accordingly, at the Government's invitation, unions are already participating with the Government in a process of very high level talks and working groups dealing with issues such as occupational pensions and retirement age, absenteeism, reform of General Orders, medical boarding system, the recruitment, selection and promotion process within the public service, the introduction of family friendly working practices, the introduction of e-government, staff appraisals and the upgrading of civil service management procedures. I am confident that this initiative will result in significant qualitative reforms of the public sector on an unprecedented scale, for the benefit of all, staff, users, taxpayers and Government alike. The Government are especially keen to maximise the number of transactions and the amount of business which citizens can do with the Government on line. Insofar as concerns the Public Service Final Salary Occupational Pensions Scheme, this is a very expensive and unfunded millstone around the necks of our children and grandchildren, which is getting larger and larger. It should be changed without affecting any existing civil servants. Already over 800 public sector employees are on different pension arrangements within the Government's Provident Scheme. That should be the benchmark for future new entrants into the civil service as well.

I turn now to the economy in the private sector. Once again all the available macro-economic indicators show an economy that continues to perform very well, even in the most challenged global economic environment in living memory. This is a veritable testament to the efficacy, resilience, diversification, quality and durability of our small economy. I have already referred to the GDP figures that show that the economy has continued to grow, even during these difficult times. During the year to January 2009, inflation in Gibraltar was 2.8 per cent, even though it peaked at 4.7 per cent in July 2008, largely due to the effects of rising oil and world food prices. Our inflation rate is, as the House knows, largely imported. As the House may also be aware, the new family expenditure survey is underway. The Retail Prices Index Advisory Committee was reconstituted in 2008, and the groundwork in connection with the Family Expenditure Survey was completed by June last year. The first session or quarter commenced in late October and was completed by the end of January 2009. The second quarter is currently underway, eighty randomly selected households were successfully enumerated and it is, therefore, envisaged that the average expenditure of a total of 320 households, throughout the year long survey period, will be used to calculate the weights

of the representative basket of goods and services that will form the basis of the revised Index of Retail Prices. In other words, the Government are recomposing the tool by which they measure inflation in Gibraltar, to make sure that it is accurately reflecting the real costs that people are experiencing in their real day-to-day personal and household economy. As I have already said, employment as at October 2008 increased year on year by 4 per cent, or 813 jobs to a record 20,509. That is to say, in the year to October 2008, when much of the world economy was shedding work, the Gibraltar economy added 813 jobs. Jobs in the private sector increased by 1,068, or 6.9 per cent to 16,629. A total of 128 of these were existing jobs transferred from MOD, which was in the public sector, to SERCO thought the ISP contract. SERCO, of course, being reflected in the private sector. So the private sector share of new job creation was in reality 940. Jobs in the official sector, MOD, fell by 255. The main increases were in the construction industry, which grew by 427 jobs, and the related labour recruitment sub-industry which grew by 112 jobs, but hotel and restaurants put on 75 extra jobs, the wholesale and retail trade put on 62 extra jobs, ship building put on 67 extra jobs and education put on 54 extra jobs. The number of Spanish nationals employed in Gibraltar rose during the year by 353 to 3,341. I will say that again, as of October 2008 there were 3,341 Spanish nationals employed in Gibraltar, an increase in the year of 353. The Government believe that when unregistered labour is taken into account the figure is actually much higher than 3,341. A total of 946 Spanish nationals are employed in construction alone. We are delighted to be able to provide job opportunities in increasing numbers for residents of the Spanish hinterland during these difficult economic times. However, it needs to be understood that people from other countries who choose to work in Gibraltar, welcome as they are, must accept the benefit system that operates in this country, which reflects the fact that there is almost full employment here. Since 1996, this economy has now created a staggering 7,534 additional jobs, representing an increase in the jobs market of 58 per cent. There were 12,975 jobs in the economy in October 1996, there are now 20,509 jobs. This is a testament to the success of our economy during this period. The number of Gibraltarians in employment rose last year by a further 36 to another new record of 10,577. This compares to 9,396 in 1996. Average annual earnings rose last year by 3.2 per cent to £22,266 in the year to October 2008. Average weekly earnings rose by 11 per cent to £379.

If I could now move to a brief review of the individual sectors of our economy. Our financial services centre has continued to grow during 2008 and 2009, two of the toughest years it has known around the world in living memory. Whilst other finance centres shed jobs on a large scale, ours managed a small increase of 65 or 2.3 per cent in the year to October 2008. As appears by Employment Survey statistics that I provided in the House earlier this month, it would appear that these employment levels are being broadly maintained during the first and second quarters of 2009. There are now 103 licensed insurance operations, 63 in licensed companies and a further 40 in protected cell companies. There are 28 intermediaries and nine managers, we have 27 investment firms, 95 collective investment schemes, 87 licensed trust and company service providers, two pension providers and 19 credit institutions. I am confident that our finance centre is poised for further growth during the coming years. The Port continues to perform well and is now established as a profit centre for the Government, as well as sustaining significant levels of economic activity in the private sector. Although the quantity of bunkers supplied in 2008 was slightly down on the record 2007 figures, all other indicators of activity showed growth. The number of vessels arriving at the Port rose to 9,749 and their gross registered tonnage grew further to 288.4 million gross registered tonnes. The number of vessels flagging into our register also rose by 9 per cent to 271 ships. These are all record or near record figures. Tourism had another excellent year in 2008 and the trend appears to be continuing in 2009. Arrivals over the land border again reached a new record of 9.43 million, an increase of 7 per cent. Vehicle arrivals, visitors to the Upper Rock, air arrivals, museum visitors, cruise liner passengers and hotel arrivals and room nights sold, all climbed to record levels. Yacht arrivals also rose slightly. The online gambling industry

continues to grow within the quantitative and qualitative restrictions that the Government place on new entrants. As at May 2009, it continues to employ 1,742 people in Gibraltar and we expect this to increase as newcomers establish and grow their operations here. Government revenue from remote gaming tax has risen to £9 million. There are now 20 operators established here. We continue to be very selective as to who we licence and we do not seek growth in the number of operators.

Speaking about general trade, some parts of the wholesale and retail trade will have come under increased competitive pressure as a result of the volatility of exchange rates. Nevertheless, in the year to October 2008, the sector was able to increase employment levels by 62 jobs or 2.2 per cent to 2,878 jobs. This is an important part of our economy. The value of imports, excluding petroleum products, for 2008 stood at £449.8 million compared to £425.7 million in 2007, an increase of 5.7 per cent. Employment in hotels and restaurants has increased by 75 or 7 per cent, reflecting the opening of new establishments in new leisure developments. These add to Gibraltar's leisure and tourist product, and together with the effects of a stronger euro, encourage residents to dine out more in Gibraltar. Nevertheless, as a means of providing some relief to this sector, the discount for prompt payment of rates on retail, wholesale and the restaurant and bar premises, is increased by a further 10 per cent from 10 per cent to 20 per cent. Also, it has been reported that the Government often delay in paying invoices to local businesses, and that this increases pressure on their cash deals. These administrative delays are wholly unacceptable and I shall take steps to ensure that invoices are paid by the Government within 30 days, unless they are disputed. This year I have asked for some statistics to be collated in relation to activity in the real estate market, so that interested parties can follow it and the Government can use it as a further economic indicator. The statistics are novel, they are necessarily still under development in terms of their forensic value, but they are, I think, a useful indicator and a welcome addition as an indicator of activity in a sector about which there has traditionally been a lack of publicly available figures, to measure the degree of activity in it. In calendar year 2007, there were 805 property sales transactions with an aggregate value of £184.4 million. In 2008, and these are calendar years in all cases, there were fewer transactions, 618, but with a higher aggregate value, £188.9 million. This suggests less activity at the lower end of the market in 2008………

HON F R PICARDO:

Mr Speaker, can the Chief Minister give the figure for 2007 again, I missed the financial number?

HON CHIEF MINISTER:

I am happy to give it but there is a tradition that the Chief Minister is not interrupted when he is delivering his Budget speech. Well, an interruption is an interruption, regardless of its reasons. I will repeat the figure again for the benefit of the hon Member. In calendar year 2007, there were 805 property sales transactions with an aggregate value of £184.4 million. In 2008, there were fewer transactions, 618, but with a higher aggregate value, £188.9 million. This suggests less activity at the lower value end of the market and more activity at the higher value end of the market. The 2007 monthly averages were 67 transactions with a value of £15.4 million. The 2008 averages were 51.5 monthly transactions with a monthly value of £15.74 million. Between January and May 2009, the monthly average is 47 transactions and £11.2 million value, respectively, suggesting a slow down in the number and value transactions in 2009.

As the House knows, the exempt status tax regime must end by 31st December 2010. It is essential for Government socio-economic prosperity that our corporate tax rate should be as competitive as is compatible with Government's revenue needs. Without this there would be large scale loss of economic activity

and jobs. Existing corporate taxpayers who presently pay 27 per cent tax, will be huge windfall beneficiaries of the need to eliminate tax exempt status and to replace it with a low rate for all companies. The new rate will be 10 per cent. Energy and utility providers will pay a 10 per cent surcharge and will thus suffer a rate of 20 per cent. These will include electricity, fuel, telephone service and water providers. Most exempt status companies currently hold exemption certificates that are valid, subject to repeal of the legislation, for 25 years. The Government, therefore, feel honour-bound not to remove the tax benefit provided by exemption certificates until the last possible moment. That will, therefore, occur at midnight on 31st December 2010 by means of a repeal of the Companies (Taxation and Concessions) Act, under which these certificates are issued. Details of the legislative provisions required to implement the new common low rate for all companies will be provided later, hopefully before the end of July. However, the salient features will be as follows. The rate will be 10 per cent; the effective date will be 1st January 2011. This means that the tax rate in respect of the first half of the tax year 2010/2011 will be whatever is then the corporate tax rate. In respect of the second half of the year, it will be 10 per cent. Companies that are presently tax exempt will thus pay tax in respect of the tax year 2010/2011 at the rate of 10 per cent in respect of half a year, because they only become liable to tax on 1st January 2011, which is the start of the second half of the tax year. Companies that are not tax exempt will pay tax in respect of 2010/2011 tax year at the then corporate tax rate in respect of half a year and at 10 per cent in respect of the other half of the year. The preceding year basis of assessment will be abolished in favour of an actual basis. Commencement provisions will be abolished, there will be transitional rules for the move from preceding year basis to actual year basis of assessment. The basis of taxation will not change and will thus continue to be on an accrued and derived basis, effectively what is known as a source based system. There will be wide-ranging and far reaching anti avoidance provisions to avoid abuse and avoidance. In the meantime, the corporate tax rate in Gibraltar is reduced from 27 per cent to 22 per cent, with effect from 1st July 2009, that is, in respect of the tax year 2009/2010. As a further transitional measure and to encourage business start-ups in Gibraltar, I am also introducing with effect from 1st July 2009 a start-up rate of 10 per cent, which will apply to any business established in Gibraltar after the 1st July 2009. Tax will be assessed on an actual year basis. As an anti-avoidance provision, it will not apply in respect of any commercial activity already being carried out by a particular taxpayer before today and which is reorganised by that taxpayer in the name of a different entity for the purposes of attempting to benefit from this scheme. In other words, as of today, as of 1st July rather, businesses will be able to establish in Gibraltar at a start-up rate of 10 per cent for this and the next year. So the scheme will last for two years. In order to assist them in their early developmental needs, this scheme will also be available on certain conditions to businesses that have been recently established. Those conditions are as follows. The business must have commenced after 1st July 2007, the company must agree to be taxed on a preceding year basis, and not on an actual year basis in the context of commencement provisions. The first tax year for which the company will be liable is 2008/2009, and tax will be payable in respect of this period at the rate of 27 per cent. In respect of 2009/2010 the tax will be at 10 per cent.

Moving to personal taxation, as the House knows, the Government have introduced a dual tax system under which taxpayers may choose the basis on which they will suffer tax, based on two different systems. One, known as the allowance based system, is the traditional system. The other is known as the gross income based system, under which the tax rates are lower but the taxpayer is entitled to no allowances. Already 3,500 taxpayers have transferred from the allowance based system to the gross income based system and are paying very significantly less tax as a result. To remind the House that, under the gross income based system, taxpayers can choose to be on that alternative paying 20 per cent on the first £25,000 of income, 30 per cent on the next £75,000 of income and 38 per cent on the remainder. It is in the nature of the gross income

based system that a taxpayer cannot be better off under it until his earnings reach £18,450. Low income earners cannot, therefore, benefit from the gross income based alternative as at present. The House also knows that the Government have systematically reduced personal taxation every year that they have been in office since May 1996. In order to continue in that tax cutting trend, I am making changes to the gross income based alternatives to make it attractive, particularly to the lowest income earners, to reduce the tax of low income earners and that of others under the gross income based system. I am today modifying the gross income based scheme, with effect from 1st July 2009 as follows. For persons whose gross income does not exceed £16,000 a year, a new band of £10,000 will be added on which tax will be paid at 10 per cent. For persons with incomes between £16,000 and £25,000, new bands will be added as follows, on which tax will be paid at zero, no tax. That is, people on incomes between £16,000 and £17,000, on the first £5,000 of their income, zero income tax. If their income is £17,000 to £18,000, on the first £4,000, zero income tax. If their income is £18,000 to £19,000, on the first £3,000, zero income tax. If their income is £19,000 to £20,000, on the first £2,000, zero income tax. If their income is between £20,000 and £25,000, on the first £1,000, zero income tax. These new bands will benefit 3,600 taxpayers by between £40 and £640 per annum. For example, a single person earning £16,000 a year, will pay £640 a year less in tax. That is a 22 per cent reduction in his tax bill. The 30 per cent band is reduced by 1 per cent to 29 per cent. This will benefit 4,000 taxpayers in sums ranging up to £750 per annum. The benefit to each taxpayer is the sum of 1 per cent of the amount by which their income exceeds £25,000 up to £100,000. The top band rate is reduced from 38 per cent to 35 per cent. The gross income based system is intended to encourage taxpayers to migrate to a simpler to administer tax system, under which they will pay less tax, especially if they are single, have no mortgage, no pension and no life insurance. It is entirely intended to reduce the tax burden of those who by their personal circumstances cannot benefit from the traditional system, which is very high rates and very high allowances. But of course, if one has not got the very high allowances one is just left with the very high rates, and that was the purpose of introducing the gross income based system. Therefore, I would urge all taxpayers to check whether they would be better off under the gross income based system, and if so, ask the Income Tax office to issue a new tax code which would result in less PAYE being deducted from their pay immediately, as opposed to having to wait several years for the assessment to be done and for any refund due to be paid back. There is a tax calculator on the Government website on which taxpayers can calculate easily which of the two tax systems results in the lower tax for them. For the purposes of the allowance-based system, which is the other system, all personal allowances are increased by 2.8 per cent with effect from 1st July 2009.

At present members of an approved retirement annuity contract, or personal pension scheme, can claim as a deduction the contributions paid in any tax year up to a maximum of 25 per cent of earned income. Where for any tax year the amount of contributions relieved is less than the total contributions paid, members may carry back this balance up to six tax years in the case of the retirement annuity contract, and one year in the case of a personal pension scheme, provided that the member was not in pensionable employment at any time during this period. With effect from today, this carry back will no longer be available.

I am also making some changes to the tax payable by High Net Worth Individuals and Category 2 Individuals. The minimum amount of tax that they must pay is increased from £18,000 to £20,000. The maximum amount of their income on which they pay tax increases from £60,000 to £70,000, both changes will take effect from 1st July 2009.

Finally, other Budget measures. The maximum weekly social insurance contribution rises by 4 per cent in respect of both employers and employees contribution from 1st July 2009. This amounts to an increase of £1.15 per week for employers and £0.91 per week for employees. The flexible cost adjustment

element of electricity bills rises from 3.26p to 4p with effect from 1st July 2009. This represents a 6 per cent increase in electricity bills. Since the average bill is £50 per month, the rise represents an increase of £3.00 per month. Gaming machine licence fees are presently £500 per annum per machine. There has been no increase since 1990. It is increased to £1,000 per annum with effect from 1st July 2009. At present a widow, and in certain circumstances the children, receive a pension on the death of the husband or father. The Act discriminates against men by not making the same rights available to widowers and children on the death of the wife or mother. With effect from 1st July 2009, this discrimination is eliminated and the death of the widower and children will have the same rights on the death of their wife/mother, as the widow/children have on the death of their husband/father. Import duty on petrol is increased by 4p per litre. In April we increased duty on cigarettes, there is now no further increase. However, we are increasing the duty which we did not increase then, on other manufactured tobacco and tobacco substitutes, which is in effect, roll your own tobacco, from £3.25 per kilo to £9.00 per kilo. This threefold increase in duty will still maintain the price differential between Spain and Gibraltar for that product at over 55 per cent. Upper Rock entry fees will rise by £2 to £8 for adults, by £1 to £5 for children and by 50p to £2 for cars. The amount payable by tour operators to the Government will rise to £5 per person, thereby increasing by £1 per person the income retained by the tour operator. These increases will come into effect on 1st October 2009. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, the first thing that I want to do in rising today is to associate, of course, this side of the House with the words of the Leader of the House in respect of the absence from the Chamber of the Leader of the Opposition. The Leader of the Opposition when Chief Minister, was the first Chief Minister to deliver the speech on the estimates himself as a politician, and not allow that those speeches be given by the then Financial and Development Secretary. Today would have marked his 37th speech in this House, on these estimates, since his first election in 1972, and I am sure that whether Gentlemen opposite agree with his analysis or not, the whole of the House will be the poorer for the absence of his analysis. He is with Mrs Bossano and we all wish that Mrs Bossano is back amongst us soon and with a full and speedy recovery, and that the Leader of the Opposition is back amongst us soon.

In dealing with my address today, I will not just be replying to the Chief Minister on behalf of the Leader of the Opposition and dealing with those aspects of the portfolio which I shadow, but also those of Mr Licudi who is also absent from the Chamber, unfortunately, because his wife is receiving treatment. I also look forward to receiving Mr Licudi back in the House as soon as possible. I am sure that is a sentiment that is echoed across the floor of the House.

I will start by dealing with the announcements that have been made by the Chief Minister. Last year I started my intervention by saying that it was the first Budget since the General Election and it was important that we should recognise that the hon Members opposite had been returned to Government and that the people wished to see their policies in Government. This year, it is fair to say that the Government are already almost halfway through their present mandate. It is not time for us to scrutinise their delivery of their election commitments and to hold them to account for that expenditure which they have incurred and the manner in which they have incurred it.

Well, I will start an analysis by taking a bird's eye view of the measures announced a moment ago by the Leader of the House. These are clearly designed to create a feel-good factor, a veneer of success and progress that is nothing more than that a veneer. The reality underlying the performance of our economy is not as rosy as the Chief Minister would have the

public believe. The decision to pursue a project like the airport project is political folly. Gibraltar needs to wake up to the fact that our economy could do better. Gibraltar needs to wake up to the fact that the Government are too often the obstacle for businesses and not the facilitator, and, perhaps most importantly, Gibraltar has to wake up to the litany of broken promises, bogus figures and ruined opportunities that the GSD represent, and that the Leader of the House now embodies. The sprendthrift attitude to VIP lounges, expensive limousines and the huge unwarranted funding of a weekly publication that is favourable to the Government, betrays the fact that a careful analysis of the performance of the sectors of our economy, on a detailed basis, will disclose that there are clouds on the horizon, and that in many areas of our economy the storms are already brewing. Where those clouds are the result of a global economic downturn, then I will not lay the responsibility for that at the door of the hon Lady and Gentleman opposite. That may not sound generous, but let us face it, that is what the hon Gentleman did when he was the Leader of the Opposition in the recession of the 1990s. But I will not stoop so low. Now, where the clouds are conversely "national" clouds, clouds manufactured here in Gibraltar, we will put responsibility squarely where it should lie, at the political door of the Members opposite. A lot of what the Chief Minister has told us today, he has said is related in terms of the increases that we have seen in cost to the Gibraltar Electricity Authority in particular, was related to the high cost of oil prices in the past year. That would have made sense as the reason for raising the cost of utilities last year. This year we also recognise that the lower cost of petrol and the lower cost of fuel might have resulted in decreases in the prices of utilities. In fact, the Leader of the House has announced that the cost of electricity will go up 6 per cent. Again, it is unfortunate that given the wriggle room that there is now that oil prices are back more or less where they should be, there is no concurrent reduction in the cost of those utilities. The Chief Minister is almost like a petrol salesman, he is very quick to put up the prices on the forecourt as soon as the newspapers talk of price rises, but the prices on the forecourt do not go down when everyone can read in the same newspapers that the price of oil has gone down. We have also had to sit through the Chief Minister telling us that there has been some minor employment dislocation only, in our economy, as a result of the global credit crunch. Well, perhaps he would like to say that to those who are unemployed as a result of the financial crisis that has hit the world, even in Gibraltar. It is in my view a little bit insensitive for those who find themselves in that position, to be described as dislocated. We have also been told that the hon Gentleman had been foretelling for nearly a decade what was going to happen to the global economy this year. Well, obviously, nobody can believe that although I noted that there was some clapping at the time, or banging of desks, from the Members opposite. Well, he told us also that he had astutely negotiated a revolving line of credit of £150 million before the credit crunch. Well, is it that the hon Gentleman is seriously telling the public in Gibraltar that he was able to foretell the credit crunch? It is that we are really expected to believe that? The Chief Minister can not be serious. We are pleased, nonetheless, to see that the effects of the financial crises, which has affected the whole of the globe, will result now in monthly monitoring, not quarterly monitoring, of many indicators. We have often been told in Question Time, when we ask questions that are not for the current quarter, and that cut into a quarter, that the Government do not monitor figures on anything other than a quarterly basis. So we are pleased that that will be the case and we hope that that information will flow to the Opposition when we request it at Question Time. I want to associate this side of the House with one thing that the Chief Minister said during the course of his introduction. We will not be able to progress on any front with our neighbours, whichever front that may be, if they continue to have a mindset set in the medieval ages. It is absolutely incredible to have seen from what has been made available publicly, that the case that is presented as an appeal in respect of the decision of the Court of Justice, harks back to the Treaty of Utrecht as somehow in some way framing Gibraltar's membership of the European Community in that way. That is absolutely ridiculous and the sooner that the people on the other side of the frontier wake up

to the fools that they are making of themselves with such arguments, the better.

The Chief Minister has told us that he is going to be micro-monitoring the economy, and that that micro-monitoring shows that it is performing broadly in keeping with what was expected, and that yields have increased from PAYE et cetera. Well, all of that has been said in the context of an attempt to show that the surpluses in the Consolidated Fund have increased, and that even in this moment of global credit crunch, Gibraltar is doing better than ever. Well, looking at the blue pages of the Estimates Book it is obvious to anyone, and the Chief Minister did not hide it, but he did actually make such a short point of it that one might be forgiven for saying that he did not really emphasise it as much as he emphasised anything else, that the £18.5 million, up from £17 million, that was taken from the Savings Bank depositors and put into the Consolidated Fund, is what ensures that the surplus is there. We were told that there was a surplus of £16 million in that Fund. Well, without the £18.5 million, or £17.2 million surplus overall. Without the £18.5 million that came from the depositors of the Gibraltar Savings Bank, it is clear that that surplus would not have been there at all. It is clear that the creative accounting that was necessary was done in time by the passing in this House of the legislation necessary to appropriate those funds into the Consolidated Fund, and without that appropriation the reality is that that surplus would not be there. We are told that the predicted surplus for next year will be £19 million. Well, that £19 million could be achieved by simply depositing the £18.5 million in a bank account at 4 per cent with the Chief Minister, without the need for spending a penny. It is clear that one of the most important planks of that surplus is the money of the depositors of the Gibraltar Savings Bank. We are told that the Chief Minister will continue what he describes a process of attempting to continue transparency and accountability. Well, that may all sound very well, I believe this is the second year that we have received the Employment Survey Report on the morning that we are to consider the estimates. Frankly, that does not allow for a serious consideration of the statistics in it, although the Chief Minister has taken us through his understanding of the figures, and the bits that he wishes to highlight. Well, if he really does believe in accountability and transparency, perhaps he can tell us why it is that the Employment Survey Report for October 2008 has a preface dated March 2009 by the Government Statistician, but that the numbers do not appear in this House until the morning when we are to consider the estimates. Of course, they are an important part of the consideration of those estimates. The introduction of e-government that the Chief Minister has referred us to cannot come soon enough. I think we are lagging behind most communities in that respect and it now makes sense for us to be able to interact with our Government, as soon as possible, through the submission of documentation et cetera over email and internet. It is a system that has worked very well already in some sectors of our economy, like for example, in Companies House, and I am sure it will work well once introduced with Government generally. We are pleased to see that an overall review of General Orders is already underway. I think that was an issue that was common to both manifestos and I am pleased to see that it is already commenced. It is also important to change the way that the Index of Retail Prices is compiled, if it is going to remain a relevant statistic for our community to understand. The Index is presently compiled using a mechanism that is already staid and we welcome the fact that that is going to be changed. We also welcome the data that is being compiled by the Government now in respect of property matters. The Chief Minister will know that in Question Times on a number of occasions the Leader of the Opposition has sought information as to the performance of the property market in Gibraltar and has been told that that data was not available. To the extent that the data will now be available, as a result of the changes implemented, that is something which will only enable us to better understand the performance of our economy, and we look forward to being the beneficiaries of receiving that data at Question Time in the future. The rate of corporate tax is going down from 27 per cent to 22 per cent. But we are on a road to 10 per cent. The Chief Minister tells us that the economy is performing like no other economy in the world. We have seen from the blue book that

the revenue from income tax and the revenue from import duties is up, even on the estimates for this year. Well, in that case, why is it that corporate tax on the way down to 10 per cent, can this year only go down to 22 per cent. In my view, more could have been done for the businessman in Main Street, who is feeling the effect of the global credit crunch, whether the Chief Minister likes to admit it or not. But to have at the same time increased social insurance by 4 per cent is really to have implemented a stealth tax through the back door in the most obvious possible way. Coupled with an increase in electricity of 6 per cent, the cost of living in Gibraltar is going to go up, the cost of doing business in Gibraltar is going to go up massively.

The increase in personal taxation allowances of 2.8 per cent, is in our view, a gimmick designed to continue an alleged ideological commitment to cuts, but in cash terms this will not mean much at all for those in real need and on the allowance based system. In effect and in tandem with the alternative system of taxation, the Government's policy continues to be not to actively or truly incentivise residence in Gibraltar. The reasons for that have been debated at length in this House. But let us be clear it is short-term gain and long-term folly to have a system of taxation that only incentivises outsiders to be residents of our homeland and disincentivises our nationals from remaining residents. Why do I say that? The Category 2 or HNWI product is an important part of our national fiscal policy. On that we can agree. The HNWI product was created by the first GSLP administration and has borne fruit. The problem is that if we develop financial products that incentivise outsiders to settle here, whilst at the same time we remove the financial incentive for young Gibraltarians to live in Gibraltar, the results are potentially too obvious to require me to take all Members through to my conclusion. The stillborn Eastside project is apparently intended to attract thousands of new High Net Worth Individuals to our country. So was the original Ocean Village and its additional towers. If all those who were really to be filled by HNWIs, the proportion of our population made up of outsiders would grow. We do not object to that as an engine of economic growth, but we cannot at the same time as we incentivise with tax breaks those welcome outsiders to reside here, equally disincentivise Gibraltarians from doing so. Of course, Gibraltarians will continue to reside in Gibraltar for reasons too many to enumerate, even if there is no financial incentive to do so. This is our home. We support the Category 2 HNWI product and encourage its enhancement and smoother operation. But I am disappointed that the measures introduced by the Chief Minister will not serve to truly incentivise our nationals to continue to live in Gibraltar. The Chief Minister will quote the figures of the number of Gibraltarians resident in Spain who applied for housing in the new Government projects as the evidence that there is not a large number of people crying to return and unable to do so because of the absence of affordable housing, or because of how expensive it is becoming to live in Gibraltar. Well, first of all, many of those who applied will have used the addresses of parents and grandparents who are locally resident. Secondly, the absence of a fiscal incentive to reside in Gibraltar may already be affecting the numbers. Long-term, the consequences of these policies may be negative to Gibraltar. Moreover, the absence of encouragement to save by the absence of incentives on tax relief for life cover and insurance policies in the dual alternative system, has both detrimentally affected the local industry and meant that young people are saving less than they might have done. It is all very well to talk of a new and simpler system, but what are the Government attempting really to do. We all believe in freedom of choice, if someone does not wish to save, so be it. If someone wishes to save using alternative financial products, then so be it. But the Government can provide a friendly nudge onto the more prudent course, not penalising those who do. That, again, has not been done by increasing allowances in the sum in which they have been increased only this year. Indeed, given that income tax revenues are predicated to increase again by almost £3 million on the forecast outturn, more could have been done either to give a real cut in tax, if that is what the Chief Minister believed should be done, or to truly increase allowances designed to promote saving. So, our policy has been that as corporation tax was reduced progressively down to 10 per cent, so personal taxation should also fall in real and

substantial terms. The standard rate of tax under the normal allowance based system today under the GSD has not changed. The standard rate of tax today if we had won the Election would be 25 per cent. Next year, it would go down to 20 per cent and in the fiscal year 2011/2012 the standard rate of tax would have gone down to 18 per cent, with allowances. That would really be a stimulus in these difficult economic times. I commend that policy to the Leader of the House and invite him to copy it sooner rather than later. Just as he copied us on elimination of TV licence fees, just like he copied us on elimination of road tax and just like he copied us on the setting up of an epidemiological study. In this case, the pupil will be praised for copying and not for doing his own working out. All of these reductions would have been put in place with the existing allowances in place. A more generous package for all Gibraltarians and truly incentivising choosing Gibraltar as the main place of residence. In effect, the Government have £6 million to play with, which is the difference between last year's estimates of £106 million and this year's estimate of £112 million in respect of personal tax. The same is true of corporate tax, where Government were predicting that the corporate tax take would be down £250,000 on last year's £24.26 million, the reality has been an increase of almost £2 million to £25.8 million. This is predicted to remain the same for this financial year. At this difficult time in the global economic cycle, with the uncertainty of the new tax regime that is to come next year, Government could have done more to soften the recessionary blow by reducing corporate tax below 22 per cent on our way down to 15 per cent next year. A £2 million windfall in corporate tax is nothing to a Government as spendthrift as this one, but an extra 1.5 per cent or 2 per cent less, perhaps down to 20 per cent, off the bottom line for a business in Main Street and elsewhere in our economy, would have meant a lot to recession-hit businesses. £1,000 more a month in the operating budget for a small business means a lot more than £1 million in the hands of a government. Moreover, this Budget has done nothing for those who bought at Waterport Terraces, who are now finding that they need to continue to pay expensive bridging loans. The delays occasioned to Government building projects has put ordinary people at a massive expense. Massive expense that will affect their ability to enjoy those properties. The Government have done nothing in this Budget to alleviate those troubles. I have to, also of course, at this point to associate myself in respect of the items of expenditure which were unexpected, with the spending on the treatment of one particular child, with which the whole House will agree. The Chief Minister has told us that since 1996, when the world began, the GSD Government have spent £427 million on capital projects. Well, he may not agree with me, but Gibraltar does not feel to people as if half a billion pounds had been spent on it. Certainly, the Upper Rock does not feel that way.

In respect of social insurance, we have seen the Government in different debates first of all suggesting that they would not be increasing social insurance, saying that as it would not be in the nature of stealth tax under their administration. They changed that attitude and not just increased it but moved into a different system of charging based on percentages. A move to percentage charging is a slippery slope. It is a slope that can only lead the contributor in one direction, increased costs. Increasing social insurance is increasing the cost of doing business in Gibraltar. In particular, given that social insurance paid in respect of individual physical employees is a tax on real businesses in Gibraltar. When we promote the use of Gibraltar as a finance centre we do so so that our revenue from the global market increases. The revenue from that global market should be concentrated in making better the lives of our people and easier the prospects for businesses based in Gibraltar. The increase in social insurance announced today does the opposite. Having got rid of the maxima in respect of social insurance, the slippery slope could also become dangerous. In its present percentage nature, social insurance contributions have become a stealth tax on local employment. The personal income tax reduction which the Chief Minister has announced will mean a lot of money going out of Gibraltar in the pockets of frontier workers. The increases of social insurance contributions announced are a liability that stays firmly on the liability side of the balance sheet of those who live, work and do business in Gibraltar. In this recession, in this global crunch, rising social

insurance is the wrong policy and the Chief Minister should reconsider having made that announcement today. He will say in his reply that when the GSLP was in office between 1988 and 1996, social insurance also rose. Well, he should be reminded that when he took over in 1996, he said he would not be taking the same line. So I do not want to simply be reminded that the party of which I belong when it was in Government might have done that, I want to know why the Chief Minister has changed what he told us was the right thing to do at the time, when he stood here criticising those who stood there. Perhaps he might tell us that he was wrong between 1991 and 1996 to have criticised the increases and that I am equally wrong. Well, let him not get away by simply harking back to what might have happened almost 20 years ago.

This Budget also does nothing for divorced women who are of a pensionable age. Although the Chief Minister will reply that he has done much for that collective, I recall seeing the press release, he should know that we have received representations from a number of divorced women who believe that what the Government have done is provide no real relief in respect of their main complaints. Namely, that they receive much less in pension than their married counterparts as a result of decisions that have almost entirely been taken by their spouses and not themselves. Given the increases in revenue, import duties and revenue from personal taxation, this is a collective that is not being adequately provided for. The number of women involved is not great although it is likely to rise in the future. It is indeed unfortunate that Government have this year not addressed this issue which I am sure is being put to them, as well as to us, by this important collective.

I turn now to the Government Projects Bill. I know there is a Bill on the agenda for debate later in this session to allow Government projects to proceed at hours in which building work is not presently allowed. We cannot foreshadow that debate and we will have to deal with those issues as and when they arise. The principal work in respect of which this Bill is being implemented, will be the airport works. Again, I am sorry to mention this project one more time, but infrastructure projects such as this on the need for which we are divided, do not have the effect on the Gibraltar economy that they have elsewhere. In other economies, Government spending on infrastructure projects means that money is pumped into the economy. That is obviously why at times of recession such Government spending is welcome. In Gibraltar, the position is not quite as simple. Most of the workers on the Government infrastructure projects, such as the airport project, are Spanish workers. The effect, therefore, is that a large part of the Government investment in such projects goes into the neighbouring economy and not our own. The consequences are not lost on the Chief Minister, who in a meeting in Malaga with Senor De Leon, commented that Spain should not be so negative about Gibraltar given that we are pumping approximately £50 million into the economy of the Costa Del Sol, by providing employment to individuals who work on Government projects in Gibraltar to the tune of at least that amount. Could it be clearer that, in fact, the airport project is not just a white elephant but it is also a project that is principally benefitting outsiders at this very difficult, economic time? The Government investment is not flowing into the pockets or accounts of Gibraltar companies, but principally into the overseas developers who have successfully tendered for the project. The fact that a European company is carrying out the work at the airport is something which is one of the consequences of our membership of the European Community, the benefits of which outweigh the liabilities. But having said that, it has to be clear to all that are listening that that Government investment is not presently an investment which is going to trickle down into the Gibraltar economy.

I also want to reiterate something that I said in the past. It is becoming increasingly clear that the information contained in the draft Government of Gibraltar Estimates of Revenue and Expenditure, confidentially provided to all Members of this House, including the Opposition, in April of each year, is becoming increasingly useless. Although it is obviously useful for us to see in tabulated form the actual collections for the immediately previous financial year, a forecast estimate for the

concluding financial year and an estimate for the coming year, the Estimates of Expenditure are not reflective of the things that the Chief Minister gets on his feet to announce. We do get an opportunity to see the current Consolidated Fund revenue in a way that enables us to understand better what income the Government are receiving. We do not, however, see reflected on the expenditure side of the book, most or any of the announcements that the Chief Minister makes. As a result, an analysis of the white book is not as useful as it could have been. Previous Governments provided detailed estimates of their expenditure, inclusive of the amounts by which that expenditure would increase as a result of the announcement made in this House on the debate on the Appropriation Bill. It appears that that is no longer the case in this Parliament. We are likely to be unique in respect of western parliamentary democracies in that respect. It is a pity that the Chief Minister has allowed it to get to that. I commend to the Chief Minister that he should ensure that for the next debate on an Appropriation Bill the Estimates of Expenditure do reflect the things that he is going to announce. He must recall that we are bound by the rules of confidentiality in respect of these Estimates, and whatever it is that we may be able to work out from analysis of the numbers, is only of assistance in respect of the arguments in this debate. Similarly, receiving the Employment Survey Report at the last minute, literally before the Leader of the House gets up to make his Budget announcement, is not conducive to making a proper analysis of the present state of our economy.

The receipt of import duties are estimated to have increased this year by £4.3 million on the estimate. Indeed, the growth on last years actual of £42.4 million is in the region of £5 million up on a forecast of £47.3 million. The estimate for this year is to predict growth up to £54 million of import duties. A growth of £11 million on the estimate made this time last year, certainly allows the Chief Minister to consider seriously the possibility of really cutting both personal and corporate tax, in a manner more commensurate with the needs of the people in the present recessionary environment. The Chief Minister is keen to tell people that Gibraltar is insulated from the current recession. Well, thank goodness that Gibraltar is to an extent insulated from the worst effects of the global recession affecting real people as much as financial institutions across the globe. But we are not immune, it is not possible for us to be immune from a global credit crunch, and those who are losing jobs in Gibraltar, in particular those who are losing jobs in our banking industry, will not want to hear the Chief Minister insisting that we are totally insulated from the effects of a recession. The fact is that people are affected. With £11 million extra just in import duties, the Chief Minister could have done more to provide real cuts in corporate and personal rates of tax, that would have allowed Gibraltar businesses and Gibraltar taxpayers to breathe a welcome sigh of relief in respect of this present climate. With the £10 million increase between the actual figure collected in personal tax and the estimate collection for personal tax this year, the £2 million increase on the estimate of corporate tax collected last year, and the actual collected this year, which is predicted to continue next year, and the £11 million increase in the import duties collected, the Chief Minister had real margin for real cuts which he has not taken advantage of. He could have used these funds to bring personal taxation down in the terms set out in our manifesto, as I have already suggested. But I know that the only real reduction anticipated of consequence in respect of revenue is in the interest earned on the Consolidated Fund, which will go down from a forecast outturn of £1.3 million to an estimate of £200,000. But the £22 million extra of revenue in respect of Heads 1 and 2 of the recurrent Consolidated Fund revenue, are sufficient to allow for the better administration of our affairs, even taking into consideration the reduction in interest earnings on the Consolidated Fund. Nowhere is this more evident than on page 5 of the book, on the blue pages, where the sum of the Consolidated Fund revenue appears, if we look at the total recurrent revenue under item number 6. That illustrates that the total estimate for 2008/2009 was £231 million. That was very similar to the actual outturn for the year 2007/2008. The increase in the estimate for the financial year 2009/2010 is exactly that, almost £20 million odd that I am referring to, estimating in the total recurrent revenue of £249 million. Individual taxpayers, businessmen and traders will not

forgive the fact that this Government have not done more with that £20 million than channel it to the apple of the Chief Minister's eye, namely, the new airport building. A white elephant in the making, if ever there was one. Given that the Chief Minister has indicated that he would not support more than 14 aircraft movements a day at the airport, on environmental grounds, the airport is really a monument to the Chief Minister's pharaonic political vanity. I would say this, perhaps the Chief Minister will accept my invitation to name the new airport after his political party. I invite him to name the terminal "the GSD Airport". Namely, Gibraltar Stands Desolate Airport.

I now turn to my address in respect of the financial services portfolio, on which I shadow the Leader of the House. The overriding issue in respect of the provision of financial services from our jurisdiction is the continued uncertainty as to what the tax reform package the Government have long announced will actually mean in practice. Today we have been told something of what that will be but until we see the detail, the nuts and bolts of the legislation, the practitioners in the finance centre will not really be able to understand what the law does. This year the Government do not have the excuse that the European Court of First Instance has not yet decided on their complaint against the Commission. The Court of First Instance has made a decision. That decision was favourable to the argument put by Gibraltar and which all of us agreed could be decided only in one way. The delay now is home grown. The delay arises from the failure of the Government to put in place a package of measures in time to make an announcement that would allow practitioners in the finance centre industry to market their new product internationally. The Government have had time to develop their thinking on this issue. All the time that the matter has been pending before the Court of First Instance, they could have been designing the new package. We knew for some time that they were abandoning the zero tax base system. Clearly, the decision of the Court might have had an impact on the package that could be put forward, but we should not have been found as we are, with a blank canvass until such time as the decision was made. Now, all the detailed architecture of that reform has to be put in place in a hurry. That shows bad planning on the part of the Government. Bad planning is now manifesting itself in a failure even to meet the date anticipated for the publication of the draft legislation. The Chief Minister has told us in Question Time that the package may not be published until September. He has told us today that he is hoping to publish it late in June, if not by September. What a pity to see an industry as proactive and effective as our financial professionals have made the finance centre in Gibraltar, stymied by this Government's failure to provide true leadership on this issue. Yes, the Leader of the House hailed as a magnificent victory our win in the Court of First Instance, but that was an almost certain outcome. It was almost a foregone conclusion. The Leader of the House has told us that he did not want to see any implementation of a new tax regime in Gibraltar until such time as the Court of First Instance case was decided. In fact, that case took so long that we had an indication of the 10 per cent tax rate even before then. Well, actually, we had, I do not know, it may be 10 it may be 12, I have not made up my mind yet. Well, now there is an appeal, thank goodness we are not being told that we have to await the outcome of the appeal before the tax reform proposal is announced, because the appeal does not suspend the effect of the decision of the Court. The fact is that we are running out of time. The year 2010 is upon us and exempt companies will have to disappear completely. The new tax regime cannot be announced, published and implemented soon enough. It is a matter of serious regret that the Government have not been able to act sooner, or have not been able to make up their minds sooner on what the issues are. This is systematic of the fact that the Chief Minister appears to want to make all decisions himself in respect of these matters, and does not realise that he needs to be taking advice from those who know what they are doing, and not just instruct people to draft laws based on what he thinks is right, but take the advice of professionals in the industry to ensure that he understands what he is deciding should be done. I should add now that at Question Time in this issue, the Leader of the House told the Parliament that some of my partners in my private legal practice were involved in the drafting of the new legislation. I will say for the record, that I

have no information from them whatsoever on their instructions, or at all in any respect, on what those partners may be doing for the Chief Minister. My information is from other industry sources. I trust that assertion will not be disputed. It is wilfully inadequate for us not to have published already a draft of the legislation of the proposed changes in some detail. The Chief Minister might see himself as the hero of the finance centre for ushering a victory in the Court of First Instance case, which all of us knew could only be won. The finance centre, however, sees him as the villain of the piece, for not having got his act together sooner and developed the tax reform proposals in good time. The Chief Minister has dropped the ball on this issue and has been found wanting. It has taken the Chief Minister a whole year simply to tell us that he prefers the 10 per cent tax rate to the 12 per cent corporate tax rate also mooted. The clarity, the stability and the certainty that the finance centre required on this issue has not been provided. Every day that passes without the publication of the tax reform proposals and the draft legislation is a day too long. We continue to lose precious business to other jurisdictions who have been more agile in adapting their legislation to modern practice. That has been echoed in statements by the Chamber of Commerce and the Federation of Small Businesses also. I can but agree. Those are not just my views, they are the views of most of the representative organisations. Needless to say, we will see a lot of hubris in the reply that will not accept any of the points that I have made and will turn most of it into the histrionics that we are used to. So be it. Needless to say, the same negative results have arisen from the failure to enter into the necessary, I say “necessary”, twelve Tax Information and Exchange Agreements earlier. I heard it said, as an excuse for the Chief Minister’s failure to get the Government to enter into these agreements earlier, that our attempts to enter into TIEAs with a number of jurisdictions are being sabotaged by Spanish diplomacy. It is said in the finance centre industry, that as the Chief Minister or his representatives leave negotiations with foreign governments by one door, Spanish ambassadors enter by the other to cajole, push and pull away from the execution with Gibraltar of such agreements. I asked the Chief Minister to tell us whether that is the case. I assume that it is not and that is just tittle tattle, given the Chief Minister’s continued assurance that we will be able to have the necessary agreements in place long before the November deadline for the next meeting of the G20. I hope that on this we can take him at his word and that that will be the case. As more and more territories move from the grey list to the white list of cooperative countries, it will become increasingly cold and hostile for us to stay on a grey list. The Chief Minister told me at Question Time in this session that it is, in his view, not in the interests of Gibraltar that he should tell us with what country he has been negotiating TIEAs, and with what countries he expects to finalise them. I accept that and I am not pressing him to give us details of what those countries are. Ireland does not think it is a great secret that they are about to sign an agreement for us, that is now in the open. Nonetheless, if there is any chance that we will not meet the November deadline, I think it is increasingly important that that be said now and that the false expectations should not be raised. If the problem is a diplomatic one arising from the unfriendliness of our neighbours, then let us start to elaborate those arguments now. It would be the height of hypocrisy for our neighbours to say that they wish to see our finance centre become more accountable, and yet foil our attempts, or foil our desires to enter into TIEAs with other states for their own narrow political purposes. I would not put it past them though. Certainly one thing is true, the United States was not susceptible to that pressure. There were many opportunities to enter into an agreement with the United States long before the global financial crisis gave rise to the G20 meeting in London, which put all finance centres in the global political spotlight. Failure to enter into an agreement with the United States earlier is, as I understand it, not one related to the United States position. If it was possible to have entered into that agreement earlier, it is a matter of regret that we allowed matters to slip until the last minute, and that we were seen by the international media to be acting on the eve of the G20 almost involuntarily dragged to the negotiating table. That was totally unacceptable.

One of the best indicators of the fact that there is no product in Gibraltar to sell and that we are at serious disadvantage to international competitors is that company formations are down. Even with the new tax rates to be implemented this year, it might have been possible for individuals to incorporate companies now if their profits are not to be paid in the current year, or deductions are designed in a particular way. Had the new regime come into place already, they may have started already to work with us. Instead, given that nothing has been known until now, we have seen a massive reduction in the number of incorporations. The BVI is making record incorporations as we are making loss-making reductions in our corporate register. We do not want to be the BVI, we are positioning ourselves as a quality EU finance centre, but no one will touch us until the detail of our new regime is out. It is also important to understand financial services issues which relate to Gibraltar itself and the financial services which are available to Gibraltarians. It is important for us to understand that banks in Gibraltar that are branches of UK banks are as concerned about lending as their UK parents. That is not just affecting the work done by practitioners in Gibraltar who are involved in international property work. The fact is that in Gibraltar there is also now less money available for borrowing in the banks that are already operating here. In the property market this has been manifested most obviously by the loan to value ratios that the banks are prepared to lend. For businesses this would be the right time for the Government to consider carefully the implementation of a loan guarantee scheme, like the one proposed by the Federation of Small Businesses some time ago and to which my party was committed. Unfortunately, we have seen no hint of that in the Chief Minister's address today.

I move on now to my responsibilities for the environment. It has been a torrid year for the environment in Gibraltar. Not everything that has gone wrong and which has affected the environment is the fault of the hon Members opposite. Of course, they are not responsible for the storms that have blown the Fedra onto the rocks off our southern shores. Of course, they are not responsible for the oil spill that resulted and, of course, I accept that they are not responsible for the fumes that might come from bunkering barges. But responsibility clearly rests at the political door of the hon Members opposite for policies which allow problems like the Fedra to occur. Decisions which involve failure to invest in equipment in departments like the Port, on which my Colleague Mr Garcia will say more, can have consequences in respect of departments, like the environment. Decisions made in relation to the number of landings at our airport, made by the Minister for Transport, have an effect on our environment. Decisions made on what type of power station to have and where to locate it also have an effect on our environment, even if they are made by the Minister for Municipal Services and not by the Minister for the Environment. The hon Gentlemen pay excellent lip service to issues relating to the environment. The problem is that the environment is not really something that reacts well to press releases. Indeed, the more press releases that are printed on environmentally unfriendly paper, the worse for the environment, however friendly to the environment the words in those press releases may be. The fact is that the Leader of the House has realised that he needs to pay lip service to the issue of the environment, because the environmentalists have done the job that they intended to do, which was to put the environment issues squarely on the political agenda. That is the evidence of the environmentalists' success. The fact that the Government pay lip service only to the environmental issues that affect us, is best evidenced by the Leader of the House's decision to specifically not lead by example in his acquisition of an official vehicle for Gibraltar, which is one of the most polluting vehicles in the world. There, our position is completely different. We believe that the Government should be a leader in the respect for our environment. We believe that any Government decision should go through an environmental filter, to ensure that it is the best possible decision in the circumstances for Gibraltar, including its constraint size and the budget available to its people to ensure that everything that we do is as environmentally friendly as possible. Of course, larger nations might be able to do more. Of course, larger nations have a greater effect on the planet than Gibraltar. But the fact is that that does not mean that we

do not have a responsibility to do what we can. The fact is that we may today invest more in our new airport terminal than we might like on this side of the House. But the reality is that if we do not do something with the world as a whole, and we do not address the issue of climate change positively, then the whole of the airport may soon be under water. Then the whole issue about whether it is a white elephant terminal or not may simply be whether we can use it under water or not. Those may seem like flippant words now, but the fact is that a rise in sea levels could easily disable entirely or frequently our airport which is at sea level. Nothing that we do in Gibraltar can prevent that, but that does not mean that we do not have a responsibility in Gibraltar to act in a manner as positively as possible in respect of our environment. As in the area of financial services, where we do more in terms of anti-money laundering and good practice than most metropolitan states, we must lead by example. We may still be the butt of unfair complaints by our neighbours, but we will at least know that we have done the right thing by our environment, as we do by our financial services regulations. There is so much more that can be done in respect of everyday decisions taken by the Government than is being done. I need not remind the House of the failures of the hon Members opposite to transpose an environmental charter for many years, and the fact that the charter is now more honoured in its breach than its observance. I am not saying that the Government should shackle themselves to making a decision that may be environmentally unfriendly, to never making a decision that would be environmentally unfriendly. To a great extent, that would be like the World Heritage Status bid, which if we were to achieve it might prevent us from developing Gibraltar in any way. But that does not mean that we should not be doing more. Just look at the state of the Nature Reserve itself. The quality of the commitment to act to protect our environment is best illustrated by the fact that four years ago the Hon Mr Holliday told operators that the £1 increase he was going to implement in the Upper Rock access fees would go straight into a kitty to have £3.5 million to spend on the Upper Rock. That did not happen. Instead, the money has gone into general funds and applied for other purposes. We now hear of a further increase in fees and that the refurbishment of the Upper Rock and Europa Point may happen with those monies, though, not a moment too soon. Well, we will see. The Shadow Member for Tourism, Dr Garcia, will be dealing with the detail of that, but I think it is fair for me to highlight that even increases in charges that are apparently for a particular environmentally positive purpose, are not passed on for that purpose for which they were allegedly intended. So, I want to tell the House that my heroes in respect of environmental progress are not on the benches opposite. Neither are they on these benches or in any political party outside this House. My heroes in respect of the protection of the environment are in the Gibraltar Ornithological and Natural History Society, in particular, John Cortes, Keith Bensusan, Leslie Linares, Charles Perez and Eric Shaw, and all the other members of that group with whom I have had less contact. They are in the Environmental Safety Group, in particular, Janet Howitt, Henry Pinna, Moses Benrimoj, and all the others who make those groups work, and people like Darren Fa who have given their time to the protection of our environment as a vocation, and not for any financial or political gain. As well as Ms Lyana Armstrong, who has brought to Gibraltar, Friends of the Earth, turning herself from a politician into a purely environmental activist. Those are the real champions of our environment. I do not pretend that I can claim to be anything other than prepared to seriously listen to these groups when it comes to the effect of a political decision, and how to make political decisions that are necessarily as positive as possible on their own effect on the environment. I confess I do not see that proactive motivation on the part of the Government. I want to read an extract from the lead article in the GONHS's Nature News of September 2008, after the last session considering our budget in this House. The article is entitled "Southern Discomfort". It is on the front page of that publication and I think it makes very embarrassing reading for the hon Members opposite. The relevant extract reads as follows. "In this year of the Strait, decisions and actions being taken are set to change the vista south from Gibraltar and north to Gibraltar. The traditional suburban southern district with its trees and gardens and the rich wildlife of internationally important Windmill Hill

flats, are giving way to high density residential amenity and industrial developments. The uncoordinated way in which these conflicting projects are being introduced, does not fail to amaze all those who aim to take stock and come to terms with what is happening in Gibraltar's south. That is without even considering the drastic interruption of the natural views of a site of huge global pre-historic, historical and landscape interest and importance. Tourists flock to the Rock now, only to be increasingly defrauded as the views they expect get scraped away with buildings such as Clifftops, the new prison and power station." Those are not my words, they are the words of GONHS, and they continue. "There is clearly a need for Gibraltar to continue to grow, and social needs such as a prison and a power station need to be fulfilled. It may be that on occasion views have to be compromised in order to achieve these, but not in every case. Not only is wildlife protection important, but there is a need for Gibraltar to retain some areas of countryside, away from the Upper Rock, where one can escape to and be able to be in contact with nature. There are hardly any such places left. There is real concern that the needs of the natural environment and the need to have quiet places with pleasing views, are not featuring enough in the evidence that decision makers consider when about to give the final go-ahead. This is not due to a lack of lobbying, it just does not seem to be given due importance." Again, that is not me, that is the GONHS. "The result will be", they continue. "that while the needs will be more or less provided, much of less definable value will have gone. Whether or not there was any real coordinated thought given to the developments in the south, we may well never know. GONHS made several unsuccessful attempts at offering its services to assist in such a coordinated effort. We asked for all the needs of the area to be considered at once, and balanced with the need to protect wildlife and the landscape. Failure to engage us at the early stages, leads to subsequent complaints and generation of adverse publicity, which come in for criticism from those who seem to believe that we are just out to block progress." That is the lead article in the GONHS newsletter for the year and it is a damning indictment of the Chief Minister's attitude to development and the environment. The Chief Minister last year told me that he agreed with me in respect of my views on Clifftop House. I recognise that the Chief Minister's reply was given in my absence last year, and I am happy to confirm to him that I read it at the time and I take all those of his comments that I consider appropriate on board in my intervention today. He can probably count them on one finger. How can it be that the Leader of the House, the Chief Minister of our territory, agrees with the vast majority of Gibraltarians that Clifftop House should not go up, that views to that effect were presented to the Development and Planning Commission, that the community's views as a whole were clear in respect of this matter, and yet the building has gone up as anticipated. There is certainly no argument possible that there was any social need to develop Clifftops. The Chief Minister will say that we accuse him of controlling everything, and then when he says that he has accepted something be done by the Development and Planning Commission that he did not believe should be done, that we complain that he has not controlled that decision. Well, it is not as simple as that. The fact is that Clifftop House is a symptom of development for the rich run riot and damn the consequences for the rest of the community. I do not accept the Leader of the House's statement in his reply last year, to the effect that he would have stopped Clifftops if he could. I do not accept that the Government of Gibraltar were powerless to prevent that land being used for that purpose. The Chief Minister may not have liked the proposal before the DPC and he may, if the DPC were operating properly, have been powerless to influence that project other than by cajoling his Minister, who is the Chairman of that Committee. But when the land was sold to the developer, or when the application was made to the Government as landlord of the plot, does the Hon Mr Caruana really want us to believe that he was not able to influence what the land use was going to be? Of course he had an influence as landlord, which he could have used if he wanted to, in order to prevent that building from becoming a carbuncle on the side of the Rock and an obstruction to the views across to Africa, one of our greatest touristic selling points, and something that we ourselves, not just our tourists, have enjoyed from the Jew's

Gate vantage for many years and we are now all deprived of. The fact is that the Leader of the House's words ring hollow because the area has now been also used for the development of a prison, which at least is not high rise, and for the location of the new power station, which will be a blot on the landscape, if ever there was one. I recognise that the location of the power station in that area may be the best in terms of wind dispersal in terms of particulates, but surely, with more thought it might have been possible to locate the power station in an even more remote area, in the region which presently holds the new incinerator, which is clearly now an industrial zone. I am sure that that is not a feat of engineering that could not be achieved. Again, the Government on the issue of the environment say so much and do so little. From the macro-environment of Gibraltar to the micro-environment of those who live around the rubbish dumps in Tankerville and at the bottom of Castle Steps, to the micro-environment of those who in their neighbourhood have to deal with apes run riot because of the Government's failure to bring the packs under control in the 13 years that they have been in office. Other than by the barrel of a gun, the Government have no plan to address the problems affecting our neighbourhood in respect of the apes. The Minister for the Environment told me in the last Question Time that there were many more things that they were going to do, some of which I could not even imagine. The Minister does not seem to realise that I have the most vivid of imaginations, and I can imagine many things that might be done to rid Gibraltar of the problems we are experiencing with the Barbary Macaques, without the need to put a bullet into the skull of any of these mammals. Again, although the Ministers promise a lot, they do very little. For now we have seen no progress at all on the ape issue for another year. The attitude of Ministers reminds me a little of the Irish Eurovision winning song by Johnny Logan, "What's Another Year?" The first words of the song are, "I've been waiting", I am not going to pretend to sing because I cannot even hold a tune, I will just say them, "I have been waiting such a long time". That is more or less what the neighbours of Tankerville, Castle Steps and Caleta might think of the time it takes the Minister for the Environment to act. The same is true of the issues affecting families in respect of Cammell Laird. They were told that the environmental problems would disappear because Cammell Laird would transform itself into a yard for the repair, only of super luxury yachts. Well, that has all gone down the tubes, like most things that the Ministers announce, and it is still a polluting yard in the centre of what is now a very, very populated urban environment. Well, I say that, that is if the Government's developments in the area are ever completed and populated. But I will leave that to my Colleague the Hon Mr Bruzon. As a Gibraltarian, I must tell this House that I despair of the Ministers' failure to bring to Gibraltar any of the developing, environmentally aware practices that are becoming prevalent in so many other towns and cities in the world, for the benefit of residents of those towns and cities. Not something, at all advanced by dredging off the East side to reclaim land on the West side of Gibraltar, not without realising what that might result in on the East side, but with a report to hand already indicating to Government clearly that the effect of that would be the serious erosion of, I can only say, the ironically named Sandy Bay. We are now halfway through the life of this Parliament, after the next Election when we on this side of the House are returned to Government, people concerned for the environment will start to see the environment really being at the centre of decision-making. They will see a Government, not just aware, but also motivated by the need to preserve what little natural environment we have left and to enhance it, not for the sake of letting nature run riot, but to blunt the negative effects of urbanisation on our daily lives and to give us all the benefit of natural areas to enjoy, beyond our splendid Upper Rock protected by the Upper Rock (Nature Reserve) Act, enacted by the first GSLP administration. What a pity that the £100 million odd that the Leader of the House has said is to be spent on transforming our city into a modern European city will not be spent with environmental concerns at the centre of the planning process. The environmental concerns will be as usual, fringe issues. Unfortunately, we hear so much that the only recycling that the hon Gentlemen are clearly committed to is the recycling of their promises.

I turn now to my responsibilities for the media. Those responsibilities have given me serious cause for concern in the past year. Perhaps more than ever. Another year has passed with GBC having no general manager. It is still run by a troika. Everyone agrees that this is a bad thing. The Leader of the House is perhaps the only exception. He told the House that he was not concerned that GBC did not have a general manager. Well, perhaps he is not, but whilst GBC has no general manager all those who are acting as general manager are on audition as general manager. This is not good for the Corporation and the community at large recognise it, as do the individuals within the Corporation. I repeat what I said last year, that it is democratically unsatisfactory for there to be no general manager of GBC, given the important role that that organisation plays within our democracy and the fact it is now funded directly by the Government. For the xxxxxx reasons, I will not tire telling the hon Gentleman that the review of GBC, paid for by the taxpayer and commissioned of Mr King, is one that should be shared with all taxpayers. Given the need to move to digital broadcasting, the increase this year of £20,000 in the estimates, which is a reduction of the forecast outturn, is a poor replacement for real investment in broadcasting in this community. For many years Gibraltar had been proud to have a television station and a radio station, something that was not available to our neighbours in the neighbouring towns of the hinterland. Now, all the towns in the hinterland boast a television station. We need to review GBC, of course we do, but that review is a community review, not a review for the Leader of the House, or even simply for the Ministry for broadcasting. We, as a society, need to understand how best we can make use of the very important services provided by the professionals of the Gibraltar Broadcasting Corporation, and make it more relevant in the post sky digital world. I see nothing to indicate that that is seriously happening. Indeed, the biggest increase in spending on the media since 2006 has been in respect of the £100,000 given to the 7 Days publication to do the work of, I think I will not say "spin", I will just say "advertising" the GSD. In the years since he was first employed by the Chief Minister, immediately after winning his first General Election in 1996, the Government's Media Director has cost us £725,000. Well, coupled with the expenditure on 7 Days, that in the view of Opposition Members, amounts to £825,000 already spent on advertising the hon Members opposite. £825,000 of taxpayers money spent for GSD partisan purposes. That is an indictment of the Chief Minister's approach to media funding. In this Budget debate, I take the opportunity to salute those publications that do not receive Government funding and that continue to print the truth from their perspective, despite knowing that that disables them from accessing the honey pot of Government cash, as well as those who have retained their independence whilst doing so. I do not include 7 Days in that analysis. As members of the public will be aware, after the last Question Time the Pension Fund of our local daily newspaper of record, the Gibraltar Chronicle, is in dire straits, and that could have serious consequences for that company as a whole. The Chief Minister says that he does not recognise the responsibility in the Government to deal with those issues. That may be the case, but the fact is that when we are talking about the shortfalls in the pensions funds, transfer values et cetera, we are talking about people's ability to lead their lives in retirement in the manner which they have been working for all their lives to save up for. Gibraltar is a place where we cannot simply turn our backs on those who have made contributions to a scheme and see it fail without more. We pride ourselves, I hope, across the partisan divide, in ensuring that pensioners in Gibraltar are well provided for. The state provides in one way and we are lucky that an independent charity like Community Care also provides in its own way a household cost allowance. That does not mean that we can simply allow pension funds to fail without asking for responsibilities, without understanding what went wrong and without forensically analysing where the money had gone if there is to be a failure which is going to have a consequence on individual workers who have been working all their lives to save. Having been told by the Leader of the House that the monies paid to the Chronicle, in exchange for the lease that it has not yet transferred, were for it to deal with its financial issues, the Government clearly have got themselves involved in this matter. The Government cannot now turn its back on those who stand

to lose out. If the Gibraltar Chronicle pension scheme fails, it will be an unprecedented failure in our economy, the impact of which will be felt by few but will be so severe that it cannot be ignored.

I turn now to telecommunications. In respect of telecommunications, I see I am amusing the Chief Minister as much as he amuses me. In respect of telecommunications, we have seen in the past year the rise of an independent telecommunications company now providing fixed, mobile and internet services in Gibraltar. There are now, therefore, three internet service providers in our community. The main concern of those of us on this side of the House is that we have read suggestions that the Government may be considering selling its shareholding in Gibtelecom. Those remarks should go nowhere. We believe it is imperative that the Government should continue to hold 50 per cent of the shareholding in Gibtelecom. This is an important revenue stream for the Government, which this year has produced another £3 million of income, and given the importance of online gaming, and therefore, the quality of bandwidth and telecommunications available on the Rock, an important part of all Government economic policy. We have also seen during the course of this year the opening of new numbering patterns, which allow longer numbers and which will have a positive effect, no doubt, in the long term. I, like most, have only now just started to get used to dialling the 200 before the five digit number. Most of us will still remember the days when we had only to dial four numbers to communicate ourselves with other subscribers in Gibraltar. There may even be some in this House who remembering dialling three, I confess I do not. The ability to do business in a modern world, depends on the ability to communicate effectively. The importance of a resilient telecommunications service being available in Gibraltar is essential to the survival of our businesses and, therefore, at the core of our economic progress. For that reason alone, Government have an important stake in ensuring that they retain an influence in that market. We are committed to the retention of the shareholding in Gibtelecom for as long as European competition rules do not prohibit that, and I would seek confirmation from the Members opposite that this is also their position.

I want to consider now my responsibilities in respect of industrial relations. I must say that the hon Gentleman's system or manner of negotiation when the employees who are negotiating with their employer are Government employees, leaves a lot to be desired. During the course of last year's Budget address, the Chief Minister told us that officials had already been working on a root and branch review that he told us was on-going in respect of the Customs Department. A whole year later there has been, not just no progress whatsoever in respect of that review, but a wholesale abandonment of it. The Government made their position clear, as usual. It was what Mr Caruana wanted or there was nothing to talk about. The members of the Customs Department have decided that they want to stand their ground. The Government now say that the whole process is at an end if Government's proposal has been rejected. That is not negotiation, that is strong arm tactics. That is to say to people, "it is my way or the highway". Although, I guess it does explain why the Government is not advancing rules to prevent bullying in the workplace. It would totally cramp the ability of the Leader of the House to conduct negotiations in his usual way. Last year it was the City Fire Brigade and the Ambulance Service, this year it was the Customs Department, who next? The fact is that the Chief Minister talks about consultation, about improving the terms and conditions of those employed as public servants et cetera, but the long and the short of it is that when it comes to it, either because he will not allow them to have a party on office premises, or because he is not prepared to negotiate unless people accept what he wants, this is a Government of imposition, not consultation, in respect of the individuals who are its own employees.

I will turn now to those areas of responsibility covered by Mr Licudi. I know he regrets not being able to be here today, to hear the various speeches of the hon Members opposite. I will start with the portfolio of sports and leisure, caveating this intervention with the fact that I am speaking before the Minister

with responsibility for that portfolio. We on this side of the House take this opportunity to wish the very best to all the sportsmen and women who are leaving Gibraltar for Aaland on Friday 26th June, to compete in the Island Games. This is the culmination of many months of practise, sacrifice and hard work. I am sure that they will all do Gibraltar proud, as always. Credit must be given to all the staff of the Gibraltar Sports and Leisure Authority for the work they do for the benefit of all our sportsmen and women. There is always more that could be done, however, by the Government themselves, to assist our athletes. One particular lacuna in our sporting budget is the absence of meaningful assistance to those sportsmen or women who aspire to elite status. By elite status, we mean achieving standards of excellence which would allow them to compete at the highest level of international competition. It would appear that all or a substantial part of the efforts are directed at mass participation in sports. Mass participation is essential. It leads to enjoyment by a large proportion of the population, as well as health benefits. But support for those who aspire to make a career in sports is not something that needs to be sacrificed. There is room for both. Clearly, however, additional funding is required for this purpose. It would not be right to eat into the existing budget. I would therefore urge the Government to make available sufficient funds to enable an elite athlete's programme to be started. The benefits of such a programme are not confined to the achievements of the individual athlete. Sporting achievement internationally is important for Gibraltar as a whole. We would also urge the Government to provide a greater amount of funds to bring international competition to Gibraltar. Having Gibraltar as part of the annual international calendar for a particular sport, brings prestige, recognition and encourages participation. The popularity of the annual darts competition, for example, which brings to Gibraltar the best players in the world, is something that ought to be emulated in other sports.

I now turn to employment. Problems with illegal labour continue to exist in Gibraltar. With an increase in employers and employees comes an increased need for greater vigilance. Illegal labour results in a loss to the public purse and in unfair competition. It must be stamped out. The Labour Inspectorate must be sufficiently resources with personnel and facilities, not just to detect illegal practices, but to act as an effective deterrent. The employer who knows that he will be caught and the penalty will be high, will think very carefully before indulging in such a practice. This is not the position at present. The Inspectorate is clearly overstretched and unable to deal with the amount of illegal labour present in our job market. The other Government inspectorate that needs to be adequately resourced is the Health and Safety Inspectorate. This fulfils an essential function. Unlike the Labour Inspectorate, where a breach of statutory provisions generally has economic implications, any breaches in health and safety measures creates a risk of injury or death. It is regrettable that the Government have again failed to give this area the importance it requires. There can be no excuse for the Government's inaction, or for their dismal failure to pay any heed at all to the recommendations of a jury, following an inquest into the death of a worker at Waterport Terraces. One of the Government's three health and safety officers retired in 2007. A vacancy appeared on 23rd August 2007 in the Bulletin of Circulars of the Government's Human Resources Department. Applications were invited from Government employees with relevant qualifications. Applicants were required to submit their application by 6th September 2007. Inexplicably, the notice was withdrawn after at least one application, that we are aware of, had been received by the Government. The Government decided to withdraw the vacancy and leave the department one man short. Why? Well, when questioned by Mr Licudi in this Parliament in April 2008, the Minister for Employment said that the Government withdrew the vacancy because they were undertaking a review of "health and safety generally, with a view of introducing reform in due course". The Chief Minister chipped in to the debate to confirm that the department would, indeed, be left one man short. He said, and I quote, "in effect there is a freeze". The Minister for Employment, probably to the annoyance of the Chief Minister, added that the review was going to be undertaken, quote, "very quickly". It is now almost two years since the vacancy was withdrawn and we seem to be no nearer to the end of this

review. This is one of those reviews, like the GBC review, for example, that go on and on for ever and ever with no end in sight. The impression this gives is that the Government use the term "review" merely as an excuse for their lack of political will to move on a particular area, or for their refusal to acknowledge a decision not to proceed. Perhaps for the word "review" we should just go ahead and read "freeze" or "stagnation". We also know that Ministers cannot be taken at their word when they promise in Parliament that something is going to happen "very quickly", or at least that their words do not have their natural and ordinary meaning. That is to say that when a Minister says "quickly", he means "slowly", when he says "soon" he means "in due course". We could joke about the Government announcing yet another review, but the fact that reviews take a long time in Government is no laughing matter. This is particularly the case in the area of health and safety. The seriousness of this matter was highlighted in an inquest which ended in March of this year into the death of a worker at Waterport Terraces. The Government's principal factories inspector is reported to have told the inquest that his department lacked adequate resources. After hearing evidence that there were only two inspectors to enforce health and safety regulations in all workplaces in Gibraltar, the jury recommended that boosting those resources would allow for frequent inspections at building sites, and reduce the risk of accidents occurring by ensuring that all contractors complied. When this matter was raised in Parliament by Mr Licudi, shortly after the inquest, the Government showed what we on this side of the House regard as a serious contempt towards the views of the jury and the legal process resulting in the verdict of that inquest. This is a Government that simply shrugs off recommendations with an attitude of "I know best, I will do this in my own time whenever I want, not when a jury tells me that I have to act". This is, in our view, a deplorable and irresponsible act by the Government. It is now time that the Government announce the outcome of the review and engage the necessary officers to ensure that a strong and effective health and safety inspectorate emerges. They cannot shrug their shoulders or wash their hands like Pontius Pilate any longer. Wake up Gibraltar, the safety of workers in Gibraltar is at stake as a result of the Government's failure to act. Moreover, the Opposition was concerned to have learned yesterday that there are workers at the Waterport Terraces site who are owed five months of wages by their employer, a sub-contractor of Brues y Fernandes. There will be an agreement on all sides of this House that if that is true, it is a situation that is totally unacceptable and portrays Gibraltar in a very bad light, especially given that this may be occurring on what is essentially a Government project, where the Government, we naturally presume, are paying on time. The Government must get to the bottom of this. These workers and all workers in Gibraltar must get paid on time. We should send a clear signal to all contractors and sub-contractors who wish to operate in our country, that there is no room in Gibraltar for the exploitation of workers. It is also worth noting from the Employment Survey circulated a few hours ago, that MOD employment is down 25.9 per cent in just one year. It is worth highlighting that the MOD has shrunk by a quarter in one year. A total of 207 jobs have been lost in the MOD in the year from October 2007 to October 2008. Only 128 of those, we are told by the hon Gentleman, went to SERCO. The important statistic is that of all the new jobs allegedly created this year, only 36 more Gibraltarians have found employment in the year to October 2008. That serves to put in its context the hon Member's pride in the fact that we provide so much employment for our neighbours, and that there are more people out of work in Gibraltar than simply what they like to refer to as "unemployables", who do not actually deserve to be ignored and blocked out by apparently dazzling statistics, behind which lie real cases of unemployed Gibraltarians getting short shrift from the administration.

I turn now to the Hon Mr Licudi's responsibilities for traffic. This is another area where again, the Government have once again failed this year. Despite their promises of announcements and action, motorists again face a summer of chaos and frustration. It is not as if they did not know what was going to happen. Not just us but many members of the general public have been warning the Government that the misery that gridlock on our streets causes, will visit us again this year like an annual ritual

which the Government, regrettably, seem to be resigned to accept. Let us be clear, this is not inevitable. Adequate steps can and should have been taken by the Government. Indeed, they have been saying they will announce their traffic management programme for many months. In his New Year's speech in January 2008, the Chief Minister referred to Gibraltar's perennial parking and traffic issues. He announced that, quote, "we will build new roads and parking facilities on a massive and unprecedented scale". That was 18 months ago. Where are these new roads and parking facilities? None have been built since January 2008. In this New Year's address, the Chief Minister stated, quote, "during the next few weeks the Government will be publishing its detailed, comprehensive and integrated parking and traffic improvement plan. This will include details of further car parks to be built and other new parking scheme, new roads, public transport initiatives and other related measures to deal in an unprecedented way, and on an unprecedented scale, with this historical problem." That was six months ago. What did the Chief Minister mean when he said this would happen "during the next few weeks"? Does he expect people to take this Government seriously when promises which are made again and again are not fulfilled? Measures were announced in January 2008 to deal with this problem on a massive and unprecedented scale. Nothing happened. Where did these projects which were on stream in 2008 go? They seem to have vanished into thin air like so many of Government's announcements. This year we were again told that measures will be announced to deal with the problem in an unprecedented way and on an unprecedented scale. But that was what they announced the year before in almost identical words. The reality is that this Government are not delivering on anything, whether it is tax reform, the publication of a traffic and parking plan or the opening of a new Theatre Royal, the Government say one thing and do no other. I mentioned earlier the chaos and frustration on our roads. This is particularly acute in summer as traffic increases and cars find themselves unable to leave Gibraltar into Spain in a timely and orderly fashion. There always seems to be an excuse for this. Last year it was industrial action by the Spanish border police. This year it was resurfacing works on the Spanish side of the frontier. It is curious how such problems always seem to coincide with an increase in vehicles coming into Gibraltar during the summer. What is clear is that the goodwill, the dialogue and understanding which we are told exists with our neighbours, are tempered by road works, strikes and any other convenient excuse. None of the excuses we get from the other side of the border can explain or excuse the Government's inept handling of Gibraltar's traffic problems on our side of the frontier. The Government want to promote air travel to Gibraltar. How can they possibly do that if passengers cannot get to the airport? Some passengers have missed their flights. Business people look on, bemused, as the flight from the finance centre that is Gibraltar takes off without them. Others have to carry their suitcases and walk, and whilst all this happens, the Government look on indifferent. In fact, indifferent might actually have been better than what they have done. Instead of realising the chaos that would ensue, we have now seen how Government have started to undertake works on Winston Churchill Avenue and the Trafalgar House area, Ragged Staff, in peak season. Have the Government taken leave of their senses? Or is it that Mr Caruana enjoys the plush surroundings and the air conditioning in the Jaguar so much that he is actually setting up the traffic chaos so that he can spend more time with his beige leather? Beachgoers who enjoy a day on the east side beaches, apologies Mr Speaker, for insulting the intelligence of many by calling Sandy Bay a beach, nonetheless, face a patient and frustrating wait in their less plush vehicles, as they struggle to get home in the evening sun, but are faced with almost never ending queues. Of course, any beachgoer who may wish to take an alternative route through the Dudley Ward Tunnel will again be disappointed. Another year, it is now seven, and the gates to the tunnel remain obstinately and firmly shut. The light at the end of this tunnel remains firmly obscured by Government smokescreens. The tunnel closed after a tragic and fatal accident in February 2002. By all accounts, sufficient time has passed for the necessary steps to be taken to re-open the tunnel. But it is still closed. What is most extraordinary about this is that not long after the tunnel closed, the Government

were giving the impression that the re-opening was imminent. They still try to give that impression today that the opening will happen soon. Sadly, no one believes any of that any more. I suppose we should just pause and remind ourselves that "soon" meant "never" in the GSD lexicon. But the fact that Government are discredited and the vocabulary assigned opposite meanings to the natural and ordinary meanings of words, is no consolation for the long-suffering motorist. In March 2003, the Hon Juan Carlos Perez raised in this House the question of the works required to re-open Dudley Ward Tunnel. The Hon Mr Britto, the then Minister for Public Services, gave this response, quote, "Government have considered in some detail the various recommendations and options that were submitted by the appointed consultant on the work that is being considered as having to be undertaken in this area before a through-flow of traffic can be re-established. A preferred solution has now been identified from the various alternatives that were submitted." End of quote. By March 2003, Government had received the report, considered the various recommendations and options and identified a preferred option. Alas, nothing happened and the tunnel remained closed. In January 2004, nine months later, the matter was again raised, but this time after the General Election, by the Hon Lucio Randall. The Hon Mr Vinet, who was by then the Minister for Roads, gave this response, quote, "Government have considered in some detail the various recommendations and options that were submitted in the report prepared by the appointed engineering consultant on the work that is considered necessary as having to be undertaken in this area before a through-flow of traffic can be re-established. A preferred solution was identified from the various alternatives that were submitted." End of quote. So we were again told, in case we had forgotten what they had told us a year earlier, that Government had received the report, considered the various recommendations and options and identified the preferred solution. Alas, nothing happened and the tunnel remained closed. In June 2006, the Hon Mr Randall asked the same question, the six months had passed and he was able to. He was told, this time by the Hon Mr Netto, quote, "Government have considered in some detail the various recommendations and options that were submitted in the report prepared by the appointed engineering consultant on the work that is considered necessary as having to be undertaken in this area before a through-flow of traffic can be re-established. A preferred solution was identified from the various alternatives that were submitted." End of quote. Yes, identical, absolutely. Again we were told, in case we had forgotten from three years earlier, that Government had received the report, considered the various recommendations and options and identified a preferred solution. This is beginning to sound like something out of Monty Python. But I do not want to start calling people by names, refer to John Cleese again, because we had trouble with that last time. But alas, nothing completely different happened. In order to keep Mr Netto on the ball and see if he remembered what he had told us a year earlier, and what his Colleagues Mr Britto and Mr Vinet had told the House going back to 2003, Mr Netto was again asked in 2007 by Mr Randall, when Dudley Ward Tunnel would re-open. We were not surprised to hear Mr Netto tell us, "Government have considered in some detail the various recommendations and options that were submitted in the report prepared by the appointed engineering consultant, on the work that is considered necessary as having to be undertaken in this area before a through-flow of traffic is re-established. A preferred solution was identified from the various alternatives that were submitted." It is, of course, identical to the answer given previously. Alas, nothing happened and the tunnel remained closed. When after the Election of 2007 Mr Licudi tackled the then Minister for Transport, the Hon Ernest Britto, who was by then back in the job, about these answers, he told this House that this shows that Government had been consistent. Yes, the Government have been consistent. Consistent in their political deception of the people of Gibraltar. Consistent in giving the misleading impression that action was about to be taken, when nothing was further from the truth. Consistent in their incompetence on this matter, consistent in their failure to provide a simple solution to a simple problem. In fact, given that most of us here are bilingual, there is a saying in the Spanish language which applies to Dudley Ward Tunnel, which is that this is taking longer than "el parto de una burra". If

there is one thing that this Government is, it is being consistent, consistently poor in handling Gibraltar's traffic problems. Three Ministers over seven years, three Shadow Ministers over seven years, no effective action at all by three GSD administrations. When are words going to become action? When will the considerations give rise to words? When will Dudley Ward Tunnel finally re-open? One word of advice, if the hon Member opposite tells us it will be soon, do not hold your breath. We do not want to have to change Speaker here like they have done in the United Kingdom. In fact, I see from the Estimates Book that the estimated £1.25 million that was going to be spent on Dudley Ward Tunnel last year, did not actually reach £64,000. Next year we see a predicted expenditure of £3 million on that project, let us see what actually happens.

As I did last year, before I conclude, I should also like to add my thanks on behalf of the people that I represent, that Mr Bossano represents and that Mr Licudi represents, to all public servants in the Ministries which I shadow and which are shadowed by Mr Licudi in the running of the public administration. As they know, and the hon Gentlemen opposite obviously hates to be reminded, all our criticisms are directed at the management of the administration by the members of the party opposite, not the hard work that is done by the public servants of Gibraltar. Now for something completely different. Once again, as I said last year, the unfortunate pattern of the past 13 years is set to continue. Not everything that the hon Members opposite do is wrong, but it is wrong that they take so long to get round to even the most basic things which our community requires of them. That has never been more evident than in their failure to have in place legislation for the tax reform, in time to implement it after the decision of the Court of First Instance, the repeated delays in the opening of the Dudley Ward Tunnel and the tax information exchange agreement with at least 12 OECD member states. Whether it is the running of a financial services centre, or the works to allow traffic to circumnavigate Gibraltar, everything that relies on decisions from the Government is delayed. Why? Because so many of the decisions are not taken so much by Ministers, who are little more than political heads of departments, but by one Minister responsible for everything, the hon Gentleman opposite. If the GSD Government were an airline, they would have gone bust having to pay under the new European rules for delayed flights. I commend delegation to the Leader of the House opposite, I commend to him that he should trust his Ministers to do a job, or get new ones, and I commend real action, purpose and progress for the community, even in the years that they have left as a Government until the next Election when we take over. The community cannot afford to be stymied for the next two and a half years whilst we prepare to take over. Action is needed now on basic infrastructure like traffic and our financial services legislation. Whether it is delaying in making the decision to actually build affordable homes, whether delay which is put down to the developers in actually delivering them, what matters to the people who are waiting to inhabit those homes is that delay, delay, delay, characterise the GSD and characterises their failure. Last year, I reminded the Chief Minister that John F Kennedy had said that we must use time as a tool and not as a couch. The hon Gentlemen have not yet got off the couch. It is time for them to stand up and move on. With a seriously eroded majority, the message from the public is clear, they would prefer to see them moving on. I can see why. A Government that promises so much and then delivers so little is running a Ponzi scheme of ideas, which renders the Leader of the House the veritable Madoff of the political world. During the course of the current session of the House, we have had to hear the Leader of the House refer to interventions made by me as "rubbish" and the Minister for Justice saying that submissions that I made were "stupid". I believe I have avoided insults and the invective generally in my intervention today. The public do not want to hear us calling each other names. I am quite happy to sit outside with the Chief Minister and call him every name under the sun, I am sure that he knows as many names to hurl at me as insults as I know to hurl at him. We would achieve nothing. That is not what politics is about. It is true that I have characterised the Chief Minister as a Basil Fawlty. There is nothing wrong in a debate, in my view, in doing that. The Chief Minister taught me that when he characterised the Leader of the

Opposition and myself in a number of different ways during the course of this debate, and others in other years. At the end of the day, to pepper one's contribution with friendly characterisations of that sort, may simply make it easier for those sitting opposite to at least pass the time whilst one speaks. But I confess, that I think that referring in debate to the interventions of each other as "rubbish" or as "stupid", really does very little other than to rubbish the ability of those speaking, to make their intervention in the debate more worthy and appropriate by the proper use of parliamentary language. The hyperbole and insults that led to the characterisation of our positions as "rubbish" and "stupid" came from the obvious frustration on the benches opposite, at having lost the political argument on the issues, but it does not advance their cause one bit. For that reason, I hope that the hon Members opposite, in their remaining interventions, and the Chief Minister in his reply, are more selective in their use of language than they have been to date. I think it is incumbent on all of us to try and make this Parliament a place of dignified debate, elevating the language that we use to the standards required of parliamentarians anywhere. I say to the Leader of the House and to the Minister for Justice that in their recent vitriolic attacks in the course of the debate in the first Private Members' Bill, they have both fallen short of the standard of debate expected, and that they have done themselves no credit as trained advocates.

I will say one more thing. We now also have for this session legislation to implement amendments to the Imports and Exports Act, to give effect to Budget measures which were announced last year. It is totally unacceptable for us to have to wait so long to see produced before us short pieces of legislation that give the necessary legal cover for the additional levies announced in Budget measures. Why is it that we cannot have published on the day that the Chief Minister gets up to make announcements, the pieces of legislation necessary to give effect to those announcements? If it is that the Chief Minister wishes to keep things so close to his chest that he does not even want legal draftsmen to see his measures, then, in my opinion, we should at least have the draft legislation a week or two after the Chief Minister has got on his feet and made the announcement. That is not so difficult and I am sure he will agree. If it is that he was in his office until after 10.00 p.m. last night, to put the finishing touches on his plans, then that shows a remarkable lack of foresight and planning, evidencing even further that the Chief Minister's economic policy is an ad-hoc patchwork of ideas, no clear strategy and reactive to the day to day. The effect of late legislation was most effectively seen on individuals by the failure to bring expeditiously, the necessary changes to stamp duty legislation some years ago, to give effect to the relevant Budget measures. In effect, the failure to bring the stamp duty legislation to the House earlier, when the announcement was made, had the effect of stagnating that part of the market where the changes were relevant, and actually catching up with some individuals who had been forced to progress with the sale of their properties before the legislation was published. When I invited the Chief Minister to provide some redress for those caught out, he refused to do so. In this legislative process which we will embark on to deal with the Imports and Exports Act, human considerations may not be so relevant, given that wholesalers will have been charging the new amount already. But sometimes individuals can get caught out and that is simply to perpetuate the unfairness.

So, it is right to say to the citizens of this community, "cast a cynical eye over the announcements made by the Leader of the House today. Look carefully at the detail of what we are being sold as fantastic economic performance. Understand what is happening to our finances and what the effect of that on the community that we are building is. See the Government's economic policy for the uncoordinated patchwork that it is. This is no clearly designed economic programme, but a patchwork quilt of different ideas hanging together with weak threads. Wake up Gibraltar, the future is nowhere near as bright as the Government would have us believe."

Finally, whether or not we agree with the purposes proposed for the expenditure set out in the Appropriation Bill, the manner or speed of the implementation of the policies of the party opposite,

Gibraltar cannot be without an appropriation, and as such, the Opposition will be supporting the Bill with the caveat that our support for the Bill should not be interpreted as suggesting that we should support any subsequent Bills that may come to this House to implement some of the policies set out today. I wish to apologise to Members opposite who I shadow, for having had to reply to them without having had the opportunity of hearing what they have to say, but they will understand that the circumstances of today are extraordinary. I am grateful.

The House recessed at 1.17 p.m.

The House resumed at 2.30 p.m.

HON E J REYES:

Mr Speaker, in keeping with our commitment and within the responsibilities that pertain to the world of culture, this Government continue to allocate substantial amounts for the improvement of existing premises, and also to provide, by way of grants, support to groups and individuals, together with additional consultative and logistical support as and when required. I am very pleased to inform this House that, now in its third year, the popular Autumn Festival is an illustration of what this Government have established to promote music and the arts generally, by offering a range of events that caters for different tastes and the different age groups. The number of annual events like these taking place in Gibraltar, create greater awareness in the world of culture in its many forms, and its popularity is ever increasing. The 2008 Autumn Festival was comprised of many varied events. The programme included the much admired musical "The Sound of Music", a poetry competition, the International Art Exhibition, a performing arts competition for young people, a book launch, an illustrations exhibition, a cello recital by Vienna Soloists and the popular Zarzuela, this time it was "La Verbena de la Paloma". This year's Spring Festival again offered us a varied and exciting programme. I was especially thrilled last week, to see the well-known Shakespeare play "Romeo and Juliet" performed by the United Kingdom company, Shakespeare 4 Kidz. Last year we had "The Tempest", which was also a great triumph, and for these occasions over 3,000 schoolchildren attended the performances, and these have encouraged us to once again include Shakespeare in this Spring Festival. The production ran twice daily for a period of four days, with entrance to the event being free of charge for all schoolchildren who attended accompanied by their teachers. We also provided an evening for members of the general public, as we wished the whole community to enjoy what proved to be a performance to remember. We also continue to sustain literature by holding, for the third year running, a short story competition for schoolchildren. I am particularly delighted to report now to this House, that the multi-cultural culinary evening, known locally as "Calentita", was held at Casemates Square and ended with a spectacular laser and fireworks display, thus adding to a splendid festival finale. Other events which formed part of the Spring Festival, and were enjoyed by the public, are the Spring Art competitive exhibition, a Fund Day for children, dance productions, fashion shows, choir performances, yet another Zarzuela production, this time it was "La Tabernera Del Puerto", a classical concert, rock concert, drama productions and a popular photographic competition. Another new addition this year was an afternoon of family entertainment, which was held at the King's Bastion Leisure Centre last Friday.

Improvements continue to be undertaken at our much loved Ince's Hall. Installation of new lighting system, projection, recording and technical equipment has now been finalised, and this has proved to be popular with the performing arts groups. Furthermore, we shall now continue with enhancements to the conventional auditorium and we shall improve the emergency lighting system, together with the replacement of the old security system and an updated emergency alarm system. We will also be working towards the installation of new fire curtains and hope to include xxxxxx enhancements to the stage and auditorium areas. Over this past year, the Central Hall maintenance programme continued with works being carried out to upgrade

the plumbing system. As a direct result of these works and other enhancements, this venue continues to be extremely popular and is used continually throughout the year. To enable our users of the Casemates Exhibition Gallery, the Ministry for Culture has continued to improve the existing exhibition lights. The exhibition galleries have been used extensively throughout the year, and because of the added fifth vault, the Gallery is now the official venue of the International Art and Spring Art Competitive exhibitions, as well as a newly established Young Artist Competitive Exhibition. I am extremely pleased to say that the latter was a resounding success and reflects this Government's continued effort in creating a platform for both the young and the advancement of arts in Gibraltar. The Retreat Centre has continued to provide a platform for a wide range of different social and cultural activities, and continues to provide rooms to various groups and individuals in our community and to our visitors.

Other popular events and festivals will continue to be held throughout this year. I am pleased to say that the Ministry of Culture is now supervising the last and final arrangements for the 2009 Miss Gibraltar Pageant to be held this weekend, the Summer Nights entertainment programme at Casemates and the popular fair during August at Commonwealth Parade. These events will all lead us nicely towards National Week and National Day itself, and which are now already well in the planning stages. Further details of these forthcoming exciting projects and other popular events will be released as and when we are ready. I firmly believe that this Government's continued pledge to enhance and cultivate the arts has helped deliver a much greater regularity of events and occasions for the cultural enrichment of our community as a whole. I wish to take this opportunity to express my appreciation to all those entities, associations and individuals who give so generously of their time in producing and providing cultural events for our enjoyment. Their ability and eagerness is fundamental and helps us to continue to develop our own cultural identity of which we are all so proud.

The John Mackintosh Hall continues to fulfil its role as Gibraltar's cultural centre. Its meeting rooms, exhibition rooms and theatre are used by all sectors of our community, and the Hall's facilities provide an essential venue for a wide range of users. It is therefore for this reason that we have ensured the continuing investment, not only in the fabric of the building, but also in the facilities and equipment of the Hall. The infrastructure of the building continues to be refurbished and last year the works in respect of the complete refurbishment of the downstairs public toilets was carried out. Furthermore, we are currently in the process of replacing the entire plumbing system to the main areas of the John Mackintosh Hall. This includes both the fresh water and salt water supply, and it is being carried out with little or no noticeable disruption to the public, no mean feat, given that the Hall remains in daily use. The Hall's Children's Library was redecorated last year and new fun seats for children in the shape of stacks of books have been provided. I am aware of the distractions that children have where electronic games, in particular, compete with books and other reading material, but the library tries to attract and maintain the attention of our future readers, by not only providing interesting reading material, but also by providing an attractive environment for them. Sufficient funding for the purchase of library books so as to maintain the collection up to date is essential. Therefore, we will continue to invest in the collections of the library, not only for children, but also for the adults who regularly use our facilities. Another major investment at the John Mackintosh Hall has been in the theatre. This Parliament will be aware that in 2007 a stage extension was purchased for use in the theatre and this has proved to be a very popular asset. In order to facilitate the setting up and dismantling of this extension, and to minimise the wear and tear on the auditorium floor, purpose-built seats were purchased for the two front rows of the auditorium early this year, and these will be fitted as soon as the necessary preparatory work is carried out on the floor of the theatre to receive these seats. The opportunity was taken to replace the seats in the Dress Circle, which were the original ones dating all the way back to 1964. Half of these seats have also been fitted with removable fixtures, so as to accommodate the necessary

conversions that take place in the Hall during its use for the counting of ballots in elections. The remaining seats were replaced with those that had been removed from the main auditorium. It saddens me to report that towards the end of last year, the John Mackintosh Hall was plagued by the antics of vandals, but I am now pleased to say that this seems to have stopped, thanks to the efforts of the staff working at the Hall. In order to assist in this preventive work, and also to increase the security of the building, we shall be considering investing in a new fire or intruder alarm system, and even possibly, CCTV. Our on-going maintenance programme of the John Mackintosh Hall will continue and, possibly, this will include having the premises painted, as well as now refurbishing the first floor toilets. I am conscious of the fact that the architects of the John Mackintosh Hall designed it to be cool in the summer, but the consequence is that in the winter the users of the library are saying that it can get very cold. We will, therefore, look towards carrying out modifications to the climate control system that was installed in the theatre a few years ago, so that we may expand it to include the library, and thereby, make it a more comfortable place during the cold weather. The maintenance programme of the Hall for the next few years will include the replacement of carpets or the resurfacing of floors in the most commonly used rooms. In addition, repairs will be carried out to the library floor, which has a raised area where the cement has expanded due to the rusting of the reinforcement steel bars in the floor. Even if all the desired works are not completed within this financial year, a long-term maintenance programme has now been identified, and the end result of this will greatly enhance this popular cultural venue.

I will now report about matters pertaining to my responsibilities within the Ministry of Heritage. I am pleased to be able to report that work has continued during the course of this last financial year, in the many spheres of heritage that I have previously reported upon. The Heritage Action Committee, which is the interface between my Ministry, other Government departments and the Gibraltar Heritage Trust, has continued to meet regularly and a number of projects have reached or are reaching completion. One such project was the new museum wing dedicated to natural history and the work being done under the Gibraltar Caves Project. This project, it will be recalled, is headed by the Gibraltar Museum and has brought huge international profile to Gibraltar, as a result of the scientific discoveries that have been made. Its success has not only been reported in this Parliament, but has also been published in the international and local press. As part of our efforts to develop the research potential of this project, and achieving the full integration of the control and management over important heritage sites, we have instructed the Heritage Division to carry out an exercise into the stewardship of heritage sites around Gibraltar. This will be linked, in the part that pertains to caves, to the cave management plan that has been previously announced in this Parliament. Returning to the new wing, the new wing at the museum has been a monumental task and I must acknowledge the effort that has gone into its production. I visited the works at a very early stage and have been amazed at the remarkable transformation that has taken place in just a few months. We are extremely proud to have had the new wing officially inaugurated by the Chief Minister on 4th June, and the new displays which are now fully open to the general public, means that visitors to the museum will have an engaging view of an aspect of Gibraltar's natural and cultural heritage, that is the product of the work of Gibraltarians, and this was carried out in collaboration with major international institutions. I should like to add, that this work has not only produced publications, but the new displays have generated a mass of new artefacts which required a special new storage facility within the museum, and these have increased the assets of the Gibraltar Museum and brought them to a level comparable to that of major national museums. We should all be proud of the achievements.

It is for these reasons that we are continuing to provide support this year towards the further development of museum galleries and supporting infrastructure for its collections. Linked to all this, will be this year's Calpe Conference. Members will recall that this is a significant year, in that it is the 150th anniversary of the publication of Charles Darwin's "Origin of Species", and it is

also his 200th birthday. The Calpe Conference, masterminded two years ago, has been designed to coincide with these anniversaries. It will be held between the 16th and 20th September, and the theme will be "Human Evolution – 150 years after Darwin". I am very pleased to announce that the response to the conference, which has been included as part of the international calendar of events, has been fantastic. At this stage, still some three months before the conference, I am assured that over 40 scientific papers have been accepted for oral presentation at the conference. The invited speakers include the world's leaders in this field, and this bears further testimony to the pivotal significance of Gibraltar in this field worldwide. Over the years my predecessors have commented on how one of the Government's aims was to turn Gibraltar, and the Museum in particular, into an international centre of excellence in the field of pre-history. I am confident in saying, in this very significant year, that this is no longer an aim because we have now achieved it. The task ahead is now to maintain this status and build on it in years to come.

I briefly touched upon the study that we are embarking upon regarding the many heritage sites. I mean those that are unofficial and scattered across Gibraltar. They range from Second World War bunkers to tunnels, walls and so on. As the study develops, we will identify areas that merit special attention, either because of their value or their condition. These will be assessed on merits and action taken to protect them, and as appropriate, make them accessible to the general public. We are embarking on a project that will have a recurring cost, but we need to tackle it and therefore we are bold enough to make it start. One project that we expect to commence this year, and which will take a number of years to complete, is the restoration of the Moorish Castle complex that is currently part of the prison. As and when the new prison is completed and the transfer commences, we will provide security in the vacated monument and will make a start with the archaeology of the site. It is the first and very necessary step. Its aim is to recover what there is of value, conserve and restore it as appropriate. With the information obtained, we will then be in a position to make informed decisions regarding the elements that may need to be removed, perhaps because they deface the original, and how the new site will be integrated into the parts of the castle that are already open to the public. Our aim is to develop the entire site as a heritage and tourism product, that will link the Upper Rock with the old town all the way down to Casemates. For this reason, we are including a provision for archaeology at Moorish Castle within this financial year. One monument that will continue to receive our attention, as it has done already for the last two years, is Parson's Lodge. This has already become and important field centre for the museum. During this year we hope to take the next step, which is to develop the monument as an educational facility for schools. Officials of the Heritage Division have already been in discussion with the Department of Education on how best to achieve this, and it is hoped that the use of this site by local schools will start during their forthcoming academic year. Parson's Lodge will become a base for outdoor educational activities. Plans for works to equip this facility as an outdoor facility, which will cater for school groups engaged in experimental learning activities, are well in hand. These activities will be mainly historical and also environmental in nature, but it is envisaged that this site will also be used for other activities, such as art. Many activities that are now carried out in various locations around Gibraltar, and sometimes even in Spain, will be able to take place within the range of educational settings provided by this historical monument, thus extending the education provision afforded to our schoolchildren. Over and above this, we will continue to provide support for the maintenance, restoration and conservation of this monument that is becoming a pivotal one in our heritage development initiative.

The Gibraltar Museum's education provision has continued to grow over the last year. A programme of supporting material, including resources, hands-on workshops, guided tours, site visits and presentations, is now well established and is being made good use of by all school sectors in Gibraltar. During this last year, close to 2,000 students were engaged directly in educational activities provided by the Gibraltar Museum. These

included various subjects, mainly historically-based, such as the Great Siege, Trafalgar, castle and fortifications, pre-historic Gibraltar and so on, and also environment/ecology-based, such as field excursions to the Upper Rock, seashore, talks on environmental issues et cetera. Although other aspects have also been covered, such as art, fashion and design, we shall endeavour to expand upon these. All the schools in Gibraltar have made use of this educational provision during the last year, which also includes direct support for teachers by way of resources and information. The drive to create a pool of locally-based educational resources is continuing, following our success in the module on Prehistoric Gibraltar which was created in partnership by the Gibraltar Museum and the Department of Education. A working group has been set up with the Department of Education, to coordinate the creation of new educational resources, and a shortlist of proposed locally-based topics has been created. These will include in the next module items on Nelson and the Battle of Trafalgar. This module will provide supporting resource material for all school sectors, including student and teacher on-line resources.

Another central historic building which will continue to receive support for its conservation is the Gibraltar Museum itself. Members may not be aware that this is the only building in Gibraltar that retains examples of all the periods of urban life on the Rock. If only for this reason, it deserves special care and attention. Several years ago we restored the Moorish Baths in the basement, and this year we will undertake general maintenance to the baths, as part of a planned conservation programme. Last year, we completed the repair and replacement of all faulty roofs in this building, we have installed new security cameras and alarm systems, and we will continue to invest in the fabric of this historic building. These are our major projects in heritage for the coming year, but we will also continue with our on-going schemes. These include support for heritage publications, the development of the Institute of Gibraltarian Studies, educational resources and training of personnel. In doing so, we will continue to promote the main pillars of heritage, that is, research, education and conservation, and which I highlighted to Parliament last year. Gibraltar is a heritage jewel and we have great Gibraltarian professionals up to the task of protecting and promoting it. With this team, and the continued cooperation of the Gibraltar Heritage Trust, and indeed, many heritage enthusiasts, the Government are confident that their support for heritage in Gibraltar is an important investment in assets that will be for the benefit of present and future generations.

If I can now turn to sports and leisure, I wish to report that during the 2008/2009 financial year, the Gibraltar Sports and Leisure Authority continued its operations to build upon and improve the work carried out in previous years by the Sports Department. It has done this in the provision and management of sports facilities, including the community use of schools scheme; technical support, assistance and advice to schools and sports associations; training, support and sports projects through the Sports Development Unit; financial assistance through the Gibraltar Sports Advisory Council; the provision of facilities for non-sporting events and the promotion of health and fitness generally. Teams from abroad have again visited Gibraltar to play and train on our impressive facilities, and this is greatly assisting the development of our local sports, as well as enhancing Gibraltar's profile overseas.

The Bayside Sports Centre facilities are now being fully used by a large number of members of our community, and their popularity and frequency of use is increasing on an almost daily basis. The boathouse and water sports facilities are still only in partial use, but full use is expected shortly, when snagging problems with the building are finally solved. I ought to add that the multi-sports games area, that is the area situated between the Tercentenary Hall and the hockey pitch, which was specifically designed to double-up as a concert venue with a capacity of up to 3,000 people, has again been very successfully used for non-sporting events. These included a reggae festival in early August and the International Dog Show last September.

The Sports and Leisure Authority continues to provide support, assistance and advice to schools and associations, in the provision of facilities and equipment and also in organising events such as the two international darts tournaments, and the very successful fitness awareness day. Other international sports federations, like the European Division of the Commonwealth Games Shooting Federation, chose Gibraltar as the venue to stage their championships. The United Nations of Ju Jitsu also chose Gibraltar as the venue to stage its annual congress and competitions. These were held last October, and the European Federation of Netball Associations also chose Gibraltar to hold it's under 17 championships. All this demonstrates the standing that Gibraltar has now achieved at an international sports level. The Ministry for Sport will continue to support such initiatives.

The Gibraltar Sports and Leisure Authority has also continued managing certain operations in the new King's Bastion Leisure centre. The Authority currently provides supervisory services for King's Bastion Leisure Centre Limited and manages the ice-skating rink, the youth lounge and disco area, the latter in partnership with the Gibraltar Youth Service. As from October 2008, the Authority is also managing the fitness gym facilities at the Leisure Centre and this has proved to be extremely popular with over 800 different persons using the facilities. I am very pleased to say that the Leisure Centre is proving to be a great success as a family orientated facility, and many Gibraltarians, and even an ever-increasing number of visitors, are enjoying its facilities. As an expansion of the services being provided, the Authority arranged for ice skating classes as part of its Summer Sports Programme and beyond.

The Sports Development Unit successfully expanded the Summer Sports Programme for youngsters last year, which included a wider variety of leisure and educational activities. This has truly been a success story and I can proudly say that we will continue to expand upon it this year, as even more activities will be available, especially with the use of all the new sports and leisure facilities. Full details will be made available as soon as next week through the publication of a detailed booklet that will be widely circulated in all schools. Another popular activity has been the physical activity sessions, including swimming and aquarobics for the over 50s, that are jointly organised with the Senior Citizens Association, and which provide the young at heart with suitable sporting equipment, facilities and training in a safe and fun atmosphere. This year the Authority will be assuming responsibility for running the Stay and Play Programme, previously managed by Social Services, now known as the Care Agency, and which provides for disabled children. A very successful second heath and fitness awareness day was also organised recently, in partnership with local athletes. A large number of persons of all ages participated on the day, and its success was expanded with an awareness campaign before and after the event through the local media. The aim of the event was to encourage the local community to lead active lifestyles and to provide information regarding the facilities, resources and programmes available. Again, I feel I must take this opportunity to thank everyone involved in this project.

The number of National Coaching Foundation courses, together with other generic coaching courses from the British Sports Trust, SAQ International and the Youth Sports Trust, run for local coaches continues to increase in order to meet demands. Assistance and support has also been provided to sports associations in the organisation of accredited coaching qualifications in athletics, basketball, football, shooting, squash, badminton, volleyball, swimming, rowing, sailing, table-tennis, lawn tennis, gymnastics and rhythmic gymnastics and climbing. The tutors delivering these courses have included, in appropriate cases, separate school in-service training days, thus ensuring that many teachers and coaches have been able to achieve some level of accredited qualifications, which will assist in the development of sports in Gibraltar. Our objectives remain to eventually achieve as much self-sufficiency as possible in the delivery of coaching and training. The Sports Development Unit also introduced schemes for outdoor adventurous activities, to incorporate the older age group, and this has been done in

partnership with the Care Agency and the Cardiac Rehabilitation Group. Additionally, the Sports Development Officer is now a member of the Gibraltar Health Authority's Health Promotions Committee. The two members of the GSLA staff who achieved accredited UK tutor status for the "100% ME Drugs Free Programme", following a visit last year from UK Sport officials, have also been delivering workshops and providing support to all sporting associations. But in particular, support has been offered to those associations participating in the 2009 Island Games to be held in Aland, Finland, where notice has already been received that anti-dope testing will be carried out. I trust this House is unanimous in wishing our Island Games participants all the best, and if all hon Members agree, I will personally convey this message to them when they depart from Gibraltar Airport early tomorrow morning. In addition to the Island Games and the Strait Games, Gibraltar sports will again participate this year in many official international competitions. These will include the 2009 hockey, basketball, sea angling, darts, ten-pin bowling, netball, athletics, swimming, snooker, pool, rowing, shooting, squash and triathlon championships. The Gibraltar Sports Advisory Council, and in particular its sub-committees have been meeting on a regular basis. On the advice of this council, financial assistance has continued to be provided to sporting associations through the three funds available. Gibraltar, with the support of the Gibraltar Sports and Leisure Authority, will again be hosting international competitions during this financial year and other events, even if not all of full international status. This provides our local sportsmen and women with very practical and functional competition, and also serves to expose Gibraltar and all its assets, sporting and otherwise, to visitors. The most prominent international event for this year is the International Association of Ultra-runners 50-kilometre World Cup, which will be held in the autumn, that is, on 31st October to be more exact. There exists a commitment to host this same Association's 100-kilometre World, European and Commonwealth Championships during the autumn 2010. The 2009 championships were held in Belgium and last week I attended this event in order to receive the official IAU flag from its president at the closing ceremony. The IAU flag is now in Gibraltar's custody and will be proudly flown in our homeland during the 2010 prestigious events. This year Government will be providing necessary funding, as recommended through the Gibraltar Sports Advisory Council, to enable participation by a large number of teams from over twenty different sports to compete both internationally and locally, at different levels of officially recognised competitions. Further funding will be provided by Government to finance Gibraltar's continued participation in multi-sport official competitions, such as the recently held Strait Games, this year they were in San Roque, the Island Games 2009 to be held in Aland from 27th June to 4th July, and I will inform the House that I hope to visit and personally, on our joint behalf, support our worthy athletes in this special event. We also look forward to the Commonwealth Games in 2010 which are due to be held in India. In other words, Government on the advice of the Gibraltar Sports Advisory Council will be maintaining the financial provision to enable our sportsmen and women to represent Gibraltar internationally, and I know we can trust them to make us all proud. Not only that, but sports development funding will again be provided, which together with the involvement of the Sports Development Unit and the efforts of our local sports associations, will enable a large number of sports specific coaching courses and other development projects to be held in Gibraltar.

Sports facilities per se, have been greatly enhanced with the coming into full operation of the Bayside Sports Centre facilities. The excellent cooperation that has been built up over many years between the Sports and Leisure Authority, the Education Department and local schools, can justly be deemed as positive, as is the continued development of the community use of the schools' sports facilities scheme. Members will have recently seen the Official Notice inviting tenders for the refurbishment of Victoria Stadium Sports Hall, sometimes commonly known as simply the old sports hall. It is estimated that works should be completed in time for the start of the winter 2009/2010 season. I look forward to once again playing as part of this Parliament's 5-a side team in the GBC Open Day match at the Victoria Sports

Hall, where together with the support of the Speaker, the all party team should hopefully win. Funding is once again being provided to refurbish vacant premises for allocation to associations and clubs, although this is not restricted to sporting societies, but is also available for premises in general. In connection with this funding provision, a study is continuing, in partnership with our Heritage Division, looking into the possibility of refurbishing other areas on similar lines as North Jumpers Bastion. I am also happy to announce that the existing project to provide rehearsal facilities for local bands and musicians is also very near full completion. This is being carried out in conjunction with the Rock on the Rock Club and the Gibraltar Youth Service, although the area currently used by the Rock on the Rock Club in Town Range has already been put into very good use. Government see these projects as a means of supporting the very valuable and active volunteer sector that Gibraltar can boast about. The scheme to refurbish Lathbury Barracks Retrenchment Block is very near completion and this will, hopefully, during the course of this year, provide extra premises for allocations to charities, clubs and associations.

In partnership with the Social Services Department the new swimming pool designed primarily for the elderly and disabled, and also for the teaching of non-swimmers, has now been successfully operational. Exclusive use of this facility for the elderly and disabled is made available over the summer period, with shared use by the Gibraltar Amateur Swimming Association, educational establishments and the community during the winter months. The Sports and Leisure Authority also has responsibility for the old 25-metre swimming pool. As a result, swim joggers, sportspersons and all citizens wishing to use the pool, no longer need to pay a fee to do so. Both swimming pools have been extensively and successfully used and the number of users, in comparison with past years, has increased threefold. This has also meant that the Gibraltar Amateur Swimming Association has been able to continue their work in the promotion and development of swimming, without the financial pressure and responsibility they have been shouldering until recently. In other words, this is a move that has benefited everyone.

Leisure facilities also continue to receive a high level of support. The King's Bastion Leisure Centre has become a huge success and continues to prove itself to be a very worthwhile investment. In order to improve the amenities available in Gibraltar, funds have also been provided to enable the Authority to develop other recreational and leisure areas, including playgrounds, for which the Authority will be assuming responsibility. With regards to playgrounds, a thorough review was carried out with a view to not only determining the refurbishment requirements of present facilities, but also the provision of new playgrounds in new locations. Government are presently considering this extensive report. During 2008/2009, the Gibraltar Sports and Leisure Authority Board has met on several occasions and has been considering projects, as well as other recommendations and suggestions, to improve the service being provided to the local community.

This House will have recognised the important advances that have been made in sport and leisure locally during the last 13 years of GSD Government. I am pleased to say that advances will continue because we fully recognise that sport and leisure make a very valuable contribution to Gibraltar's quality of life. We will, therefore, continue to improve our facilities and to support local sporting associations and others in their efforts. Government recognise and are very appreciative of the very significant work and commitment demonstrated by the large number of volunteers involved in the running of sporting associations, clubs et cetera. Their help ensures that sports and recreation thrive and develop in Gibraltar for the enjoyment and benefit of all. It is my personal desire to continue building upon the excellent working relationships we have established with all sectors of our sporting fraternity.

HON C G BELTRAN:

Mr Speaker, I will be reporting to this Parliament on my ministerial responsibility for education and training, giving an account of progress during the past financial year, pointing to future developments planned by the Government, many of which are either totally or partly budgeted for the forthcoming financial year. I start with developments in the 14-19 curriculum area. The consortium arrangement set up between both secondary schools and the Gibraltar College continues to work extremely well in its dual role of steering group on 14-19 matters on the one hand, and also advising on widening subject choice and participation on the other. My Ministry continues to keep a watchful eye on the developments on the 14-19 front in England and Wales. There have been no changes of any significance since last year, except that the functional skills tests, originally planned for first teaching in September 2010, will no longer be used as compulsory gateway examinations for the GCSE, but will instead be incorporated into the GCSE specifications as from 2010. They will still be available as stand-alone tests however, and the Department of Education and Training is currently evaluating functional skills to assess their possible role within our system. I should add, given the number of changes and reforms in curricular as well as other areas of education, that always seem to be pending in England, that my Ministry's long-standing policy of waiting, assessing and evaluating, and only then deciding which initiatives to adopt, is the only prudent option and one that has served us well over many years. As things stand, a review of the A-levels is planned for 2013 and no decisions will be taken until then.

Professional development. Keeping our teachers up to date with developments and advancements in the field of education is vital if we are to maintain our high standards. Teachers' professional development opportunities, therefore, continue with two cohorts of teachers completing the second stage of a leadership and management course, custom designed and accredited by Durham University, and also participants will be given the choice of opting for an Executive Masters in Education during the course of this financial year. The content of these courses have been tailored to suit the local educational context, and include lectures and presentations by recognised experts in the respective fields dealt with in the course. These include leadership and management, special needs and assessment.

I now go on to teaching and learning responsibilities, or the TLRs as they are known locally in the profession generally. As envisaged, the TLR structure in schools has been successfully achieved. The large majority of the 202 posts in this restructure have either been filled in the initial assimilation, or slotting-in stage, or through the subsequent interview stages of the process. The movement of successful applicants from a post to a higher one, has meant that some of these have been vacant at any given point in the exercise. Other posts have not been applied for by anyone, very few. Eight posts are currently vacant and will be re-advertised shortly. I think they may have actually gone out today or yesterday. The exercise, over two years of negotiation with the NASUWT, the Teachers Union, has resulted in an increase in posts of responsibility in schools of 47 new posts, from 155 previously to 202 now. This has meant an extra investment in schools in this area of just under £300,000. In order to ensure the best value for money and the smooth transition into the new TLR structure, the advisory service is delivering an induction programme, which will be started in respect of the new TLR structure for all the profession, at whole school level as well as for tier and individual post holders. This is a very important factor in the smooth implementation of the process and it is being achieved through presentations highlighting strategies of intent, and subsequent discussion sessions.

I go on to in-service training. This financial year the advisory service, apart from its day to day role, has provided and arranged refresher and new developmental courses for teachers, in areas such as visual impairment questions, learning styles, first aid, internet safety, child protection, reading, writing and spelling for children with specific learning difficulties, team building and social and emotional aspects of learning. The

advisory service continues to develop the use of ICT and new technologies in our schools, and has provided xxxxxx sessions in school improvement planning, through the use of ICT. Initial training sessions on the role of the TLRs have been provided for the headteachers and deputies as well, of course. Schools have also been presented with an overview of the Department of Education and Training's vision for the new TLRs, and the advisory service will continue to induct teachers into this new leadership role during the course of the next financial year, via in-service sessions on leading from middle management, on areas such as assessment, whole school-self evaluation, the role of the team leader in performance management.

Pupil-teach ratios. The total complement of teaching staff on a permanent and pensionable status in our schools is currently 333, as opposed to 288 when we came into office in 1996. The average teacher-pupil ratios in our schools fare well compared to schools in UK, and indeed, in other European countries. In First Schools the average ratio continues to fall within the agreed median with the union, and class sizes at this level, therefore, is 1:20, the teacher-pupil ratio. In Middle Schools the average again falls within the agreement with the union for class sizes which is 1:25. In Secondary Schools, of course, the average varies somewhat, depending on option subjects and the choices made by students at AS and A-level.

Pre-school education. We continue to run all eight Government nurseries, as opposed to two when we came into office in 1996, catering for 315 children, as opposed to 135 in 1996. There is a nursery attached to every First School, plus one in Varyl Begg nursery and one in St Martin's. We continue to offer every applicant either a morning or afternoon placement. This, in spite of what is sometimes said, is sound educational practice in accordance with studies at Oxford and other leading research centres.

The Young Enterprise Scheme. Young Enterprise Gibraltar has celebrated the end of a very successful first year. The company teams participating in the Young Enterprise Company Teams Programme at the Gibraltar College, presented their companies to the judges at the final selection session in May, and the finalists from Gibraltar recently joined other finalists from across Yorkshire and Humber, that we are linked with, to present their experiences and advancement achievements in a bid to be present at the National and European stages of the prestigious Young Enterprise competition. Young Enterprise offers a range of programmes based on the principle of learning by doing, which brings volunteers from business into the classroom to work with teachers and students. The Gibraltar Young Enterprise Companies Programme run at the College, as a pilot, has enabled students to go through the whole process of setting up and running their own companies. I am informed that the students' involvement in the scheme has resulted not only in huge improvements to the students themselves, but it has also acted as an inspiration to the College as a whole. I should also add that the Gibraltar College is now officially recognised as a Young Enterprise Centre, and I was very proud to unveil a plaque to this effect last month.

Vocational courses. In partnership with the Ministry for Employment, the Department of Education and Training is examining all the possible vocational routes available for young people, with a view to improving and developing the dissemination of information on vocational courses via the schools, and tackling the xxxxxx currency issues that have historically arisen between the academic and the vocational streams. In addition, the two Secondary Schools are also exploring ways of providing children with more choice when it comes to vocational courses that can be offered from within the school context.

I go on to higher education. The fact that every year over 40 per cent of our annual intake gain access to higher education, is proof of our success in preparing our pupils throughout their school career, from nursery right up to Secondary Schools, for public examinations. The statistics speak for themselves. In 2008, the GCSE pass rate A* to C grade was 62 per cent. A level pass rate was 98 per cent. The number of students from

Gibraltar in UK universities and colleges this year, as at the end of May, is 529 students. A substantial number of people from our community at large continue to take advantage of our distance learning schemes, and my Department has supported applications for courses, both academic and vocational, as well as on-going professional training. Funding has been available for a wide range of courses. My Department has also been very keen throughout the year to support and guide students in making the right choices, and in promoting the concept of careers in education. A series of presentations to sixth forms students by participating universities proved very successful. Prestigious universities, such as Cambridge, the London School of Economics, Imperial College and Oxford, gave a series of talks to our students on life at university, and furthermore, gave presentations of cutting edge research projects currently being undertaken by these institutions. This momentum was not lost and a wider group of universities also visited Gibraltar recently, presenting the students with further information concerning entry requirements for higher education, the managing of their finances whilst studying abroad and career opportunities in particular fields of study. Over and above these high powered presentations, that offered our prospective university students an excellent overview of what universities can offer them, in terms of higher education and career opportunities, our Secondary Schools and the College are constantly reviewing the state of career and job opportunities in Gibraltar, and informing, advising and guiding students on realistic pathways that they can follow.

I go on to special needs. In keeping with inclusive practices, our policy continues to be one of equal opportunities. All children should have access to an appropriate education that affords them the opportunity to achieve their personal potential. As far as possible, children with special educational needs will continue to be educated in mainstream schools, alongside their peers, but of course, always bearing in mind what is realistic, affordable and in the best interest of the children above all. Therefore, specialist provision will continue to be provided at St Martin's for those pupils for whom mainstream school is not appropriate, with suitable outreach programmes implemented, based on the needs of the individual. Additionally, learning support facilities in mainstream schools will continue to operate for those children whose needs cannot be met at St Martin's or in mainstream classes. In order to implement such a policy effectively, the Government have well qualified teachers in this area of education in all our schools, and a number of classroom aides who support children with SEN, as well as nursery children.

Extra curricular activities. Following good education practice, our schools provide outreach programmes to create awareness in pupils of issues and opportunities in the wider community, outside the confines of the school. Indeed, it is the norm today for universities and employers, in assessing applicants for entry and employment, to look for evidence of experience and commitment in activities beyond the strict framework of the school curriculum. All our schools, therefore, continue to organise a large and varied number of extra curricular activities for their pupils, including fund raising for over 25 different local and international charities and aid agencies, such as, Child Line, Breast Cancer Support, Jeans for Genes, Action Aid, Cancer Research, Calpe House and the Gibraltar Mental Welfare Society, to quote but a few. During the current academic year, the extraordinary total sum of over £40,000 has been collected by our schools. I am sure that all of us in the House wish to put on record and express our appreciation to the children and the teachers in all our schools for this magnificent effort and sense of civic duty.

Education trips, both in Gibraltar and abroad, are also organised and these include visits to archaeological sites in Spain, visits to our Museum and other places of local interest. Second year Middle Schools, in particular, organise trips to the UK for a variety of sporting and cultural activities. Both First and Middle Schools also involve their pupils in cultural and educational trips to Spain. A trip which has now become an annual event in Bayside School's calendar is a visit to Cordoba, as part of the Muslim civilisation component of the Key Stage 3 History

syllabus, years 8 and 9 students spend a few days visiting the mosque, the Alcazar and Medina Azahara, as part of a very comprehensive itinerary. Also the Bayside School art department will be taking a group of art students on a four day trip to Rome, as part of their curricular provision for the A level art specification. A large number of clubs and activities are also organised by the schools themselves, and these include, chess clubs, guitar and ocarina, line dancing, ICT, art, religion, sports activities of all sorts, including inter school competitions, especially at Middle School level, gardening and science, to name but a few. Schools also participate in activities such as Christmas carol concerts, art competitions, the annual Flower Show, story and poetry competitions, the Clean Up the World Campaign, music festivals, chess competitions, their annual sports and fun days, heritage events, World Environment Day, Shakespeare 4 Kidz plus a host of other competitions and events organised by a range of entities, private and public, such as the Strait Games that involve the participation of schoolchildren from Gibraltar, Spain, and on occasions Morocco as well.

Under the heading of “extra curricular activities”, I also want to inform the House about the work experience project carried out by the Secondary Schools and the College, as part of their wider careers programme. This academic year, over 400 students were placed for a week in areas of employment, ranging from a number of Government departments, garages, workshops, banks, hotels, medical establishments, legal firms, retail outlets and so on. In the light of the educational developments which I have already explained, work experience is of significant importance in our students’ preparation for future careers and in obtaining places in university. Yet another extra curricular activity, and one that has developed an increasing significance over the last few years, is the careers fair organised by the three secondary sector institutions, under the auspices of the Ministry for Education and Training. With the support of an increasing number of private sector employers, as well as Government departments, the fair offers a vital and enriching environment allowing employers and potential employees to meet and discuss the realities of what is now a highly competitive job market, both in Gibraltar and abroad. In today’s fast changing world of work, with continually expanding technological and other requirements, there is a clear need to keep future xxxxxx who are still in school fully abreast of what will be required of them. In bringing public and private sector employers, as well as other service providers together in one venue in partnership with schools and the College, the careers fair provides a practical, face to face dimension and opportunity for students and parents, and enhances what is covered in the personal, social and health education programmes undertaken by students in the schools and the College.

I go on to minor works in schools. An important part of Government policy in education is to ensure that children are taught, not only in a well resourced but also in a pleasant and safe environment. To this end, the following are just some examples of minor works that were carried out in schools during 2008/2009 financial year. Bayside School, for example, had four air conditioning units installed in room 15, which is the main examination hall. Two lifts were installed to facilitate access for children with special mobility needs at Bayside in September. The kitchen was re-housed in a much brighter and larger area. This is the technology kitchen not the teachers’ kitchen. It was furnished with the latest in industrial kitchen cupboards, stoves, fridges and so on. The school had an intruder alarm installed and a new toilet facility for the disabled was built. The cost of these works was £191,924. The Minister for Finance is very pleased to hear that. Gibraltar College. At the College, in order to provide with fire prevention regulations, fire doors were installed along the corridors of the College and the admin block was refurbished, again, the cost £33,394. Bishop Fitzgerald Middle School had security arrangements built in for the school, a door was opened in the south perimeter wall and an intercom installed, cost was a mere £1,258. St Anne’s Middle School had a shower room refurbished, the middle floor was painted, almost £35,000 spent in that school. St Paul’s First School had repairs to the roof at a cost of just over £51,000. St Mary’s First School had similar works at a cost of £18,598. St Bernard’s First School

had the lunch area painted, structural repairs were carried out to one of the staircases and its roof was painted, cost £17,150. St Joseph's First School had the playground newly resurfaced, £21,000 odd. At Notre Dame First School, an intruder alarm was installed and a youth area has been converted into a special needs bathroom, £15,000. St Martin's School, the car park which is also the entrance to the school and where the school bus drops off picks up the children, was resurfaced at just under £10,000, and so on. What I have just read out are but a few examples of works carried out in schools last year. All told, a total of £1.04 million was spent during this last financial year in maintaining and improving our school buildings, including the purchasing of new furniture used by staff and pupils. I am fully satisfied that whilst some of our schools are housed in older buildings, none can be described as being in a sub standard condition. This was the expression used recently by the Hon Stephen Linares, publicly, to describe one of our schools. The hon Member opposite should note that from what I hear, his misguided attempt at scoring political points, has not gone unnoticed by the teachers affected. A public apology, perhaps, from their former colleague would, I am sure, be well appreciated by that group of aggrieved teachers.

Projected works for 2009/2010. A variety of further works are planned for a possible start during this new financial year, as part of our rolling on-going maintenance programme. In general areas such as security works, intruder alarms, the installation programme will continue. At St Joseph's First School they need a new PA system and enhancing the storage facilities for sports equipment. At St Anne's School they need works, refurbishment of the design and technology room. At Bishop Fitzgerald School, works to be undertaken to repair windows, the electrical installation of the ICT suite will be upgraded to cope with extra demand. The Hebrew School will have the ICT room refurbished. At Westside School, work on the new kitchens, again, students, home economics and dance area will continue, along with works to facilitate access for children with special mobility requirements. At St Joseph's Middle School, the gymnasium will be fitted with floor markings. The lunch hall at Governor's Meadow First School will have repairs carried out to the walls. At St Bernard's First School, part of the school will be painted internally and works carried out to toilets, resurfacing of the playground and so on.

I now turn to my other main responsibility, training. I would like to continue with public sector training and other related activities. The expansion and development of training programmes, on which I shall now be reporting, have been intensive and, indeed, very significant in the light of the importance being given in today's society, not only to professional development, but also to that of lifelong learning. Government departments carry out specialised training specific to their function at our facilities at the Bleak House Training Institute and with our advice when required as follows. A programme, for example, of IT courses for the civil service, commencing November 2008 and offering training at different levels in Microsoft Outlook, Word, Excel, Access and Powerpoint. From November 2008 to the end of March 2009, over 160 civil servants had received training, with more groups scheduled through to the end of June 2009. Social Services Agency, as it used to be called, has carried out extensive staff training during the year. The following courses were delivered, I will mention a few. NVQ in Care Level 2, Safeguarding Children, Dealing with Challenging Behaviour, Principles of Care, Food Hygiene, Medication Administration, Health and Safety and so on. The Technical Services Department also had courses in AutoCAD and Management and Supervision of Work in Confined Spaces, Competent Person in Confined Spaces, Manual Handling Health and Safety Training. Department of Transport had a Tachograph course, a course in that area. Port Department had a Staff Development course and Security Presentation. The Customs Department had a Competent Person in Confined Spaces course. The Human Resources Department on recruitment, a recruitment Course. The Department of Education and Training, a post-Graduate course in Leadership and Management and a Headteachers and Deputy Headteachers Induction course on TLRs. The Royal Gibraltar Police had the recruitment training course and first aid

courses, and the Gibraltar Health Authority Learning in Action Management course.

I turn to private sector training and other activities. Local private sector companies continue to make use of our facilities and advice for their in-house staff development programmes. I give some examples. Local private sector companies in-house training in the following, management training, managing people, managing performance, the ten commandments of training, I do not know what that course is about, but that is the title, people policies in action, presentation skills, induction courses, business letter-writing, customer care skills. Private training companies continue to use our facilities also, to deliver courses marketed locally. These have included, supervisory skills, team building, communication skills, negotiating skills, health and safety, handling food hygiene, first aid, interior design, IT in Outlook, Word, Excel, Powerpoint, presentation skills. Using our facilities at Bleak House, Campbell College runs a continuing programme of training leading to examination in the ICSA Certificate and Diploma in Offshore Finance and Administration. Certificate units include the offshore business environment, investment, trust and company principles, accounting fundamentals. Diploma Units include offshore trusts and company administration, business management in practice, governance and reporting portfolio management. This year they have also commenced a course at the ICSA professional level in corporate financial management. They also run a distance learning Bachelor of Law course, with regular classes held at Bleak House. The Gibraltar Society of Chartered and Certified Accountancy Bodies also runs accounting courses. Last year they offer four CAT papers, as well as the ACCA qualification. Selhurst Consulting runs courses in human resources at Bleak House, leading to the Chartered Institute of Personnel and Development and a certificate in personnel practice. There is also a course run by the Department of Education and Training at Bleak House in ICT for senior citizens. Education is very much a lifelong process and so, as in previous years, a further series of IT courses were organised for senior citizens at basic and intermediate level, offering training in word processing, e-mailing and the use of the internet. This past financial year we have had a total of 50 participants, 25 at basic level and 25 following an intermediate course. Learning the skills necessary to communicate with family and friends living abroad, and locally of course, and also the ability to access a myriad of information via the internet, continues to greatly enhance the quality of life of a growing number of our elderly citizens. I have spoken to these senior citizens personally and they are delighted with what my department is offering them.

I turn now to examinations. Bleak House continues to function as an examination centre for the Open University, the Chartered Insurance Institute, the Institute of Financial Services, School of Finance, the Institute of Chartered Secretaries and Administrators, OCR and Pearson view, and in addition, regularly host examinations on behalf of other UK institutions and universities, thus enabling local residents to sit their examinations in Gibraltar, rather than having to travel to the UK.

Vocation Training Schemes, courses in literacy, numercay and plate levels 1 and 2, which is an ICT course, are held at Bleak House for trainees from the VTS Scheme, to offer them the chance of gaining recognised qualifications during their training period. In the maritime sector, I am please to inform the House that one of our maritime students completed his training and obtained his Officer of the Watch Certificate in August 2008. We already have another student undergoing training and he commenced in September 2008. In partnership with local shipping companies, it is envisaged that two further scholarships will be offered this year, to enable young people to undergo training leading to Officer of the Watch qualification. Standards of Training Certification and Watchkeeping, the STCW 95, basic courses have also been offered during this past year at Warsach Maritime Centre. In accountancy, the Department of Education and Training once again continued to offer subsidies to students undertaking the Certified Accountancy examinations known as ACCA, and likewise also, subsidised students following the Certified Accounting Technicians courses. For both of these courses, the Department has offered evening classes in

preparation for respective examinations, and the beneficiaries have been both from the private and public sectors. As in previous years, following a request made by the Federation of Small Businesses, in February 2008 originally, a subsidy was again made available for training leading to ISO 9001 accreditation by local companies. Similarly, with Investors in People, the Government of Gibraltar through the Department of Education and Training, hold the necessary licence to offer accreditation for investors in people. A programme of training sessions aimed at assisting companies to prepare for formal assessment by Investors in People is already being delivered in Gibraltar in conjunction with the University of Durham. In July 2007, we had the first three Gibraltar organisations to be awarded IIP after international assessment. These are Financial Services Commission, Bassadone Automotive Group and Redwood International Limited. Although we still have organisations in training, we are nearing the end of the pilot project and are expecting to have Gibraltar accredited as an approved IIP country very soon. Public sector management courses, opportunities have also once again been offered to public sector employees, to follow management courses delivered by Durham University's business school and accredited by the Chartered Management Institute. After having successfully completed the certificate and diploma stage, at present there are over 31 civil servants participating in the Masters Degree stage of the organisation of management programme. Public sector specialised training for individual departments, funds have also been made available, put to very good use, by individual Government Departments for public sector specialised training as follows. The Department for Transport, for example, Tachograph Course. In the IT and Logistics, a systems management technicians course. The Youth Office a youth officers training course. The Education and Training Department had a visually impaired consultancy training and refresher courses on EU funding. The RGP had a bar vocational course. Treasury, Income Tax and Education Departments had accountancy training. Statistics Department had RSS ordinary certificate course. The Environment Department had training for the conservation officer. Human Resources Department, recruitment and selection course. GCID had a financial investigation course, Eye Base User course, internet intelligence course and Eye to Analyst notebook training. Extensive training, various courses on health and safety, construction contracts, confined space maintenance and small works courses and courses of this type, undertaken for the benefit of the Technical Services Department. The list continues to other departments, such as the Port Department, the Attorney-General's Chambers, Chief Secretary's Office and other departments. A word about the civil service training, once this year's Estimates of Revenue and Expenditure are approved, the Department of Education and Training will be in a position to carry out a comprehensive funding exercise which will enable the various Government departments to embark upon further specialised professional training for their own staff. Contrary to what occurred prior to 1996, it has always been and still continues to be this Government's intention to ensure that civil servants remain well trained, fully updated professionals in their respective specialisation, by following accredited courses both in Gibraltar and in the United Kingdom. This will help guarantee the high level of public service that our community has and deserves. Training subsidies have been given to various sectors of the community, and I give a few examples, the Happy Faces Charitable Trust are training in a fashion college in the UK, as part of the winning prize of the Designer of the Year competition; Security Express Limited are training security guards to SIA standards, Wiltrance Gibraltar Limited had a dangerous substances carriage by road course and the Duke of Edinburgh had a Special Needs UK Conference course.

In conclusion, I wish to thank all the members of staff in our schools and the College, as well as at the Ministry of Education and Training, who through their hard work and dedication, make sure that we have in Gibraltar an education service that, whilst not being perfect perhaps, could well be the envy of any community of our size anywhere else. Going on previous year's experience I have no doubt, indeed I venture to predict, that the Member opposite responsible for shadowing my Ministerial portfolio, will in his contribution pay scant attention to a word of

what I have said and repeat his pre-prepared tired and feeble and erratic arguments, in an effort to rubbish this Government's continuing, increasing and effective investment in schools and nurseries. He will ignore our substantial investment in teaching and ancillary staffing. He will do his best to side-step our annual £800,000 expenditure in educational equipment and materials and in scholarships generally, which currently runs at over £3.6 million. The hon Member opposite will try and deny our huge investment and success in specialised attention given to the needs of children. He will not make any reference to the vast and growing provision in professional and vocation training, but in the end he will fail, because the undeniable truth is that the very high standard of education available to us all, young and old, today in Gibraltar, and which plays no small part in the successful development of this community, is a self-evident truth, admitted and admired by all and, therefore, one of the greatest sources of triumph for each and every one of us in this community. What is more, the fact that we can afford such a splendid and successful education service, is yet one more indicator, if another indicator be needed, of the undeniable and resounding success of this Government's management of our economy.

HON S E LINARES:

Mr Speaker, I will not disappoint the hon Member opposite at all, whilst he seems to have probably seen my speech. I wonder whether he had Gremlins in the office last night whilst I was working on my speech.

HON CHIEF MINISTER:

The hon Member left it till the last minute?

HON S E LINARES:

Absolutely.

HON CHIEF MINISTER:

Putting the finishing touches?

HON S E LINARES:

Yes. Mr Speaker, this is my tenth Budget address to this House, and I have realised………

HON CHIEF MINISTER:

As an Opposition Member.

MR SPEAKER:

Order, Order.

HON S E LINARES:

The hon Gentleman, when he was addressing his speech, alluded to the hon Member opposite about interruptions, and he continues to interrupt what I am saying. I hope he has the courtesy, at least, to listen to what I am saying and then he can have the jibes he wants later in reply, which he will anyway and I am not going to, like the hon Gentleman, predict what he is going to say.

Mr Speaker, I have realised that year on year the GSD is not only running out of ideas, it is now becoming more and more desperate to hold on to power, even as far as trying to doge and

weave when answering questions in this House, without being straight and honest, and at times, deceiving the general public using the controlled media. During my address I will demonstrate this, using some of the answers given to me during Question Time. As last year, I now have a wide ranging portfolio, which includes all Government services, and within Government services, there are departments, such as Customs, HM Prison, all utilities, the City Fire Brigade and others. Apart from that, from Government services, I still have Education and Culture.

I would, therefore, start with my portfolio in relation to Government Services. I am a bit wary at what the Chief Minister said as to the review and reform of the whole of the civil service, and the negotiations he is having with the unions in relation to pensions, the review of the General Orders, absenteeism, et cetera, if the previous announcements are anything to go by. In relation to Customs, the Chief Minister promised everyone, and in particular the business community, that he was to carry out a root and branch review of the Customs Department. He said, and I quote from Hansard, so that he does not say that this is not what he said, so there is no misunderstanding, "this financial year, 2005, and with the support and participation of the staff and unions, we intend to carry out a root and branch review of the Customs Department, including its functions, methods, resources, premises, staff and management structures and its roles. We hope to improve the service to the business community and other users, and also to improve the Department for the benefit of the staff, as well as to maximise the effectiveness of its revenue collection." God knows who told him that we needed a root and branch review in the first place. The Government then proceeded to commission a report on the Department, to be conducted by Customs and Excise officers from the UK. It is very significant that once this report was completed, the Government did not only not want to publish the report, but officers were not allowed to see its contents, and as I understand it, even the union hierarchy were given only parts of it. So much for trying to seek the support of the staff and union. He has failed miserably, since he has not done much except antagonise and demoralise all officers, who were and are even today, carrying out a good job. This Government have failed the Customs Officer because, firstly, he lost his previous Chief Secretary who was dealing with this issue in a formidable way, by using wisdom, sensibility, and most of all, experience. He was doing exactly what the Chief Minister said in the Budget of 2005, that is, letting staff and unions participate in the root and branch review, though, as previously mentioned, without allowing the staff a glimpse of the report. Once the former Chief Secretary retired, the problem started to arise due to the lack of understanding and the fact that the staff had suspicions as to the Government's motives regarding the review as a whole, since it became clear that the root and branch review was not genuinely to reform the service, but to undermine Customs Officers' work. Secondly, he has tried to negotiate a deal with the union hierarchy without properly engaging the staff, that is the people that matter, the Customs Officers themselves. Thirdly, is this incredible idea that the Chief Minister has that they are not a body that could and should be compared with the likes of the Prison Officers, the Fire Brigade, or even the Police force. The fact is that they wear uniforms, they are a law enforcement department, they have to coordinate with other agencies, both locally and abroad, they collect a substantial amount of money in revenue for the Government coffers and they have the added duty to have to police our coastline to try and apprehend smugglers, manning all exits and entries into Gibraltar, then conduct searches to premises, as well as internal searches of suspects. Additionally, they have to attend court proceedings to give evidence. These duties have traditionally been carried out to the highest of standards. It is therefore not surprising, that the vast majority of the Customs Officers have democratically chosen to reject the agreement that was drafted at Convent Place, after a lapse of time had passed without engaging the staff at all. This, coupled with the fact that all of a sudden a pay rise of 12 per cent was offered, with the agreement having included a performance clause, which is very suspect, to say the least, and since it does not explain how this will be done and whether there would be any recourse which, should negative reports be produced about officers'

performances. Are we to have a public report on performance of the Department, as is the case in many places such as in the UK, Jersey, the Isle of Man and other jurisdictions? If the current record of this Government with reports is anything to go by, then it will definitely be kept under wraps in Convent Place. With the flexibility clause, which meant that if management wanted officers to be transferred to other duties within the Customs Department, they could do so, the suspicion, therefore, arises out of the fact that if Government extended the duties of Customs Officers, as it is in the UK, then they would also have to do immigration duties. The agreement, which has been drafted, has not only got lots of ambiguities, such as the fact that private medical reports are not recognised, but it also has flexibility which is seen as being added with a wider remit, which can be interpreted in many ways. That is why they have overwhelmingly rejected this agreement, and the staff are obviously not satisfied with the explanation given to date by their union representatives, and more importantly, by the Government. It is clear from answers to questions to this session of Parliament, that the Government were never interested in a root and branch review, but in tampering with the workings of the Customs Officers, since now that the collective agreement, which only relates to the job of officers, has been rejected, the Government, via the Chief Minister, have stated that following the rejection from staff of the agreement, that “this is the end of the matter and Government are not willing to consider a post mortem in this House”. That was his answer. “There will be no further negotiations in relation to the review of any aspects of the Customs Department”. This is a clear indictment on what the Government’s motives were, contrary to being open to look at all aspects of the service, which, as he said in the Budget of 2005, is to look at its functions, methods, resources, premises, staff and management structures and its role. He has decided, like a spoilt child in a tantrum. Only one aspect has been rejected, and that is the staff and management structures, they have shut the door to what he promised to the business community and the general public.

Since I was given the Government Services portfolio, which includes the prison, I have taken an interest in what is currently happening, and more importantly, what is going to happen once the new prison is complete. First of all, I must say that once again deadlines that this Government give are not to be taken seriously. When I last asked the question to the Minister in charge, Question No. 423 of 2008, when the prison would be ready for prisoners to be transferred from the old prison to the new prison, he told us it would be ready for transfer on 31st July 2009. Anyone who walks around the Lathbury Barracks area, which I do quite often, and one of the things that really annoys me is the Clifftops building, will know that the new prison is far from being ready, let alone for transfer. Another broken promise. This Government are also expecting to transfer the prisoners to the new prison without even consulting the Prison Officers, or even the union representatives, as to how this will happen. Not only that, but the Prison Officers have for a number of years tried to make it known to Government that they are understaffed, under-resourced and that there should be a programme of proper training. It was interesting to see that in the schedule given to me in answer to Question No. 368 of 2009, the Government have not sent any Prison Officer to do a course on prison officer entry level training, since the year 2005, which can only mean two things. One, that there have not been any Prison Officers employed since then. Or two, that there are Prison Officers who have been employed after 2005, who have not done the entry level training that should be required as a minimum before they are allowed to have contact with any inmates. In relation to contact with inmates, it is a fact that due to the low staffing levels existent at the prison, Operational Support Grades, which are not supposed to be in contact with inmates, are currently being used as if they were Prison Officers. This not only can create problems within the prison, but if anything should happen to an inmate whilst being in the watch of an Operational Support Grade, they would not be covered as to liability and Government would be seen to have been negligent, and thereby making the taxpayer foot the bill. Going on to negligence, it is incredible to have found out that there have been instances at HM Prison where wings have been

left on their own without supervision by any Prison Officer. One wonders how many more instances there have been of people throwing drugs or other things over the wall which have not been detected. In regard to the population of inmates, and I see as interesting reading that there has been more reallocation of funds in the reallocation statement that the Chief Minister laid today, there has been more expenditure, higher than budgeted in the prison. Therefore, they have budgeted more for the increase of inmates. The point I am making is that the population of inmates has increased and this proves it, during the last five to ten years, whilst no one in Government have seen it fit to make a judgement as to whether there is a need to increase the staffing levels of the Prison Officers. When analysing the ratio of Prison Officers to inmates, it is clear that the prison service is not only undermanned, but it seems that these Prison Officers can be considered as mavericks. Let us take for instance, from Monday to Friday from 09.00 to 17.00, the ratio is 1:5. All the information that I will now be using is obtained from the statistics that the Minister gave me in this session of the House at Question Time. If we take the fact that there are currently 51 inmates, one would need a minimum of ten prison officers. Currently there are only 16 officers in the whole of the establishment, which is stated in the Estimates Book in page 87. This does not include the fact that some prisoners will have to be escorted to court, and the minimum to escort would be two officers if it were only one inmate. But if it were any number above, it would have to be at least three. Therefore, there are only three to six officers left to do the night shifts. This situation is not only ludicrous, but I would dare say, even dangerous. All in all, one can understand why there are times when wings in the prison cannot be supervised. Not only that, but we can also understand why we have had incidents where prisoners have escaped, and why one prisoner managed to escape to buy things from a grocery shop and come back to the cell to enjoy all the things he had bought outside. We have a Government that does not know what category to place the prison in, as it is in the UK. One knows that it may be the case that the prison here need not be categorised as it is in the UK, but a model such as the one used in Jersey, could be an area that can be explored. Sticking one's head in the sand is definitely not the solution, which is what this Government do when they are caught out. Due to all these reasons, Prison Officers have had no other alternative but to take industrial action, because their grievances were not being heard. I sincerely hope that since I have been highlighting these issues, and the fact that they have taken the initial action of not wearing their uniforms, that sense will prevail on the part of the Government and that they will sit down with this collective of people to resolve the entirety of problems that exist. By the way, no one in Gibraltar lives one million miles away anyway, and to say that twice, as the Chief Minister did at the last Question Time, shows that he lives on cuckoo land.

HON CHIEF MINISTER:

Lives in cuckoo land.

HON S E LINARES:

Yes.

MR SPEAKER:

Order, Order.

HON S E LINARES:

He can live on or in cuckoo land. It does not matter, he was in cuckoo land. The fact is that by saying this he shows a streak of paranoia. In relation to the City Fire Brigade the same has happened as with the Customs Department. The Brigade, which has always had the support of the community for the excellent work they have always carried out, are now rather demoralised and annoyed. Why has this come about? The

reason again is to do with the way the industrial relations is dealt with by Convent Place. First, the official side tries to curtail social functions, just out of the blue, using the excuse of health and safety. When the staff challenge the Government on the issue of health and safety, by asking them to conduct an independent health and safety audit, it refuses to do so. What they do is to have an officer within the fire fighting ranks, albeit very well qualified, to conduct an internal health and safety inspection of the station. This officer could only be able to do a health and safety inspection in the narrow sense and, again, the Government refuse to publish even this inspection. It is obvious that if the Government had conducted a proper health and safety audit of the entire City Fire Brigade, as the representatives of the fire fighters were asking for, they would probably find that there were many other recommendations that Government would not be committed to do. But in any case, we know that reports commissioned by this Government are never published anyway. The Port Department is yet another department which has been functioning for years well, and has been traditionally seen as being efficient, until this Government decided to convert it into an Authority by rummaging the concept down the throats of employees. In this department we had the curious situation where the Authority was created by statute, and no officers from the department wanted to become part of the Authority, and yet for a time we had a Chief Executive Officer of the Authority who in practical terms did not have any authority to run the Authority. He was being paid to manage the workers of the Authority who refused to be transferred. The Cemetery, which is another section of my portfolio of Government Services, demonstrates clearly the way this Government operate and how they deal with questions asked in this House. Question Nos. 146 to 148 of 2009, which were asked on 10th June, only two weeks ago, asked questions in relation to the Statutory Board of Visitors of the Cemetery, which the Minister with responsibility for the Environment has to appoint annually. The answer was, "the term of the office of the last Board of Visitors to the Cemetery expired on 31st October 2002, and a new Board was not appointed." So far so good. "A revision of the Cemetery Act is taking place and the Government decided that, on introduction of this new Act, the Board of Visitors to the Cemetery would be repealed." So far so good. "The appointment of a new Board of Visitors was consequently not pursued." After being given this answer, I subsequently asked in the following session of this House, whether they were now in a position to present the new Cemetery Act to this Parliament and, if not, when did they envisage that this would take place. The answer, again coming from the Chief Minister, in his usual way, is to say, "when the Government are able to publish a Bill for a new Cemetery Act and wish to do so they will." Well, when reading the Gibraltar Gazette the same day, it had Government Notice No. 548, the announcement that the Minister in exercise of his power conferred to him by the Cemetery Act, has appointed the following persons to be members of the Board of Visitors to the Cemetery for the period ending 1st June 2010. We are all aware that the Chief Minister can answer the question in the manner he wishes, but it just proves that either his left hand does not know what his right hand is doing, which I doubt, or he treats this Parliament with contempt.

On the educational front, there are issues which Government are either incapable of solving or totally unwilling to do anything, despite the fact that they have admitted that something needs to be done. Here I go on to what the hon Member mentioned. When I became a Member of this House, and on my second session of Question Time, that was way back in the year 2000, I asked the previous Minister for Education the following question, "are Government satisfied at the conditions of St Bernard's School?" The Minister for Education answered. "No, Government are not satisfied in the sense that there are serious intrinsic limitations and facilities that the school can provide. For example, playground space, steep staircases in the school for small children and problems of accessibility and road safety for the children." He also mentioned the fact that they had spent over £80,000, more or less the same figure that the Minister is talking about today. He continued by saying, however, "the intrinsic structural limitations of the school building remain, of course, and the relocation of the school is currently under review

by the Government." I presume that the staff then should have felt extremely sensitive to the comments made by the then Minister, and thought that the Minister was lying, since the present Minister said to me, as he has stated today again when I asked him the same question nine years later, that the staff were extremely sensitive to the kind of name calling, particularly when it is not true. Well, who is saying the truth then, tell me? Well, if the Minister disagrees with the fact that the school lacks playground space, has steep staircases in the school for small children and problems of accessibility and road safety for the children, is it not a school that can easily be categorised as sub-standard? It is his problem and not anyone else's. The Minister, in answer to Question No. 136 of 2009, where I asked if he was satisfied with the conditions of St Bernard's School, said, "in respect of Question No. 136, the answer is yes, an emphatic yes." In answer to supplementary questions he went on to quote me, and he has done so again today. He said he had done his homework. Unfortunately, he would not have obtained a good result for his homework, since what I said was, and I am again on the political broadcast that day, we have a Government that is more interested in building an un-needed air terminal at the cost of £30 million, not £50 million which he said and is in Hansard, than to spend money on relocating St Bernard's School where, currently, children were being taught in sub-standard conditions due to the age of the building and the lack of space. I would have thought that educating children in adequate facilities is more important than embarking on a project such as the airport terminal. One can only have praise, and this is where I differ with him about me antagonising the staff and all the things he has said about the staff, because I did say this and this is a quote from the broadcast. "One can only have praise at the way teachers and pupils in that school operate and manage to teach and learn". Therefore, what I was saying was to echo what the previous Minister for Education said in answer to my question. Let us not forget that the broadcast went on air eight years after the Minister was reviewing the relocation of the school. In 2005, when asked whether there had been any progress on the relocation of St Bernard's School, the previous Minister stated, "no decision has been taken on a possible relocation of St Bernard's School as yet. But the matter forms an important part of the inter-Ministerial discussions which are taking place currently in relation to the new uses of the old St Bernard's Hospital site. It is within this context that we are looking at the relocation of St Bernard's School, having accepted the fact that it would probably be advisable to relocate St Bernard's School from where it stands today." Today we see that they are still stuck on the idea of relocation of St Bernard's School, and it is disappointing to hear from all the projects announced today, that no funding for the relocation of this school is in the Estimates of Expenditure.

The Supply Teacher issue is yet another topic which this GSD Government fail to understand, or deliberately try to confuse by throwing mud at me, which obviously does not stick. Despite the Government saying that the situation of Supply Teachers is unacceptable, it is incredible that the Minister for Education is now dismissing the fact that he will not consider, at least, that they have no rights to sick or annual leave, and the fact that they are not considered as having a job, even if this means for a temporary period. The Government definitely show that they are incompetent in solving issues which might be considered complex, but yet when it comes to expanding their wings, or refurbishing or relocating their offices, they seem to be capable of doing this within weeks. Let us not forget that this Government managed to relocate and refurbish the new premises of the Department of Education to move to its present location in a matter of a few months, at the extraordinary cost of nearly £650,000, yet they are taking years to relocate a school which the GSD have accepted needs to be relocated. It just goes to show their priorities. After having lengthy debates on the issue of Supply Teachers, and having asked numerous questions in this House, of which we constantly accused of doing, because they say we keep on repeating the same questions, in Question No. 158 of 2006, which was posed on 21st March 2006, I quote from the Minister himself, "let me say a few things, first of all and most importantly, is that the reassurances given to this House by the Chief Minister agreeing

that long-term supplies of this nature merit and deserve a contractual arrangement, that still stands." In Question No. 177 of 2007, the Minister recognised the contradiction of having permanent supply by stating, again I quote, "I mean permanent, meaning permanent long-term supply teachers. For example, covering maternity leave, in that sense, there is a permanency in the contractual arrangement with that teacher. But in terms of contracts covering conditions of service and all that, it is in the pipeline." When pressed a bit further, the Minister stated, "indeed, I have to say I sympathise", talking about me, "with what the hon Member has said but I have also given him the state of play at the moment." So he was agreeing with me, the Chief Minister has agreed with me on this issue. In 2008, when the hon Member opposite was already Minister for Education, he stated in answer to Question No. 500 of 2008, and I quote, "no contract has yet been given, although I have this as one of my priorities. It still is and we are now closer to a resolution of this matter." Again, the fact is that we have not been able to do anything for these young teachers to date, and it is unacceptable that another year has gone by with the teachers being employed on supply conditions, in some cases for even four years, as stated by the Minister himself in answer to my question. He is now saying that this creates expectations to teachers. He is now dodging and weaving again. On this issue, the GSD have again failed miserably.

Truancy is another issue which this Government have failed to do anything positive to legislate, which was the intention of the previous Minister. To the extent that he even said that the legislation had already been drafted. This Minister for Education, in turn, has accused me in public of trying to bring the Department of Education into disrepute. Nothing can be further from the truth. The fact is that way back in 2001, I began asking questions in this House in relation to truancy. The previous Minister stated in answer to Question No. 647 of 2001 that, "the department is currently drafting legislation with the Legislation Support Unit, aimed at criminalising – I do not like that word he said at the time. But it is stated in purely legalistic sense, persistent truants who are causing mischief in the community and leading others astray. This legislation will be modelled on current UK legislation." He went further by saying that "the draft legislation will be put to Council of Ministers for a policy decision. The drafting is now almost complete", he said. In Question No. 930 of 2002, he stated that the legislation to deter truancy, so there is recognition already about that, is now at an advanced stage. He continued by saying that at the last meeting of the steering committee on the issue, the final wording was being updated. More important still, new creative attempts were being made to support families with preventative measures, such as the Education Supervision Orders. It is important to state at this stage, that even if it is thought that the legislation in the UK, and both the previous Minister and myself agreed that it might be a bit draconian, and that in Gibraltar we do not have the same problems of truancy as that in the UK, what we also both agreed was that the current situation locally of going through a whole process, which usually takes about a year, of taking a parent to court for not sending a child, or children in some cases, to school, and finally fining them a maximum of £5, as it currently stands, is totally unacceptable. At least the previous Minister recognised that there was a problem and that all that might be needed is to make amendments to the current legislation to increase the penalty. Therefore, dismissing the issue as the Minister does, is definitely not the way forward. He is clearly in denial and that is the worst situation one can be in. I would also urge the Minister not to take for granted the attendance in local schools, that they compare favourably with attendance in the UK. In an effort to try and convince the Minister to do something about this issue, I will ignore the tone of the press release which he issued on 10th June 2008, in which he accused me of all sorts of things which I can easily rebut.

One would have thought that the portfolio of culture would not carry any controversy. But when we get a Government, like the one we currently have, even this becomes a subject with problems of the Government's own making. The Theatre Royal is one in which this GSD Government failed, to the extent that the taxpayers has paid out a hefty sum of nearly £4 million for a

monumental hole in the middle of the town. Unfortunately for this GSD Government, the legacy that they will leave will be this disastrous project, which the Chief Minister used to say was a vision thing, and that all we knew was the cost of things but not the value. Well, the reality is that we know the cost and there is certainly no value to date in having a hole in the middle of the town. I would urge the Government to purchase from the landlord the current property, which would mean that we do not have a running expenditure of nearly £69,000 a year, and therefore the Government can well do something else. Although I remember that the Chief Minister also said that this is a theatre and it will always be a theatre. But I just would urge them to buy the property.

Yet another issue which is to do with culture, is that of the other massive failure of this GSD Government in relation to the Music Centre. They proceed, with the entire fanfare that we are accustomed to by this Government, to give the trustees a prime building, that of the old BFBS site. They give funding to them to refurbish part of the outside of the building and they did not engage with the trustees, in order for them to be able to run the centre adequately. Instead, what they do is to try to blame me for questioning the intentions of the Trust. The fact is that the Ministry for Culture denied that they had anything to do with it, yet anyone who wanted to use the premises would go to the Ministry to ask how to go about making use of it. This, despite the fact that they were consistently telling me in this House that they had nothing to do with the running of the Centre, and that it was the responsibility of the Trust. It is no wonder that the trustees returned the building to the Government who did not support the trustees, or even monitored how they were going to use the building. Some of the trustees were not even aware of what was happening and there was clearly no support from the Ministry of Culture, who should have helped them, either by physical support, instead of passing the buck to the trustees, or even financial help for the operation of the centre.

Moving on from the Music Centre, it is surprising to have heard the Minister answer in this House that they do not intend to have a development unit of culture. One can only presume that the current Minister of Culture must have been told off for announcing this, after the Viewpoint programme on culture, where I mentioned this concept and the next day he was saying that he was going to meet all interested bodies, with a view to setting up such a unit. More spin I presume.

I will end my Budget address by saying that the things I have urged the Government and Ministers responsible for different departments to do, be taken seriously, since, in some cases, many have been waiting years. That if we are to take seriously what the Chief Minister said in today's announcement in relation to the reviewing and reforming of public services, that they engage the staff in general and not just the management, since creating expectations without seriously doing what is announced, will only demoralise, antagonise and generally annoy the staff and the civil service, who have traditionally done a good job. If the motive is genuine they will react in a positive way in order to give an excellent service which they have always done.

HON J J NETTO:

Mr Speaker, I am very pleased and honoured to deliver my second Budget speech as Minister for Family, Youth and Community Affairs. It gives me great satisfaction to be responsible for such a varied and challenging Ministry, and to be able to make a positive contribution to this Government's considerable achievement and social advancement in the field of social security, social services, care for the elderly, the care of disabled persons and our youth. We are a Government of action and not of words and our track record is a testimony of this. As Minister for Family, Youth and Community Affairs, I will actively pursue the implementation of all our manifesto commitments and will continue to work tirelessly to develop and improve the services within my area of responsibility. I would now like to highlight some of the achievements and social

measures implemented by this Government with regard to social services, the elderly, the youth and civic affairs.

In the field of social security, I am pleased to say that social security pensions have been increased as from 1st April this year by 5 per cent. The full old age monthly pension payable is now £374.78 for a single person and £562.21 for a married couple. Since April 2007, pensions have been increased by this Government by 80.23 per cent. A 65.2 per cent increase in the old age pension that came into effect in April 2007 will continue to be disregarded for the purpose of entitlement to the minimum income guarantee, although subsequent yearly pension increases will not be disregarded as it will be compensated by an increased in the minimum income guarantee level. As announced by the Chief Minister in his Budget speech this morning, widowers and the children of such widowers will in future be entitled to the same social security benefits as currently enjoyed by widows and their children under the social security scheme. This will eliminate the present discrimination against widowers on grounds of sex. Therefore, as from July this year, widowers will no longer be subject to the special condition which did not apply to widows. The special condition that a widower had to be permanently incapable of self support for not less than ten years, and wholly maintained by their wife before her death, to qualify for a widower's pension is now abolished. Last year, this Government introduced legislation to allow divorced women to claim for an old age pension based on their former spouse's insurance contribution during the period of marriage, and also to enable married women who were paying, or in the past had paid, the reduced social insurance contribution, to make retrospective payment of the difference between the reduced contributions and the full standard contributions. So far 50 divorced women have benefitted by substituting the former spouse's contribution record, and are already receiving an enhanced old age pension. There are also 392 women who were previously paying the married women reduced contribution that opted to pay back the full rate contribution, who will benefit by receiving an old age pension in their own right when they reach the age of 60. A further opportunity to pay arrears of contributions was also given to those persons who prior to 6th January 1975 were exempted or prohibited by law, from contributing to the social insurance pension scheme, because they earned more than £500 or were self-employed persons. Twenty persons with incomplete contribution records took up the offer and will now have the benefit of an enhanced pension. We reckon that the position of those persons who missed previous opportunities to pay the said arrears, has now been regularised. In this morning's session the Hon Mr Picardo suggested that divorced women had not obtained a good deal out of the GSD Government initiative in this matter. I am proud that this Government have taken the initiative to address an irregularity which had existed in the social insurance scheme since it was introduced in October 1955, and is now providing additional financial benefits for divorced persons. Critics of this measure should remember that no previous administration has ever lifted a finger to provide social security pension rights for divorced persons, even though the scheme has been in existence for over 50 years. As we have done in the last 13 years in office, we will progressively review and enhance, where possible, all the benefits provided under this scheme. Our record in achieving real benefits for our people is massively huge in comparison to the GSLP when in Government. As mentioned in my Budget speech last year, the Department of Social Security is in the process of computerising all their benefits sections with a comprehensive IT system. This will replace the antiquated manual system which has been in place since the 1950s, and will greatly improve the services currently provided to the public. The first phase of this huge and complex project is to replace the payment of benefits by pension order books, by a more sophisticated IT payment system. It is envisaged that the new system of personalised electronic accounts will come into operation on 1st April 2010. As part of our manifesto commitment, we will be introducing legislative measures so that when calculating the yearly average for entitlement to an old age pension, all social insurance contributions paid from the age of 18, instead of 20 as at present, should count for benefit. This will operate on the basis that the best contribution years from the age of 18, that is, in the

reckonable period of 40 years in the case of a woman, and 45 in the case of a man, would in future be taken into account for the purpose of calculating pension entitlement. This will enable contributors to substitute contributions made in the contribution years when they were 18 and 19 years of age, for two contribution years where less contributions or no contributions were paid. For example, periods of prolonged unemployment or sickness, maternity leave or early retirement not covered by statutory credits. This is yet another social progressive measure by the GSD Government which will benefit working people.

Turning to the Care Agency. Recently this House passed the new Care Agency Act. This will enable me to reshape and remould my resources in a manner in which it will better serve the interests of our service users. Whilst I can understand the difficulty of Members opposite visualising the conceptual model that will emerge over the next 12 months, I will nevertheless make an attempt to crystallise such organisational configuration. The work of the Agency will fall within seven tubes or speciality of work. It will have a centralised finance and administration department, which will eventually be housed at Johnstone's Passage, once the necessary refurbishment has taken place. By virtue of the fact that it will centralise finance and administrative work throughout the Agency, this will allow other departments to better focus their work in developing standards further, or in the creation of new services without having to waste unnecessary time in generic administration work, or work that can be done elsewhere. The elderly care tube is essentially what we know as Mount Alvernia and the Jewish Home. This function will continue to provide the existing services to the elderly and to the very high standard that we have now become accustomed to. As the House is aware, the GSD Government have a manifesto commitment to provide more residential home facilities for Gibraltar's elderly, for whom independent living ceases to be a viable option. To this end, and as stated in our press release of 28th April 2009, the John Mackintosh Wing of the old St Bernard's Hospital will be refurbished and converted into a new additional residential care home. Like Mount Alvernia and the Jewish Home, it will be operated by the Care Agency. The new home is envisaged to have a considerable capacity for the benefit of senior citizens, and therefore, represents a significant step and investment in expanding the quantity of social care services available in this important service area, for which demand is constantly increasing as our elderly folk happily live longer. In the meantime, and as an interim measure while the John Mackintosh Wing is refurbished, the Care Agency will provide around 30 additional residential beds in temporary premises at the new St Bernard's hospital, which are currently surplus to the hospital requirements. These premises constitute a whole ward area in the new hospital, which is vacant and not in use by the GHA. Individuals who will occupy a bed in this new ward, will be those former patients who presently continue to occupy a bed within other wards of St Bernard's hospital for social reasons. Control and use of these premises will temporarily be ceded by the Gibraltar Health Authority to the Care Agency. The interim residential care service in these temporary premises will be provided and staffed by the Care Agency, and on the same residence terms as apply in Mount Alvernia. We should not lose sight either that in a few months time the Government will open its doors to Albert Risso House. This is another specialised residential home for the elderly, given the hugely popular Bishop Canilla House. This is a particularly proud moment for me, given that the home will provide for 140 flats of a very high standard for the elderly to enjoy. It is also a very proud moment for the recognition the Government give to the late Albert Risso. Mr Risso was certainly one of Gibraltar's modern founding fathers and contributed much, both to the trade union movement and to the political life of Gibraltar. In 1957 he was the Member of the Legislative Council for Labour and Social Security matters, and in 1964 he became the first Minister for Labour and Social Security under the new Constitution of 1964. Many have compared Mr Risso's contribution to Gibraltar to Aneurin Bevan. Certainly, much of what today we take for granted in terms of the welfare state, Mr Risso played a major role in creating such a safety net for all those persons in such need. We will continue to have an adult care tube, essentially providing for social worker support for up to adults generally, with an increased role

in partnership with the Housing Ministry, for the allocation of flats in Bishop Canilla House and Albert Risso House. While Housing will continue to hold the varied services and contracts that they do, social workers will be able to provide a much wider perspective on the overall options available to the elderly. A new disability care tube will be created, which will focus on disability issues within St Bernadette's Occupational Therapy Centre, Dr Giraldi Home and the new mobility centre, on which I will have something to say later. This new department will be headed by a new team leader, a post that has been advertised, in order to support and lead in the development of the services therein. A reconfigured children/families care tube will provide a broad range of support by social workers to the various items listed in the Childrens Act and Childrens Residential. Already the new Chief Executive (Designate) has made a few short-term managerial changes in relation to children residential, and more are envisaged in the long-term, inclusive of the residential model. It is worthy of note, how positively all managers and social care workers are responding and contributing to this endeavour. It will be my intention, once I have a clear picture of the new model to succeed, to be able to discuss it both with the staff, and generally to the public. Another new department to be created will be the rehabilitation care tube, which will bring together the rehabilitation services of Bruce's Farm and the role of the Government's Drugs Strategy Coordinator. We believe that the joining of these two aspects is an important milestone, both in the pursuance of preventative planning and strategy coordination, with the essential rehabilitation services that a community like ours needs for those unfortunate members of our society who do require such services. Here too, this new department will be headed by a new team leader, a post that has been advertised already. In terms of public awareness, we have continued to develop and produce literature and material at a local level. This includes booklets for schools, posters and recently produced high quality magazines, aimed at young people, and the further development of a website containing a world of drugs awareness information. Much of what is now a fixture in terms of drugs rehabilitation, awareness and education did not exist many years ago. We will continue to monitor and develop these services, if and when necessary, in order to effectively respond to the ever changing threat that drugs pose within our community, as indeed they do in many other countries.

Finally, in this aspect of my speech, the last tube to operate within the Care Agency will be the Youth Service. During the last financial year the Youth Service underwent a service review, which was undertaken by three UK registered inspectors contracted by the Gibraltar Government. They visited the Youth Service facilities, focussing on the quality of youth work delivery, youth service staff and the participation and involvement of service users. They met with local NGOs that deliver youth work, Government Heads of Department that have used welfare commitment, as with me as Minister responsible for the Youth Service. The review team also considered existing youth service aims and policies, reviewed work recording and evidence based work, and considered current opportunities for young people to influence and contribute towards policy making decisions and implementation of facilities. The team spoke to service users about their views, aspirations and needs. They met a variety of workers, volunteers from NGOs, full, part-time and voluntary staff and a cross section of young people. They visited Gibraltar on two occasions. Their report acknowledges the support and overall respect that the Youth Service and its staff enjoy in Gibraltar. It further commends the quality of its workers and the face to face work delivered at the Youth Clubs and in conjunction with other providers. The Youth Service was deemed to be managed and led capably and resourced adequately for mainstream provision. The report advises greater clarity about the youth service policy and aims. It recommends more contact time with young people overall and in different settlements. It points out that young people should have greater opportunity for involvement in decision-making than at present, and that information about projects and service users should be regularised. It further advised that targeted work should also form part of local youth service delivery. In response to the review's recommendations, the Youth Service has set about measures to increase contact time for youth

workers by a themed project, extending a personal support programme to more agencies as well as schools, recruiting young mentors and volunteers to develop programmes and establish relationships with users of all clubs and commence the training programme for those already carrying out face to face work. In order to make policies and aims clearer at all levels for the service users, NGOs and other stakeholders, have all been given the opportunity to influence policy development and implementation. More young people have been included in club committees, the advisory council and student groups. Contact with minority groups, who by virtue of their social or other background do not make use of mainline provision, have also been approached with a view of inclusion and participation at local national forums, as well as with their peer groups. In the forthcoming months the Youth Service will be finalising its policies and operational procedures. It will also be presenting proposals to include more young people via schools and other outlets. Plans involving neighbourhoods and other community groups will be forthcoming from this summer, increasing for young people and inviting parents and other adults to contribute. Having the Youth Service operate within the new Care Agency does allow for a win win situation for various associated stakeholders. Firstly, with the creation of a new post of team leader, we feel that this will allow for a much better succession plan than is today available. The team leader could then focus more on policy development and implementation, while the Senior Youth Worker can be more hands on in short-term operational demands. On the other hand, some of the under-utilised assets during normal working hours may be used by other worthy groups in our community. The chance now exist to help others. Two very important posts in the new Agency are those of the Chief Executive and the Services Safety and Standards Director. I am pleased to announce that my Chief Executive (Designate) is Mrs Carmen Maskill, who previously held the post of Chief Executive in the Elderly Care Agency. For those who may know her, they will certainly agree that she has shown herself to be one of the very best, certainly a tried and tested senior manager of the public service. Her enormous experience in management change, and her track record in improving services will certainly be an asset to the Agency. The second post, whilst admitting that the title is a bit of a mouthful, is the Services Safety and Standards Coordinator. This is a crucial and important post for the Agency. Essentially the post holder will be responsible to the Chief Executive whilst constantly monitoring all departments within the Agency, to ensure adherence to the highest standards possible throughout. The person already in post is Miss Jenny Allison, who used to occupy the post of Nursing Coordinator in the previous Elderly Care Agency.

Moving on to new services to be provided by the new Care Agency. This week we announced the summer project to allow access to the beach by wheelchair users. There is an undetermined though significant proportion of physically incapacitated Gibraltarians, and tourists, who find access to our beaches difficult, and in some cases, impossible. Though the elderly and disabled pool provides appropriate swimming facilities for a disabled person with the assistance of a carer, it has for some time now been the view of the Government that other options had to be explored. Options that would permit a disabled person to have the choice of being able to enjoy swimming activities together with his or her parents, siblings and other members of the extended family. Since early 2008, my Ministry has been working for ways in which to achieve this, and I am pleased that as from this year's bathing season, disabled persons will be able to enjoy a day out at Eastern Beach without accessibility constraints for getting onto the beach and into the sea. For this purpose, specialised equipment has been procured, equipment such as amphibious wheelchairs, wheelchairs specifically designed to make mobility on sand easy and which are also waterproof, a hoist to make transfers from one wheelchair to another as smooth and easy as possible, a marquee which will permit transfer to be done in privacy, life jackets and beach crutches, which are specifically designed not to sink in sand and which are floatable. Additionally, seasonal staff who are trained in manhandling, hoist transfers and first aid will be available seven days a week to assist. I would like to take the opportunity to thank a number of people who have been

instrumental in the realisation of this project. These are, Jenny Allison, Karenza Morillo, Debbie Borastero, Michael Gil, JBS and, last but not least, the sponsor that has provided the money for the infrastructure, who wishes to remain anonymous. Earlier on I mentioned the Shop Mobility Centre, which will be another new service for people with disabilities. The Centre will be part of the new Disability Care Department. The previous Shop Mobility Centre was opened by a private trust named the Gibraltar Disability Awareness Information Group, in May 2001 from a shop in the ICC at the entrance of Main Street. Over the years, local disabled persons, as well as many disabled persons from the hinterland and overseas, have benefitted from the services provided by the centre, services such as availability to hire wheelchairs or mobility scooters for a nominal fee. As a result, many disabled persons, young and not so young, have been able to benefit from greater access to commercial and leisure facilities, which previously were not accessible to them. Nine years later and as a result of the merger of the Elderly Care Agency, Social Services Agency and Bruce's Farm, Government have decided to take over the centre under the auspices of the Care Agency and within the Disability Care Department. Before I proceed elaborating on this exciting new venture, I would like at this juncture to thank the persons who had the vision and the enthusiasm to start the centre, namely, Miss Amber Turner and Mr Eric Rowbottom. The energy and stamina that they have displayed since the establishment of the Centre, is greatly appreciated by Government and service users alike. Also appreciative is their resolve to allow a smooth handover of this important function into the Care Agency. I am now pleased to be able to announce that although the concept of the Centre will not be generally altered, it will nonetheless be undergoing a major sprucing, which will involve not only refurbishment works and upgrading of past available services, but also the introduction of new services and equipment. The overall objective of the new Centre is for it to be a core and focal point of disabled persons, a place where persons are able, not only to hire equipment for a peppercorn fee, but also be able to acquire information which is applicable and of benefit to local and visiting disabled persons. The upgrading of the Centre services and equipment will consist of a new fleet of mobility scooters and self-propelled wheelchairs, wet weather capes and wheelchair and mobility scooter storage covers. I would like to highlight that the expansion of the Centre will be an on-going project, and already there are other proposals under consideration. It is expected that the Care Agency Shop Mobility Centre will be opening its doors in the not so distant period, and a press release will be issued as soon as the date is known when the Centre will be ready to greet its old and new service users. Here too, I would like to thank Jenny Allison, Amber Turner and the Red Cross Society for making this project a reality.

Turning to the Ombudsman, there is a healthy working relationship between me as Minister and the Ombudsman. I am always available to assist the Ombudsman whenever the need arises. The total number of complaints recorded last year has been 305 and 136 enquiries, which compares with 343 complaints and 144 enquiries for the year 2007. With regard to the Department of Social Security and the former Social Services Agency, the number of enquiries and complaints are low in relative terms. Nevertheless, we will look into the comments made with a view of improving our services further. The Ombudsman's Annual Report has been published following last year's format, which will now become the standard form. As was the case last year and several years before then, the Ombudsman again distributed copies of his Annual Report to the public in general. This was done from outside Parliament House on Wednesday 27th May 2009, and over 500 copies were distributed. The Annual Report is the largest single expenditure in the Ombudsman's budget. Therefore, they are conducting a survey designed to provide information about the report and the mini CD that accompanies the report. Later this year, on 1st October, they shall be celebrating their tenth anniversary of the creation of the Ombudsman's office by the GSD Government. The day will be marked as a special occasion, when some overseas guests, as well as local dignitaries, will be addressing those present.

Moving on to the Gibraltar Citizens Advice Bureau, the Bureau has been a key part of the local community since its inception in April 2003. The whole ethos of the service is about helping people, no matter who they are, to exercise their rights and obtain fair treatment under the law and thereby improve their lives. The Gibraltar Citizens Advice Bureau is committed to promote equality and diversity and prevent prejudice and discrimination, ensuring equal access to advice and promoting good regulation between all sectors of the community. CAB participated at the sixth European Forum of Citizens Advice Services, on the exercise of European citizens' rights held in Brussels. The Manager, Pili Rodriguez, was re-elected as chairperson of Citizens Advice International for a further term. The Citizens Advice International also commissioned the IT System Manager, Gus Linares, of the local Citizens Advice Bureau, to take up the task of webmaster for the organisation. He designed and is maintaining the website for the Citizens Advice International. This can be accessed at www.citizensadvice-international.org.

Career Fairs. In February 2009 the Citizens Advice Bureau hosted a stand at a careers fair held at Bayside Tercentenary Sports Hall. The event was very well attended and many students approached CAB's desk to ask for information and advice, to work at citizens advice and what the different roles of advisors and IT entailed. CAB also participated at the Annual Citizens Advice Scotland Conference in August 2008. This Conference also coincided with the Citizens Advice International Council meeting. The Conference focused in examining in detail consuming issues for the citizens advice service. It also dealt with the credit crunch and the issues that impact on the CAB service. During this time in Edinburgh, CAB also participated in a progress towards equality conference, and also visited the Scottish Institute of Human Relations. The Institute aims to facilitate the growth of individuals in their sense of themselves, their relationship, their work place and cultural environment to the application of psycho-analytical, psycho-dynamic and systemic ideas. In December, in the run up to Christmas, CAB felt it was a good time to alert the public on overspending and avoid getting into financial difficulties. CAB printed a leaflet called "Keep Santa Smiling" and distributed the leaflet at the Piazza. Talks are also being given at schools and colleges on advice on managing and money, and the value of CAB work, especially for prospective overseas students. They continue to liaise with the utility companies to provide financial advice for clients in arrears of electricity and water. In addition, they have a counselling referral system and legal clinic. Developments are under way to host the Citizens Advice International Council in Gibraltar in October. This Council meeting will coincide with the forum aim to raise awareness of equal opportunities and discrimination in all Citizens Advice International member countries. People of all communities need to know that they can rely on the citizens advice service for high quality advice, that is accessible inclusive and responsive to their needs. CAB is committed to promote equality of opportunities and raise awareness for equality legislation by providing information and advice, media advertising, issuing publications, statistical recording and hosting seminars and training courses. Whilst there may be a wealth of local solutions across Europe, it is necessary that the advice services work together so that they can better engage with decision-makers and partners advice organisation. CAB has also worked on producing a report on applying website accessibility to the Gibraltar Government website, as requested by me. Accessibility refers to making the website more accessible to disabled users. This report outlines the level of accessibility Government websites should have, and provides guidelines on how to achieve them. The investigation for the report has been based on the UK website accessibility policy. The report has now been passed on to the IT Department for their comments and observations. CAB is also taking the initiative on taking the essential knowledge of do-it-yourself in the community with the help of volunteers. This will be done both practically and by information and topics will include fire prevention, sport authority, electricity, for example, wiring a socket, sewing a button and ironing. This initiative from CAB has the full support of the Senior Citizens Association in Gibraltar, as it will provide much needed information and practical advice. CAB has received various requests from

countries wishing to set up a bureau. These countries are Cyprus, Turks and Caicos Island, Orisa in India, Nigeria, Rumania and, more recently, from Ciudadanos por el Cambio in Barcelona. These countries want to emulate CAB and model the bureau on the Gibraltar Citizens Advice Bureau. This augurs well for the local Citizens Advice Bureau, when one considers that CAB has only been operational since 2003. Since its inception, CAB has proven ability to respond to new opportunities and challenges, creating an increasing range of innovative services, looking at the make-up of the community we serve here in Gibraltar. Our ability to both adapt and innovate has seen CAB attracting a wide range of partners, strengthening the service and ensuring that advice and information provision meets our changing needs.

Turning to consumer affairs, the Department of Consumer Affairs, which took over from the Consumer Advisory Service, has gone from strength to strength, both in effectiveness as a consumer protection agency and its technical know-how and professional expertise, and presently deals with many complaints from the general public. The field of consumer protection is becoming today increasingly complex and expansive following on European Union Directives. During the years 2007/2009, the Department has embarked on several consumer related projects. The Consumer Protection Corporation legislation was brought to the House in August 2007. This EU Regulation has created a network of public and other important bodies across the EU, responsible for enforcement of the consumer protection legislation in member states. The Department is making use of these points of contact when local consumers have had problems shopping elsewhere in Europe. They have also been able to assist other EU agencies when they have needed our intervention with local traders. The Department has also made good use of their Trading Standards Institute to help those consumers who have made purchases in the UK. They are registered within the Trading Standards Institute directory and, therefore, help local consumers who have made purchases in the UK. This is also reciprocal with the consumers or tourists who make purchases in Gibraltar, as their local trading standard office will get in touch with us locally should they encounter problems with the purchase that they have made in Gibraltar. In the last year the Department is also providing a service by staying open during lunch times in order to assist those consumers that are working. They have also been included in the Government website and this assists all those consumers from abroad that have shopped in Gibraltar and wish to obtain assistance. They have nurtured contacts and keep in touch with their counterparts in the UK and the Channel Islands, with whom they have very good links, by attending conferences and meetings and keeping abreast of the latest developments in the field of trading standards consumer protection practices. Their relationship with the Corporation of London Trading Standards Section, with whom they have a link, is also very strong and to this end, they will be offering them training opportunities and relevant professional qualification of our staff within the department, when they require it. This is desirable and conducive to a good and professional service for persons employed within the department. During 2008/2009, the department organised two awareness events for the Gibraltar consumer. One was on scams and the other, their yearly Xmas shopping awareness day. They have proved very successful, and judging by the feedback they have had, this was greatly appreciated by the Gibraltar shopper. Our alert early warning system on faulty and dangerous toys, and other suspect items such as electronic products et cetera, have also proved very successful and they have a very good rapport with importers of such goods, in order to act quickly if and when this is identified on sale in Gibraltar. The department will later on in the year be embarking on a price marking campaign. Furthermore, due to the numerous complaints they have had to undertake a petrol pump testing exercise, this has covered all the existing petrol stations in Gibraltar, they have used the services of a qualified inspector and they have, therefore, complied with existing law. Finally, I believe there is now a greater awareness and respect for this department, both from the public and local business, and they have developed a good credibility and believe that they are providing the means of

making sure that in Gibraltar the consumer can shop with confidence.

Finally, as is customary for the last seven years, I would like to thank my Personal Assistant and my Personal Secretary for their loyalty and hard work in what is a very demanding Ministry.

HON MRS Y DEL AGUA:

Mr Speaker, I proceed to report on my portfolio comprising health and civil protection. The City Fire Brigade has responded to 1,549 calls from 1st June 2008 to 31st May 2009. These can be classified as 166 actual fire calls, 217 false alarms with good intent and 13 malicious calls. The Brigade also attended to 960 special services, of which 537 were emergencies. It mobilised the ambulance service on 3,619 occasions and the City Fire Brigade ambulance was dispatched as the third ambulance on 193 occasions. During the last financial year, two recruit firefighters attended the 12 week initial training course in the UK, and Firefighter Yogen Santos obtained the Silver Axe for the best overall recruit, out of 24 UK participants. Guillermo Mauro replaced Louis Casciaro as Chief Fire Officer on 4th June 2009.

During the past year, the Civil Contingency Committee has been engaged in the management of the following areas: operational response and training; and threat prevention and readiness. On the subject of operational response and training, C3 has met on several occasions in response to major incidents, as well as participating in several training exercises. The most serious event occurred during the severe weather experienced during the weekend of the 10th and 11th October 2008. The numerous incidents that occurred during that weekend, tested the resilience of our emergency and essential services. This was demonstrated during the successful rescue of all crew members of the MV Fedra which run aground at Europa Point during one of the worst storms ever recorded. During the storm, and for several weeks after, C3 was engaged in damage limitation, recovery and organising the necessary repairs to the damage caused. Some of these works are still on-going. C3 has also participated in several full-scale and table top exercises, based on different emergency scenarios. During these the decision making process at strategic command level was tested, as well as the communication between the different command groups. The lessons learnt from these exercises are being incorporated into revised planning documents. A further series of exercises and documents are planned for the next 12 months, the first one to take place in September this year. C3 has frequently met in response to the threat posed by the world wide spread of the H1N1 virus. All agencies are constantly monitoring the situation and are in contact with each other, as well as with international organisations such as the World Health Organisation. This year, an emergency planning officer and an assistant have been recruited. They will take up their new posts in August. Their main role will be to assist the Civil Contingency Coordinator in the development of civil contingencies organisation.

I will now move on to Health. As I have said publicly on several occasions, the Gibraltar Health Authority is comprised of everyone who works in it, from the top to the bottom, and because we are all accountable as an organisation and, therefore, exposed to both criticism and praise, I believe it is extremely important for me, as GHA Chairwoman and Minister for Health, to regularly put my ear to the ground at grass root level, to hear what members of staff have to say. For this reason, since my appointment as Health Minister, I visit the different wards and departments routinely. I sit down with the staff and listen. It is an extremely useful exercise, not only because the staff feel valued and supported and appreciate that their views count, but also because I derive great benefit from this myself. I get stuck in because I like to, because I enjoy the interaction with them and because I feel it is my duty to keep myself informed of what goes on at all levels within my Ministry. Every time I do it, I am pleasantly surprised because instead of being bombarded with complaints, which is quite frankly what I was expecting when I started this exercise, I am always gratified to discover that the vast majority of the staff that I talk to are constructive, enthusiastic in offering solutions and alternatives

by way of improvement, and are also liberal in their praise regarding the progress and development that they are witnessing. They too welcome any feedback I give them on areas where there is room for improvement as a result of my interaction with patients and members of the public. I take this opportunity to publicly thank both the day staff and night staff, for always making time in their busy schedules to accommodate me.

The Nursing Service has this year focused on the goals and objectives set out in its development plan. This plan continues to be overseen by the two senior nursing groups within the GHA, the Nurse Executive Team and the Practice Development Forum. Representatives from these groups continue to review and revise objectives and communicate the progress made to their nursing colleagues. The nursing service is committed to evolve the ways in which they deliver care, focusing on quality and better clinical outcomes. On-going work towards improving standards of care is central to these key objectives. Success is monitored through audit and spot checks by managers and staff within the teams. This year has been extremely challenging for nurses throughout the GHA, as they strive to meet these higher standards and still manage the increasing scope and volume of patient services provided across the GHA. I am confident, that nursing staff members will continue to take an active role within the area of practice development, as this is crucial to the delivery of the important and fundamental elements of care for our patients. The GHA continues to see this as a priority which is evident in the appointment of a Practice Development Sister. Based at St Bernard's Hospital, she has the responsibility of supporting her nursing team in developing their practice knowledge and skills. By emphasising practice development, nurses contribute to the achievement of one of the goals of the GHA, which is to improve clinical outcomes, and they are doing this by implementing evidence-based patient-centred care. The night staff are continuing with their "Hospital at Night" project, with training on resuscitation skills being undertaking, in conjunction with members of the ambulance team. The GHA and TGWU/Unite have jointly produced a series of medical legal training seminars for GHA staff. This initiative followed an approach to me by the Union after its members expressed an interest in medical legal issues pertaining to professional nursing practice. These were well organised and well attended, and other staff groups have requested further sessions. It gives me great personal satisfaction that the GHA and the Union are working so well together towards maintaining and improving professional nursing practice. I was extremely gratified by the comments made to the press by Louis Gonzalez, Convenor for Union Unite, and I share his enthusiasm that this will be the first of many such joint ventures, where both management and Union can continue to develop a good working relationship in the interest of both patents and staff. The first cohort of diploma student nurses to undertake nurse training, in conjunction with Kingston & St George's University, commenced in September. The students are progressing well. Last year, for the first time, the GHA seconded an enrolled nurse onto the programme on her full salary, as opposed to the historical bursary. We hope that this will serve as an incentive for others. Kingston & St George have also been delivering a degree level module in diabetes which has been attended by 14 nurses from across the GHA.

Mr Speaker, I will now identify specific improvements made in various GHA Nursing Departments throughout this past year. In the A&E Department: in addition to the general trend regarding documentation improvement, the main emphasis this year has been to build on the triage system which was introduced last year. This is the system that ensures that the sickest are treated first. Auditing of the triage system identified gaps in training, and further improvements have been made in this system. The staff training agenda in A&E has included sessions on Child Protection, Suturing Techniques and life support. The completed children's play area within the A&E waiting room has become a very popular feature in the unit, making the visits of our younger users a more pleasant experience. In spite of A&E numbers now running at 3,000 monthly, the GHA is still achieving excellent response times for all A&E patients. Rainbow Paediatric Unit: the nursing staff, along with the

medical staff and the allied health disciplines, are continuing to develop new services within the unit, which is now able to offer diagnostic sleep studies to patients under the care of the Consultant Paediatrician and the ENT Consultant. The addition of new equipment means that there is better oxygen level monitoring and a reduction in the need for referral to the UK for PH monitoring. There have been further developments in the Paediatric Out-patients service, in that every family which attends the clinic receive a printed summary of their child's consultation. Play therapy has also been a key area for development this year. Nursery staff members attend the unit weekly to entertain and play with our pre-operative children who are awaiting scheduled surgery. Recent training has included courses in Paediatric Life Support, Child Protection, Neonatal Illness Management and Diabetes Care.

Moving on to the Phlebotomy Department, Staff Nurse Audrey Baglietto and Staff Nurse Angela Palma were successful in their application for the new posts of Senior Blood Donor Carer. They are awaiting a placement with the London Blood Transfusion Centre, which will be part of their training. In September 2008, staff from the unit visited the Regional Blood Transfusion centre in La Rioja, Spain. The aim of this visit was to view the management of the centre and learn about its IT system, which is essential for the implementation of recent EU Directives. Staff members within the unit are now working an on-call system for blood donors, providing a 24 hour service for any emergency which may arise. The department, together with staff from the Laboratory, once again organised the "World Blood Donor Day" which took place on 14th July 2008. As in previous years, the aim of the day was to continue to create awareness of this important service and to recruit new blood donors. Once again, I take this opportunity to pay tribute to Gibraltar's blood donors, both young and old, and to encourage as many people as possible to become donors in the future. On the subject of donors, and as mentioned already by my hon friend the Chief Minister, I must yet again thank the people of Gibraltar for their tremendous support in the Julian Baldachino Appeal. Whilst a donor was not found from the 3,500 who offered their blood for testing, the response, both in the community and from GHA staff, who worked incessantly to meet the deadline, is a vivid reflection of the extent of the generosity and solidarity of our people. Subject to the satisfactory resolution of logistical and EU regulations issues, this year the GHA will locally begin the process of stem cell retrieval from placental blood, for storage with either the Anthony Nolan Trust or the Jose Carreras Foundation. It is envisaged that 350 collections of stem cells will be retrieved per annum. The programme will allow greater potential for recovery from serious childhood illnesses such as leukaemia, and will provide up to 25 years of availability of stem cells, during which time, further scientific breakthroughs may mean the discovery of cures for currently incurable illnesses through the use of stem cells.

Moving on to the Critical Care Unit, staff members continue to work hard to maintain the improvements achieved in previous years, including internationally recognised achievements in resuscitation. Over the past year, the nurses have been busy adapting to the haemofiltration service which was last year's challenge. This year's improvements in patient care include the development and implementation of clinical care pathways in the following: ventilator care; feeding in ITU; pain management; eye care; sedation and fluid balance management. The Critical Care Unit's training agenda has included, not only the mandatory training such as Advanced Life Support, but also training in Catheterisation, Infection Control and professional accountability in documentation. The dedication and effort which staff continue to place in improving the service offered by the unit was reflected in the quality audit which was repeated this year. The audit was maintained and remained at a high level.

Referring now to Surgical Wards, work continues within these areas to maintain and improve upon the high quality nursing scores. Various in-house training sessions have been held and have been well attended by staff members. These sessions have promoted awareness of patient focused care and best clinical practice. They have been coordinated with the Practice Development Sister, to enhance clinical practice within the

following areas: documentation and care plan design and implementation; Catheter Care; recognition of impending need for resuscitation and patient confidentiality. Mr Speaker, because the patient population is so diverse, the challenge for the surgical wards is to support the wide range of diverse specialities within these areas, through training which is tailored to meet the health needs of our community.

Moving on to Medical Wards, the main focus this year in both medical wards has been to improve the nursing quality scores. This was done by implementing the key points identified in the action plan, following the first quality audit which was carried out in 2006. A significant improvement in the quality scores of both wards was attained in the 2008 re-audit. Training for staff has been a priority and has included: Diabetes Care; Lymphoedema Care; Wound Care Management and Care Planning, in addition to the mandatory training. A programme of basic IT skills has also been introduced in anticipation of further use of the Bed Management System and the new Electronic Health Record. Moving on to the Infection Control Department. This is a department which provides an excellent service, not only to the community but to the GHA as a whole. Between August to December of last year, Gibraltar experienced its biggest infectious disease outbreak in recent times, with 283 clinically diagnosed cases of measles. A rapid response process was put in place from the outset with our two Infection Control Nurses, Sister Sandra Netto and Charge Nurse Kenneth Orfila visiting every affected family within 24 hours. They gave advice on isolation precautions, identified contacts, took samples for testing and arranged for MMR vaccination where appropriate. Such an immediate level of professional response is uncommon in other countries. Sister Netto and Charge Nurse Orfila continue to be instrumental in the management of the current Swine Flu alert, providing information and advice to those who call the helpline, providing training sessions to different staff members and departments and attending suspect cases at home. I take this opportunity to commend them both for their hard work and professionalism.

Moving on to Mental Health Services. During the last financial year, the Mental Health Services in KGV Hospital have developed and implemented many changes consistent with its on-going development plan. A Carers Group has been formed to assist those who care for people with serious mental illness at home following discharge. The group meets every two weeks on Wednesday evenings, between 7.00 p.m. and 8.00 p.m. During this time, carers can discuss concerns, build friendships with other carers and develop their knowledge and understanding of individual illness. Supporting this initiative, a patient/carers information booklet has been developed, which enables both patient and carer to have a better understanding of what to expect from an admission to KGV, its routines and policies, including how to make use of the complaints process. The quality audit first performed in 2006, was repeated in 2008 and demonstrated significant improvements in patient interaction and therapy interventions. I am also pleased with the enhanced focus on patients with the introduction of the patient weekly programme. This incorporates the concepts of one to one time spent with patients, discussing areas of concern like medication compliance, anger management and managing self-harm ideation. This patient focused approach also introduced the development of groups, in which patients work alongside the psychologist, looking at areas of recovery and developing skills to assist in self-management of illness. The very successful and well attended Activity Centre Photographic Exhibition was organised again this year, which was the culmination of two years of excellent collaboration between patents and staff. The Community Mental Health Team which was awarded the Department/Ward of the Year Award for 2008, also continued its development programme. This year they plan to deliver a twice weekly mental health clinic in prison, to be led by the Specialist Nurse Practitioner. There are also plans to develop a weekly Mental Health Clinic in the Primary Care Centre. The team also managed to reduce waiting times for non-urgent child and adolescents to less than four weeks, and waiting times for elderly with Dementia at the Joint Memory Clinic, from an average of ten weeks to six weeks.

Mr Speaker, I now move on to the Ambulance Service. In the last two years, this department has undergone massive change. The move of the ambulance service to St Bernard's Hospital in June 2007 brought pre-hospital emergency care together under the same roof as the other hospital emergency care services and has assisted in achieving a seamless integration for the greater benefit of patients. Another benefit of the integration, is that by working with experienced and highly professional doctors and nurses in the A&E, the ambulance crew's skills have been enhanced and their knowledge, understanding and experience increased. Training and the development of the clinical standards of our ambulance crews as been the top priority. The GHA's link to Kingston University has been of tremendous benefit, not only to the nursing service but also to the ambulance service. In August 2007, the Practice Research and Development Manager of the South East Coast Ambulance Service, visited Gibraltar and produced a needs analysis report, with the aim of modernising and developing the service. Training already provided has included Automated External Defibrillation Instructor Training, and the service now has four local qualified instructors. Specialised driver training, which means that those driving ambulances in emergency situations are better skilled to get patients and staff to the hospital safely. Specific management training for all ambulance management staff. There have also been voluntary placements in which ambulance crews from Gibraltar have worked on the road in the south of England, such a Brighton and Redhill. These experiences have not only developed the skills of Gibraltar's EMTs, but have also helped the Gibraltar Ambulance Service achieve and maintain the standard set by the UK. I would like to add that this has been done voluntarily by some members of staff at no cost to the GHA. There were Refresher Skills training courses for the Patient Transfer and Emergency Service Crews in 2008 and again in 2009. All our ambulance staff are now up to date with the mandatory training, and more importantly, over 92 per cent, 22 out of 24, of our Emergency Medical Technicians achieved an 'A' grading in their assessment. The results from examinations at the end of training, overall average of 81 per cent, reflect the competence and the high standard of patient care being provided. One of the most important achievements, has been Emergency Medical Technician Michael Valarino's graduation as an Ambulance Tutor. He completed the third phase of his training course in February 2009, and in so doing, he has become the first ever Ambulance Service Tutor in Gibraltar.

Gibraltar was proud to have hosted the first International Conference in Pre-Hospital Emergency and Disaster Medicine, from 26th to 28th March 2009 at the John Mackintosh Hall. This was a big event for the ambulance service and brought together worldwide clinical experts, to share the latest medical advancements on how best to treat patients who become critically ill and require life-saving treatment. The programme included pre-hospital emergency care, as well as the emergency after care treatment for cardiac arrest and resuscitation, stroke and trauma techniques. Professors, Consultants, Paramedics, Nurses, Academics and Clinicians from countries as far afield as the US, Canada, Egypt, South Africa, Jersey, UK and more locally from Spain and Gibraltar, gathered to discuss ways of improving survival rates for these critical conditions. As part of the Conference, two of our EMTs presented some of their own experience and advancements in Gibraltar to the Conference delegates. An article on the success of the Conference has been featured in the website of the UK Faculty of Health and Social Care Sciences. A few days after the Conference, I received an email from one of the delegates of the UK, an eminent professor widely respected in this specialised field. With Mr Speaker's indulgence I would like to share it with this House. It reads, "Dear Mrs Del Agua, I had the privilege of meeting you after my talk on resuscitation at the Gibraltar Conference on pre-hospital disaster and emergency medicine. You suggested that I should visit St Bernard's Hospital so of course I did. I would like to say that I was extremely impressed. The first thing that struck me was that it was very clean, not always the case in the UK, alas. But then I was impressed by the obvious commitment of all the staff I met. The building and the equipment were all of the highest standard. If I should need hospital treatment, it might be a good idea to try to get to

Gibraltar. Apart from the wonderful care, the views are worth a lot too. My wife and I thoroughly enjoyed our visit, many thanks, Professor Douglas Chamberlain.”.

Moving on to Primary Nursing, developments for 2008/2009 included the introduction, planning and administration of the Human Papilloma Virus vaccine to all school girls aged between 12 and 18 years. The uptake has been very encouraging. In addition, due to the measles outbreak, the child health team working in liaison with the Department of Education, between September 2008 and February 2009, administered the MMR booster to all school aged children. In total this represents an additional 3,030 vaccinations over and above the on-going immunisation programme. Clinical nurses and district nurses in the PCC have undertaken lymphoedema training and are now providing lymphoedema care to the patients, both in Primary Care and in the home environment. Both departments have also trained staff in Diabetes Care, in order to further develop their services to diabetic patients in the community. The successful leg ulcer clinic has now progressed to the next stage where patients who have been successfully treated are seen on a periodical basis in order to prevent recurrence of the ulcers. In addition, the Cardiac Rehabilitation Nurse, working with his mental health colleagues, has introduced a programme of cardiac rehabilitation for the long-term mental health patients in KGV Hospital.

In last year’s Budget speech, I announced that during the year we would be meeting another manifesto commitment to recruit more staff in order to deliver more time dental and orthodontic services. I said that we had already recruited an additional dental officer and a second orthodontist, and that once we recruited a dental nurse, I expected to see a drastic reduction in waiting lists by the end of the year. I am pleased to report that the dental nurse was recruited and we are now seeing the full effects of the dental programme as I predicted. The waiting time for adults with dentures has been reduced from 12 months to three months, 600 children have been taken off the waiting list for dental care. In orthodontics there is now no waiting list for new patients, with 200 people having been removed from the waiting list for fixed appliance treatment.

Moving now to medical services, the GHA continues to invest in the professional development of medical staff who are attending an increasing number of courses overseas. There has been on-going development of the respirology service with bronchoscopy, sleep apnoea testing and assessments for oxygen therapy increasing significantly. Following the resignation of Dr Luis Manetto in November 2008, his post was filled by a fellow Gibraltarian, Elaine Pincho. The Clinical Governance activity has included complaints review, risk management, regular meetings of the audit committee, reviews of clinical incidents and a review of the Department of Surgery. I would also like to highlight the work of the Opthalmic Unit since the move to the new hospital. A total of 220 cataract operations were performed in the past year, with only four needing a general anaesthetic. The acquisition of two new pieces of equipment has provided two great improvements. The first is the reduction in the cataract surgery time and the second is an improvement in the estimation of the corrective lens required following cataract extraction. Cataract surgery dates are given within one week of the visit in which the need for surgery is determined. The team has increased attendance in the Emergency Clinic by 15 per cent, with 1,889 cases seen over the past year. They have carried out Fundus Angiography on 23 patients, who would have been previously served at Moorefield’s in the UK. The multi-disciplinary approach has made children’s clinics more efficient and has improved the screening access for diabetics. They have continued the DVLA quality Eye assessments as part of the Driving Licence Programme. In meeting another of Government’s manifesto commitments, the GHA has now contracted its own full-time rehabilitation officer to meet the needs of the visually impaired, including training in Braille, long cane and general mobility training. So far, 84 patients have been assessed and an average of three to four new referrals for assessment are being received weekly. At present, 26 clients have been supplied and inducted into the use of the long cane. I am informed that the users of this service are

delighted with the improvement that it has brought to their quality of life.

Moving on to the Pharmacy Team, they have been working very hard this year in relation to the procurement system and have had to overcome many obstacles in converting the generic basic programme into a system suitable for a clinical hospital set-up. All drugs and surgical stock held in pharmacy stores is now fully computerised. Stock control is, therefore, much more effective in this new environment. In the Nutrition and Dietetics Department, this past year has seen specific service developments in paediatrics, where behavioural feeding clinics have been introduced, closer networking with the renal team, as well as increased out-patient services. There has been a growth of 32 per cent in activity and a considerable improvement in scope of services over the period 2005 – 2008. The Physiotherapy Department continues to provide an orthopaedic dedicated service, a falls prevention programme and Parkinson's groups in which therapists provide training for this group of older service users. At the beginning of this year, an additional assistant was recruited and, for the first time, all sectors of the physiotherapy service now have assistant support, releasing physiotherapists to carry out their more specialist work. Waiting lists had gone up to 14 weeks due to recruitment and staff illness and being one physiotherapist short, due to the junior being in the UK undergoing a training placement. Staffing levels are now back to normal and a four month waiting list initiative means that the waiting list is already down to six to eight weeks and should be down to two to three weeks by September 2009. Both Gibraltarian graduate physiotherapists employed through the Vocational Training Scheme, have now been taken on as Senior IIs. Following training in October and November 2008, a lymphoedema service is provided by two physiotherapists. The Pathology Department continues to refine and improve the service provided. This has been driven by the introduction of up to date equipment and the laboratory is now populated with a wide range of highly sophisticated machinery for the testing and analysis of samples. In addition, the recently introduced laboratory information system now ensures that many test results are transmitted to clinicians electronically the minute they become available. This service will be expanded to include micro-biology and histology over the next twelve months. The appointment of a part-time Consultant Haematologist has resulted in the repatriation to Gibraltar of key services like bone marrow reporting. The Radiology Department was again extremely busy this past year, carrying out over 25,538 examinations on 19,261 patients. A further 1,701 external investigations were also conducted. These included MRI, Pet Scans, Bone Densitometry and Radio Isotopes. The equipment plans for this year include the purchase of a complete upgrade of the computerisation support for the department. This is expected to be completed within the next 18 months. The Speech and Language Therapy Service continues to provide highly specialised programmes of care to both children and adults with congenital and acquired communication difficulties. In 2008, there were 2,905 paediatric contacts and 200 adult in-patient contacts. In addition to the very successful paediatric feeding clinic initiated at the PCC, which incidentally won the GHA Innovation Award this year, a dysphagia (which is a swallowing disorder) special interest group has been set up within St Bernard's Hospital. The group is focussing on developing a care pathway for patients with dysphagia and developing a protocol for delivering awareness training to nursing staff. Requests for training have also been received from St Bernadette's OT Centre and Mount Alvernia.

Mr Speaker, I now move on to the GHA's support services. As part of the GHA's Operations Directorate, the Estates and Facilities team is responsible for the daily maintenance requirements of the entire organisation. Their job requires input from many professional disciplines who work on complex medical equipment, engineering infrastructure and maintenance and cleaning of the building fabric. This behind the scenes work, continues to provide the essential support that our clinicians expect in a modern healthcare service. This year has seen the department complete nearly 2,700 work requisitions, in addition to the routine continued maintenance programme and

upkeep to all our equipment and facilities. The GHA is encouraged to see and hear the continued positive comments and feedback from the public and visiting professionals about the design, cleanliness and upkeep of our facilities. The GHA continues to invest in professional development in this area, as well as with every other department, with officers attending vital training programmes and seminars delivered locally and abroad. There has been a phased implementation of "Management by Projects" as a management approach using the Prince2 best practice methodology which was acquired last year. The Procurement and Supplies Department provide a vital service to the clinical, medical, administrative and operational departments of the GHA operating at St Bernard's Hospital, Primary Care Centre, KGV Mental Hospital and the Community Mental Health Team. This department also provides out-patient services for incontinence, compression and hosiery products and the provision of home oxygen therapy equipment. In the past year the department has processed approximately 5,300 invoices to the value of £5 million and handled approximately 6,000 purchase orders to 1,046 suppliers listed on the central database that supply goods and services to the GHA. The General Stores has processed approximately 8,000 internal stores requisitions from GHA departments and wards. The Records Department's role is pivotal to the success of our healthcare services. I am pleased to report that this department continues to produce excellent results and has dealt with an increase in clinical activity reflected in a total of 38,645 clinical appointments. The department has successfully commissioned an electronic patient file tracking system, which has allowed for greater control and management of the records using bar code readers across the organisation, enabling staff to track the location of files. As part of its continuing professional development plan, the Finance Department will be conducting a basic training programme on the Principles of Accounting Practices. It is expected that knowledge on basic accounting principles will assist finance staff in further understanding the new financial software. The Finance directorate intends to make this training part of a routine induction programme for all staff members, a cornerstone for their professional development. The Information Management and Technology Department continues to assist modernising the GHA. Over the last year, they have continued to integrate and deliver all diagnostic information relating to the patient at the point of care. These services are being delivered safely and seamlessly, with the development surrounding our central patient registration system. As a department, the IM&T also look after the administration side of the organisation and have been working closely with central Government departments and leading the implementation of the financial and administrative systems of the organisation. The department has also been heavily involved in the radiology upgrade, which now includes a women health module for advanced screening. Future IT developments include electronic improvements in the way that the Sponsored Patients Programme is operated, with a view to linking up the department with UK hospitals. The GHA's Human Resources Department has had another busy year. At any one point in time, they are recruiting to up to 35 posts in both the local and international labour markets, and work has continued on the Agenda for Change process. In collaboration with the Department of Education and Training, and following this year's Careers Fair, the GHA is developing its workforce planning capacity so that we can provide parents and students with more accurate information about the timing of future career vacancies in the GHA. This will provide students with clearer guidance about the possibility of employment within the GHA for specific professions. It will allow students the possibility of planning their career based on a clearly defined and timed programme of study, together with specific qualification requirements. This approach will help to direct more local people into GHA careers and over time will reduce our reliance on overseas contract staff. This past year has been a busy one for the sponsored patient department. The staff served 1,091 patients, an increase of 5.3 per cent, 741 of which went to the UK and 350 to Spain. These 1,091 patients made 2,415 trips, 1,532 to the UK and 883 to Spain. Staff members of this department continue to provide a caring and personal approach to each individual's needs and the feedback from the members of the public who have cause to use this service is extremely positive. The GHA's excellent

complaints procedure continues to work very well. There have been 57 formal complaints during 2008, five more than the previous year. Again, this year GHA dealt with 340,000 patients during 2008, which makes the formal complaint rate 0.016 per cent. All the complaints were subjected to the full rigour of the policy. Again this year, six complaints went forward for independent review.

I now turn to the GHA's plans for this new financial year, including an analysis of how the Government's health manifesto commitments have progressed during the first 19 months of this our fourth term in office. Mental Health Reform: Staff members have completed their final draft of the new mental health strategy which will be presented to Government. A team of professionals within the Mental Health Service have for the past 18 months been working hard on a very comprehensive proposal to amend our mental health legislation. It is anticipated that a first draft will be produced before the end of this year. This year should also see progress towards the provision of the new mental health facility. Sponsored Patients Reform: Last year I informed the House of the GHA's intention to enter into discussions with the Calpe House Trust, with a view to involving the sponsored patient department in the decisions surrounding who is given access to Calpe House. It was felt that the department was better placed to assess, not only the social and financial needs of the patient, but also the needs surrounding their clinical condition. I am pleased to say that I have had a very cordial meeting with the Calpe House Trustees, who have fully cooperated with the GHA in this regard. This year, the Government will look at further suggested reforms of the programme, which include a review of the allowances for those receiving care in Spain and in the UK, as well as the petrol allowance for those sponsored to Spain. The GHA is in the process of forming links for cardiac services in Spain. Currently patients requiring urgent angiograms are being referred to Xanit and the GHA is assessing the clinical care provided by this centre, with a view to agreeing on a comprehensive agreement for cardiac surgery. The benefits for both the patient and the GHA will be significant. Diabetes Service: The Diabetes Clinic for children at St Bernard's Hospital and the clinic for adults at the Primary Care Centre continue to develop. Once the recruitment process of the necessary staff is completed, and the programme's operational plan has been finalised, then the chiropody service will be integrated and we will have full implementation of the Government's manifesto commitment in this regard. Low Vision Clinic: This year we foresee the appointment of a second optometrist which will enable the introduction of a fully fledged Low Vision Service. The GHA will also look at the establishment of a therapeutic contact lens service to further reduce referrals to Moorefield's Eye Hospital. With the publication of new guidelines for Glaucoma Screening and Management, a Glaucoma and Ocular Hypertension Co-Management clinic will be introduced. Spectacle and Dental Artefacts Free for Children of School Age: The GHA is in the process of completing the cost analysis for this programme, and I am confident that this commitment can be funded in the 2010/2011 financial year. Combined and Coordinated Health and Social Care for the Elderly: Great strides are being made through a team approach between GHA staff and Care Agency Staff, towards this objective. An example of this coordination, and this has been explained by the Hon Jaime Netto, has been to provide temporary accommodation for those elderly persons who have been medically discharged but are occupying acute beds in hospital. This interim residential care facility will alleviate the bed shortage that has been experienced at St Bernard's Hospital as a result, and which has led to the postponement of some scheduled surgical interventions. The GHA, its users and staff, will significantly benefit from this initiative. It will not only allow the GHA to get on with its programmed surgery, but it will also, importantly, relieve the added pressure on staff in the medical and surgical wards. Electronic Health Technology. This year will see the implementation of the first modules of the Electronic Health Record and paperless hospital. If negotiations with the specialist provider can be completed on time, the GHA will proceed this autumn with the introduction of the system. This implementation is fully compatible with the electronic systems

already introduced in the Laboratory, Radiology, Prescribing and Patient Registration.

Primary Care: There are now 35,000 people registered and issued with health cards, 3,000 more than last year. Over 167,000 visits were recorded at the PCC over the last year, 27,000 more than the previous year. Last year I gave a detailed report on the new initiatives that had been put in place to improve access to primary care. One of them was the voicemail service, where the caller leaves their name and number and a member of staff calls them back during the course of the day with an advanced appointment. The number of patients who opted to use this service is on the increase. During the month of May, 276 appointments were issued to callers using this service. Another initiative was the introduction of an appointment reminder service. During the last month, 1,952 patients were called to remind them of their appointment. As a result, 56 patients gave notice of cancellation and these appointments were released for other patients. The electronic web-based and voicemail cancellation service also continues to yield results. There is a new system now, whereby if the GP needs to see a patient beyond the three months in which the lists are open, the patient is called with an appointment as soon as the lists are available. Repeat prescriptions are now issued on a six monthly basis, as opposed to three, for those patients for whom it is clinically indicated. In the continuing effort to improve access, the PCC staff have now introduced a new system of administrative support to all three areas, which is working very well, I am told. The clerks are responsible for the recalling of all patients for each corresponding area, in terms of advance bookings, enquiries, et cetera, as opposed to everything being dealt with by the front desk. This year the focus will be on improving the repeat prescription system even further through measures that I recently described in this House. In addition, the GHA is pioneering a system whereby patients will be allocated to different groups of doctors within the PCC. GPs will be divided into three groups of five to six doctors, each with a lead coordinator. Patients are already being invited to register with one of the GP groups. In effect, a number of doctors, as opposed to one, will be familiar with the patient, their condition, their on-going treatment, their medication, et cetera. The aim is to make the practice more responsive to the patient's needs and will lead to more effective management of long-term disease like diabetes and heart disease. This new system will be on trial and there might be a need to modify some aspects of it, should the demand for a particular doctor or group be too high or too low.
Cancer Services: Over this past year, we have made great improvements in Chemotherapy care. The GHA has entered into a formal agreement with Clinica Radon in Algeciras, which gives all sponsored patients in certain disease categories, the opportunity to receive their oncology care in a nearby centre in Spain. Patients with the common cancers will now have a real consistent choice of service between the UK and Spain. The opportunity for treatment in Spain has been taken up by a significant number of patients, and in the last month a total of 29 new patients requested to go to the Centre in Algeciras as opposed to the UK. Once the GHA has had a year's experience with the Clinica Radon programme, the issue of follow-up clinics in Gibraltar and the provision of chemotherapy locally for certain cancers will be reviewed. Clinics are already provided in Gibraltar for ENT cancers, gynaecology and bladder concerns. The recent recruitment of a new general surgeon in the GHA has greatly enhanced our cancer treatment and laparoscopy services. The new Clinical Director is currently developing multi-disciplinary meetings with the relevant professional groups, to discuss patients diagnosed with breast, lung, colon and other cancers. The medical oncologist from Clinica Radon also attends these meetings. This will assist in the coordination of care improving the quality of both delivery and outcome, and the first ever Breast Care Nurse was appointed in November of last year. In May 2009 she attended a week's placement at the Royal Marsden Hospital in London. Moving on to the Breast Screening Programme, everyone in Gibraltar must by now be aware, except the Members opposite, that the breast screening programme for all women over 40 is a new service which has still not been introduced, due solely to the fact that we have not yet been successful in recruiting the third radiologist that is required for the delivery of the service. Everything else is in

place. Following the recent public debates on the matter, where I accused the hon Member opposite of trying to time-manage Government's own manifesto commitments, when they themselves had no commitment to implement a breast screening programme, they came up with the feeble excuse that they did have a commitment to do so. Having scanned their manifesto, all I found was a very ambiguous comment that they would screen for diseases. So much for clarity of intention. But fine, I will give them the benefit of the doubt and accept that they might have been referring to the breast screening programme. So starting from the premise, therefore, that both the Government and the Opposition agree that such a service has never existed, or else neither of us would have included it in our manifestos, the Opposition cannot argue as they do that it is not working properly. How can it work properly if it has not started? When I disarm them with the political argument which they cannot rebut, they try to save face by resorting to their party political organs, which proceed to print a series of outright lies, in a bid to distort reality. It is pure fabrication that the GHA Radiologist, whose name they cannot even get right, has resigned. It is pure fabrication that his wife, another Radiologist in the GHA, has resigned. It is pure fabrication that patients have been told they could be suffering from cancer but have to wait a long time for a mammogram, and it is totally absurd, to accuse me of not recognising that it is thanks to the Bonita Trust that the new mammography unit will be purchased. The entire Radiology Department of St Bernard's Hospital has been named after the Bonita Trust, precisely in recognition of their wonderful generosity. We do not hide it, everybody who goes for a radiology test cannot fail to see the huge placard hanging over the door, which says "The Bonita Trust Radiology Suite". It is not that I want to improve the hon Members' electoral prospects, but for the sake of the little credibility that they have left, I would urge them to relay the abundant information that is provided to them in this House more accurately to their party's political propaganda machinery. It is thanks to this Government that the health of the women of Gibraltar is high on the GHA's agenda. If the hon Members do not want to believe what I tell them, they should at least give some credit to the views of the Breast Cancer Support Group, who play a very important role in creating awareness and supporting women with breast cancer. I will quote from their latest press release, following their very successful breast cancer conference, it goes like this, "The conference has been the icing on the cake of the already successful One-Stop Breast Clinic, which sees women presenting with symptoms immediately and offers excellent and efficient services like no other in Europe." Not my words, the words of the Breast Cancer Support Group. "Diagnosis is quick, there is support from our new breast care nurse and surgery and treatment is given locally so women are able to stay close to family and friends." Very important and they went on to say that one of the conference guests, a top Consultant Breast and Endocrine Surgeon and Director of St Mary's Breast Unit, was so impressed with our hospital's layout, equipment, staff and theatres that he would come to Gibraltar when he gets ill, another one. He stated that our hospital was far superior in every way to many UK hospitals and that we had nothing to envy the UK. I will leave it at that. Just to add, that as soon as the breast screening programme gets underway and is fully operational, I will turn my attention to the GHA's evaluation of the colon, lung and prostate screening.

Turning now to investment in staff training and professional development, I do not mince my words when I say that one of the greatest achievements of this Government in the area of health, in complete contrast to the previous Administration, is its outstanding track record in providing unprecedented levels of investment in staff training and professional development. This year, again, we will see a 65 per cent rise in this area, from £400,000 to £650,000. The on-going development of Gibraltar's health service is excellently supported through a partnership with Kingston University, which contains both undergraduate and post graduate elements. Additional funds have been provided for doctors and allied health professionals, to maintain their training in a manner consistent with their registration requirements. The ambulance training programme has been a resounding success, arising out of the partnership with Kingston University and the South East Ambulance Service in the UK.

The GHA is also looking at innovative ways to enhance continuing professional development for doctors. In addition, clinical and administrative grades will be provided with further opportunities to enhance their skills. This commitment on the part of my Government towards investing in the continuing professional development of GHA staff, is absolutely essential for the delivery of a safe and successful health service. Linked to this, and as part of the on-going leadership modernisation, last year I reported that ten GHA managers had successfully completed a programme in project management known as Prince2. This year, I am proud to report that the entire Facilities and Estates Team has taken on the Management by Project concept, and this year will see the graduation of 34 managers in front line management. Many others are in the process of completing the Masters programme with Durham University. One of my main priorities this past year, was to set a realistic time frame in which to deliver a feasible succession plan for the GHA. That plan is nearing completion and I intend to take it to Government for consideration during the course of this financial year.

In ending my contribution, I thank my management team, my personal staff and all the employees of the GHA for working so hard towards achieving the very high standards of service that this discerning community rightly demands and expects, and which this Government is committed to continue providing.

The House recessed at 6.10 p.m.

The House resumed at 6.25 p.m.

HON N F COSTA:

Mr Speaker, before I begin I would like to thank the hon Lady for having gingered things up a bit slightly before I rose to my feet. In preparing my second Budget speech, I took the opportunity to consider, not just last year's contributions by Ministers but also the contributions made some years back. There is one thing that stung, like a scorpion in a shoe, and that is that the Government are, if nothing else, masters in the art of repetition, in announcements and re-announcements. The repetition of broken promises, or the repetition of commitments, that take forever or an inexcusable time in which to implement. My friend the Hon Mr Picardo, did give some examples before and I will, of course, do my best to illustrate the sort of thing that I mean. In respect, as well, to spin and the propensity of the Ministers to do just that, I refer to the Chief Minister's reply to my Budget speech of last year, in respect of the areas of responsibility of which the Leader of the Opposition has entrusted me with. The Chief Minister opened his remarks by calling me, and I quote, "agreeably courteous and polite", and he followed by a promise to do his hardest to reciprocate my style. At that point, one would have been forgiven for thinking that perhaps there would be some kind word during the course of his speech, or that perhaps there would have been some sort of concession or agreement to anything of the issues that I had mentioned. But of course, whereas the speech was prefaced with those kind words, nothing approaching a kind word, nothing approaching agreement, nothing approaching an inch of concession on anything came about. The Chief Minister did say something, well, the Chief Minister did say a lot of things on the last occasion, of course, he did speak for at least five and a half hours. But he did say something which I thought was worthy of mention at the outset, and it was the curious statement, at least I thought it was curious, that I was not comparing that administration to the GSLP administration of 1988 to 1996, because in his estimation, if I had compared his administration to that administration, I would come to the view that his administration has performed better. I find that, to put it mildly, a curious political statement to make. During the little time, or the 15 minutes in politics in which the Chief Minister has so kindly said that I have been involved, they seem to share, from the Chief Minister across the spectrum, with an almost political obsession with 1996 and having to compare anything that happens today with what happened in 1988 to 1996. But as I have told the Chief Minister and Ministers, as I have reminded them in this House, I am concerned about how the issues of

governance affect the lives of Gibraltarians today. I am concerned about how the expenditure of our public revenue affects the lives of Gibraltarians today. I am concerned about how some elements of mismanagement, political mismanagement in our public affairs, from the uncontrolled ape and seagull population to the cancellation of operations, to the inexcusable delay in affordable housing, prejudices Gibraltarians today. Today, not in 1988 or 1992 or 1996. We are concerned, and Gibraltarians are concerned with the political reality of Gibraltar today, and at some point, at least I hope, the Chief Minister and his Ministers will wake up to the political realisation that Gibraltarians are fed up of hearing the ridiculous trumped up and worn out excuse that all the current and present failings in the system are somehow, with a tendency or otherwise, connected to an administration that came into Government more than 20 years ago. Does anyone in Government honestly think that Gibraltarians believe that sheer piece of political dishonest mantra any more? I do not believe so and it is time that they gave it up. But the reason for perpetuating a lie is psychologically well routed and can be easily explained. The more one repeats an untruth, the more likely one is to believe in that what is said. What is it that the GSD fear? Well, the GSD fear that one day in the crackle of the radio or in the smell of damp newsprint, that incantation that they think works like magic over Gibraltarians, which is to say, one should compare to what happened in 1988, will no longer work and Gibraltarians will realise that what it is that has to happen is an analysis of the political realities of Gibraltar in 2009 and not in 1996. So, for the reasons I have given, I have no reason, no necessity to compare what happens today to what happened in 1988 through to 1996. Moreover, I do recall with some interest that during my first session of Questions and Answers, the Chief Minister did say that one GSD Government finishes at a General Election and that another one starts, so that we should not presume to hold a past GSD administration, or rather, we should not presume to hold the current GSD administration for the failings of the past GSD administration. If that is the analysis that the Chief Minister puts to evaluate his own performance, which of course I do not share, but if that is the analysis by which we should compare and evaluate political performance, then how ridiculous is it to say that we should be comparing what happens today with what happened in 1988? But that is typical now and is well accepted by more Gibraltarians than ever. What is good for the Opposition goose is by no means good for the Opposition gander. However, if I were to compare this administration to the GSLP, as the Chief Minister has invited me and my Colleagues to do on more than one occasion, then I would say to him that, essentially, his administration, his successive administrations, have built on the foundations which have been laid by the previous GSLP administrations, and whose fundamental and beneficial shake-up to Gibraltar's positioning and Gibraltar's economy. Let me name but a few of the examples that I could give him. First of all, the GSD has continued re-positioning Gibraltar's economy by strengthening and diversifying the finance centre, whilst at the same time moving away from our dependence on the UK and the naval economy – something which the GSLP administration in 1988 was key and instrumental in bringing. Secondly, by awarding university grants to all students to be able to go and study in the UK and come back as a graduate and therefore create a much better skilled work force – a policy that was introduced by the GSLP administration. By continuing thirdly, with a programme of residential homes to Gibraltarians by providing co-ownership schemes, even if their administration has taken ten years to announce that affordable housing will begin under their stewardship. The protection as well of our Nature Reserve, and of course, fifthly, by continuing the beautification scheme plans which were already in place before they came into office. During the last Question and Answer session of this House, the Chief Minister took exception that we had accused his Government of resorting to personalised political attacks, and one only needs to read the press releases, issued by Government in reply to press releases that we issued, as I did in preparation of this speech, and in the vast majority of these press releases where one does see personalised attacks, the press releases are peppered with innuendo against the character of the Opposition Member, their abilities are questioned, the motivations are questioned, their integrities are

questioned. So it is very much, as much as the Chief Minister may not like it, but it is very much a question of the Opposition's criticism of policy versus the GSD's personalised attacks, and the latter should not form part of the cut and thrust of political life. In my view, such outbursts demean our parliamentary processes and the people involved. But much, much worse than that, it alienates Gibraltarians, the ordinary person listening to the debate on the radio or reading the Chronicle in the morning, it alienates them from the process. But I have said it before and I will continue to say it for as long as the slings and arrows continue to be fired at the person, rather than at the idea, and it is this, that if a rebut would concentrate on the critique rather than on the criticism, it is because they have nothing to say other than to attack the person who is making the criticism. Whereas there are improvements, of course, in health service and in social services, whereas there is no denying, as the Chief Minister and Colleagues do, to try to portray us as mischievous agents that somehow all we do is try to attack blindly, some of the problems which we raise because they are brought to us by members of Gibraltar, by constituents, are there and they are perfectly obvious to anyone, and not just to us, and they speak out for themselves. Those problems, obvious as they are, can be brought up in this House and they can be objectively done so without the need to impute bad faith and to impute ill motives on the persons who bring the criticism. At the same time, we are certainly not paid to publicise what the Ministers see as their successes. They certainly do that well enough themselves and we are not their cheerleaders. The Chief Minister did, during the last Budget session, say that he receives criticism from his own for not extolling their virtues enough. I sincerely doubt anyone believes that because the current administration does an excellent job in self-praise, so we will leave that to them. The Ministers, for the two years or so they have left, I would urge them to try to elevate the public pronouncements away from the mire, inject reasonableness and maturity in its political debate by limiting its arguments to the policies discussed, and I say that of course, with the utmost humility and respect given my fifteen minutes in politics. What I have done is to present the current context in which the Ministers move, and I thought it was useful to set it out as prefacing my remarks in respect of one of my specific areas of responsibility, that is to say, health.

To avoid the accusation that has been levelled against me in the past, that is to undermine the entire health system by predicating my entire speech on one case, something which I refute that I did last year, I preface my remarks by saying that patients' experience of the GHA does in fact differ. To use an example quite close to me, of a close relative having experience of the GHA was indeed very positive one day and then very negative the next day. So it is not for a second suggesting, and I did not do last year and will not do today, that the whole entire system is in a shambles and that I am trying to undermine the entire system. All we seek to do by bringing up matters, whether by press releases or in Question and Answer sessions, or indeed, during the course of this debate, is to highlight the areas, which in our view, in our estimation, are deficient and which need improving. That does not mean the rubbishing of an entire system, which is something which, unfortunately, cannot be said about what they say about us, which is that everything that we do or say is rubbish or different levels or categories of rubbish. That is not correct, in the same way that it would be incorrect to say that the entire system is flawed. But in the same way that the Minister does concede and did concede in the last Budget address, that the system is not perfect, it is our duty to highlight those parts of the system that are not perfect. I said it last year and I will say it again, that it is the Opposition's very function, that is to say, in bringing to the House or to the public the areas in which we feel that matters are deficient, that will make the Government think long and hard before they do implement their policies, because they know that at all times their policies will be examined by those whom Gibraltar has entrusted with ensuring that there is a proper check and balance to their affairs and to their policies, and that is us, and that is our function, and I am sure that all hon Members agree, that Government and the workings of Government are always much more effective when there is an effective Opposition questioning the workings of Government. Let me also say, that the Ministers should not on the whole be surprised that, vocally speaking, I

should simply hear the complaints about the GHA. Let me also say, as the Chief Minister said on the last Budget speech, that we are fond of issuing press releases without first having fully investigated facts. Well, in that respect let me say to him that many of the complaints that I receive in private do, in fact, stay private and I try to address the problem which the constituent suffers directly with the office of the hon Lady, and hope that the hon Lady will admit that there are many cases of which I address to her in private and specifically and which never see the light of day publicly, because our concern is not to make political mischief, as they are very fond of saying that we are, it is to try and help those people who come to us for help. I did say before that I liaise with the office of the hon Lady and not with the hon Lady herself, because it has become an ambition in my life, in all my fifteen minutes of politics, to be able to speak directly with the speaker when I call the office. I have never been able to, but I can assure her that when she is sitting here I will pick up her telephone calls when she does call me. But I will also say this about the hon Lady, that every time a constituent does come to me and I do raise a point directly with her, the feedback that I get is that she does consider those cases, and in public, for the benefit of the Chief Minister, I would find it harder to say that all that I do is criticise and be negative, I am grateful to the hon Lady for the times that she does consider the cases that I bring to her attention. I do so with a certain degree of trepidation, of course, because now the Chief Minister will have to find a different way of how to criticise me when he comes back in the round up, but having said that, I thought it was right and proper that I should thank the hon Lady nonetheless. It is only when a patient, or the relatives of patient are so incredibly frustrated about some element of the bureaucracy of the GHA, that it is they who tell us to come out public with the statement and this is only done with the consent of the patient and the patient's relatives. It is not, contrary to the perception they seek to create, to undermine our credibility and our honesty as politicians and Opposition Members, it is not the custom and the practice of Opposition Members to issue press releases, willy nilly, without having investigated the facts. In respect of health services it is absolutely right that the state should fund them. The hon Lady opposite, in fact, once again, does preside over what is the biggest state budget, which reflects, I think, the importance that this House and Gibraltarians attach to state-funded health services. But, of course, in presiding over the largest Head of Expenditure, we on this side of this House have to be careful and watchful on how that taxpayers money is spent. We need to ask, naturally, whether the services provided are cost effective, whether there is some investment, whether there is any waste and whether the amount spent corresponds directly to the services being provided. Let me say, as has been said by the Chief Minister and the hon Lady opposite, that the bone marrow appeal was one of those instances where there was a worthwhile endeavour and money, indeed, well spent. Therefore, let us consider the investment made by Government. During this financial year alone, Government estimates a total forecast outturn of £68,076,000. In respect of the financial year ending March 2008, that is to say the last financial year, Government's actual total expenditure was £66,000,733.48 as opposed to £59 million something in the financial year ending March 2007. In real terms, therefore, between 2007 and 2008 there has been an annual increase of almost £7 million in Government expenditure relating to our health services. These are, however one looks at them, important figures and we therefore need to ask the question, however much the Chief Minister will look at me now and say "gosh, here we go again with the same issues", how is such an astronomical amount of money being spent? I say it again, £66 million, some of the perennial problems do continue to arise. On the last occasion when I brought up and I raised the issues that recur, hence why I continue to bring them up, the Chief Minister said that every time I do so, or every time any hon Member does so, he will have to defend them on the same arguments, and he challenged us. He said, "why do you not write something new and I will write an entirely different speech altogether". In other words, do not bring up perennial problems and we can move on. I have a suggestion which I think is much better in the circumstances, solve the problems and we will stop bringing them up. How about that as a better deal for Gibraltar? Let me start with the complaints and the complaints procedure. The

Chief Minister on the last occasion said that it was a much more effective complaints procedure than, of course, he had to refer as a result of pathological political necessity to 1996. So he said it was much more effective than it was in 1996. The hon Lady said it was an excellent system during the course of this House. He also said that I should have tried to complain in 1996. Well, look, whether it was true, whether it was very difficult to complain in 1996 or any time before or not, the fact still remains that we are considering the political reality in 2009, that may have escaped them but it does not escape us and it does not escape the public. On the last occasion, the Chief Minister said that it was simply not true, his words, not true that some patients were unaware of the procedure, that some people were loathe to use it and that others found the process exasperating. He said twice, "this has to be untrue". One has to wonder whether the Chief Minister did in fact speak to the very same people that I spoke to, who told me the things that they were complaining about. I sincerely doubt it. Moreover, the Chief Minister should reflect that maybe some people do not like to complain on the so-called premise that the Gibraltar Health Authority provides a service which, unfortunately, most of us if not all of us will have to use time and again. Therefore, it is not the most comfortable of circumstances to complain about a system which one knows one may have to use in the future. Moreover, it has not been one person, it has been various people who have come to me to say that whereas they did try to make a complaint, that was met with resistance from the administration responsible. Now, one person may have a political axe to grind, maybe two, maybe three, but certainly not everyone who comes to complain to me will have a political axe to grind, and will repeat the same complaint about the complaints procedure that there is resistance about formally lodging complaints and trying to sort things out in a different manner. Some people find it difficult to complain the first place. If they are met with resistance from those responsible, then they may be put off altogether. Some other people complain because they say, "well look, why are we going to complain, what good is going to come of it?" In any event, some people have said, "I am not entirely sure that even taking the matter up to the Independent Review Panel is going to do anything". As a result of those various discussions that I had with complainants, and I see the hon Lady is already shaking her head because she may remember the debate we had in Questions and Answers, where I said to her that if the hon Lady wanted to eliminate the criticism that has been levelled privately to me and publicly by some quarters of the community, that the system is not truly independent, all that the hon Lady needs to do is, instead of having a list which is compiled by her, from which the Ombudsman then chooses to form the panel, in order to remove that criticism levelled at them publicly, and in order to have a system which is thoroughly independent, independent from the public press, the argument is very simple. The moment one has a politician choosing people to go on a list, then it is natural to think that some people may view that as leaving it open to political interference, and I have never ever suggested to the hon Lady, as I see her shaking her head, that she has tried to interfere with the system. I never have. All I am saying to her is that if she were to allow the Ombudsman to put the people in the list in the first place, rather than choosing from an existing list appointed by politicians, the criticism would be completely eliminated and therefore there would be no further criticism. But who I am to try to argue the hon Lady and hon Colleagues opposite into sanity and into common sense? One of the other problems that has come to my attention from people that come to see us has been that there is only one Patient Complaints Coordinator and that, therefore, resources are limited in this area. I once again note from the Government's own statistics, from the Draft Estimates provided, that the GHA will not increase this number. Perhaps one of the things that they should consider, in order to be able to staff and better resource the complaints procedure, given the number of people who do attend the hospital, is to recruit more people. A related complaint to that, the fact that there is only one Complaints Administrator, and this is what I have had from professional doctors and not from patients and service users of the GHA, is that given the lack of resources in that respect, some of the doctors need to deal with the complaints themselves. That is, of course, on top of all the work that they have to do. Now, the Chief Minister cannot now say to me that this is something that, I

do not know, I am inventing or whatever, because this has been by the own doctors and if they were to conduct a survey, they may find that, in fact, it is a complaint from them about the Complaints Procedure.

I now move on to the perennial questions and issues that I mentioned at the beginning, and which is why I said that the GSD are masters in the art of spin and of announcement and re-announcement. Parking and parking for the disabled. Since I was elected, I have raised in this Parliament, and I have raised in public, the need for parking spaces for families and visitors of patients in the hospital. Since 2008 we have been asking when the arrangements for hospital users in Europlaza will come into effect. That, the story of this particular saga comes first of all with the Hon Lt-Col Britto confirming that the Government would operate all car parks through a Government-owned company, which we now know to be Gibraltar Car Parks Limited, and which at the time we were told was being staffed and activated. That was in 2008, surprise, surprise, it is still the position today. What is very interesting is that the Hon Lt-Col Britto said, and I quote, "I can assure the hon Member that this is not something that is technically under review, which means nothing is happening". Well we have to thank the hon Member opposite for his brutal honesty, that a review in fact means that nothing is happening. So, God knows what is happening to those things that they say are, in fact, under review. Both the Hon Lt-Col Britto and the Hon Mr Holliday have said, "the necessary components to staff Gibraltar Car Parks Limited to have car parks operational in respect of the hospital will be in place shortly". I quote "very soon", and pressed on the last occasion by my hon Friend Mr Licudi whether they would be ready in a month, which I am sure most hon Members will agree that a month would fit in the definition of the word "shortly", and indeed, "very soon", the hon Member opposite was unwilling to commit himself and, of course, we are not surprised. Connected to this issue, is the issue of members of the community who suffer from physical disabilities and have expressed concern that once the Europlaza car park is fully operational, there should be a suitable number of car parking spaces for those with physical disabilities, because at the moment, my understanding is that they are having difficulty in being able to access suitable, available car parking spaces for disabled. I now turn, of course, to the perennial issue which keeps coming up time and again, and will continue to do so until the problem is resolved, of bed shortages with the concomitant result of cancelled operations. On the last occasion, the Chief Minister said, sarcastically of course, and I quote, "after 12 years, people of Gibraltar deserve is a range of tape recordings in the Opposition", and I also quote, "an Opposition that changes the record". Well, I tell the Chief Minister now that after 13 years in Government what the people of Gibraltar deserve is a range of measures to actually grasp the nettle of bed shortages and cancelled operations, and shelve this problem as an issue of the past. That is what the people of Gibraltar deserve. From my reading of previous Budget sessions, the issue of bed shortages appears every year, despite the boast of various Ministers for Health that expenditure on health has increased since the magical year of 1996. In other words, 13 years later, millions of pounds in, still the same problem. If the problem by itself were not enough, the people of Gibraltar and us here, have to endure this comment, and I quote the Chief Minister, "what will the Government do to ensure that operations never have to be cancelled due to bed shortages? Answer, nothing. There is nothing that the Government can do to ensure that no operation will ever have to be cancelled because of bed shortages". That is an incredible answer from the Leader of the GSD. Nothing, is that the reply, nothing? Of course it is impossible for the Government to give an eye clad guarantee that no operation will have to be cancelled. Of course, but to say that nothing can be done is to say that they will not move on the issue, which is that they will try to alleviate the bed shortages so that there are no operations cancelled. But, contrary to the accusation of the Chief Minister that I did not, therefore, know what I was talking about, maybe I do know what I was talking about because, look here, as recently as 29th April 2009, there is the promise of an interim facility for the elderly at St Bernard's Hospital whilst it moves ahead to refurbish part of the old St Bernard's to convert it into an additional residential home. How is that relevant? Well,

because the issues are inextricably linked, as there are a number of elderly patients who are discharged from the hospital but who occupy hospital beds. In this respect, the hon Lady said, and I quote, "these interim residential care facilities will also alleviate the recent acute bed shortage that has been experienced at the hospital, resulting in the need to postpone some schedule surgical operations." First of all, "recent", I think not, more like perpetual. The hon Lady goes on to reiterate how much of nothing, which is what the GSD Leader said during last year's address, how much of nothing is going to be done. It will allow the GHA to get on with its programmed surgery without interruption due to the wards being full with elderly people who are not in need of hospitalisation. So contrary to my, and I quote, precocious comments on the last occasion, contrary to the Chief Minister's view that I should better understand how things work, it would appear that the hon Lady and I are, in fact, of the same mind. Something had to be done, something will be done but it is yet to be done. If the matter were not quite so serious it would be a matter of some jesting, that the Chief Minister cannot accept, even when the criticism of the Opposition is justified. The instances of inconvenience of having an operation cancelled are well recorded in the press, and I refer this time to a press statement which we issued in respect of a complainant, who advised us that the only surgeon able to undertake keyhole surgery would be on holiday for one month and that no cover had been provided during his illness. The operation, in one of those cases, related to stones in the gall bladder and the person concerned had to be treated in hospital, in agony, on three separate occasions. The patient was given pain killers and was sent home. It is obvious that if there are no keyhole operations conducted during the month that the surgeon responsible is away on holiday, then those who are in pain will continue to be so until the surgeon comes back and starts working his way down the list. If there is no cover, is that not a shambolic state of affairs if for one month no operations are going to be conducted in that respect? I would like to pause for a second because it is very easy in the cut and thrust of this debate, for us to gloss over the facts of which we speak. Let us try to put ourselves in the position of the person whose operation has to be cancelled because, of course, it is one thing to debate it, it is quite another to have to sit down with people and listen to what it means to their lives. Having an operation cancelled is not a run of the mill event. The more serious the operation the more serious the event. For a person who has an operation there are changes and adjustments that have to be made. Most people who are at this stage, so some time off work will have to be taken, with the adjustments that would have to be done at that person's place of work. If the person is a single parent, an operation may take a day and, of course, will have to stay overnight or two, then that would mean having to take care of the children and make alternative arrangements. The person may be a person who is suffering from the illness and may be in some discomfort or even pain. So, to be told on the day of the operation that it cannot be done on that day, is not something that should be glossed over, it does cause serious inconvenience to the people who are affected by it. It is very easy for the Chief Minister to say nothing is going to be done et cetera, but one has to be aware of the human element that is involved in, what are essentially, administration decisions that trickle the way down as to how these things are going to be done. Equally as serious was the attempt by the Chief Minister on the last occasion to try to divorce the ultimate political responsibility in respect of the delivery of Gibraltar's health care from its management, by saying that the hon Lady is not employed to manage the hospital. That may well be the case, but all Members I hope will agree with me, that the hon Lady is there to effect a supervisory political function. To ensure that the complaints that she hears about, whether through me, whether through the press, whether through members of the public going directly to her, in respect of cancelled operations, especially during the winter months, when it is accepted that there is a surge of cancellations……… Then it is up to the hon Lady to ensure that the appropriate policies are in place and implemented so that it does not happen. Contrary to what they would have us believe, in effect, the Minister responsible for Health Services or the Minister responsible for Social Services, is at the very top and is the top political manager. They are the person with whom the buck stops, so

they are the ones who should ensure that these things should not happen. If it is true that the hon Lady is not carrying out this role, if it is instead the case that it is the Chief Minister that decides the political decisions, and it is the civil servants that carry them out in the Gibraltar Health Authority, then let us start by being realistic about these things, let us start by saving money and let us start by axing one political position if it is redundant, will save £75,000, because the impression is, in fact, created that it is the Chief Minister that makes all the core, important, political decisions. We see him at the head of the Civil Contingency Committee in respect of Swine Flu, with the hon Lady opposite sitting to his right, duplicity in political positions? When they announced the affordable housing programme it is the Chief Minister who makes the announcement with the Housing Minister sitting on his side. Again, redundancy of political positions. If the Chief Minister is going to make all the important political decisions, then do we really need to pay another nine Ministers? I think not and I hope that the Chief Minister is not thinking that I am begrudging his efforts. I do not but if he is going to be making all of those decisions and if he is going to be at the core of everything, then let us sack the redundant Ministers and he can given himself a raise, I am sure he would not mind that. As I asked during my last Budget speech, what is the point of pouring millions of taxpayers' money if the Minister, who apparently is not responsible for managing our health services, nor the Chief Executive, can resolve the same problems that occur time and time again. Related to the question of bed shortages, I have raised questions in connection with the elderly. In answer to Question No. 545 of 2007, the Minister for Health noted that the total number of elderly citizens waiting for a place at Mount Alvernia stood at 197. In answer to Question No. 369 of 2009, the total number of elderly citizens occupying a bed at St Bernard's Hospital, as at 2nd June, is 350 and the Hon Jaime Netto, from his Budget address, seems to think that this is a figure that will increase. Well, if this is a figure that will increase and it does reflect a growing trend, then whether it is the hon Lady, or the Chief Executive or whoever it is that makes decisions, better expedite what it is that they are doing to make sure that the situation is tackled quickly. Let us hope that this is one of those situations where there is swift, expeditious movement and not as they have done on many other projects which takes them an inordinate amount of time to achieve. Another important area of health relates to mental health, and it is certainly in no small measure, thanks to the efforts of local individuals and groups that Gibraltarians today have, I think, a much broader and deeper understanding of the importance of mental health. In their last political manifesto, the GSD promised a purpose-built mental health facility, which we on this side of the House support and have been doing so since 2003, and in January this year the hon Lady said that by far the greatest improvement to our mental health services will be the new purpose-built facility at the Aerial Farm site. We have since discovered that Government are still considering different sites and that no final decision has been made on where to establish the new purpose-built mental health facility. If it is accepted that mental health services have in the past not been properly resourced, as it has been accepted, that they have not made sufficient investment and that a new building is a core plank of their policy, then when will Government finally decide on a site and commence necessary works? Unfortunately, as far as the estimation of these Members of the House is concerned, it is symptomatic of this GSD Administration, and previous GSD Administrations, that the real needs of the community are put to one side, while other projects of financially dubious benefit, like for instance, a project mentioned by my friend the Hon Mr Picardo, the Air Terminal, xxxxxx should receive full impetus. It is not only us, because we know that the Chief Minister and Ministers do not like to take our word for anything, but it is not only us who question the usefulness of the Air Terminal project at this time. It is the Federation of Small Businesses, it is the Chamber of Commerce, it is other political parties, it is political independent observers independently who have done so, and if the Chief Minister is going to say that in times of recession et cetera what one needs to do is to invest more rather than less, then let me tell the Chief Minister that he need not bother with that reply or refrain because from the questions that have been answered in this House, we know that Gibraltarians and

Gibraltar will benefit precious little, whether by way of jobs or whether by way of the contracts that are going to be allocated. If this Government cared for Gibraltarians, as they do in respect of other projects, let me say this, after 13 years in Government, thirteen, so I can go back to 1996 as to when they start as opposed to 1996 when our previous administration was going out of office, the waiting list for the elderly should have been seriously reduced, if not eliminated, by the building of a proper elderly care home. The new purpose-built mental health facility would also have been built, as another example of projects that matter to the ordinary Gibraltarian who lives and has always lived in Gibraltar. The problem of beds shortages resolved once and for all after 13 years, no more cancelled operations, affordable houses built in the first term of office and already been given to returning graduates, proper traffic flow and the list is endless. If one really does need to compare this Administration to the previous Administration of 1988 to 1996, the one striking feature is that the developments that were done then were for the benefit directly of Gibraltarians, whereas the developments now is certainly not the case because otherwise all of those instances, few as I have mentioned, would have been addressed long before and they still have not. Certainly, it is not the time to have a detailed analysis as to the law in respect of mental health. The hon Lady did, and I am glad to note that she did, and I bring up the fact that we have an old Act, around 37 years old, the Mental Health Act and, of course, it was drafted, I believe, emulating the UK Act. It caters for a society which is very different to a Gibraltarian society 40 years later, scientific research, scientific discovery, development has been improved and come a long way so that the needs and techniques et cetera today in mental health, are very different to those 40 years ago. So I am glad to note that there is movement on the drafting of legislation, a new Mental Health Act, although of course it remains to be seen whether this is like the Heritage Act law that has been in the pipeline for as long as I have been reading Budget statements, which they repeat and they rehash and then recycle but never gets done. In addition, I also make special reference to one of the most vulnerable groups of persons, which in the estimation of Members on this side of the House, where more could be done and this relates to persons ordinarily over retirement age suffering from Dementia and Alzheimers. Although steps have been taken by this Administration, it is our view that certainly more could be done in this respect. For example, in addition to introducing mechanisms for early diagnosis, allocation of funds could be made for a respite home specifically for people with Alzheimers and Dementia. I am glad, for one, that the hon Lady did, as I said at the beginning, ginger things up a bit by mentioning the public debate on the mammography service. First of all, let me say this, I have never, I do not know whether the broad side brush levelled at the Opposition did refer to me specifically or not, it may not have, but I have never been one to come out of the House, or anywhere, and then go to any organ, whichever organ that the hon Lady was referring to, and start feeding them information. I certainly have never done that and if there is any complaint or criticism that they do receive misinformation, then that is a matter for them and the organ in question, not direct that at us as if somehow we are running around telling people misinformation. It is exactly this sort of thing that I mean. It is the "let us portray them as mischievous agents, creating havoc, affecting the morale of people by feeding misinformation". I for one have never done that and that portrayal is …… and as I say if they have a complaint about it, let them raise it with the organ in question. Of course, there will never be any complaints about 7 Days. But returning to that wonderful colour propaganda, I mean newspaper, the mammography service debate that I was talking about, again, in the same way as with mental health, I also have to thank the work that has been done by Breast Cancer Support Gibraltar and the fact that they continue to create an awareness of breast cancer and they do, I understand from my conversations with them and from people who do suffer from breast cancer, provide a vitally important lifeline to sufferers of this type of illness. In respect of the debate I was referring to, and the fact that the hon Lady said that we had had this debate in public, what we at no point said………, and I checked the press release because I did check the Breast Cancer Conference press releases issued by the Government, I did check our own press release and our own press release at

no point did we mention the routine structured mammography service, and therefore I could not have criticised the routine structured mammography service because as the hon Lady said herself, it does not exist, so if it does not exist I would not have mentioned it. What I was talking about was the routine mammography service and what I was saying was that the complaints………, what I was referring to was that the complaints that we had received on this side of the House, that symptomatic women instead of being seen to immediately in the one-stop breast clinic, have had to wait months to be seen, not immediately. Also, what I did refer to in the press release was that the routine screening service that has been provided, the hon Lady herself has said that the average waiting time is 18 months and we were referring to that as well. We were saying that 18 months, surely, is not good enough. We were referring to those matters not to the routine structured mammography service. During the course of the Breast Cancer Conference, and again the hon Lady repeated it now, to rebut our public statements she said, "nobody is in a position to argue that it is not working properly because it is not something that is happening now." Again, we have not mentioned that, it is unfair to defend our press release on the basis where no reference was made to the routine structured mammography service.

I move now from health to social services. Of course, we will have to see whether the changes that have been announced by the Hon Mr Netto will have a beneficial impact on the lives of the service users. Unfortunately, we reserve our judgement on those issues and we will reserve the right to comment in the future as and when matters arise. As I did on the last occasion, and in spite of the fact that Ministers did not like it because they then proceed to point out all the things that they had done since 1996, we would once again say that social services is not funded to the extent that it should and there are many examples why this is the case. For instance, they should employ more social workers, more counsellors, in order to be able to assist the family courts to carry out the work. Practitioners in the family bar and service users of that particular service will know of the difficulties that they encounter, for instance, in having welfare reports prepared in a timely manner. The fact is that that part of social services is not adequately nor properly staffed to meet the amount of litigation that is coming through the courts at the moment in respect of family matters. It should not be for those who fall through the cracks of the system to have to seek out the assistance of the system. The system should be there as a safety net for those who cannot do or manage by themselves. In this respect, I would like to refer the House to the instance of a criminal case in which I was involved, and this involved in the charge being brought against a lady who had been involved in an altercation with her husband. Now, the husband and the child in common were Gibraltarians but this lady was not from Gibraltar, she was from outside, because she had no alternative redress other than the matrimonial home, the Magistrates' Court took the only view that it could take in the circumstances, which was that she had to be kept remanded in custody because, otherwise, if she were let out on bail, she would have nowhere to go, she would be loitering, that is, committing another criminal offence. In other words, she would end up on remand again. That set of circumstances for me, and for the court, and the JPs who were listening to the case at the time, did put into sharp focus an important crack in the current system. It is a lacuna which we have mentioned before by asking questions in the House about the construction of a halfway home for women, and for men, who find themselves homeless for whatever set of circumstances. In this case it just happened to be that there was a family dispute and one of them found themselves in the streets. But in addition to the fact that there is no interim measure, there is no halfway house for people who do find themselves in this situation, there are other social issues that arose from that case. If the Ministers were to say, "well this is a case which could have been dealt with by the shelter that currently exists", this was a matter that I did, in fact, take up immediately with the women's shelter but, unfortunately, at the time, there was no room. I have to thank the Hon the Minister for Justice who I called to see whether he could have some sway with the shelter and, thankfully, by the time we returned to court the matter had been resolved because the parties had reconciled. However, had that not been the case,

then the same situation would have been perpetuated. But in addition to the fact that this person would have found themselves without recourse, is also the issue of access to the young child. The child in common was a baby, which meant of course that one of the parents would have had to take care of the child, in circumstances where the mother was being kept remanded in custody. Most couples today both work, so this placed this family in a very difficult position because the father had to miss work as a result of his wife having to be kept remanded in custody, in order to take care of the baby, care arrangements in hospital would not have been at all suitable. So from one set of circumstances, one family dispute, all of these social problems arose and these social problems were not met by the current system. That is a wholly unsatisfactory state of affairs. Another deficiency in the system, is the fact that we need proper and adequate provision of Government housing, or low cost housing, for disabled persons and their families so that they can lead a much xxxxxx life as we and I. I was glad to note the comments made by the Minister about the facilities being made in respect of people with disabilities in order that they may enjoy the beach. That is certainly something that is laudable, but whereas that is a positive step, more has to be done by way of permanent solutions in order to be able to make people with disabilities lead as independent a lifestyle as possible. However, in addition to the provision of affordable or low cost Government housing, should be the increase, or rather, they should become eligible for household cost allowance. Maybe we should extend the Minimum Income Guarantee. We should also urge Government to implement, or rather, adopt the disability action plan which is being proposed, in consultation with the Gibraltar Disability Local Movement.

In conclusion, what Gibraltar needs is Government that forgets the past and forgets in using the past to justify the inexcusable present day failures. We need the Government that, actually, when considering policies exercise an element of humanity in considering the affairs of state. We need a Government with imagination, a Government that can delegate between its Ministers so that decisions can be implemented soon, quickly, in human terms within the time for people to be able to reap the benefits and not to have to wait for so long. We need a dynamic political force that drives Gibraltar through. We need a Cabinet that works properly collectively as opposed to having to wait for everything decision to be made by a person in the centre, and we need a quantum leap in Gibraltar politics and we need it now.

HON D A FEETHAM:

Mr Speaker, at the beginning of our term in office in October 2007, I announced that the Government would be conducting a root and branch review of the entire justice system. This review was underpinned by unprecedented levels of public consultation and participation in 2009. This included consultations on the renovation and the building of new courts, reform of our family law system, reform of our criminal law system, the procurement and sale age in relation to alcohol and tobacco, reform of the legal aid and assistance system, jury reform and reform of the industrial tribunal. In each and every one of these areas, we have made substantial progress of which I have no hesitation in saying that JFK himself would have been proud. Indeed, we hope to be in a position to complete our work in most of these areas this year or in the first half of next year.

The Courts – as I said last year, none of these reforms would be effective without the substantial investment that the Government are making in their plans to overhaul the physical infrastructure at both the Supreme Court and the Magistrates' Court, and to restructure its back office business and management systems. It is generally acknowledged that the present infrastructure resources available to the court are inadequate, and that despite great effort by the staff of both court systems, the level of service which is provided to users is not as high as it could be. I am glad to say our plans for improvements in both areas are well in hand.

Infrastructure improvements – all plans, with input from the judiciary and other relevant stakeholders, were completed towards the end of last year together with all the preparatory work. This year we commenced work in earnest of phase 1 of the project, which is the construction of the Magistrates' Court in the building in Town Range just behind the Supreme Court. Those lawyers who habitually practise in the Supreme Court will have already seen that the demolition works have begun. The total cost of phase 1 of the project appears in Head 102 Projects, Subhead 6H and is £4 million over two years. The building will have the benefit of three Magistrates' Courts, two of which will be of identical size and a slightly larger third court which will cater for juries in Coroner's inquests. The complex will have all the facilities associated with a modern court house and will be disabled-friendly. The design ensures that there will be a complete segregation between the public areas and those areas where staff work, and between those areas and the areas where remand prisoners will be kept pending their cases being called up, and the route which remand prisoners will take to the court, which will also benefit from a secure dock. There will also be a complete overhaul of information technology that will connect the courts to other key component parts of the system, the RGP, the Prison and lawyers. Once we have completed the Magistrates' Court building we will begin work on phase 2, which will be the conversion of the current Magistrates' Court into a modern Supreme Court facility and the building of another court over that court. Phase 3 will involve the conversion of the current Supreme Court house and the building of a fourth court over and above that court. This will mean that the Supreme Court will have four courts at its disposal, together with ancillary facilities, such as judges' chambers, jury rooms, administration offices, conference rooms and public entrance foyer with security control. This will be a major project and the scheme was described by the President of the Court of Appeal and the Acting Chief Justice as meeting, and I quote, "the needs of Gibraltar's judiciary and the public it serves for at least 20 to 30 years". It will also be one of the Government's examples of an integrated strategy for urban renewal and enhancement of our heritage. It is not surprising, therefore, that the Heritage Trust have described the project as one of the most exciting in the pipeline.

The Combined Court Service – it is also important that our courts adopt the most modern systems to ensure that they serve the public efficiently and effectively. It is our vision for both courts to work closer together as a combined court service. I must begin by acknowledging that there is much to commend about the present service in Gibraltar. We have tremendously knowledgeable and experienced staff and we benefit greatly from the low staff turnover found in Gibraltar. It is also worth recognising that the majority of staff are keen and ready for change and share the Government's vision and desire for an improved court service. Last year I said that, at the suggestion of the judiciary, we were considering appointing a Chief Executive of the court service in order to enhance the management of the combined courts and ensure that the management is properly coordinated. I am glad to say that we will shortly be in a position to advertise this post. We hope that a Chief Executive will be particularly useful in helping to coordinate the forthcoming works to both parts of the court system, in a way that minimises the disruption to their business. A couple of months ago we commissioned a visit to Gibraltar from Mr Peter Risk, who is the South West Regional Director of Her Majesty's Court Service, and who has produced a road map for the development of the court service in Gibraltar. I have no doubt that his report does so and it will prove to be a valuable tool in ensuring that we deliver a world class court service for Gibraltar. As part of this restructure, we will also end the antiquated notion of judge or court clerk managers. To paraphrase a comment made to Mr Risk by the Senior Presiding Judge of England and Wales a few weeks ago, and I quote, "most judges have never administered or managed anything". It is not possible for someone such as the Registrar, committed as she is, to manage a department and at the same time judge, to be a taxing master and administer legal aid. Administrative responsibilities were removed from the Registrar in England and Wales 40 years ago. Likewise, it is not possible for someone, however hard he works, and the present incumbent works very

hard, to spend all his time in court, as the court clerk does, and then dedicate the amount of time needed to manage a department. That situation ended in England and Wales about 30 years ago. We must move with the times and we are determined to do so.

Further measures on e-justice – as I have said, the Government are committed to increasing access to justice via information technology. Last year I said the Gibraltar Law Reports will soon be available online as well as in a printed version. All cases appearing on the website will be identical both in pagination and head notes to the printed copies. The cases have been uploaded onto a website and the Acting Chief Justice, together with a committee that he has set up, simply needs to make a final selection for the years 1980 to 1987. The years 1812 to 1979 and 1988 to 2008 have already been downloaded. It may well be that the Government make the website available to lawyers, even in the absence of the 1980 to 1987 lacuna, and deals with that gap once the selection is made.

The new prison – partly out of courtesy to the hon Gentleman who really should be replying to me but he finds himself that I have the benefit over him, I will keep my responses to him relatively short. What I will say is this, the new prison at Lathbury Barracks will be completed this year. In answer to Question No. 423 of 2008, I said that the new prison will initially accommodate a total of 76 inmates, with a possibility of increasing the capacity to 98 inmates in the future by developing the top floor of the prison and that that would be ready, or ready for transfer, by the end of July. Last year and subsequent to the question in this House by the hon Member, the Government took the decision to undertake that work now and, therefore, the completed prison will enjoy its full capacity at the end of the completion of the works. In other words, the capacity at completion will no longer be 76 but will be 98 because of the development of the top floor. If the hon Gentleman had asked the question this year as he did last year, instead of being fixated for partisan political reasons with the industrial action, he would have of course been told that that was our intention. That has meant that the timetable for practical completion of the prison will be delayed by a few months but not beyond the end of this year.

Family reforms – in the context of family reform, last year we conducted an extensive consultation exercise involving the publication of a White Paper on the Children Act. The final product will, of course, be before Parliament in this Session. The Government are conscious that divorce and separation are very stressful, and that in the aftermath many parents feel lost. Access to good information and advice is important to all stages of relationship breakdown. Well informed parents are better placed to make soundly based decisions and, hopefully, help parents resolve issues without recourse to the courts. We have therefore also published two documents which will be issued by the court service on divorce or separation. These are called “Parenting Plans – A Guide for Separating Parents” and the second document, “Model Parenting Contact and Resident Plans”, which have appeared in both the Gibraltar Chronicle and the Panorama and which we will shortly be sending to every household in Gibraltar. A considerable amount of work has also been done in relation to substantial reforms to our Matrimonial Causes Act, which we will make public later this year. Again, the profession has been consulted at every step of the way and have provided valuable input into these reforms. There are forms and benefits too numerous to set out fully in this speech, but they will include (a) a reduction in the amount of time people have to wait before divorce. The waiting period for starting divorce proceedings, when a marriage is obviously doomed to fail, will be reduced from five years to three years of marriage. Consonant with that, divorce by consent will be reduced from three years to two years, and without consent from five years to three years. We believe that this strikes the right balance between protecting the sanctity and seriousness of marriage and allowing people to get on with the rest of their lives. In England the period of marriage that has to elapse before someone can petition for divorce is one year, and in Spain a divorce by consent is possible after only three months of marriage. These short time periods are not enough for a

marriage to get over its teething problems and we believe that we have struck the right note and the right balance at three years.

Financial arrangements – financial matters will be completely overhauled and modernised under the new proposed legislation, with greater power given to the courts to supervise and enforce. I know that many practitioners and members of the public will find of particular interest the innovative approach, the formal recognition of pre and post nuptial agreements, something the English courts have traditionally not enforced but have been historically popular in other jurisdictions. This will hopefully prevent protracted and expensive disputes in court. Anecdotal evidence suggests that potential disputes over property and finances are putting people off, particularly the young people, from getting married. We hope that these measures will protect the institution of marriage by offering a way in which to deal with those concerns. Again, consonant with our state today, of placing the wellbeing of children as a paramount consideration, those agreements will not be enforceable if they relate to financial arrangements or provision for children without supervision of the court. In other words, couples can agree the division of all their assets and make whatever financial arrangements they feel work for them, but they cannot oust the overriding jurisdiction of the court in relation to whether adequate provision is made for their children.

Pension sharing arrangements – of great importance is the introduction of legislation regarding the question of sharing pension rights between spouses. At the present moment, a spouse of divorce is not automatically entitled to share in the other spouse's occupational or Government pension, and this is something which can operate harshly on a wife of many years, particularly a wife of many years, who whilst not working has been the bedrock of the family. I hope that the House will welcome the fact that under the coming legislation, a court will have the power to make an appropriate order of divorce for the sharing of such pension between spouses.

Specialist family judge – the architecture of our reforms to family law will be complete with the appointment of a new family judge to deal with all family cases in Gibraltar. No Government has ever shown a greater commitment to ensure children and families have the greatest possible protection, and that those involved in family breakdowns are helped to help themselves. I am also proud to say that we will have completed these quite monumental reforms in the first two years of our term in office. As everybody can see, certainly no one in my department has been spending time on the couch, to use the words of an hon Gentleman opposite.

Jury reform – in April last year we issued a consultation paper, "Jury Reform – A Fairer and More Effective System". The clear feedback from that process was that the jury system should be retained but be reformed. Nearly half of those responding to the consultation process supported the idea of the voluntary jury service proposal, that we had made, but the other half did not. The overwhelming majority were in favour of restricting the exceptions to jury service to an absolute minimum, so that the burden of jury service is shared by as many citizens as possible. The results of the consultation process were circulated to the Bar Council earlier this year and so have the draft amendments to Part 3 of the Supreme Court Act and a new Part 3A on the use of lay assessors for serious financial crimes. Certainly, if anybody on the other side of the House wants to see that draft legislation, I am perfectly prepared to pass a copy over to any of the hon Gentlemen interested. We have listened very carefully to the views of people and we have acted upon them, including shelving, for the time being certainly, of our proposals for a voluntary jury service.

Eligibility – essentially at the moment, subject to the exemptions and disqualifications in the statute, every person between the ages of 18 and 65, who is a resident in Gibraltar, having a competent knowledge of the English language, is liable to serve as a juror at any trial held by the Supreme Court. The Government are proposing to simplify the qualification criteria, and also to narrow down on the exclusions for jury service. The

proposal is that if (a) a person is eligible for registration as a voter and is not less than 18 nor more than 65 years of age, or (b) he has been ordinarily resident in Gibraltar for a continuous period of five years before the jury list is drawn up, he will be eligible. We believe that the system will be easier because it is based on the Register of Electors, but at the same time, we are also widening the pool of potential jurors because the system at the moment is that aliens, who have been resident in Gibraltar for less than ten years, are excluded. Some exclusions, for example, Ministers of Religion and lawyers, will also be maintained. Mentally disabled individuals will continue to be excluded if they cannot reasonably be expected to perform the duties of a juror. Again, hon Members will note that this narrows down disqualification to mental rather than physical disability. Of course, someone who is severely physically disabled would not be able to perform the duties of a juror but it would be for the judge or the Registrar in the selection process to exclude those individuals. The Government are also giving individuals an option to continue on the jury list, even if they are over 65 but below the age of 71, on a voluntary basis.

Jury intimidation – the other significant policy decision that we have made, is in respect of a new power provided to a judge to discharge a jury for jury tampering, and for a judge to be able to continue with the trial without a jury. The hon Gentlemen who take the Times will have seen, or will have read, that this power was exercised for the very first time in a case recently in England. The Government are determined to make sure that criminals do not get away with intimidation in order to secure acquittals. These reforms will also go hand in hand with the Crimes (Vulnerable Witnesses) Bill, which we will publish next week, which will give the courts the power to make witness anonymity orders in situations where witnesses are being intimidated.

Trial with lay assessors – the Government are also introducing the concept of trial by judge and two lay assessors in cases of fraud and financial crime, of such seriousness or complexity that it is appropriate that the case should be tried by a judge of lay assessors. The test is that the trial is so serious or complex, or that the probable length of the trial, or all of these combined, is likely to make the trial so burdensome to members of a jury hearing it, that the interests of justice require that the trial should be conducted with lay assessors instead of a jury. Guilty or not guilty verdicts will be by a majority but the judge has to provide reasons for the verdict, and there will be a requirement to provide reasons, either for a majority verdict, or indeed, for a unanimous verdict. The judge will also be required to espouse the nature of any difference of opinion when he gives his judgement on a majority verdict. That is, the reasons for the dissention. This is something that was requested by the English Bar if the UK Government decided to introduce lay assessors into these types of cases.

Legal Aid and Assistance – the reform of our legal aid and legal assistance system is progressing, but perhaps not as fast as I would wish them to progress. I intend to inject new impetus into these reforms this year. Already the Government and the Bar Council have discussed a road map for the way ahead and we have established a working group to draft the necessary proposals. We are making progress in doing so.

Criminal law reform – we have already completed work on phase 1 of the Criminal Justice Law Reform programme, which we will be bringing to Parliament shortly. That involves the production of a Crimes Bill modernising all our criminal offences. The Bill has 24 parts, drawing from a total of 47 statutes from the UK and elsewhere. It includes wholesale reform of our sexual offences, a new sexual offenders register, a complete overhaul of laws on indecency and child pornography, computer misuse to deal with such things as, I know the hon Gentleman is interested in this aspect, computer hacking. The law on attempts and accessories will also be overhauled, criminal trespass, racial and religious hatred, corrupt practices, theft and fraud, forgery and counterfeiting and, in fact, protection from harassment, amongst others. Already we are in the process of publishing some of the measures relating to reforms of vulnerable witnesses and victims of crime in the Crimes

(Vulnerable Witnesses) Bill, which I said we will be publishing next week. Within weeks I hope to do likewise with those areas of the Crimes Bill which we have said we will fast track, and that includes child pornography. Later on this year, we will complete the exercise by publishing the Crimes (Criminal Evidence and Procedure) Bill, which will overhaul all our criminal evidence and procedures, including police and criminal evidence and the rules of evidence which are used in our criminal courts. That will be part two of our criminal reforms. One cannot under-estimate the difficulty and the enormity of that task, but it is one that we hope to complete very soon indeed. In this regard, I would like to thank not only all those lawyers in the private sector, that have given of their time to help me in completing this very complex exercise, but also members of the RGP, the prison and also the Attorney-General's chambers, who have also put a great deal of effort into the project.

Alcohol and Tobacco – I expect to also be in a position within the next couple of months, possibly earlier, to make a statement outlining our intended reforms of alcohol and tobacco procurement and sale ages. A balance needs to be struck between rules that whilst restricting alcohol consumption do not prohibit it entirely and treat 16 and 17 year olds as young children who cannot act responsibly. We will also tackle enforcement by requiring establishments to seek identification, public drinking and also the penalties for those who flout the law. Multiple offenders face revocation of their licences. It will be as simple as that.

The Industrial Tribunal – finally in terms of reviews of the justice system, conducted in 2007 and 2008, I convened a committee of all the industrial tribunal chairmen in early 2008, to review the rules relating to the industrial tribunal, particularly in comparison to other jurisdictions. The aim was to modernise and improve the efficiency of the industrial tribunal. Working drafts of the rules were drafted at the end of 2008, in fact, the Hon Mr Licudi asked me for an advance copy of the rules, I emphasised to him, as I emphasised to this House, that they are, in fact, working drafts, but I was happy enough to provide him with a copy. Indeed, these were circulated earlier on this year. The Government are also considering having a permanent chairman of the industrial tribunal, who could also act as a permanent chairman of some of the other tribunals, where appropriate. We are also considering relocating the industrial tribunal out of the Employment Department altogether. Again, consonant with our stated objective of involving and consulting key stakeholders, the chairman of the industrial tribunal and others involved professionally in the industrial tribunal, have been involved very heavily in these reviews and also these considerations.

Insolvency – last year I said that my Ministry had also started a wide-ranging review of insolvency legislation in Gibraltar, which is a very important area of business for our community. Currently our law is based on the United Kingdom's Companies Act 1930, and its Bankruptcy Act 1914. I also said that the Government had established a small advisory committee of accountants, lawyers and regulators, to provide their expertise on how our insolvency system works and the problems that are encountered. This is one of the areas where I will be concentrating my efforts next year and where I will begin to be injecting some energy after the family and criminal reforms have been settled.

The Gibraltar Police Authority and the Police – next February will be three years since the creation of the Gibraltar Police Authority and the new Police Complaints Board. I believe we are already seeing the benefit of that new system in the public's participation, considerable participation, in the Annual Policing Plans, and those Plans themselves can only improve and develop and strengthen already close links which exist between the RGP and the community. In this respect, as I did recently in the passing-out parade, I would like to thank not only Mr Guerrero and his entire committee, but also the Commissioner of Police and the entire force for the work they have put in into strengthening those links. The Policing Plan for 2009/2010 was laid before Parliament by the Chief Minister last week. Even though Gibraltar enjoys relatively low levels of crime, we must all make a concerted effort to work together to reduce crime even

further. I am sure that working together this community will be successful in that objective.

Finally, the Ministry of Justice is a new Ministry, both in constitutional terms and in terms of its functions, resources, and indeed, staffing. The process of build-up of the Ministry and its role in the community will thus take some time, but I hope that it will continue during the current year and I hope that all the reviews and extensive reforms that we are undertaking help in that process. That is all I wish to say in relation to the matter.

HON F J VINET:

Mr Speaker, I am privileged to be able to once again highlight general progress and development relating to housing, which continues to be a central part of this Government's policy and commitment. I say that housing is a central part of Government policy, and it would almost be unthinkable if this were not so, given the large of people it has a direct bearing on, and also the very significant financial resources this Government have chosen to vote to it. May I point out, it is quite a shame that only one member of the Opposition has deemed at Budget address of the important subject of housing, sufficiently interesting to remain in the Chamber, but there we have it. I am grateful to Mr Bruzon for remaining behind. Historically housing has been deemed a difficult Ministry. The idiosyncrasies of Gibraltar have ensured it remains sensitive, politically visible and sometimes even a much maligned subject matter. I think, overall, the real story is far more positive. I sincerely believe that if we look at housing objectively, and if we peel away the historical stigma and the political mud thrown at it, then really, and whilst fully recognising there is more to be done, we come to realise there is actually a good story to tell. At the very least, it is a far better, more positive story than the reckless comedy of errors inherited by the GSD 13 years ago. As the Hon Mr Costa will be able to see, had he remained behind, I too am guilty of that pathological obsession with 1996, and long may that obsession continue for the sake of Gibraltar.

Our continued investment in housing is divided into three main areas, the delivery of housing services, the maintenance and refurbishment of existing housing stock and new constructions. I start off with the first of these three strands, namely, housing services. The Ombudsman's Annual Report of 2008, recently laid before Parliament, has shown that housing related complaints have fallen substantially. Although, admittedly, part of the reason for this welcomed decrease may be attributed to the setting up of the Housing Tribunal, which as we know, is a more effective, more direct alternative line of appeal, and overall assessments inclusive of both Housing and Buildings and Works, shows that complaints have followed a downward trend. Indeed, in an interview published in the Panorama newspaper on 5th June 2009, just three weeks ago, the Ombudsman said, and I quote, "over the last five years the Housing Department have improved on their service delivery to the point where complaints have declined significantly". This is the result of both Government policy and of contributions made by staff at the Ministry for Housing, the efforts of whom, sometimes under testing circumstances, are commendable. The Ministry earlier this year introduced a new monthly billing system for Government tenants, where for the first time, tenants are able to update themselves at a glance of any personal financial developments about the rent, including arrears, a statement of account. This has been welcomed, particularly by the elderly and by those who prefer to process rent directly over the counter, as the relative inconvenience of visiting City Hall is now monthly and not weekly. Apart from this new system having been well received by tenants, it has also had a very good effect on the collection of arrears. I should stress that the majority of Government tenants pay their rent on time and qualify for discounts in the rates. While a minority do continue to be in arrears of rent, more and more tenants are entering into agreements to pay those arrears. We have taken a policy decision to adopt more flexible terms of agreement where necessary, and this together with the aforesaid monthly statement of account, and also the conditions attached to the issuing of parking permits in relevant estates, has had a dramatic and positive impact. Since March 2009 to the

beginning of this month alone, that is to say, in just the last three months, £288,000 has been covered by tenants entering new arrears agreements. The annual report which I had hoped would be published during the last financial year has suffered some delay due to other pressing priorities, as well as change in the personnel entrusted with the project. I can, however, confirm that the annual report for 2008 should be published in July and this will include useful information and details of housing provision to members of the public, as well as more detailed articles and progress reports. Following the Government's manifesto commitment to prioritise parking for its tenants within public estates, I am pleased to highlight parking restrictions have also been introduced at Alameda Estate, following consultation with the tenants association. This means that Alameda, Laguna, Glacis and Schomberg Estates, as well as parts of Scud Hill, now have improved car parking arrangements for the benefit of the residents of those areas. The Ministry for Housing will continue to monitor feedback through meetings with respective tenants associations and will, wherever practically possible, and if tenants so desire, introduce these schemes elsewhere. I know full well that although the feedback received so far from the various tenants associations and from individuals is generally very positive, further improvements are possible. That is why Government are considering on-the-spot fines to try and further deter foreign vehicles from parking within our public estates to the detriment of our tenants. But while no system can ever be 100 per cent effective, the parking arrangements put in place by the GSD Government are a huge improvement on what existed previously and have been warmly welcomed by tenants. The Government's consultative approach with the established tenants associations continues to form the backbone of meeting the needs of our tenants and addressing the many complex issues surrounding housing services. As I said last year, I hold regular meetings with each of the formally established associations, and these are always enjoyable, lively and productive. I take this opportunity to encourage the formation of tenants associations where there are currently none. That is the best collective way of listening to tenants' needs, and so far, has proved to be an invaluable mechanism to advancing and modernising the services supplied. I wish to publicly express my sincere gratitude to all members of the tenants associations that give up their own time and on a voluntary basis. I know they do this because of the strong sense of community spirit and the result is that they contribute greatly in shaping the services that we provide. As Mr Speaker will be aware, a new Housing Act was implemented in June 2008 and new mechanisms resulting from this Act have already been in operation. These include the Housing Tribunal which I referred to earlier. Similarly, a new one tier system, one tier all encompassing Housing Allocation Committee now allows housing related recommendations to be made more quickly when compared to the previous two tier system. Hon Members may recall there used to be one main committee plus two specialised sub committees and the latter then had to report back to the main grouping, and now there is just the one Housing Allocation Committee. Contrary to what had been said and commented in some quarters that this new slim line system would be slow, cumbersome and less capable of tackling housing issues, instead the new mechanism facilitates recommendations more efficiently, proving to be less bureaucratic than before but still containing expertise within the fields of medical and social affairs. This was the whole point of the exercise and I am happy to see that it has worked. Indeed that applies to the whole of the new Housing Act. Overall this new and modern piece of legislation is much more flexible and aims to promote and introduce greater transparency.

I turn now briefly to progress on the right to buy. As Parliament will be aware, this policy allows Government tenants the option, if they so wish, to purchase their sitting tenancy properties. Though still early days, I wish to highlight that the process for the sale of post war properties is well advanced, with around 1,550 so far from the existing 3,832 properties for the xxxxxx scheme, expressing a positive interest to purchase. The potential proceeds of these sales, currently estimated at around £64 million, will be re-invested in public housing as per the new Housing Act. As from 1st June 2009, the qualifying age for persons eligible to become a housing applicant was lowered

from 21 years of age to 18, while the pre-list waiting time was halved from two years to just one. These were important manifesto commitments and I am satisfied that these more modern, more socially relevant changes are now in place. Of course, the inescapable and unavoidable result in the short-term is the lengthening of the waiting list. But this will in due course be offset to a large extent by the new rental estate and the greater availability of flats that will arise once the Albert Risso House for the elderly is allocated later this year. It is right and proper that Government be challenged and held to account by the Opposition. There are many aspects of Government generally, including housing, that can be improved upon. But sometimes disbelief and amusement of the bitter sweet type is how this side of the House is forced to read comments and criticisms emanating from our Parliamentary colleagues opposite. Not just because of the substance of the accusations themselves, sometimes misleading, more often than not exaggerated, almost invariably untrue, but also disbelief and amusement at the cheek and sheer nerve of those making the accusations in the first place, given their own track record. Last year during the Budget debate, my good friend the Hon Charles Bruzon said he and his colleagues were very concerned at what he described as the increasing number of people on the social and medical housing lists. This grave concern was made public only several moments after I had stood up and explained that applicants experiencing social problems were now also being offered post war housing and not just pre war properties. In other words, after explaining how we were better catering for the greater demands on socially categorised applicants. This grave concern was made public only several moments after I referred to the record numbers of allocations to applicants on both the social and medical lists. I will not be surprised if the Shadow Minister for Housing chooses to make the same accusation today, but if he does so, he will have totally dismissed all the figures I have been making available across the floor of the House over the past 12 months. Figures that show that more homeless persons are being re-housed. Figures that show a significant increase in the number of allocations to applicants with social and medical issues. I would not be surprised if Mr Bruzon once again refers to persons who remain on the Medical "A" list after several years. If he does, he will do so despite having been told in Parliament that some people choose to decline offer after offer, after offer of perfectly suitable accommodation, and I have even made public some of the interesting reasons given for declining offers. I say this not necessarily as a critique of the Hon Mr Bruzon but to place things in perspective. This Government will continue to assist those people within our community that are most vulnerable, like the elderly, people with medical ailments, and those having to deal with social challenges. Their needs will be attended to sympathetically and professionally. But at the same time, the aspirations of those who have been patiently waiting their turn on the standard waiting lists will continue to be addressed. On that note I bring to an end my contribution on housing services and I turn to maintenance of the housing stock.

In the financial year 1999/2000, the Approved Estimates for this Head of Expenditure, namely Head 3 - Housing Administration and Housing - Buildings and Works, was £6.27 million. Since then the estimated combined recurrent expenditure has continued to increase steadily, and under this financial year our Estimates indicate an available level of funding in recurrent expenditure of up to £8.93 million. That is effectively £9 million. As far as capital projects are concerned, again, major capital works in relation to the refurbishment of the Government housing stock have seen an unprecedented level of investment. These works generally comprise the replacement of defective roofing, major structural repairs, the windows and shutters replacement programme and the well advanced lifts installation programme. During the last 11 years, this Government have spent £33 million in undertaking such works. This is a real commitment to housing infrastructure. A commitment that continues this year as we plan to invest a further £1.8 million towards our housing stock. Buildings and Works will continue to undertake a major programme in refurbishment, minor response maintenance and specialist conversion for senior citizens and others needing such facilities. Government will continue offering training for the work force and will ensure that mechanisms

remain in place to allow for the purchasing of appropriate plant and tools for response maintenance. The figures I have mentioned speak for themselves, as far as Government's commitment is concerned, but the current backlog of outstanding jobs continues to be unacceptable and unsustainable. It is true that there is generally a downward trend and that is welcome, but I want more to be done by everyone concerned to target this historic backlog and reduce numbers to more acceptable levels. The solution is not to simply throw more and more money into what is already a well resourced department. Moving on, as a quick reminder, the Government are currently engaged in many capital projects through the private sector. The Varyl Begg Estate roofs replacement programme and installation of new lifts is now complete. The next phase of works at Alameda Estate will continue with major structural repairs at Governor's Meadow House. This is geared for the end of the year and encompasses very extensive, and indeed also very expensive works, similar to those recently undertaken to Ross House. Works at Ross House cost £900,000 and we expect a not entirely dissimilar invoice in relation to Governor's Meadow. Other blocks at Alameda Estate will be tackled thereafter. Projects at Gavino's Dwellings, 51 Prince Edward's Road, 9 Crutchett's Ramp and Medview Terrace at Catalan Bay are all complete and have transformed once shabby, tired buildings. I personally have seen the finished product and can vouch for these success stories. As I speak, the existing lifts at Constitution and Referendum House at Glacis Estate are being replaced with brand new modern facilities. For the first time each lift will access all floors and not only alternate floors, as has historically been the case up to now. This has required the creation of new lift door openers in order to allow access of both lifts in each block to every floor level. Works are expected to be completed in October, and I am confident this will greatly improve the quality of life for tenants in what are normally referred to as "the Tower Blocks". Incidentally, extensive roofing works in both these buildings are also on-going and nearly complete. This year the Government intend to proceed with the complete replacement of roofs at both Maidstone and Sortie House, at a total cost of around £200,000, whilst later this year we intend to commence with the phased construction of new sheds at Laguna Estate, something that I know will be met with welcome approval by tenants. There are also further smaller miscellaneous projects that are planned to commence shortly, while on a bigger scale and, hopeful of there being no unforeseen emergencies that necessarily need to be prioritised, we plan to commence with the embellishment of St Joseph's Estate. Other capital projects planned for the future include refurbishment of Kent House, Harrington Building, Churchill House, Bado's Building and Moorish Castle Estate. The Government are, therefore, determined to pursue a comprehensive programme of identifying buildings that have fallen into disrepair and initiating major repairs where these are possible. The fact is that we are still dealing with and spending millions on those properties that were neglected by those in Government before 1996.

This brings me to the final strand, namely, new housing construction. May I initially summarise what is being accomplished? A new Government development for home ownership, known as Waterport Terraces, almost 400 accommodation units, new Government supported affordable housing schemes in the South District, known as Cumberland Terraces, Nelson's View and Bayview Terraces, almost 400 accommodation units. A new senior citizens rental project, known as Albert Risso House, adjacent to Waterport Terraces site, 140 accommodation units, and the new mid harbours rental estate, almost 500 accommodation units. It is a pleasure to personally see individual members of the public in my weekly clinics, and to be informed first hand of concerns or grievances that existing tenants or housing applicants may have and, of course, to be able to offer direct assistance wherever possible. But over the past few months I have become increasingly alarmed and upset at rumours brought to my attention by concerned members of the public and, specifically, by housing applicants, who have been told that offers of accommodation they have received for the new rental estate will now not materialise. Some applicants have come to see me in despair

because, apparently, the rumours doing the rounds are that either the rental estate is not being built at all, or that although building work is being carried out, in fact, Government have now decided those buildings will be used for some completely different purpose. Rather conveniently the view from my office clearly shows the advanced stage of construction of this, the first estate built for public housing stock since Varyl Begg Estate in the early 1970s xxxxx This readily available visual tool proves to be a useful aid in allaying any concerns. I also point out, however, that some of these ladies and gentlemen, some young and some not so young, have not come to see me to merely relay a rumour that they have themselves been able to dismiss, but to seek a solution to an issue that they have been led to believe is totally genuine. I do not know where those malicious rumours emanate from, or for what purpose they are placed in the public domain, but what is clear is that this is an orchestrated attempt to mislead innocent members of the public and I strongly condemn those responsible for their reckless disregard of the truth and for their regrettable attack on the emotions and aspirations of entire families. Work on the new rental estate is progressing well and is progressing quickly. Works commenced in September last year, with the construction of the concrete frame and floor slabs expected to be completed, according to information passed on to me by the chief technical officer, by the end of summer. I am equally advised that the construction of the external façade and internal walls will commence during September and it is currently envisaged that phase 1, which comprises four apartment blocks with a total of 284 apartments, is scheduled for completion towards the end of 2010. As far as phase 2 is concerned, the land reclamation element is nearing completion and I am informed we are only weeks away from actual construction work beginning. Phase 2 comprises two blocks with a total of 208 apartments and completion, I am told, is currently scheduled for the end of 2011. The end result will be a magnificent, attractive, modern estate on a prime sea front site, providing hundreds of families with quality rental housing in smart surroundings, with 500 underground parking spaces and boasting spectacular views of the Bay. In fact, it will be so good that I can now understand why some people would rather it never happened at all. There has been much debate about delays in construction of the affordable housing schemes. Regrettable as they may be, delays are relatively common when undertaking large scale and complex construction projects, whether luxury or affordable. But there are far more important aspects to safeguard than target dates being kept to. Asked to choose between delays on the one hand and poor quality on the other, it would be interesting to see what the original purchasers of Harbour Views or Brympton would go for. Waterport Terraces and the three former OEM developments are not spearheaded by the Ministry for Housing. But I know full well that this Government will not compromise on design or on the quality of materials, even if this means additional delay. Giving our people the decent homes they deserve is far more important. I expressed similar sentiments last year, but on this occasion I know these are views shared by the vast majority of purchasers entering the new properties at Waterport Terraces. They now realise that the wait has been worth it. These accommodations units are spacious, well designed, safe, decent homes, properly focussed to people's needs. It was for me a real honour to escort Her Royal Highness the Princess Royal around Waterport Terraces in March. Having walked through the entire estate and visited apartments that were already being lived in, the Princess Royal highlighted the remarkable quality of what she described as "an innovative development", and how impressed she was with the flats themselves. Coming from a person who is experienced and well versed through her own charity work with UK affordable housing schemes, her comments were a great compliment. But even more gratifying was to hear those same comments being expressed by many of the lucky new occupants at Waterport Terraces. Of course, the Opposition will continue to criticise delays, and as is customary, will try whatever they can to belittle achievements and to smear the shine from any medals anyone might be inclined to bestow upon the Government. God forbid that the GSLP/Liberals recognise that the GSD get anything right ever, even an intention. Well, whatever our critics may say, the affordable co-ownership housing schemes, the mid harbour rental estate and the magnificent 140 homes for the elderly at

Albert Risso House, the site of which I also visited recently, are schemes the whole of Gibraltar can be proud of. These are prestigious and intricate projects and they will not be rushed nor sacrificed to the whims of those wishing to pursue short-term goals at the expense of everything else.

Drawing my contribution to a close, I take this opportunity to publicly express my gratitude to the chairman and members of the Housing Allocation Committee, for their hard work and excellent contribution. They can be proud to participate in a process enabling so many allocations to come to fruition. These members deliberate on individual cases that are sensitive, convoluted and personal in nature. I sincerely thank the appointed members, all of whom give up their own time on a voluntary basis, for undertaking the unenviable and difficult task of assessing, discussing, advising on and assisting in the allocation of Government housing. Finally, may I pay tribute to the Principal Housing Officer, the Housing Manager and the many staff members from the Housing and Buildings and Works, who via their commitment and loyalty help our community. My warm thanks to each and every one of them and I also thank Mr Speaker and all my Parliamentary Colleagues for their attention.

HON C A BRUZON:

Mr Speaker, I thank the Minister for the candid way in which he has delivered his speech and for the criticism that he has made, and I accept that he is a gentleman of integrity and honesty. However, I have to launch my criticisms at the Government an in no way will my criticisms be personal. I will mention, of course, on a number of occasions, the leader of the governing party, the Chief Minister, because he is the one who has often enough been making the statements and not so much the Minister for Housing. It is my opinion, and I have thought about this since I became a full-time politician, that the primary and central responsibility of politics and politicians is to ensure that there is justice, real human justice, within the framework of the state. Fundamental to my Christian faith is the distinction between what is traditionally called what belongs to Caesar and what belongs to God. In other words, the distinction between Church and state. However, I also accept, and it is my sincere view, that the autonomy of the temporal sphere belongs to the state, which in turn recognises and respects the harmony and freedom of religious practice. The aim and criterion of politics must be based on justice. All of us should understand, if I may say so, that what we are all involved in, namely politics, must surely be more than just some kind of mechanism for defining rules and regulations, however important these are. We must inevitably face the question of how true justice can be achieved and delivered, here and now, for the benefit of the people we serve. The promises we make, the commitments we offer our people, should be made in honesty and with that level of realism that will enable people to believe what we say and expect us to deliver what we promise. So when the Chief Minister in October 2007 told the people of Gibraltar that 140 homes for the elderly, Bishop Canilla style, were under construction at Waterport Terraces and would be ready early in the new year, meaning 2008, he must have known that this would not happen. To have given this kind of commitment to the elderly, in my view was unfair and unjust. When the leader of the governing party said in October 2007, rather, reminded the electorate how way back in 2003 they had said they would build 300 new rental homes, including 150 for the elderly, he reiterated how now, meaning 2007, they were in fact building 840 new rental homes in all. Well, the 140 rental homes for the elderly are still awaiting completion, and instead of 700 homes for people on the housing waiting lists, it emerged soon after the elections that only 490 were being constructed opposite Rooke. I think the Chief Minister must have realised that there was something wrong here in the way he put his policy across. I think this was unfair and unjust. If I may refer briefly to the Hon Fabian Vinet's comments on these rumours, he does not know what the source of the rumours is, that the 490 rental homes are no longer going to be built, I, in an attempt to correct a false rumour, explained to people a year or so ago that what was happening was that 210 rental homes in Rooke were no longer being built. I agree with him that the rumour also came to my office and I put people right

in saying that the 700 homes had now dropped in terms of numbers to 490. I do not know if that is helpful but that is what I can truthfully say on the matter. When the Chief Minister, just recently in 2009 during his new year message, said that during the next few weeks, and by that I suppose that the next few weeks would have meant end of January beginning of February, that during the next few weeks we will see the completion of Waterport Terraces affordable housing project. The impression he gave that the project would be completed in the first few weeks of 2009. This simply did not happen and I think he knew it could not possibly happen. This, in my view, was unfair and unjust. When in March 2008, the long awaited newsletter was published, giving details of completion dates for various phases of the Waterport Terraces home ownership scheme, the purchasers were told, and I quote, "in order to avoid passing on information about new completion dates which later turn out to be unreliable, the Government at the highest level has met with senior directors of the contractor in their head office in Madrid, prior to issuing any further newsletter. Based on promises made to the Government at those high levels, the following are the new completion dates. Phase 1 – May 2008; Phase 2 – July 2008; Phase 3 – October 2008. These new completion dates", we were told in that newsletter, "appear to be more reliable". The leader of the GSD and his advisors must have realised at the time that these completion dates were simply just not realistic and would not be achieved. Yet they went ahead and published them knowing full well that they would not be met. Again I say, that in my opinion this was unfair and unjust. When in December last year I asked Government to give me their latest completion dates for Waterport Terraces and for the three home ownership housing schemes in the south district, the Chief Minister, instead of simply giving me the dates, embarked on a long preamble which constituted a mini party political broadcast, telling Parliament that I had accused him of distorting the truth by promising completion dates and then breaking his promise again and again. He told me that if I was interested in the truth, as I repeatedly professed, that is what he said, then I would wish to know that the Government had, in fact, never made any promise nor even given a commitment to any purchaser about completion dates. The truth is that the Government have on numerous occasions given clear indications concerning completion dates to purchasers at Waterport Terraces. In fact, they have gone to the highest authority in Madrid, the head office of the contractor, in order to give accurate completion dates. He ended his mini party political broadcast by telling Parliament that we appeared to have different definitions of the word "promise". What is the meaning of the word "promise"? According to the Oxford Dictionary, a promise is an assurance that one will do something or that something will happen. It is also an indication that something is likely to occur, to give good grounds for expecting, to be confidently assured of something. Is this not what the Chief Minister has been doing in connection with completion dates of the Government home ownership schemes? Of course it is, but more importantly perhaps, we should consider also what is meant by completion date. A completion date, in my opinion, and specifically in connection with the Government's home ownership schemes, was never understood by me to mean an exact day in any given month at an exact time of the day. It refers and can refer to a month or specific quarter of the year, as was the case when a year and a half ago they said that phase 1 of Waterport Terraces would be ready by May 2008. For the Chief Minister to say and keep on saying that he has never made any promises or given any commitments to purchasers of Waterport Terraces about completion dates, is in my opinion false and untrue. For the Chief Minister to have behaved in this manner is unfair and unjust. I do not remember ever having accused the Chief Minister of having taken some kind of monastic vow that carried with it the penalty of excommunication for non-fulfilment. Mind, it is extremely likely that he will be excluded from No 6 Convent Place in a couple of years time come the next elections. But as far as that is concerned, of course, we shall have to wait and see. What he has definitely done and keeps on doing is to raise people's hopes and expectations about completion dates for the Government's home ownership housing schemes, knowing full well that many of the dates that he has been indicating are simply impossible to achieve. This, again, let me say, is unfair and unjust. As I said at the beginning of this short address,

what we are involved in is much more than some kind of mechanism for making rules and regulations, however important these may be. We must ensure that we deliver justice for our people in a timely and adequate way, something that this Government have failed to do over the years as far as housing is concerned. Today, as I have done in my previous Budget speeches, I hold Government accountable. They should never, never have waited as long as they have in their attempts to supply the people of Gibraltar with truly affordable housing and with the kind of social housing that many are still so desperately in need of. There is no doubt in my mind that their treatment of our people in this regard was unfair and unjust. They have indeed failed large numbers of Gibraltarians, both at home and on the other side of the frontier, in not addressing in a more timely way this vitally important social issue. For this I hold them responsible. The blame is theirs and no one else's. I think they know it and the people of Gibraltar know it.

HON L MONTIEL:

Mr Speaker, the last time I started off my speech by providing to Parliament some highly relevant and indicative statistics relating to the increases in the number of jobs that our economy had generated since 1996. It pleases me to announce that this year once again the number of jobs generated by the economy has increased by 4.1 per cent from 19,696 in October 2007 to 20,509 in October 2008, and the highest ever yet recorded. Job creation is a sure indicator of any economy's wealth creating potential, and this increase in the number of jobs created, is all the more such a reflection of wealth creation in the face of current times and world economic recession. That Government are not immune to such world economic turmoil, is readily conceded, and that the degree to which it may eventually be affected is yet to be seen. Yet it is evident that the robust and resilient nature of our economy appears to be holding well in such difficult times. Still, these present day circumstances and reality do consequently determine the existence of some unemployment, and we do have resident people unemployed, not in the remotest way near to the rising unemployment statistics that are being reported and suffered by so many countries all over the world, none more so than within the EU itself. The Ministry of Employment, therefore, needs for everyone to continue to strive in order to afford the registered unemployed every opportunity and prospect of forming part of the labour market. This is indeed its top priority. While it is evident that Gibraltar's economy has been transformed from being public to private sector led, the deep changes that this transformation has brought about continue to demand high levels of adaptability and flexibility in all quarters and all round. This is indeed no new concept, but one that nonetheless can hardly be overlooked, and that requires constant and important updating and change we must. Invariably, there is a sense of growing awareness to this change in the new emerging labour market. Changing times, hard recessive times and diminishing job markets across Europe, cannot be but highlighted and demand the need to adapt and to the exigencies of flexibility. In the manner in which such change has affected, it will no doubt continue to affect Gibraltar's economy. It becomes evident that employment opportunity will necessarily reflect this change and the xxxxxx of our economy. So, in the competition age that dominates private enterprise, and the emerging picture, can but portray the change and adaptability that circumstances demand and that our labour market, employers and employees alike, need to fit into. This is why I consider it absolutely imperative that employment opportunities created by our own economy are made available to our own available work force. It is the one sure way to maximise our economic growth. This is not to say at, and I hasten to add, that employment opportunities have to be kept within Gibraltar's resident work force, and no matter how much I would love this possible, we are all aware, and have always been from time immemorial, that Gibraltar has had to rely, and will necessarily continue to rely, in varying measures, to a foreign labour contingent. A contingent, that again I hasten to add, is truly valued. It stands to logical and natural reasons, however, that so long as there may be suitable, capable and available resident nationals to take up employment opportunities, I would expect that employer to consider and

recruit from within this labour pool. I wish for it to be known beyond any doubt whatsoever that my Ministry, through its Employment Service, will spare no effort to put forward as candidates for any notified vacancy, persons that they consider suitable and capable for that job from those registered as unemployed with the Job Centre. It is little wonder then that one can become somewhat upset when an employer takes for granted that local labour is unsuitable or not reliable or unskilled, and will not even grant an interview to Job Centre submitted registered unemployed persons, in turn opting to seek by every means to employ people from abroad. Whilst it will be the choice of the employer as to who is to be selected and employed, except in the case of a work permit being required, I would like to remind employers that the whole idea behind having compulsory notification of vacancies is to enable such job opportunities to be offered to those resident registered unemployed persons that may match the given job requirements. Moreover, current legislation provides for two weeks to be allowed by employers, from the date of notification of the vacancy to the date of employment commencement, precisely to allow identification and submissions of suitable candidates. The Employment Service and its employment officers cannot deliver any other way, and the resident registered unemployed cannot be assisted in a designated manner that we, the Government, consider it our obligation to do. It xxxxxx me to understand and accept that if we have compulsory registration of vacancies, it is clearly to be able to afford the registered unemployed at least the possibility of attending a job interview, in the genuine expectation of a possible job offer. It is sometimes argued, and all too often readily accepted by employers, that vacancies arising within certain sectors, often referred to as non traditional work sectors, will be impossible to fill from within the resident work force. This is a barrier that must come down and will only be brought down if the key players, employers and work force, both employed and unemployed, are prepared to be flexible and adaptable. By simply considering the number of notified vacancies, on average over 600 each month, and the number of employment terminations, on average some 500 each month, it is possible to deduce that there is still diversification and variation to our economy and that we are in a state of perceived and continued change. This, of course, affects us all in the manner that I have already referred to earlier, and calls upon a need to be flexible in order to best adapt to this change. In terms of employment opportunities, I must emphasise the degree of flexibility and adaptability that, in the interests of Gibraltar's labour market, and indeed its economy, ought to prevail in employer/employee expectations. As Minister for Employment, Labour and Industrial Relations, this is a concept that I cannot stress enough. To my mind and generally speaking, it requires a concerted effort by both employers and resident unemployed individuals to meet each other's expectations. Employers, again generally speaking, need to be more flexible in their efforts to recruit from within the resident labour pool and those unemployed, similarly, need to be more flexible in their job aspirations. Still, the Employment Service perseveres, gets on with the job of providing a service to the registered unemployed and to employers, always endeavouring to do their utmost to ensure that notified job vacancies constitute genuine job opportunities for the resident registered unemployed. At this point it is opportune to highlight the fact that, despite the related difficulties that I have outlined here, the Employment Service through its Job Centre manages on average to directly assist into employment some 50 registered unemployed persons every month.

At the same time, and very much in a complimentary function, my Ministry is responsible for vocational training, which I must straight away emphasise is very much linked to assisting in the enhancement of the individual's employment potential and development. The Government of Gibraltar investment in vocational training constitutes a significant contribution towards local employment in a highly competitive and skills demanding local economy. Towards this objective, Government have allocated the site commonly known as the "Dutch Magazine" for the development of a new training establishment. It will accommodate the existing three training centres and will provide modern resourced facilities to cater for an array of multi-craft

skills to meet the needs of local industry. As a consequence, this Ministry has identified the growing demand for certain skills, and has as a matter of policy, and will plan ahead to keep abreast with developments in technology, the diversification of trades and other pertinent people skills. Following the established practice, the Vocational Training Scheme constitutes a valuable scheme, designed to enable young people to gain hands on experience and training in the real job situation throughout the private sector. As of 1st April 2008, there were 131 trainees, 50 male and 81 female, enrolled in the Scheme. During the period 1st April to 31st March 2009, a total of 33, of which over 50 per cent were employed by the training provider. Trainees from the VTS were able to secure permanent employment. Many of these trainees undertook literacy, numeracy and IT courses at Bleak House, and the level of qualifications achieved have been very encouraging. The two main training centres, the Gibraltar Construction and Cammell Laird Training Centre, provide apprenticeships in the traditional trades, construction and engineering, under the vocational qualification up to level 3. All these apprenticeships are UK accredited and internationally recognised. A total of 60 trainees were receiving NVQ training at the combined centres as at 1st April 2009. In September 2008, a breakthrough was made by the introduction of telecommunications apprenticeships by Gibtelecom in partnership with the Ministry of Employment. The last telecommunications apprenticeships schemes took place in 1981, when three apprentices were taken on by the Gibraltar Telephone Department. A total of eight trainees are currently in their second year of training, and it is envisaged that the company will continue providing this training opportunity, to ensure that not only Gibtelecom acquire the core and IT skills for the years ahead, but also services the wider needs for more people with the communication qualifications, for there is likely to be an increasing need for multi-skilled engineers. In order to prepare young people to compete in the growing market of social and nursing careers, the Ministry of Employment in conjunction with the Gibraltar Health Authority and the Care Agency, will this year launch a pre nursing NVQ cadet scheme. Approximately 24 young people between the ages of 16 and 25 will be given the opportunity to train to NVQ levels 2 and 3, and some may be able to undertake a three year course, leading to a qualification as registered nurse. The demand for care services is likely to grow as elderly numbers increase. I wish to inform that 35 special needs individuals have already been introduced into sheltered and supported work placements by the Employment Service under the terms of the existing vocational training scheme. These are people, with a physical or mental impairment, but who can carry out tasks in a working environment with minimum supervision. The challenge to develop this scheme is on-going and, although unfortunately, there are not that many employers willing to assume responsibilities, we are extremely grateful to managers and employers in the public and private sectors, who have so far cooperated with the Ministry.

As will be appreciated, the Employment Service does endeavour to bridge possible opportunity gaps through its efforts to truly maximise locally available human resources, and thereby further assist the resident registered unemployed back into the labour market. As other means of working in this direction, I must also mention the direct assistance afforded, particularly to the longer term unemployed, both by the services at the Job Club and the wage subsidy scheme. The Job Club is an all round job seeking assistance programme aimed at enhancing an individual's employability. Whilst greater employability is usually associated with possession of relevant qualifications and/or experience, the employability aspect of the Job Club sets out to develop and evolve more around specific job search fundamentals, such as the basic, but increasingly important job seeking document that is the person's CV. Other such employability fundamentals include the concept of motivation and self-esteem, interviews et cetera. As for the wage subsidy scheme, such a measure continues to be geared towards assisting the long-term unemployed back into the labour market, and also provide assistance to other disadvantaged groups, like for example, ex offenders, recovering substance abusers and those returners wishing to take up employment after having taken time off for personal family reasons. This past year, a total of 13 employers

participated under the wage subsidy scheme with employment offers of 20 registered unemployed persons. All wage subsidy measures, in any case, are designed in such a manner that they afford the greatest possible opportunity of not just a job but a permanent one, which will provide longer term employment beyond merely a period of wage subsidy. It is also important to note that the availability of wage subsidies, as in past years, will continue to be passed on prudent and contained expenditure with the aim of maintaining wage subsidy levels always in tune with real and long-term sustainable employment.

Finally, I am compelled to place on record my most sincere gratitude for all the dedication and generous assistance that has been afforded to me throughout this year by the management and staff of the various sections of my Ministry. This work is both valued and recognised, having always contributed in no small measure to my better discharge of responsibilities as Minister for Employment, Labour and Industrial Relations.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Friday 26th June 2009 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 8.57 p.m. on Thursday 25th June 2009.

FRIDAY 26TH JUNE 2009

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 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 C A Bruzon
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon L Montiel – Minister for Employment, Labour and Industrial Relations

The Hon J J Bossano – Leader of the Opposition
The Hon G H Licudi

IN ATTENDANCE:

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

THE APPROPRIATION ACT 2009 (continued)

HON LT-COL E M BRITTO:

Mr Speaker, I will begin my contribution this year by addressing my responsibilities for tourism, I will follow this with environmental matters and I will end with the Technical Services Department.

Mr Speaker, it is encouraging to report that despite the global economic problems that started in the year 2008, last year was yet another successful year for Gibraltar's tourism industry. Our total visitor numbers have grown again by a very respectable 7.69 per cent, from 9,430,102 in the year 2007 to 10,155,002 in 2008. Last year, 9,664,882 visitors entered Gibraltar by the land frontier with Spain, representing an increase of 7.65 per cent on the previous year. Much has been debated in this Parliament about the composition of the figure for visitors to Gibraltar through the land frontier, in relation to how it is affected by cross-frontier workers. I have been working with the Chief Statistician and his staff to address this matter. The Statistics Office has produced a workable formula by which to extract the effect of cross-frontier workers from this figure. This has been worked into the figures for 2008 for visitor arrivals in Gibraltar, as shown in the footnote to Table 6 of the Tourist Survey Report, which was recently laid on the Table in this Parliament. It is not intended to fine tune the historic figures for previous years in Table 6, but we will continue in future to show the estimated number of visitors by land, excluding non-Gibraltarian frontier workers, as has been done for 2008. The total estimated tourism expenditure figure, according to the 2008 Tourist Survey Report, was £247.5 million and this represents an increase of 7.34 per cent on the previous year. Coach arrivals at the Gibraltar Coach Terminus in 2008 dropped by 7.3 per cent, reflecting once again, the move away from the traditional inclusive tour business being experienced by the market in this part of the world, the effects of the global crisis and the euro exchange rates. However, the House will be pleased to note, the amount of private tourist vehicles visiting Gibraltar increased by 10.3 per cent in 2008, arrivals by air increased by 3.3 per cent and arrivals by sea by 11.1 per cent. Total visitor numbers to the Upper Rock have increased by 1 per cent. Revenue has remained relatively constant at just over £3 million, having shown a small, 0.9 per cent, decrease over 2007. The number of private visitors and vehicles decreased slightly over 2007 by 4.4 per cent and 4.11 per cent respectively. Visitors carried by the mini coach operators decreased by 5.5 per cent, however, visitors carried by taxis increased by 3.63 per cent. Total arrivals at Gibraltar's hotels in 2008 were 69,630, an increase of over 9 per cent on 2007. This is the highest number of visitor arrivals at Gibraltar's hotels since 1982, when records for this variable in hotel occupancy survey report were first recorded. The number of hotel room nights offered has remained almost constant. The number of room nights sold has increased by 4.72 per cent and room occupancy has risen by 4.84 per cent. Guest nights offered have decreased slightly, whilst guest nights sold have increased by 3.5 per cent. Sleeper occupancy has increased by 2.8 per cent and the average length of stay has remained constant at three nights. These statistics clearly show that this Government is now, certainly on the evidence of these figures that I have just read out, the most successful Government ever in making Gibraltar attractive to every visitor across the tourism and business spectrum. This success was reflected in the reports presented at the last

quarterly meeting of the United Kingdom Tourism Association, known as the UKGTA, where all the indicators from three of Gibraltar's hotels, the main UK tour operators to Gibraltar and the airlines serving Gibraltar from the UK, were extremely positive. For example, and it is a very good example if I say so myself, when commenting on the tourism industry in general, particularly in Europe, one of the representatives from a leading UK tour operator at the UKGTA meeting, said, and I quote, "Gibraltar is out-performing the market", in the current economic climate. Words of praise, indeed, in a period of time when everything is not rosy in tourism everywhere. As I said in my contribution during the Budget session last year, and again I quote, "one event that did adversely affect overnight visitor stays was the cancellation of flights from Manchester by Monarch Airlines in 2006". Following the resumption of the Monarch Manchester flights, the position has now been reversed and, according to another leading tour operator to Gibraltar from the UK, and again, as reported to the UKGTA forum, one third of this company's bookings to Gibraltar are now from Manchester. However, I must strike a note of caution and point out that, although Gibraltar's many advantages as a tourism destination appear to have halted any downward trends so far, it would be reasonable to expect that the continuing downturn in tourism figures globally, may have an effect on Gibraltar in 2009. Time will tell if this should turn out to be the case, but the Government will continue to monitor the situation closely. So now more than ever the Government will not stand still on the promotion of Gibraltar as a tourism destination. The Gibraltar Tourist Board's marketing campaign in the UK and in Spain, in the latter part of the financial year for 2008/2009, has concentrated on the advantages Gibraltar currently enjoys by being a sterling currency area. An increase in visitors to Gibraltar from all sectors can be attributed to this. This drive will continue to attract consumers from the UK, who are searching out destinations where the pound is the currency used. But it also attracts visitors from the euro zone countries who are benefitting from shopping in Gibraltar because of the current exchange rate values. Once again in the current financial year, 2009/2010, the GTB's marketing drive will focus on the consumer and on the power of the internet, and this year's marketing budget will be more pro-active and focused than ever. The GTB will continue its advertising campaign in the consumer media in the UK, whilst not forgetting the travel trade. The tourism website pages at www.visitgibraltar.gi have been upgraded, and an online training programme for travel agents has been established. This is intended to provide incentives to employees, in those travel agents selling Gibraltar as a destination, to become more knowledgeable about what we have to offer. It is a very good package and it contains at various levels questions about Gibraltar, which the travel agent logs on individually, with an individual identification number, and depending on his score, depending on his chances of getting rewards and it is attracting a lot of attention and working very well. This year the GTB will take a cautious approach to its participation at trade fairs and exhibitions, in response to the economic climate. But we will continue to have a presence at the major tourism events. This will ensure that Gibraltar remains at the forefront of the industry, and will reinforce its drive to become "the" short break destination of choice in southern Europe. In 2009/2010, the GTB will be actively engaged with its partners in the industry in joint marketing campaigns, both in the UK and in Spain. The pooling of resources in this way means that the marketing of the destination, Gibraltar, reaches further in a more cost effective manner. It is often the case, that the combined buying power of the large tour operators and airlines, working with Gibraltar, ensures that a media buying package becomes available, which would otherwise have been prohibitive in price for the GTB to purchase as a stand alone entity.

Works have continued over the last 12 months on improvements to Gibraltar's tourism product. These have included (1) the provision of new toilet facilities in the area of Princess Caroline's Battery and Moorish Castle, along with the necessary sewage systems to service these facilities. (2) The provision of ape-proof litter bins within the Upper Rock. (3) The refurbishment of the Jew's Gate entry point; and (4) the refurbishment of the Moorish Castle ticket office. During the current financial year, it is expected that further improvements will be carried out at St

Michael's Cave, the Great Siege Tunnels, O'Hara's Battery and at Apes Den. Unfortunately, the storms of October 2008 caused major damage to Camp Bay, precisely in a year when the project to enhance this area had been completed. The area suffered extensive storm damage, with the cost of repairs running into tens of thousands of pounds. However, I am pleased to say that the works have been carried out to repair the damage and restore this beach facility. The improvements to the facilities at Eastern Beach came into operation on schedule at the start of the Bathing Season for 2009. The new changing rooms and showers offer a standard of beach facilities that are unprecedented in the management of beaches in Gibraltar. It is regretted that there has been unavoidable delay in the opening of Sandy Bay Beach and that public access onto the beach is likely to be available this summer only from the northern steps. The beach will be able to be used, but the delay is due to a section in the area of the storm damaged buildings being declared out of bounds on grounds of public safety, until essential demolition works are carried out. The situation will be periodically reviewed as other remedial works continue, with a view to possibly also allowing access onto the beach from the southern ramp. The delay has been due to the legal situation that exists and the legal negotiations that are taking place between the Government and the head lessor of Both Worlds, and have been caused because of the intricacies of the legal situation, but because there are legal proceedings involved, I do not want to go into any more detail. Despite the global economic problems, the results speak for themselves yet again, and our tourism industry continues to thrive. This Government's policies and investment in tourism are paying dividends. So too is the hard work carried out by, not only the GTB, but also all the key partners in Gibraltar's tourism and leisure industries, who work tirelessly to position this fabulous Rock as the destination of choice in this part of the world. I look forward, along with the Gibraltar Tourist Board and the local tourism industry, to making 2009 another fruitful year.

I will now turn to environmental matters, and in relation to climate change and our Kyoto commitments, the Gibraltar climate change programme was released on World Environment Day last year, and is publicly available on the Government of Gibraltar website. The Government will be dealing by example and the Department of the Environment is preparing a seminar for all Government departments, to discuss its implementation. Following on from the Environment Charter, the Department is now finalising its Environmental Action and Management Plan. It has concluded the first round of stakeholder consultation on the plan, and will proceed with the next round of consultation within the course of this year. The plan is a comprehensive package of action points with a timetable for enforcement. The plan tackles many environmental matters, including air, water, waste, environment development interface, habitats, noise, energy, transport, pollution, climate change and environmental heritage. It is a forward planning document which embraces the essence of sustainable development, by providing short, medium and long-term targets. As we announced in May, the National Environmental Research Institute of the University of Aarhus in Denmark, has been commissioned to undertake the epidemiological study into the incidence of cancer in Gibraltar and the immediate surrounding region. The study, in addition to establishing whether there actually exists an incidence of cancer greater than expectations, will also establish whether Gibraltar is a high risk community for cancer, and will assess the effects of sources of environmental exposure, or health hazards that could result in unacceptable levels of exposure to contaminants or pollutants. The Institution commissioned to undertake this work has a very good track record in environmental cancer epidemiology, which should ensure that the results produced and the conclusions reached are able to stand up to public scrutiny. The findings of the study are expected to be made available to us early next year. With regard to Government's research for services of renewable energy, I regret to advise this House that the initial interest shown by the two companies dealing with ocean currents, has not progressed at the rate we had hoped, and the actual monitoring of currents has still to start. The Government are still committed, however, to increasing the amount of energy produced from renewable sources, and with this in mind, Government now plan to start the

next stage of renewable energy planning, which will focus on a feasibility study for the setting up of wind turbines locally, with the possibility of both onshore and offshore turbines. The continuing research and watching brief on marine underwater currents technology will continue. The past year has seen the formation of an apes management group, to oversee the management of the Macaques by the Government's contractors, and the improvement of the current facilities, including the food and provisioning of the apes on the Upper Rock, together with a more effective birth control programme. The most pressing problem with the Macaques presently is the urbanisation of these primates and the effects of the income of their behaviour on the human population. There are many reasons why the Macaques will roam away from the Upper Rock and become urbanised, most of which are the result of natural behaviour. However, the fact that there is still illegal feeding on the Upper Rock exacerbates the situation as it makes the monkeys lose their fear of human beings, and moreover, expect to receive high calorie and high flavour food from humans. This encourages them to approach humans whenever they encounter them, including in built up areas. Any source of food that serves to keep them in the area, keeps them there and they then become a nuisance. The problems are being tackled in several ways. Macaques are being relocated, contraception is being increased, the selective and targeted removal of animals is being stepped up. Small numbers will shortly be exported and the plans to relocate a larger number to North Africa, have recently been given a boost following developments in the potential host country. Increased investment in the sites is expected to lead to greater ease in monitoring the social structure of the Macaque groups, with a view to pre-empting possible splits that may lead to monkeys roaming away from the main feeding sites. Providing larger feeding areas in selected locations will allow for more natural feeding behaviour, and there will be better opportunities for viewing by visitors. The pilot scheme for recycling of glass and cans has not been as successful as we would have expected, and the Government have now located more recycling bins of different sizes throughout Gibraltar. There are now bins for glass and for cans of varying sizes, depending on accessibility issues, throughout a total of 43 disposal points. These disposal points have been identified to make them as conveniently accessible to the general public as possible. The requirement of the service that needs to be carried out to the bins to upload the glass and cans for taking away for recycling, and accessibility, have all been important factors in deciding these locations. The quantities and weights of glass and cans collected are disappointingly low. We are currently collecting an average of 4,078 kilos of glass each month and this is estimated to be only 5 per cent of the estimated total waste glass generated in Gibraltar. The average amount of cans collected is 690 kilos, approximately 1 per cent of the estimated total of waste cans produced. These amounts are well below the expected targets for a community the size of Gibraltar, and the public and the catering establishments are therefore strongly encouraged to avail themselves of the recycling disposal points, and thereby help to protect our environment. Continuing on the subject of recycling, the tender for the collection of all waste electrical and electronic equipment is proceeding. When the tender is awarded, this waste, which has been stored in order to avoid the illegal dumping into landfill, will subsequently be taken to authorised facilities for its recovery, reuse or recycling. Depositing of such items in a segregated manner will facilitate this process in order to meet the targets set by the EU. These targets have to relate to the items being imported into the local market. In respect of the refuse collection and disposal service, and as highlighted last year, Government are embarked on a review of the whole process which involves changes to the law in relation to times for disposing of refuse, the working practices of the service provider contracted by Government for refuse collection and the regularisation of disposal facilities. We are currently consulting with the unions and with the representatives of the workers involved. Additionally, Government have been in consultation with the environment safety group, the ESG, because through their initiative to participate locally in the Clean Up the World Campaign, they have identified areas where substantial refuse has to be picked up every year. Unfortunately, these areas are no sooner cleaned that very shortly afterwards, sometimes even

within 24 hours, refuse once again appears illegally dumped in these locations. With the help of the ESG a list of these areas has been drawn up and the Government will consider proposals for systematic monitoring and cleaning of these areas. The public will have noticed that during the past financial year there has been an increase in the number of litter bins in our streets, and during the coming year it is expected that we will continue to add to this number. From a total of approximately 300 in number there are now approximately 450 on our streets. During the past year 136 new bins were placed, of which 32 were replacement bins. In 2007 and 2008 Gibraltar exceeded the particulate matter, or PM_{10} annual mean limit value. The year 2008 was also the first year where we had a failure of the nitrogen dioxide annual mean air quality objective. The Government have put in place a programme of tasks that will clarify and inform the identification of the sources and their respective strengths, so that Government can devise policies to control them. Government will be producing a time extension notification to the European Commission, where an extension of time will be sought for the application of the PM_{10} limit values until 2011, and the application of the nitrogen dioxide annual mean air quality 2010 objective until 2014. The programme entails the establishment of data sharing with Spain on their analysis of African dust intrusions into the Iberian Peninsula, the use of modelling, the application of the latest analysis methodologies to existing data to aid in the production of trends and source identification, the expansion of our monitoring programme to include salt, a possible large fraction of our PM_{10} which could be discountable as a natural component, and further very high resolution analysis for PM_{10}. Once these mechanisms are set in place to control the identified and quantified sources, Gibraltar will be much better placed to achieve the limit values at the end of the extension. In relation to the promotion of energy performance of buildings, the complex software programme which is Gibraltar specific, that will be used to calculate the energy performance of buildings, is now almost completed. Government have already run courses for professionals to acquaint them with this software and to enable them to qualify as energy assessors. In September this year Government will also be conducting a seminar to promote a better understanding of the building energy performance rules, and how persons such as developers, constructors, building services engineers, estate agents and legal firms, to mention just a few, are affected. In addition to the existing monitoring carried out by the Environmental Agency under the Bathing Water Directive, the Department of the Environment has developed a monitoring strategy aimed at addressing these pressures that are currently affecting our aquatic environment. Results gathered from this initiative are being used by Government to develop an accurate picture of both our coastal and ground waters. In line with our requirements under the Directive, Government have already produced an interim report on the significant water management issues affecting our waters. This report can be viewed online from the Government's website under the Ministry for the Environment section. Preparations for the production of the Gibraltar river basin district management plan are already well underway. This report will provide a comprehensive overview of the water quality status in Gibraltar, along with a programme of measures aimed at tackling any pressures on water quality. The principal objective behind the Habitats Directive is the preservation, protection and improvement of the quality of the environment through the conservation of natural habitats and of wild fauna and flora. The Directive requires Member States to undertake surveillance of the conservation status of natural habitats and species. To achieve this end, surveillance monitoring is on-going and the Department of the Environment is appraised on a frequent basis of the results produced by its contracting parties. Work for the next reporting period, ending 2012, is therefore underway. The results of the monitoring will assist Government in meeting the requirements of the Directive, which include ensuring that the favourable status of our European protected habitats and species is attained or maintained locally. This year Government celebrated the fifth anniversary of World Environment Day on 5th June. The purpose of this day, organised by the United Nations Environment Programme, is to spread awareness of centre stage environmental issues. This year's theme is "Your Planet Needs You – Unite to Combat

Climate Change". This year's events centred on the ever popular school events for children and parents. The events were filmed to be shown by GBC at a later date. This event was held in the Tercentenary Sports Hall. In addition to this, a very successful trade fair was held on the morning of Saturday 6th June at Casemates. Twenty individual stalls were set up with local businesses illustrating their environmental awareness policies and projects.

Finally, I will now turn to the Technical Services Department, which has during the past financial year continued to be involved with many of Gibraltar's projects across a wide spectrum, ranging from street beautifications to the construction of the new prison. The present year will see the Department completing some of the on-going projects, the start of others on site and the progression through the pre-contract phase of those at design development stage. Technical Services will this year be involved in the delivery of three major highways related projects which have been developed through the design stages and onto the construction phase. The Trafalgar interchange works have already begun and consist of the construction of new roundabouts in the area, linking traffic from Ragged Staff, Main Street and Rosia Road in a more efficient manner to improve circulation. Apart from this core objective, the preservation of the beautiful landscaping of the area has been a primary consideration in the design. In parallel with this project, design work for the proposed new Dockyard road will be completed. The latter is aimed at providing a relief road from the lower south district area, particularly with the increase in residents that will be generated by the various new housing developments. The widening of Devil's Tower Road has already commenced and will consist of converting the current two-way single lanes into a dual carriageway linking Winston Churchill Avenue with the new airport ring road and the tunnel. At the same time, the whole length of Devil's Tower Road will be beautified by the provision of new footpaths and street furniture, thus improving the current situation. The third major project is the Dudley Ward tunnel approach road. This has needed changes to the design, following reappraisal of the project due to technical constraints. This will now be constructed in phased packages, encompassing the erection of rock catch fences, demolitions and earthworks, the construction of the rock fall protection canopy and road works. The first works, involving the erection of catch fences, has already begun and the others will follow in quick succession. As will be appreciated, all the above projects are aimed at improving the circulation of traffic through our road network and are part of the commitment given to the electorate in this respect. Following the completion last year of the Orange Bastion/Fish Market Road and Market Place projects, the programme of beautification works in the city centre area continues at the southern end of Main Street. The project is set for completion towards the end of this year and encompasses the section of Main Street from Governor's Lane up to Southport Gates, including the square opposite Convent Place. When coupled with works to Convent Place and the section of Line Wall Road beside Ince's Hall, the aesthetics of this whole area will be significantly improved. In addition, long standing problems will also be resolved through the laying of new services infrastructure. Further south, the final phase of the demolition and replacement of the full length of the existing balustrade along Europa Road and South Barracks Road was completed during the past year, and the visual improvement along these stretches of road is there for all to see. The highways maintenance programme has continued during the past year and will proceed this year with on-gong repairs to footpaths, roads and retaining walls. The need to balance the maintenance of the road network against allowing vehicles to circulate is at the forefront when the programme of works is developed. The initiatives implemented by the Department to minimise inconvenience to the public, by undertaking works to critical areas during weekends and public holidays, have proven very successful and will continue to be developed. The coordination by the Department of all works on the public highway continues to ensure that any disruption is kept to an absolute minimum. The maintenance programme of the public sewers and storm water drainage networks has over the past year seen preliminary works undertaken to repair a section of the main sewer along Rosia Road, as well as the desilting of

various storm water culverts. Works are planned this coming year to repair sections of the network along Queensway and to undertake desilting of the main sewer. The Department will continue to be involved with works relating to coastal protection and cliff stabilisations. With regard to coastal protection, they are currently dealing with the works to repair the damage caused by the storm experienced during October last year. Its severity was such that existing revetments along Western Reclamation and the North Mole Reclamation were completely destroyed, leading to erosion of the landfill behind. Works are expected to commence during the summer with completion before the onset of winter. Moving to cliff stabilisation and rock fall protection projects, the past year has seen works undertaken to the cliffs to the rear of the Calpe Married Quarters, in parallel with the conversion of the latter into terraced houses as part of Government's on-going urban regeneration programme. A section of cliff above Europa Road has been tackled and advanced works on the Catalan Bay tunnel slopes have already commenced. The main project to erect rock fall catch fences along this area is being designed. These works are part of a continuous cliff stabilisation and rock fall protection programme that has been on-going over the past 11 years. Our peculiar geological and topographical situation poses great practical difficulties when dealing with rock fall issues. But we are steadily tackling areas and will continue to do so. The Technical Services Department will this year continue to develop and manage and deliver many of the projects in Government's comprehensive programme. In addition to those already mentioned, other projects include the new prison at Lathbury Barracks, which will be completed and then handed over to the Ministry for Justice. The Department has also been tasked with delivering the scheme to convert the Dutch Magazine complex into a new training centre facility for the Ministry of Employment.

I will conclude by paying tribute and thanking all members of staff and the Heads of the Government Departments and of the Gibraltar Tourist Board, for which I have political responsibility. Without their dedication, loyalty and hard work, the efforts of the political Government would remain fruitless. In particular, I would like to publicly thank my personal staff within the Ministry of the Environment and Tourism, for their unqualified support and unfailing efforts, and especially my Personal Secretary who retired this year after working with me ever since I became a Minister in 1996.

HON J J HOLLIDAY:

Mr Speaker, before I start my contribution on each of the areas for which I hold Ministerial responsibility, I would like to record my satisfaction at the healthy state of the economy and the various budget measures announced by the Chief Minister yesterday. In a time when many of the world's leading jurisdictions are suffering from negative growth, I am happy to report that Gibraltar's resilient economy continues to grow, albeit at a slower rate than in previous years. Even in these difficult times, the international press has not failed to notice that Gibraltar continues to be a stable market for business and investment. This confirms the Government's successful strategy in the management of the economy. Gibraltar is not and will not be immune to the recession, but we are well placed to emerge strengthened, in these uncertain times. Our workforce is well trained in most areas in order to compete successfully in the current world economic downturn. However, the Government are optimistic that business and investment will continue to grow in Gibraltar, especially when the transition to a low tax jurisdiction is completed. The various budget measures in respect of corporation tax, announced by the Chief Minister yesterday, will be well received by the business community.

The Invest Gibraltar office continues to provide efficient support to industry by providing guidance and best practice advice to small and medium enterprises. The office is a front line organisation acting as a bridge between the Government and the private sector for day to day matters, and continues to have an excellent relationship with the Gibraltar Chamber of Commerce, the Gibraltar Federation of Small Businesses and the business community in general. In 2008, a total of 117 start-

up companies were assisted by the Invest Gibraltar office in their endeavours to commence trading in Gibraltar. This represents a significant increase from the 2007 figure of 71. So far in 2009, a further 33 start-up companies have been assisted. The number of business enquiries now exceeds 750 per year. This significant growth demonstrates the confidence that exists in Gibraltar by the local and international business community.

The Enterprise and Development Department is currently working on a project that will enable licensing transactions over the internet. The aim is to improve the effectiveness of the trade and licensing office by computerising information and procedures, thereby enabling the business community to transact with the Government via the internet. I am certain that this initiative will be welcomed by the business community.

During the current economic crisis being experienced worldwide, and as a consequence of the most recent economic forecast carried out by the European Union, which predicted a marked reduction of growth in the European Union, the European Commission took the decision on 18th February 2009 to extend the final date of admissibility of expenditure under the 2000/2006 EU co-funded project to 30th June 2009. This was done so that Member States could maximise the absorption of available funds that had slowed down as a result of the unprecedented financial crisis in the socio-economic situation and the labour market. Therefore, the 2000/2006 and the 2007/2013 programmes have been running in parallel since 1st July 2008. Under the 2000/2006 programme, Gibraltar has undertaken a total of 194 co-funded projects. These have included 136 projects under the Objective II European Regional Development Fund programme, 44 projects under the Objective III which is the European Social Fund programme, 7 projects under the Gibraltar/Morocco Intereg 3A programme and 5 projects under the Intereg Southwest Europe programme. A total of 116 projects have assisted the small/medium sized enterprise, either to start up or expand their business activity, thus adding wealth to the local economy and creating jobs in the labour market. Under the 2000/2006 programme, the total investment made has been as follows. The private sector has invested approximately £3.3 million, the EU have invested £9.3 million and the Government of Gibraltar £11.9 million. The programmes have also assisted in furthering the EU Lisbon and Gothenburg agendas, which promote the creation of sustainable employment. This is also a priority for the Government. The allocation of EU funds under the 2007/2013 programmes for Gibraltar are as follows. The ERDF programme is approximately 5.8 million euros; the ESF programme is 3.6 million euros; the Intereg 4B Southwest Europe is approximately 211,000 euro and the Intereg 4B Mediterranean is again 211,000 euros. These funds, together with Government's contribution and approximately 1.5 million euros which is envisaged by the private sector contribution, will bring the total value of the EU programme to approximately 19.1 million euros. Unser the 2007/2013 programme there has been already a total of 19 approved projects broken down as follows, 11 under the ERDF project, 7 under the ESF project and one Intereg project. This represents a current financial commitment of approximately £3.9 million. The aims of the new programmes are to diversify the economy, encourage enterprise, support sustainable development, protect the environment and promote technology based society in line with Government's policy priority. Government's role will be to act as a catalyst to allow the private sector to consolidate existing jobs, create new sustainable jobs, maximise the opportunities for more and better jobs, diversify into new areas of activity, encourage the introduction of new technology and generally to foster the use of IT, develop key services, encourage further social xxxxxx and be more aware of the environmental issues to encourage urban regeneration and enhance the Gibraltar tourist product. The emphasis of the new programme is on jobs, information technology and the link between jobs, the economy and the environment. I would like to take this opportunity to encourage the private sector to contact the EU Programme Secretariat and seek information on how these EU funds could assist their businesses, as I believe that not enough is being made use of, of these available funds. In fact, I would also like to encourage the Gibraltar Chamber of

Commerce and the Gibraltar Federation of Small Businesses to inform their members as well.

On development, despite the global economic downturn, Gibraltar continues to enjoy sound investment confidence. I am glad some private sector projects have been completed or are progressing well, like Ocean Village, Tradewinds, the Anchorage, the Sails and King's Wharf. It is envisaged that the mid town development and the east side projects will commence in the near future. There are other projects in the pipeline currently being discussed with the Government by potential developers, some of which will hopefully start to come on stream next year. Amongst these are various hotel projects which the Government are keen to see coming to fruition. On the Development Plan, the process of approving the new Gibraltar Development Plan is now entering its final stages. The Development and Planning Commission completed its consideration of all representations received on the Draft Plan, and subsequently published its proposed amendments in April this year. These proposed amendments were made available for public inspection and comment and the Commission has now finalised its consideration of the comments received. Presuming that there are no appeals to these decisions, the final draft will shortly be submitted to the Chief Minister for final approval. It is hoped that the new Development Plan will be published before the end of the year.

On technology, the Information, Technology and Logistics Department have undertaken a number of projects, or are currently working on new projects and have made significant progress in a number of areas which will further improve the delivery of service and develop new systems of e-Government. The Government intranet development programme is still on-going and will continue during this year. The IT Department has also developed a new Gibraltar website, in order to upgrade and improve the current site. We plan for this to go live before the end of the year.

On communications and the Gibraltar Regulatory Authority, the GRA is an independent authority which regulates various aspects for which the Minister for Communications has responsibility. These are electronic communications, which includes radio communication, and licensing of the radio spectrum and international coordination of satellite network and licensing. Following the commencement of the Communications Act in 2006, there are eight companies operating under this regime, providing a variety of fixed and mobile network services. Last year I reported to Parliament that two companies who had expressed an interest in providing mobile services in and around Gibraltar were expected to commence providing services during the course of this year. I can confirm that in March 2009 the GRA licensed CTS Gibraltar Limited to use a number of radio channels to provide the third generation mobile network. The licence issued under the provisions of the Communications Act, together with the general authorisation as an electronic communication network provider, currently held by CTS, will enable the company to provide mobile telephony and other mobile services in Gibraltar. CTS became the second mobile operator licensed at Gibraltar. The other company is still going ahead with its preparation to roll out a GSM network, and is expected to commence providing services during the course of this year. The GRA has set a series of deadlines that the company will have to meet before commencing operations. As I reported to Parliament last year, the Communications Act requires the GRA to carry out a series of market analysis. The first few phases of these reviews have been completed and the results published on the GRA website including comments submitted by the European Commission. On 11th August 2008, and after having taken into account the European Commission's comments, the GRA published consultation on the application of retail price control and cost accounting obligations, as well as decisions and significant market power obligations, with regard to wholesale fixed markets and wholesale mobile markets. The Authority designated Gibtelecom as having significant market power in both the wholesale fixed market and wholesale mobile market, and applied obligations on Gibtelecom in the relevant markets in which it has been designated as having significant

market power. The Authority published two Decision notices on its website specifying this obligation. In relation to the retail price control and cost accounting obligation, the GRA embarked on a tariff free balancing and retail price control exercise in relation to Gibtelecom's activity, which is to form part of a separate consultation. The Authority decided to apply the retail price control on Gibtelecom in the following markets: (1) in the retail access to the public telephone network at a fixed location; (2) retail national publicly available telephony service from a fixed location, and (3) the retail international publicly available telephony service from a fixed location. The GRA continues to provide support to the satellite operator SES Satellite Gibraltar Limited, in relation to the coordination of network and the follow up required with the International Telecommunications Unit.

On the Gibraltar Broadcasting Corporation, the review undertaken by Alan King was completed earlier this year, and as the Chief Minister has recently informed Parliament, further developments and proposals are expected before the end of the year. I know that this Government's initiative has been well received by the Board, Management and staff of GBC.

The Royal Gibraltar Post Office continues to offer the cheapest national postage rate in the western world and the next day delivery continues to deliver over 93 per cent of all walks by the next day. The franking machine postage paid impression and bulk mailing revenue has in the last year increased to £352,000 from £250,000 in the previous year. These business orientated services have increased the overall sale of stamps revenue by £77,000, in spite of the downturn in actual traditional stamp sales. The RGPO has recouped an additional £565,000 over and above the previous year's revenue, in terminal dues from foreign postal administrations. As was explained by Government last year, the Post Office operates in arrears pending inter-postal administration settlement. In some cases other inter-postal administration accounts, not directly involved with Gibraltar, require to be settled before Gibraltar can itself clear. Prior to Christmas 2008, the Post Office introduced the Universal Postage Union, IPS International Mailbag electronic barcode labelling system, thus enabling it to monitor mail despatches and rapid reaction to any possible delays, especially throughout the busy Christmas period. This system is proving to be highly effective and helps ensure that all Gibraltar's outbound international mail despatches reach their destination in a much quicker timescale. The UPU system is being further expanded to cover other postal services. In 2009, the Post Office will be introducing a new service providing a very secure method of sending documents and other mail items, up to 2 kilos, to the United Kingdom. This is modelled on the Royal Mail Special Delivery Service, and so far, out of over 25,000 items posted under the pilot scheme business customers, not a single item has been reported as lost. Following this great test success, the service will be introduced as a prime counter product to the whole community. I am pleased to announce that transit time averaged two working days plus day of posting during the test, and the retail price of the product will be around £3 per normal air mail postage to the UK. This service is traceable on Royal Mail's website and the signature of the recipient can be displayed on screen. The philatelic market in general has been experiencing a decline during the past year and the recent general crisis is compounding the situation further. However, the Gibraltar Philatelic Bureau has increased its turnover in 2008 in comparison to 2007, by 11 per cent and its profit has marginally increased. The highlights of the past financial year have been record on line sales through the website and a number of stamp promotions in the UK, promoting Gibraltar stamps. The Philatelic Bureau currently has 12,000 plus active customers and 6,400 active email addresses for collectors worldwide. A total 80 per cent of the total philatelic sales during 2008 were to offshore customers.

On cruising, the Cruise Line International Association is forecasting that 13.5 million passengers will sail with its 23 member lines in 2009. A 2.3 per cent increase from the estimated 13.2 million last year. In the last eight years annual passenger volumes have increased by 79 per cent. 2008 was a particular difficult time for the cruising industry worldwide, due in no small measure to the price of oil which peaked at around

$140 per barrel in July. While fuel consumption has always been a major consideration in itinerary planning, it then became a priority. Schedules for 2009 had already been published so fuel surcharges were introduced by all liners. Many operators tore up their 2010 plans and went back to the drawing board to identify the most economical itineraries. The credit crunch and the economic downturn has also created havoc with what cruise lines have come to expect in terms of market growth and trend. The industry had been growing at an unprecedented rate for some years now, even with severe setbacks caused by outside factors such as 9/11. A significant advantage in enabling the industry to rebound quickly, is the ability to shift hardware from one part of the world to the other, to avoid travel as well as to easily respond to changing consumer demands. Many analysts suggest the present situation is similar to the aftermath of 9/11, when a number of operators collapsed. In the present scenario, more Americans are again reluctant to travel far to join cruises away from their home waters, albeit for financial rather than security reasons. The lack of confidence is also evident in that whilst prospective cruisers were prepared to commit large sums to book a cruise a year or more in advance, bookings are now being made only a month in advance. The effects of these two issues are potentially serious, and particularly in the case of the latter, create huge uncertainty in the cruise market. The cruise market in Gibraltar in 2008 was a great success with 222 cruise calls and 308,989 passengers. This represents an 11.9 per cent increase in passenger numbers compared to 2007. The largest number of passengers arriving on a single ship was on 12th August, on one of the largest cruise ships in the world, Royal Caribbean Independence of the Seas, called with 5,609 passengers aboard. She made nine calls in 2010 and is scheduled to visit us ten times this year. The largest number of people arriving on a single day was on 30th August, when we had 8,281 passengers and crew arrive on both the Independence of the Seas and the MS Opera. I am proud that the Gibraltar Cruise Terminal won an award at the Seatrade Cruise Shipping Convention held in Miami in March this year. Gibraltar received the 2008 award for the most efficient managed and operated cruise terminal in the Mediterranean. We also received a commendation under the designation of best tourist guides. In addition to this, Gibraltar was runner up only to Naples out of 23 ports in the overall quality of excursions category, in a survey published by the prestigious Princess Cruises recently. It is of great satisfaction that Gibraltar should have fared so well against major ports such as Barcelona, Rome, Venice and the French Riviera, amongst others. These awards are a testament to the professional manner in which cruise ships and their passengers are dealt with during their visits to Gibraltar. I would like to take this opportunity to again congratulate the port and terminal staff and local industry players, for the important role they play in ensuring the continued success of Gibraltar as a port of call for cruising. Gibraltar will have another record year in 2009, when 248 calls are scheduled to call with an estimated 380,000 passengers. It is still early to predict how 2010 will turn out. However, 185 bookings have so far been received with a potential passenger throughput of 313,600. This figure will continue to grow in the coming months. The trend in the cruising industry continues to be to build larger ships to satisfy passenger demands. Therefore, Government have undertaken all the preparatory work and are in the process of relocating existing occupiers of varied premises in the Western Arm, in order to be able to extend the current cruise terminal, so that Gibraltar is prepared with adequate facilities for the cruise ships of the future. This extension will double the passenger handling capacity which will result from these larger ships.

I will now turn to aviation. One will recall that this Parliament recently passed the Civil Aviation Act 2009, which entered into our legislation on 29th January. On that same day that the Act came into force, supporting secondary legislation covering Air Navigation Regulations, Rules of the Air Regulations, Dangerous Goods Regulations and Investigation of Air Accidents and Incidents Regulations were also enacted. The legislation which came about following the changes incorporated into the new Gibraltar Constitution saw the Minister for Transport given responsibilities previously held by the Governor. The Civil Aviation Act also established the requirements of the new post

within the Government, namely the Director of Civil Aviation. The Director of Civil Aviation has initiated an xxxxxx programme of the different areas of expertise at the airport. He has also published required policies and procedures on the civil aviation website on the Government's website, which details how aviation stakeholders should conduct their business. Despite the very difficult commercial circumstances being experienced by the airline industry worldwide, the number of arrivals by air last year was 183,663, representing an increase of 2.2 per cent over the previous year. The year 2009 is already looking like another record year for air arrivals, as for the first five months of 2009, we have had an increase in air passenger arrivals of 16.5 per cent over the same period last year. Currently, Gibraltar has 28 flights per week to the UK, with EasyJet and British Airways flying 12 times and seven times respectively to London Gatwick, and Monarch Scheduled operating six flights a week to London Luton and three to Manchester. Earlier this week, British Airways announced that it would be transferring its Gibraltar operation from London Gatwick to London Heathrow as from the winter schedule, thus allowing Gibraltar to be served from a fourth UK airport. I believe the move from London Gatwick to London Heathrow is a positive development, especially for the business community. Following the departure of Iberia last year, flights from Madrid were resumed by Andalus Airlines at the end of April this year. The frequency of the Gibraltar/Madrid operation is currently 11 times a week. Andalus Airlines will be starting a thrice weekly operation to Barcelona as from Friday 3rd July, which is next week. Later this year, Gibraltar will have connectivity with six destinations, and the Government continue with their strategy to attract more operators to coincide with the opening of the new air terminal.

Turning to road transport, the Government have a manifesto commitment for this term of office to address Gibraltar's historical parking and traffic issue. Government will shortly be making a public announcement on its new integrated parking traffic and parking master plan. This plan will encompass road enhancement and traffic fluidity schemes, public transport and parking. Parliament will recall that last year I mentioned the fact that the completion of the new car parks in the Upper Town, New Harbours and Sandpits were imminent. I can now confirm that the three car parks are operational and yield a total of 490 new parking spaces that have been welcomed by the public. However, our strategy to provide multi-storey car park facilities continues. The construction of the multi-storey car park in Devil's Tower Road, by the Cross of Sacrifice, that will accommodate approximately 1,200 vehicles is already underway. This project will incorporate a park and ride system, mainly for visitors to Gibraltar, in addition to other normal parking facilities. The Government also continue to monitor traffic flows and will strive to ensure further enhancement. A case in point is the on-going construction of the new air terminal/frontier access road that will incorporate a dual carriageway from the Commercial Gate at the frontier to the junction of Eastern Beach/Devil's Tower Road, together with a tunnel underneath the eastern end of the runway, consisting of four lanes with a separate subway for pedestrians and cyclists. This represents a major investment in addressing once and for all one of the biggest sources of traffic congestion and delays in Gibraltar, and will eliminate the present need to bring traffic to a standstill for up to 20 or 30 minutes when an aircraft lands or takes off. Dudley Ward Tunnel is scheduled to open next year and a new road is also being constructed to link the Westside reclamation area from Queensway at Coaling Island to the new Government housing estate. Government are also improving the traffic flow at the Trafalgar interchange to decongest the access to town from the south district. The interchange is aimed at improving traffic circulation around this crucial part of our road network. The project has already commenced. Work continues on the design and planning to try and establish a new road to extend the Dockyard road southwards and provide a new link to Rosia Road. This will provide a new road for motorists that will eventually improve the situation in the Trafalgar area. Another issue that is of high priority is the removal of derelict and abandoned vehicles. Work continues with good results and Government are committed to continuing with this strategy. As I recently announced in the House during Question Time, Government are currently examining ways of streamlining the

current procedures in order to further increase the number of abandoned cars that can be removed from our roads. Public transport forms an important part of this new integrated traffic and parking master plan, and even though the Government are very satisfied with the excellent service provided by the Gibraltar Bus Company, they wish to encourage the public to make more use of the service. The Government plan will include new bus stops and a new bus route, amongst other initiatives. I am, nevertheless, pleased to report that the total number of paying passengers in 2008 by the Gibraltar Bus Company was 2,063,646, which represents an increase of 19 per cent over the previous year. I am also pleased to inform Members that the replacement of our existing driving licence by the new photocard driving licence, which will be Third European Directive on Driving Licences compliant, is progressing well as is the application of the production of the digital tachometer card for Gibraltar. This card identifies the driver in records and stores the driving activities whilst engaged in road transport.

I will now turn to the Port. The Port has performed very well in 2008 and the prognosis for this year is for continued growth in the various sectors. I am delighted to report that the number of vessels calling at Gibraltar in 2008 was 9,749, representing 288 million tonnes, which is again an all time record. Bunkering operations saw a slight decline in 2008 from 4.3 million in 2007 to 4.2 million. However, the first quarter of 2009 has seen ship numbers increase by 16 per cent and the volumes increase by 10 per cent when compared to 2008. It is against this background that the Gibraltar Port Authority has reviewed its xxxxxx structure in May this year, in order to substantially increase its revenue and lay the foundations for the Port to become commercially viable. I wish to stress that the recent increase in port tariffs were only introduced after extensive discussions and consultation, over many months, with members of the Port Advisory Council and the Board of the Gibraltar Port Authority. This exercise fully took into account the fee structures of nearby ports and further afield in the Mediterranean, in order to ensure that Gibraltar remains competitive with its rivals in the market. I am happy to report that despite the scaremongering generated by some players in the local shipping industry, business has continued to grow since the introduction of the new fee structure. This year will see the upgrading of the Vessel Tracking System, which will be operational by the end of the year. The introduction of this system will enable the Port to develop even further.

Turning to the Ship Registry, this year has been one with many challenges for the Gibraltar Maritime Administration, with the incidents involving the New Flame and the Fedra requiring the use of marine surveyors, resources to carry out complicated accident investigation, to identify and analyse the relevant safety issues pertaining to the accidents and to make recommendations aimed at preventing similar accidents in the future. The New Flame investigation was completed during the year with the other two Flag States involved, Panama and Denmark agreeing with the Maritime Administrator being the leading investigator. The report was published on the Gibraltar Maritime Administration website, following agreement of all the parties and submitted to the International Maritime Organisation, the IMO, in London. The Fedra investigation is still on-going and to investigate the circumstances leading up to and during the incident, it has been necessary to extract information from the ship's voice data recorder, commonly known as "the black box". However, because of the complexity of decoding the information from the black box, the need to translate some of the radio communications from the Greek and Romanian languages into English and the need to divert resources to the operation of the rest of the fleet, this report will not be completed before the end of the year. I am delighted that the Gibraltar Ship Registry continues to climb up the Paris MOU white list and during the year the United Kingdom Coastal Guard invited the Gibraltar Ship Registry to join the United Kingdom Coastguard xxxxxx Ship 21. This offer was accepted and all Gibraltar registered ships will benefit from a reduced inspection regime from the United Kingdom Coastal Guard. There are presently only 21 Flag States on this list and Gibraltar, the UK and Bermuda are the only other members of the Red Ensign Group on the list. The Ship Registry part of the Gibraltar Maritime Administration

continued its year on year growth which last year increased by 11 per cent. In 2008 there were 52 new registrations and 29 deletions, bringing about the total number of ships on the register to 272. This represents nearly 1.66 million gross tonnes with the average vessel having an age of 11 years. This increase in volume has been achieved without loss of value of quality within the fleet, as it is still the case that sub-standard ships and their operation are constantly monitored, and where necessary, required to leave the register if they fail to meet the high standards set by Gibraltar. This continued growth is in some part due to our good reputation but marketing also plays an important role, advertising, attending shipping conferences and exhibitions, as well as visiting targeted shipping companies, has assisted in the registration of quality ships. The first practical step to take over the Gibraltar Yacht Registry has been undertaken during the last few months. This will enable the Yacht Registry to grow as part of the Maritime Administration set up and expand into the registration and certification of mega yachts where there is a huge market potential. This is a future growth area which Gibraltar intends to fully maximise. Earlier this year, Gibraltar hosted the Red Ensign Group's annual conference. This conference, of which Gibraltar is a category one member, meets annually to formulate policy that will benefit all members in the various fields. By all accounts the conference was a success.

Now turning to utilities, the Gibraltar Electrical Authority Waterport Power Station generated 44.84 per cent, while OESCO generated 56.16 per cent of the total power requirements for Gibraltar during the last financial year. The total units generated by Waterport and purchased from OESCO increased to 165,735 million units, representing an increase of 8.48 per cent from last year. The units billed to the consumer totalled 161.6 million units compared to 148 million units in the previous year. This represents an increase of 8.64 per cent. The amount collected was £18.86 million which is an increase of 16.3 per cent. The number of consumers stood at 16,431 at the end of March 2009, an increase of 164 which is just over 1 per cent. The total installed generating capacity continues to be 42.8 Megawatts and the last financial year Gibraltar recorded the highest ever summer peak load in its recorded history, at 30.5 Megawatts, representing 8.93 per cent above the previous highest ever peak load which was recorded in the winter of 2007/2008. However, this record was again broken during last winter's cold spell when we recorded another historic peak load of 34.9 Megawatts, a 24.64 per cent increase over the previous winter's highest ever recorded peak load. The cost of fuel at Waterport Power Station this financial year has been a rollercoaster ride with price fluctuation mainly on the increase throughout the year. This has been consequent on the world economic downturn which has had an impact on the oil production and fuel consumption, coupled by the continued devaluation of sterling against the dollar. In the financial year 2008/2009, the total cost to the Authority arising from the increased cost of fuel exceeded £5.3 million over the approved estimate. This uncertainty and increase in fuel cost has led the Authority to enter in 2009 into fuel hedging arrangements for its fuel requirements. This will allow the Authority to reduce its exposure to fluctuation in oil market forces for the new financial year. The Gibraltar Electrical Authority has upgraded the xxxxxx that is used to monitor the generation and main distribution system. This will provide a better and faster response when dealing with power xxxxxx scenarios. The Authority continues to upgrade and improve the electricity infrastructure as part of the provision of electrical supplies to new developments. This financial year, new sub-stations have been commissioned at Waterport Terraces, Waterport Place, Powers Drive, Mount Pleasant and Cumberland, not only providing electrical infrastructure in support of these developments, but also reinforcing the electrical infrastructure in the area. A public lighting systems survey was carried out by specialist consultants, and a number of recommendations to improve the infrastructure have been proposed. During the last financial year, the on-going street lighting improvement programme continued with improvements and upgrades to Fish Market Road, the north end of Queensway and Upper Windmill Hill. The Deputy Chief Executive Officer, Mr Eddie Navas, retired at the end of May after 30 years service in the Electricity

Department and later the Electricity Authority. I would like to wish him a long and happy retirement. He has been succeeded by Mr Joseph Alsina who up till now had been the Authority's Senior Generation Engineer.

Turning to AquaGib, during the last financial year a total of 1.3 million cubic metres of potable water were supplied, which represents an increase of some 2 per cent over the last year. AquaGib pumped an estimated total of 3.4 million cubic tonnes of sea water through the various sea water reservoirs. New reverse osmosis desalination plants were successfully commissioned in August 2008 and are allocated in the old MOD laundry tunnels at Governor's Cottage Camp. The total value of this project was £3.5 million. These new units bring the total reverse osmosis design production capabilities to 1.3 million cubic metres a year of potable water. The storm and the resultant high seas of 10th October washed away a large section of the reclaimed land in the North Mole, and with it severely damaged some 200 metres of buried sea water pumping mains. Salt water supplies were interrupted to the city, north and east side districts for some ten days. Thanks to the round the clock efforts of AquaGib staff and contractors, temporary repairs were undertaken and the service resumed. The permanent replacement mains have now been operational since the end of March. At the same time, the threat of oil pollution from the wreck of the Fedra, to the Little Bay sea water intake caused the desalination plant at Governor's Cottage Camp to shut down as a precautionary measure. The use of the distillers at Waterport enabled the stock of potable water to be kept at a safe level and also provided assistance to the Ministry of Defence, whose own stock of potable water at the time were critically low. Throughout the year the quality of potable water supplied by AquaGib generally complied with the requirements of Directive 98/83/EC.

Turning to Gibtelecom, despite the increase in the competitive local market and the worldwide economic climate, Gibtelecom's turnover increased in 2008 by 3.6 per cent year on year, to £31.4 million. As shown in the Government Estimates for the financial year 2008/2009, hon Members will see that the Government received £3.2 million by way of dividends in respect of its 50 per cent shareholding in the business. One of the main drivers of Gibtelecom's growth continues to be the internet services, where ADSL broadband penetration per capita in Gibraltar has increased to around 29 per cent. I am pleased to report that this is higher than the current EU average of 22.5 per cent, and it is estimated that nearly 70 per cent of Gibraltar's households now have broadband access. Gibtelecom continues to invest in its network infrastructure and diverse international routes, to ensure the quality and reliability of service. Substantial investment is also being made in mobile telephony technology, another growth area for the company, with technical assistance from the Government's partners in Gibtelecom, Telekom Slovenia and their main mobile subsidiary Movitel. This year has finally seen the completion of Gibtelecom's new premises at John Mackintosh Square which has provided the company with a higher profile presence in the heart of the city. Employees from various departments are currently moving to this new building, which is connected to the Treasury Building and City Hall, where Gibtelecom's main fixed line distribution frame and System X sit, together with the internet equipment allocated. Gibtelecom Customer Service Centre moved to the new premises from Europort earlier this month. The company has also purchased a new lease on the premises at Mount Pleasant which houses 24/7 network operation centre, the mobile switch and several data centre hosting consumers IT equipment, another growing market for Gibtelecom. The year 2008 saw the commencement of Gibtelecom's apprenticeship scheme in conjunction with the Department of Education and Training, to which I made reference in my Budget speech last year. The company took on eight apprentices in September and intend to continue the scheme in future years, not only for Gibtelecom's own requirements, but to contribute to enhance the skill base of Gibraltar in the area of telecommunications and information technology, which are vitally important aspects of our local economy. More recently in March 2009, saw Gibtelecom end the announcement of informing customers when redialling the old five digit Gibraltar number and not using

the international code to access Spain. This marks the successful conclusion of the implementation of Gibraltar new fixed line numbering plan independently from that of Spain. I commend the Appropriation Bill to the House.

HON DR J J GARCIA:

Mr Speaker, many people will be disappointed at some of the Budget measures which have been announced this year. Social insurance has gone up, this will affect both employers and employees. Electricity has gone up, this will affect everyone, from households to businesses. Petrol has also gone up. Again, this will have an effect on the ordinary man on the streets and on the business community as well. This is the eleventh time that I rise to address the House on an Appropriation Bill. Before I look at some of the issues which I am responsible for in this Parliament, I would as usual like to express my concern over a couple of other matters as well.

The first is to put on record my own disappointment at the very low turnout that Gibraltar evidenced during the European Election on 4th June. This House will know that we have always taken pride in the high level of voter participation whenever our people have been called to the polls. This is traditional for elections to this Parliament, for referenda, and indeed, for the first elections to the European Parliament in which we participated in 2004. Gibraltar has always been an example for others to follow. The fact that only 35 per cent of people bothered to turn up and vote the second time that Gibraltar participated in European elections, despite calls from their political leaders to take part, suggests to me that there has been a distancing from Europe and from European institutions. In my view this should be tackled and corrected because Europe is important. Europe matters. Indeed, a very high proportion of the work that we do in this House is the transposition of EU Directives into Gibraltar law. The powers of the European Parliament have increased over the years and look set to increase even further. It is important to make sure that more and more of us take an interest in its work and in its activities, and that more and more of us turn out to vote when elections are called.

Having said all that, there can be no denying that people in Gibraltar feel hard done by Europe. In a sense they have every right to feel annoyed. In relation to Gibraltar, the European Commission washed its hands a long time ago of its crucial role as guardian of the Treaties. When the treaty rights have affected citizens in Gibraltar are trampled all over by Spain and by others, the Commission does not lift a finger to help. It is logical that people here should be fed up at this aspect of our relationship with the European Union. The latest example that we know of is the Commission accepting the designation by Spain of Gibraltar's territorial waters as if they were Spanish. This shows, at best, an appalling lack of interest in Gibraltar matters. At worse, it exposes once more the weakness of the European Commission when it comes to standing up to the pretensions of the Spanish Government over Gibraltar. It is something they should have been alert to. The same goes for those who are responsible for the conduct of our relations with Europe, who seem to have been caught napping once again. This House knows that there have since been almost continuous incursions into our waters by Spanish naval and law enforcement vessels who have proceeded to behave as if our waters belonged to them. The Royal Navy and Gibraltar's own law enforcement agencies must be alert to these and put an end to them. Also to do with our waters, we know the Spanish Government has protested fourteen times about the East side projects, on the basis that it is being constructed on waters that they claim belong to Spain. There are issues also with the seas that surround the three mile territorial limits that Gibraltar claims at present. These should be international waters until they are claimed by the UK on behalf of Gibraltar. However, as we all know, Spain claims that they are Spanish and not international waters. It is this that lies at the heart of the difficulties faced by the company that has been trying to work on the wreck which is believed to be that of HMS Sussex. The wreck lies in between the three mile limits that we have at present and the twelve mile

limit that we are entitled to claim. The Spanish regional, national and law enforcement authorities have behaved throughout as if this stretch of international sea also belongs to them. The House will be aware of the incursion by the Spanish Fisheries Protection vessel "Tarifa", which is part of the Spanish navy, into our waters a few weeks ago. Hon Members will also be aware of the refusal of a rib launch from that vessel to leave our waters when instructed to do so by the Royal Navy. This was the latest provocation and the latest act of hostility we have endured from Spain as they continue to challenge our jurisdiction and sovereignty of the waters that surround the Rock. We on this side of the House roundly and absolutely reject the Spanish position in relation to the territorial waters of Gibraltar. The notion that the Treaty of Utrecht denies Gibraltar the right to claim territorial waters, and presumably air space as well, is an absurd proposition. The waters around Gibraltar belong to Gibraltar, in the same way as the air space over and around the Rock and its waters belongs to us as well. It is important that those who are tasked with maintaining their integrity and their defence do so with resolve and conviction.

It is equally important to ensure that the Port Department is adequately resourced in order to be able to exercise its jurisdiction over all Gibraltar's waters. Apart from the obvious political dimension, which I have just gone into, there are also serious safety considerations as well. The report into the New Flame accident says, and I quote, "that existing facilities for the control of shipping at the Gibraltar Port Authority are inadequate for a port as busy as Gibraltar". This is a matter of concern to us on the Opposition benches, as presumably it should be to those on the Government side as well. It is totally unacceptable that report after report into shipping incidents in Gibraltar waters should highlight the same issues again and again. It is obvious that the Government should have acted much sooner. For instance, the report into the grounding of the vessel Azzahra on 2nd December 2005, identified as a safety issue the fact that port policy then did not place emphasis on a navigational assistance service. This is the same recommendation that was made in the report into the Samothraki incident, which occurred on 17th March 2007 when the vessel ran aground off Europa Point. The report into the New Flame repeats the same thing when it says that the port does not currently provide a navigational assistance service to assist onboard navigational decision making, and therefore was unable to assist in avoiding the collision. Although the Government have accepted the recommendations made, we were told that these cannot be implemented until an upgraded VTS system has been provided to the Port Department. The House was told at a recent Question Time that the invitation to tender was published in June, even though this was something that should have originally happened in March. The delay in obtaining this equipment cannot be explained by lack of funds either. Indeed, in 2007/2008 this Parliament voted £500,000 for works and equipment, for which the Port Department only spent £168,000. The waters on the east side of the Rock, as I said earlier, have been in the news in recent times because Spain maintains that they are Spanish. We reject this completely. However, it would help considerably if the Port Department had a live signal to the east side, in order to monitor vessels in the area. The information on shipping movements in the east side is provided by the MOD. In the Samothraki report, this connection was described as one which was subject to signal interruptions, delays and they also complained that display data was not in real time. Although we expect the situation will be resolved by the new VTS system, the time it has taken to materialise is cause for concern, given the important political and safety issues at stake. The House will be voting £600,000 for this financial year in works and equipment for the port. We hope that the funds will be used to address some of the serious issues which have been highlighted by this side of the House over the years.

While on the subject of the port, I wish to draw attention to the desperate need for berths for small boats in Gibraltar. This is an issue which has been well publicised in the past year and I have no intention of going into it in detail. Many boat owners have had no choice but to remove their boats from the sea and to place them on land. Many others who would like to buy a boat are not allowed to import one because of the lack of berths. It is

not good enough for the Government to point to the small boats marina in Coaling Island as an example of what they have achieved in this respect. The House is aware of the problems that occurred at the time of the severe storms last year and of other structural issues which I do not intend to go into. However, the point is that there are many of these boat owners who do not want a marina and the associated expenses that go with it. All they want is a berth at which to tie up their boats. It is not acceptable, that at a time when more and more of our sea front is being handed over to developers, there is no room found to accommodate the small boats. A look across to The Island project is a case in point, where luxury homes with private berths, mainly for outsiders, were built, at a time when we need to have both homes and berths for our own people. I have seen for myself many of the small boats which have been hauled up on land at Western Beach falling to bits. Some have suffered at the mercy of the elements, others have been vandalised and some have been victims of theft. The presence of about 50 small boats on land in the access road to Western Beach has also had a severe effect on the number of parking spaces available for beach users in the summer months. The Government have a duty to give more urgency to this matter and to provide berths to those affected.

Having addressed a number of maritime issues relating to the sea, I now turn to civil aviation and matters of the air. In his address last year, the Minister for Enterprise said that the new air terminal was a flagship project for the Government. The House knows that we do not agree with the scale of the project, nor with the huge expenditure that this will entail. Over the last financial year nothing has happened to make us change our view. If anything the events of the last 12 months have reinforced our position, and should make the Government review their policy with prudence and caution in mind. It is important to note that both the Chamber of Commerce and the Federation of Small Businesses have questioned the scale of the project. It is beyond dispute that the existing air terminal is too small. This is why our policy is to refurbish it and to expand it. The Government's solution is to move it somewhere else and be faced with an enormous construction, many times the size of the existing terminal and many times the cost of its refurbishment. No doubt the running costs of the new structure will be higher as well. The House knows that the cost of this flagship project is estimated to be about £50 million. The forecast outturn on the last financial year for this project was £4.1 million. The estimated expenditure for this financial year is £24 million. There have been a number of disturbing events which have thrown a shadow over the optimism generated by the Government in relation to this project. For one, the future of the flagship route, the flight from Madrid to Gibraltar, is far from certain. The failure of the GB Airways and Iberia experiment with the route is still fresh in the minds of many in the industry. There were those who argued, when both airlines pulled out, that the low load factors were due to the timing of the flights and the fact that they used large aircraft. Andalus started a route a few weeks ago with better timings and with smaller aircraft. Yet one of the directors who was interviewed on a Spanish radio station recently, himself questioned whether it was viable to continue operating the route, given the very low load factors of about 25 per cent. This is an average of about 12 passengers a flight. This is confirmed in their latest figures. In its first full month of operation, the month of May, Andalus timetabled 52 flights to Madrid, of which three were cancelled. A total of 748 passengers arrived on the 49 remaining flights, this gives an average of about 15 passengers a flight. It means that about 2,450 seats from Madrid to Gibraltar were offered and available on the 50 seater aircraft. Only 748 of those seats were taken. The early indicators suggest that the route does not appear to offer much hope to Gibraltar from a tourism point of view. A total of 657 of the 748 passengers who arrived in Gibraltar were deemed to be in transit to Spain, and only 91 stayed in Gibraltar. This figure, presumably, includes Gibraltarians. It remains to be seen what will happen over the summer months and we will continue to monitor the situation. It is clear that the expense of the new air terminal building cannot be justified in terms of the present use which commercial airlines are making of Gibraltar airport. It is also relevant to note that in terms of the proposed new route between Gibraltar and Barcelona, the director of

Andalus initially said on Spanish radio that the demand for the flights up to that point was zero. The airline has since told the Spanish media it intends to start the service with three flights a week as from 3rd July. The cost of the bus service to and from La Linea continues to increase, even though the number of people using the service are fewer than ever. In answer to questions, we were told that two departing and five arriving passengers used the bus service in the whole month of May. The cost of the service was £3,144 in that month, which means an average cost to the Gibraltar taxpayer of £449.14 per passenger. On behalf of the Opposition, I must once again express our dissatisfaction with this state of affairs. It was also a matter of concern that earlier this year a number of people were made redundant by Gib Air, the company that provides ground handling services for the airlines that use Gibraltar airport. This has traditionally been regarded as an area of stability and security of employment, which is why the redundancies raised eyebrows at the time. In his first Budget speech as Tourism Minister last year, the new Minister said that the Government continued to encourage airlines to provide more services from Spain to Gibraltar, albeit with realistic scheduled timings that will benefit the leisure and business markets. It seems clear now that the problem is not the timing of the flights, or the size of the aircraft, the problem is the demand. The question is whether existing flights to Madrid from nearby Spanish airports and the availability of the high speed Ave train from Malaga, are soaking up the demand that exists. It is worth noting that when the Ave route was introduced from Malaga, flights to Madrid from that airport suffered a drop in passengers of about one fifth. Once again, we have to question whether any market research into these issues was actually conducted before the decision was taken to build a new air terminal, because if the demand is not there and the expenditure is going ahead regardless on the present scale, the reason for constructing the new air terminal and relocating it somewhere else cannot be based purely on economic factors. The motivation, therefore, can only be political. The Government are perfectly entitled to pursue whatever policy they deem appropriate in this respect, just as we are perfectly entitled to adopt a different policy and to disagree with them. Let me say, before I move on to tourism by land, that I welcome the announcement made by the Minister that the inclusion of frontier workers into the statistics has now been taken into account with the formula that they have worked out, and I will be asking questions on the formula obviously at Question Time, but I am grateful. I think it is a sensible thing to have done.

I move on to tourism by land and to an aspect which has been an area of concern for a number of years now. This is the fact that the number of tourism coaches coming into Gibraltar continues to fall. Last year, in an effort to counter this fact, the Minister repeated the claim that Gibraltar continues to be the top selling day trip destination from the Costa del Sol. However, after being pressed at Question Time as to how this was established, I can now say that it seems there was no scientific basis to this claim or, in fact, whether it could be substantiated at all. The Minister did not even know how many tour operators, of the number that exist, had said that Gibraltar was their best selling destination. The fact is that over the years the Government have given a whole array of different reasons to account for the drop in coaches and coach visitors, and none of which have been particularly convincing. These have included the then poor road connections in Spain, the effects of September 11th, the high rate of the euro and the drop in visitors to Spain. The Government have also argued at one point that coaches were counted at the coach park and not at the frontier, and that many of these coaches were coming in, dropping people off in other parts of Gibraltar and returning to Spain, without going to the coach park, so that they were not included in the figures. This turned out later to be incorrect and it was later confirmed in the House that for statistical purposes, coaches were counted at the border and not at the coach park. In his Budget address of last year, the then new Minister for Tourism said that the Government continued not to attach significant importance to the declining coach arrivals. That may well be the case, but the fact remains that the decline has been significant and important, and its effects are being felt by the business community. In 1996, when the hon Members came

into office, there were 11,597 coaches. In the year 2008 the figure had dropped to 8,719. This represents a fall of nearly 3,000 coaches over 12 years. This drop has continued into 2009. There were a total of 2,873 coaches coming into Gibraltar from January to May of this year. This compares with 3,645 in the same period of last year, with 4,798 in the year 1996. The point is, that although the Government may not be unduly concerned by the drop in coaches and in coach arrivals, the fact remains that there has been and there continues to be a significant fall.

On another issue, the Government continued to be masters in the art of making the same policy announcements time and again for projects which do not materialise in the envisaged time frame, or in fact, do not materialise at all. This creates an impression of activity, it generates expectations, which are then dashed when little or nothing happens. I propose to examine three separate examples of this. The first is the specific assistance to businesses, the second the Europa Point project and the third the Development Plan. In their Budget contributions of last year, both the Chief Minister and the Minister for Trade indicated that there would be some help forthcoming to the business community. It will be recalled that in the United Kingdom, as a response to the banking and economic crisis, the Government there identified and set up a series of measures to assist the business community. In Gibraltar the Chief Minister hinted at a possible import duty review, as well as measures designed to protect the competitiveness of businesses. The Minister for Trade himself told the House that the Government were aware that there were certain businesses within the wholesale and retail sector that were going through difficult times. He then went on to welcome the Chief Minister's announcement of a dialogue with the Chamber of Commerce to see what the Government might be able to do in this regard. I asked in December last year, six months later, whether the process of dialogue with the business community had commenced. I was told at the time that it had not started but that it may commence in January 2009. I would have thought, given the announcement made in Parliament and the nature of the problem, that this was something that was going to be addressed with more urgency, or at least before the affected companies had ceased trading. There has been no specific mention of this issue this time round. The increase to 20 per cent of the discount for the early payment of rates, while obviously being better than 10 per cent, is simply putting back what existed before.

I will move on now to the illusive Europa Point project. To say that this goes back a number of years is an understatement. It has been the subject of announcement and re-announcement several times. Indeed, it was meant to be the main project of 2003. The Government said then that they wished to demolish the restaurant building, develop a picnic and leisure area, improve the mound and create a new parking area. They added this would be the first stage of a larger project which would take in the whole of Europa Point, and make it a must-see stop for every visitor to Gibraltar. Although there has been some demolition in six years since 2003, nothing quite as grand as what was envisaged has materialised to date. The project was launched again in 2007. A list of 20 different points for the area was issued by the Government and the project duration was given as 15 months. A General Election was called soon afterwards and a sign went up saying that works would start in January 2008. Apart from the demolition of the restaurant, very little seems to have happened. The sign that was put up has now been taken down again. It is therefore a surprise that residents of the area should be completely fed up at the lack of progress. The House voted £1 million for the refurbishment of Europa Point in the financial year 2007/2008. Only about one third of this sum was actually spent. A nominal £1,000 was put in for the next financial year, to which nothing was added and of which nothing was spent. In the coming financial year the Government have repeated the £1,000 nominal entry. It remains to be seen whether there will be any progress or whether there will be another fanfare of announcements and publicity for the same thing once again.

The Development Plan also falls into the same category, although I must confess that on this there has been more movement. I know that the Chief Minister himself recently described its eventual coming into force as a torturous process. I have to agree with him, that having been a Member of this House for more than ten years, I recall raising this issue in questions and at Budget time for very many of those years. In his contribution last year, the Minister responsible for planning said that the Government continued to attach great importance to the planning process. If the delays in the production of the final Development Plan are a reflection of the importance that the Government attach to the planning process, then I am very sorry to say that they must obviously attach very little or no importance at all. I say this because, as the House knows well, it is common practice to produce one of these plans every ten years. The last plan dates back to 1991. This means that a new one was due in 2001. It is absolutely incredible that we are now in the middle of 2009 and the new plan is still not in place. I look back with interest at what the Government have said about the plan in the past. In 2005, the Minister said it would be ready for consideration by the DPC "shortly". In 2006, he hoped it would be ready "in the very near future". Later, in 2006, he said "we are almost there". In 2007 he said it would be ready "in the next few days". It was not until that summer, just before the Election, that the plan was finally exhibited and open to public comment. In his Budget address of last year, the Minister said that it was anticipated that the changes to the draft plan, following the public consultation, would take place during the summer. That is to say, last summer, the summer of 2008. After this the Commission will submit the draft plan to the Chief Minister for final approval. The exhibition did not take place last summer, instead it took place a few weeks ago. This means the whole process has been delayed again, further, by up to a year. The Government have made a mockery of the planning process by the way in which they have dealt with this issue. The point surely is that they have given permission for development after development, all over the place and all at the same time. The longer the wait for the new plan, the more developments that have been given the green light under the old one. It is not good enough for them to say that these developments had been regulated by the 1991 Plan. They know this is hopelessly out of date. The Minister responsible has just said in the House that the process is now entering the final stages. He said that the draft plan will shortly be submitted to the Chief Minister, and hopefully, published by the end of the year. A very torturous process indeed.

The Opposition have expressed concern in the past at the way in which the Government have handled a number of heritage issues. Our criteria has always been to judge them by what they do and not by what they say, because often what they say and what they do are completely different things. Where is, for example, the heritage legislation that was promised? Different drafts of this law have been circulating around Gibraltar for years. Where is the application for World Heritage Status? Either for all of Gibraltar or for part of it. Nothing else is known of these projects. It is not good enough to continuously express a commitment to heritage and then to proceed to do the opposite. The knocking down of the Rosia Tanks and the filling in of the No. 4 Dry Dock are two cases in point. They expound a policy of development outside the City Walls and preserving the core defined by the walls themselves. The problem with this philosophy is that there are already in the pipeline developments that while technically are outside the walls, will dwarf them completely and make them almost disappear from public view. Moreover, while it may seem to be a reasonable proposition to save what is inside the walls, this does not mean that the Government can then proceed to do what they like outside the walls. Many people have already expressed serious concerns, for example, at the policy of constructing large blocks, largely for outsiders or speculators, all along our sea front.

There are other areas of concern too, relating to the way in which the Government are dealing with former MOD properties. I devoted part of my address last year to go over different aspects of this situation. This included what we considered to be the undervaluation of land in the centre of town for the mid town project. It included the allocation of two separate MOD

houses to the same tenderer, on the condition that he had to live in both of them. It also included the wholesale destruction of part of the heritage. This third area I propose to look at today. The last MOD lands deal of April 2004, saw a large number of single house dwellings being handed over to the Government. It is a matter of concern, from the heritage point of view, that instead of being restored and refurbished, a number of these buildings are being knocked down. In September 2004, the Government put out to tender Lind House and the New Aloes. The former sold for £1 million and the latter for £410,000. It is a matter of serious regret that permission has recently been granted for the demolition of Lind House and its replacement by a new construction. The New Aloes has already been demolished, and the last time I looked there was nothing in its place, only a hole in the ground. When this issue was raised during Question Time in this Parliament, it was established that the plans were to replace this former MOD property with a four storey mini block. The sale of Mount Barbary and Rock Cottage were advertised in May 2006. The Government confirmed to this House that on 26th February 2009, a demolition permit was granted for the full demolition of Mount Barbary. Rock Cottage while not undergoing the same fate, for the time being at least, has been advertised for sale by a local estate agent. The advertisement in question declared there was potential for further property development within the grounds of Rock Cottage, and pointed out that it was a 3,690 square metre plot. There are a number of issues that arise from all this. We have questioned in the past and continue to question today, whether Government have obtained the best possible deal in economic terms. There has also been property speculation with some of these houses, even though in some cases, there was a clause stating that the successful tenderer had to live there. Parliament will recall how Lind House was put on sale by an estate agent in the UK for £4 million, and given a development value of £15 million, even though the Government only obtained just over £1 million for the taxpayer in the original sale. The Opposition also has serious heritage concerns. It is obvious that the appearance and character of the affected parts of Gibraltar will alter radically, if property after property is flattened to make way for new construction. We have said before that it is the responsibility of the Government for its control over the planning process, and for its control and enforcement of the tender process, to put an end to what has been happening up to now.

This brings me to the Upper Rock. The Upper Rock has suffered from years of neglect and under-investment. Part of the reason is that the entrance fee, which is an environmental levy, is used as general Government revenue for things which may have nothing to do with the Upper Rock, or even with the environment itself. There is a clear policy divide between the Government and the Opposition on this point. We have made it clear that the money raised by the Upper Rock should be spent on the Upper Rock. The Government do not agree. It is totally unacceptable that with the Upper Rock in such a state, the Government only spent £25,000 on it last year. I note the estimate for this financial year is for £300,000. However, in the context of another increase in entry fees, which has been announced this Budget session, this is not very much. I have to add also that concern is already mounting in the tourist trade, that such an increase should be made at a time of recession, and when the main season has already commenced. It means operators will have to change their prices mid season or lose money on agreed rates. The point is, surely, that the Upper Rock generates considerably more revenue for the Government, and that it is not acceptable that only such a small proportion of this revenue should be ploughed back into our main tourism assets. The Tourism Minister told the House last year that the Upper Rock revenue reached £3.4 million. It is regrettable that only £25,000 of that was spent in the area. One serious problem the Government are failing to tackle is traffic. There was serious traffic gridlock last year on several occasions, as foreign registered cars competed with taxis and coaches for the limited space in the roads of the Upper Rock. This was compounded by the fact that many drivers of foreign cars do not know what to expect and the kind of manoeuvres we often have to conduct in very confined spaces. There were also a number of accidents that could have had more serious consequences, but thankfully did not. The Government confirmed to this House

that in 2005 the then existing restrictions preventing foreign vehicles from entering the Upper Rock until 3.00 p.m. during August were lifted. The Government also explained how they tried to control traffic flow in such circumstances. It is obvious that this has not proved very successful given the chaotic situation that we are often faced with during the peak summer months. This also has serious safety implications. There are issues relating to access by the emergency services, or indeed, to any emergency that requires a rapid evacuation of the Upper Rock. The Government confirmed in the House last year that they have received a variety of proposals from interested parties, interested in taking over the running of the Upper Rock sites. They also confirmed that none would be considered until a policy decision had been arrived at, about a new structure for the holistic management of the Upper Rock. The present problem lies in the lack of planning and investment, therefore, in the funding and in the proper and adequate running of the area. It is this that is creating difficulties for people who work in the Upper Rock, who live in the Upper Rock and who come and visit the Upper Rock. As I have said before, the Upper Rock is Gibraltar's main tourist attraction, it is why people come here. The Government have a duty and an obligation to ensure that the experience of visitors is as pleasant and as trouble free as possible. This is not asking the earth, it is simply asking the obvious. The traffic issue must be tackled, the cleanliness issue must be addressed and the basic facilities must be improved. This applies even at the most basic level, for example, in terms of having toilets that actually work. Otherwise people will be left with the impression that the Upper Rock is nothing more than a milking cow for the Government, where they take out millions of pounds in entrance fees and then put back comparatively little in return.

In conclusion, there remains plenty more to be done. I take this opportunity to thank Mr Speaker, to thank the Clerk and the staff of the House on behalf of the Opposition, for their assistance and support throughout the year.

The House recessed at 11.30 a.m.

The House resumed at 2.30 p.m.

HON CHIEF MINISTER:

Mr Speaker, the common theme this year in the addresses of the hon Members opposite appears to be breakable down into three fundamentally but equally unsound propositions. The first is that the Opposition is constructive and truthful but that the Government is spinning and untruthful. The second is that we should not look back to remind voters of the mess that the GSLP made when they last entrusted them with the governance of Gibraltar, and that the Government should stop doing so and therefore give the Opposition an opportunity to persuade the electorate to overlook the disaster that they made of the governance of Gibraltar last time. The third proposition is that the hon Members do not get personal, they have eliminated invective and they only criticise policy, whereas the Government on the other hand is very personal, launches personal attacks and is very, very unfair to the poor old Members opposite. Nobody that follows any political debate between the Government and the Opposition could possibly believe that. The reality is that they say these things but then behave quite differently. It is they and not the Government who spin, distort and misrepresent for their own selfish, personal, political ambitions. It is they who get personal not the Government, and then when they have done it all, when they have done and said as they pleased and accused of what they pleased in whatever terms they please, they then, but only afterwards, plead for civilised debate, only, obviously, as a means of trying to prevent them getting back some of what they have first themselves given. Well, if only life was as simple and easy as that. But I am afraid the path of consistent rational coherent behaviour is a little bit more difficult for the hon Members than that.

The Hon Mr Bruzon is a prime example of it, but not the worst this year. His speech from beginning to end made just two points, only two points. The first is that in no way will my criticisms be personal. The second, which is the rest of it, of his

speech, was various ways of calling me a repeated liar. "In October 2007 when he said that Albert Risso House would be ready early in the new year he must have known that this was not so". Well, if I say things knowing that they are not so that is lying. "When he said that Waterport Terraces would be ready in early 2009 he knew it would not be so". Well if I say things knowing that they would not be so, I am lying. But that is not getting personal. "The CM denied giving promises or commitment but the truth is", namely what I have said was a lie, and then only to admit he himself to say that I had only given indicators. He said that I had given false and untrue promises and that he said that I give dates knowing full well that they are not realistically possible. Well, the word "liar" can be said in one four letter word or it can be spread out and spun out into a 15 word sentence, and then that sentence can be reconstructed in five or six different ways but it all amounts to the same thing. All of this despite my assurances and explanations to him to the contrary at Question Time in the House. So not only does he think that I lie to the people of Gibraltar, he thinks I lie in this House as well, and that is not getting personal, that is the civilised debate that the other Members have called for. That is the elimination of the invective that the other Colleague of his on the other side said. That is the Government getting nasty and the poor old Opposition, being very civilised and very constructive, and only doing their democratic duty to hold the Government to account. I do not complain about any of these things, I have been in politics in Gibraltar long enough to have developed a thick enough skin to be able to take the heat in the kitchen. So, I do not want the hon Member to think that I am saying all these things because I am terribly offended or terribly upset with him, I am saying them to him only to demonstrate how unreasonable, unrealistic and inappropriate their own statements are about who gets personal and who does not, and about whether they get personal or not get personal or only criticise policy and not go for the man. They say they only play the ball and not the man whilst at the same time playing, almost always, only the man, and that was the totality of the Hon Mr Bruzon's speech so there is nothing more that I can say of him. That was the purpose of his speech, was to say that the Chief Minister of Gibraltar lies, not only to the people but to the Parliament.

The Hon Mr Linares, who has thought better of coming here to listen to this reply, says that we deceive the public using controlled media. I do not know whether the media that he thinks that we control are the ones that his Colleague accuses us of cancelling their occupational pension scheme. A funny way to control the media, to make people shut down their very valuable occupational pension scheme. But anyway, so we deceive the public and we manipulate and control the media, but this is not personal, this is playing the ball and not the man, this is attacking the policy and not the person. He then went on in his self-imposed role of new trade union leader in Gibraltar, obviously he does not think that Prospect, GGCA or Unite, or the Teachers Association, he obviously does not think that any of those are worth their salt, so he has single-handedly become the union leader that advocates for the claims of every element of the public sector against the Government their employer. In respect of Customs, he says, "it is clear", clear as mud I would have thought, by what basis he believes it is clear, "it is clear", he asserted with confidence and with no qualification of any kind, that the whole purpose of the Government's root and branch review of the Customs had been "to undermine the service". Well why would the Government want to undermine its own service, if I wanted to close down Customs tomorrow it is a perfectly legitimate Government policy decision. We do not need to offer them a 12 per cent pay rise to undermine the service. It is a pretty peculiar way of going around undermining the service. But does he care? He does not care, he does not care for truth or for reality, he just cares about the last thing that some disgruntled employee whispered in his ear to wind him up, to convert him into their spokesman. This root and branch review, the sole purpose of which was to undermine the service, was the result of two years negotiation ending with an agreement which was recommended to the staff by their union. So it is not just the Government that wanted to undermine the service, for reasons that he did not care to explain, but the union also wanted to undermine the service, presumably to do down

80 odd of their own members. Does he care? Of course he does not care, all he is interested in is cheap jibes at the Government regardless of whether there is modicum of truth in them or not. We fail to consult staff at all, or to negotiate with staff at all, well not true I regret to tell him, not that he cares, because we actually negotiated it with the staff's own representatives, two customs officers who were the shop stewards who were the reps of fellow customs officers. So not only is it not true that we did not consult with them, not only is it not true that we did not negotiate with them, it is the opposite of the truth. Does he care? Of course he does not care. This strange flexibility clause, I know that the hon Member is not himself capable of much flexibility, but this strange flexibility clause, as he calls it, is the same flexibility clause that is to be found in Authority agreements that have been accepted by other workers. What they object to is flexibility, they object, even in return for a 12 per cent increase, to being told by management that even though working here instead of there is still within their job terms and conditions, they resent management's ability to manage them and the Government will not have it. So there will be flexibility, whether by agreement and inducement or not, there will be flexibility, because the taxpayer is entitled to it, because we are not asking them to do anything that management is not entitled to ask them to do, and we are not asking them to do anything that is not already in their job description. An Opposition genuinely interested in monitoring the Government's stewardship of public monies might more reasonably have asked me "why pay them a 12 per cent pay rise for getting them to do what you are entitled to get them to do for nothing extra?" That is what a responsible, proper Opposition would have done. Not sided with every disgruntled sector of the public service, and lining themselves up against the interests of the taxpayer, because he does not seem to understand that when he supports those who oppose the Government, he is opposing the taxpayer whose money it is that goes here, whose public services they are and who are the users of these public services. Does he care? Of course he does not care because all he is interested in is today's score line in his own private, ambitious political war with the Government. He must not worry about having shut the door to what we promised to business, because what we promised to business will be delivered by the Government with or without agreement with the customs officers, and now the agreement is finished so that just leaves the without route. The only thing that Customs, the City Fire service, the Prison have in common to the ones that he spoke about is their political interference, their political agitation, their political manipulation of industrial disputes for their own personal, political election. That is the only thing that these three issues have in common. Never before in the history of Gibraltar has an Opposition behaved like this. At least the Leader of the Opposition had the decency to stay in the trade union movement whilst he wanted to use industrial relations as a battering ram for political purposes. But then, when he succeeded and became a politician, he then of course abandoned the workers, but never before has an Opposition from the Opposition benches constantly and consistently sided with claimants against the interests of the taxpayer whom they are supposed to be representing. All claims against the Government apparently are well placed and the Government is always wrong, and the claimant is always right, regardless of the merits. But when the GSLP were in Government a very different cock crew. Then there was no recruitment, no promotion, no claims acceded to of any sort, no staff increases, nothing. See why the hon Members do not want us to look backwards, because every time we look backwards we just expose them for the political hypocrites that they are. Even the Chamber of Commerce last week applauded the GSLP's hatchet job on the Civil Service by congratulating them on the huge impact that they had had on curtailing the number of Civil Servants. That is the extent to which their behaviour in Government was completely the opposite of what they now try to adopt as credentials in Opposition against this Government that has done more for the reform, modernisation and improvement of the working conditions of Civil Servants than he would be able to do in his lifetime. It is not just the Government that believe that the Opposition is politically interfering and manipulating industrial relations disputes for their own purposes. The trade union movement actually have gone to the unprecedented steps of

saying so in a press release. I do not know why he is shaking his head. Is he saying that the unions did not say it in a press release? It is exactly what they said in a press release. Political interference and manipulation by the Opposition. The hon Member should also understand the distinction when a Minister says that there are intrinsic limitations in an old building and when they are sub-standard, and then he does the opposite, then he tries to use what the Minister said as evidence of support of what he was saying. What the Minister said was that there were intrinsic limitations in St Bernard's building, because of its age and configuration. No Minister has ever said that it resulted in sub-standard educational environment, which was the thrust of his political attack. No regard whatsoever for accurate recital of what people have said for the purposes of the forensic use to which he then chooses to put those words, to mount his little political campaigns. The only thing that the hon Member said in his speech with which I would agree is that the Government should buy the Theatre Royal site. Actually we are well advanced in the process of doing so, having exercised our contractual option, very astutely negotiated at the time, to purchase it at effectively a fixed price.

Now turning to the Hon Neil Costa. Actually, I have to say that in the absence of the Leader of the Opposition and the Hon Mr Licudi, I think that the Hon Mr Costa led the line for the Opposition in this debate. Certainly his speech was the most politically relevant, politically astute in the sense of making political points, and the most relevant and most appealing presentation. But I suppose that any compliment from me could be a poisoned chalice for him so I had better not pursue that line much further. He certainly did a better job at saying that there should only be policy criticism and no personal attacks, and then at least try to keep to it. But the mask did slip once or twice. For example, he did refer to our dishonest political mantra. Now dishonest political mantras are things that are only perpetrated by people who really deserve personal xxxxxx. Honest people do not apply dishonest political mantra. He then referred to me, when he was referring to something I had said, he then of course said sarcastically, of course, meaning that I am always sarcastic. Well, that is not so much an attack on my policies as an attack on me. See, then he had one or two other snide remarks, all delivered in his affable, gentle, friendly way, but still, nevertheless, a slipping of the mask, even in his case. Of course, he was a little bit less strong on some of his other points. I was surprised, for example, to hear him speak so favourably of the GSLP's administration in Government when he spoke about the comparison between them and us. Of course, it is worth remembering that he is not a member of the GSLP. Indeed, thanks to his election in the House at the last election, the Liberal Party did much better in terms of the coalition's performance at the last elections than their so-called coalition partners in the GSLP. Four to three, almost neck and neck, the number of seats held by the two respective parties on that side of the House. But still, he is not in the GSLP, he is in the Liberal Party. The Liberal Party was started, it was then called the Gibraltar National Party, but the Liberal Party was started by the Hon Dr Joseph Garcia and the Hon Mr Fabian Picardo. They set it up whilst the GSLP was in Government, presumably because they did not like the way the GSLP was governing, because if they had liked the way the GSLP was governing they would have joined the GSLP and not set up a rival political party. See how it is not possible to stop looking back. So, the point is this, that when he speaks now to talk up the GSLP when in Government he has got to remember that he belongs to a political party that was created to oppose the GSLP, because the GSLP was doing such a bad job in Government, and that the Leader of the party, the Hon Dr Garcia who now sits next to Mr Bossano in this House, tore up the GSLP election manifesto in front of the television cameras as a sign of his disgust at what the GSLP had done for Gibraltar in eight years, and now it transpires that the GSLP did so very, very well. See how he has only been 15 or 30 minutes in politics. This is the problem with only being 30 minutes in politics, that one's memory just does not go back far enough. On a more constructive note, the relevance of referring to the past is not that it exonerates the Government from whatever the Government may not be doing right today. The Government do not harp back to the past as they would call it, as cover for what we are not doing well or for

what we could do better. It is not possible to be in Government and not do some things badly and some things not as well as one might. That is true of every human endeavour and being in Government is no different. That is not the reason why we look back. We do not look back as cover for our own possible deficiencies. We look back because when a party that has been in Government criticises what the Government is doing better today than they were doing when they were in Government, then that is relevant for two reasons and that is still relevant today for two reasons. Firstly, the criticism is either unjustified and lacks credibility, that is, it goes to the credibility, to the political credibility of the hon Members today, or he is condemning the performance of the party with which he is now in coalition when they were last in Government, because if they were doing it worse than we are today, and we are today worthy of his criticism, then presumably his criticism of the GSLP would have been even stronger, which presumably it was which is why he chose not to join them. So this is not an irrelevant, this looking back is not irrelevant, it goes directly to the political credibility today, it goes directly to the amount of weight that voters should place today on the judgement, performance, credibility of at least the GSLP part of the Opposition. He said that people do not use the complaints procedure because they are met with resistance from the Complaints Coordinators or administration, or generally met with resistance. Of course, it is very difficult to know what may be going in people's minds when they complain and the reasons why they complain or not, but I can tell, Mr Speaker, that there is absolutely no resistance placed to any, and there can be no resistance placed. I accept that in the first stages of the complaints procedure, when there is an amicable attempt being made to resolve it, then the hospital administration could try and ride roughshod. But at any given point the patient can say, "I am now going to the formal procedure", and all he has got to do is write a letter. That is it, all he has got to do is write a letter saying "I complain" and that unleashes a statutory procedure that is simply not capable of being resisted by the hospital, administration or anybody else. What the hon Member should perhaps give a little bit more credence to is that sometimes people in Gibraltar, and everywhere else for that matter, do not themselves distinguish between resistance and rejection. That is today. To them a complaints system is only effective if it agrees with them. When the complaints system, or the system, or the hospital, or the doctors, or the administration look into it and simply does not agree with them, that is resistance. I think the hon Member also, when he talks about lacking credibility for independence because the Minister appoints, well look, Ministers appoint many more important people than hospital complaints procedure panellists. I mean, Ministers appoint parole boards that decide when people leave prisons, they make all sorts of senior appointments. Nobody challenges the independence, and therefore the integrity of appointees simply because they have been appointed by Ministers. To accuse the panellists of lacking independence because they have been appointed by the Minister is not an insult to the Minister, it is an insult to the appointee, to the panellist, whom he is in effect saying "because the Minister has appointed, you are not going to be honest, you are not going to be objective and you are not going to report what you really find or think". That is what he is saying. He says that doctors have complained to him. Well it must be pretty unusual doctors. Doctors hate the complaints procedure. Doctors hate the complaints procedure because it occupies a huge amount of their time. They have got to answer questions, they have got to dig up records, it distracts them from what they are there principally to do, which is to spend as much of their time as possible dispensing medical treatment. Doctors do not, therefore, like the complaints procedure in that sense. So the suggestion that there are sort of an army of doctors out there who want not one but two, three or four complaints administrators so that they can administer more complaints at the same time, so they have got more questions to answer, more notes to write up and more reports to write up, is in my view highly unlikely. The hon Member says that it is not acceptable that when there is a keyhole surgeon who goes on a holiday for a month there is no cover. Well, most surgeons in Gibraltar are now by one means or another double provided, they cover for each other. Those are not covered when they go on holiday because it is supposed to be that the surgeons cover

for each other. Keyhole surgery is a procedure, it is a process, it is not a particular type of speciality in the sense of particular illnesses, or particular things to operate on. Gibraltar is fortunate now to have two general surgeons. They are contracted to provide cross cover for each other's leave. Only one of them is qualified to do laparoscopic surgery. There is no approval for locum cover for any of the double handed consultants, as I have just explained, except of course, when the surgeon is absent for prolonged periods in paediatrics and obstetrics, where there is a risk to patient. In the same way that Mr Sene, the other surgeon cannot cover for Mr Grama in laparoscopic work, Mr Grama cannot cover for Mr Sene in some urology work. The same point, but laparoscopic procedures are elective procedures. Any emergency gall bladder surgery procedure would be done using an open surgery approach, and this can be done by either of the two surgeons and, therefore, can be done whilst the keyhole surgeon is taking his no doubt well earned annual leave. Of course, laparoscopic surgery has only been performed in Gibraltar since 2005, thanks to one of the great innovations and improvements introduced by this Government to the health service. Prior to that, patients with gall bladder problems were operated using the open surgery approach, or in some cases were sent to the UK for keyhole surgery. The latter, who were also in discomfort and pain, had to wait much longer than a month. The position that he is describing today, even whilst the keyhole surgeon is on his annual leave, is a huge, huge improvement on what it had been before anyway. I agree with him that patient experience may differ. From time to time, from day to day, from doctor to doctor, from incident to incident, of course that will happen. But that happens in all hospitals, that happens in the Houston Medical Centre as well. So, is it the politician's fault that patient experience differs between one day and the next? Is it the politician's fault that a system capable of giving an excellent service on a Monday lets a patient down on a Wednesday? Is that the politician's fault, because they think that the staff is excellent and that all the problems are down to the Ministers. I agree with him that the Gibraltar Health Authority is not perfect. It is much closer to perfect than it was on 16th May 1996. But of course it is not perfect, and of course it is right and helpful that he should highlight the decreasing number of shortcomings that from time to time emerge. The Gibraltar Health Authority and the Government welcome that, so that we can continue to improve the service as we have been systematically doing during the last 12 years. He must not think that there is any degree of resentment on the part of the Government for the instances of failure, or of degraded treatment that from time to time will occur and that he is right to bring it to the Government's and to the Minister's attention, and we think that that is constructive. But then of course, his mask began to slip a bit because he kept on looking round to his left, see, and the more he looked round to his left, the more he sort of departed from his script and got contaged by some of the practices of the people sitting to his left. Terrible, extraordinary, I think the word he used was that the Chief Minister should have said that he cannot guarantee that no operation would be cancelled. He could not do anything that would guarantee that no operation would be cancelled. Terrible, what a terrible, irresponsible thing to say. Only then himself to say, not 40 seconds later, well of course, obviously no one can guarantee that something will never happen. But that is all that I had said in the first place. So if he knew that all that I had said was that it was not possible to do anything that would guarantee that there would never be any cancelled operation, a statement which I repeat now, why does he use it as the springboard to paint me up as some inhumane, uncaring person who does not give a damn whether operations are cancelled or not and the human effect of that on patients, because that is the political point that he was making, and he was making it on a premise that he himself knew to be false, because he knew that all I had said was that it was not possible to guarantee that it would never happen. The mask then steadied a bit and he went on to make the point about the bed blockage and the bed shortage. Nothing that the Chief Minister can do but, of course, clearly untrue, because they have now done this business of opening another 30 beds, see, that proves that there was something that he could do. Well no it does not, because the "it" that he could do nothing about was guarantee that it would never happen, and if one had 100 extra beds for

the elderly, as we will shortly have, one still will not be able to guarantee that at one given point the hospital will not be full, or that the surgeon gets ill on the day of the operation, or that some member of the surgeon's family has some mishap and that the surgeon, for one reason or another, cannot come to the hospital to work and then the operation is cancelled. See how it is not humanly possible to have a system that guarantees that no surgery will ever be operated. Nothing to do with what the Chief Minister said or did not say. The temporary interim opening of a new Care Agency facility in the building which also houses the new hospital is not capable of resolving the hospital bed shortage problem. Why, because for so long as acute hospital beds are used as an old person's elderly residential home, it is only a matter of weeks and months before those extra 30 beds fill up with such people again. If one opens another 30 beds it would still only happen again a few months later. This is not about shortage of beds. I keep on telling the hon Members opposite that when we built this hospital that they so disapprove of, we were actually criticised by the consultants for over providing. The advice of the consultants was that there were too many beds for the population of Gibraltar. There is a difference between bed blockage and bed shortage. Bed shortage is when there are insufficient beds for a population of the size that the hospital serves. Bed blockage is when the beds that there are, are occupied by people who should not be in hospital at all, and that second problem cannot be solved whatever number of beds one puts in the hospital, because there will always be more elderly people to fill them, and they will still have a shortage of beds then for surgery. I would have thought it was mathematically and sociologically self-evident, but every time we have a Question Time, and every time that we have a Budget session, the tape recorders go on and the same old speeches get regurgitated. In conclusion he said that what Gibraltar needs is to forget the past. Well, the people of Gibraltar are far too intelligent to forget the past, because the people of Gibraltar know that they cannot afford to forget the GSLP's past, it would be unsafe and dangerous for them to do so. What we need, he said, was an element, an element, in other words, there was no element of humanity in the Government. What we need is an element, not more humanity, no, what we need is an element of humanity, meaning that there was none at all. Well, I confidently assert that no Government of Gibraltar, ever, has done more for the elderly, for the handicapped, for workers, for the low paid, for the sick and for the vulnerable than this Government, and the last thing that the elderly, the handicapped, workers, the low paid, the sick and the vulnerable need is a return to the levels of humanity that existed before the 16th May 1996. That is the last thing that they need, and they know it which is why they gave a better electoral performance to the Gibraltar Liberal Party than to the Gibraltar Socialist Labour Party. See how astute and how intelligent the electorate is. What we need, he said, was more ideas. Well, as he will have to sit and listen to me recite in a moment when I respond to his honourable Friend and acting Leader of the Opposition, there has never been more progress in Gibraltar in the last 12 years, in any other 12 year period before or probably longer periods before. I mean, most people accuse us of doing too much. There is too much road works going on, it causes traffic delays, there are too many buildings going up, there is too much this, there is too much that. I must say, no one has ever accused us before of lacking ideas. There are people who may disagree with our ideas, or who may disagree with the way we implement our ideas, but no one has ever accused this Government before of lacking ideas.

Moving now to the contribution of the Hon Dr Garcia, who of course, regretted the rising of social insurance contributions, electricity and petrol. Of course, all of those things happened with much greater frequency when the GSLP was in Government than now, but anybody would think that the world started in May 1996. So, it is not surprising that people think that the world started in May 1996, he keeps on telling them that all these terrible things only started happening since the GSD were in Government. Well of course it is regrettable, nobody likes to pay more for anything. When I put up electricity prices, my electricity bills at home are about £350 a month, six per cent is extra, it is not something that I enjoy paying. But the reality is that he must understand that the integrity of public finances

requires things to keep up, at least with inflationary cost increases. About petrol going up, I distinctly remember saying to him, well why not abolish road tax and increase petrol duties so that the Spaniards pay it. Then when we do that, it transpires that we are terrible because we have increased petrol duty. We could be forgiven for going mad listening to some of the hon Member's consistency of argument in this House. Of course I agree with his remarks about the implications of the lowering of the Euro Vote turnout, given that what he has done is repeat almost everything that I said on voting day. I agree with him, and the Government intends to do all that it can, although it is not the Government's primary responsibility, to put an end to Spanish incursions. The upholding and defence of the sovereignty of Gibraltar's waters is the constitutional responsibility which they insisted on preserving for themselves in the new Constitution, of the United Kingdom Government. I do not have a navy and I do not have a diplomatic service. However, the Government of Gibraltar certainly has jurisdictional competences for official acts in Gibraltar waters, and that we are certainly intending to upgrade our investment to make much more senior our assets to uphold them. Not only will that involve the installation of a new VTS system, but it will involve the acquisition of vessels of a much more important size and capacity with which to exercise and enforce our jurisdictional competences and our statutory obligations. I am sure the hon Members will welcome that. They can tap on the table and they can show that in the traditional way that they do. "At a time when more and more seafront is being handed over to developers" he said. Well, I am sorry to disappoint him, but that is just not true. Less and less of our seafront is being handed over to developers. Indeed, I cannot think of a single piece of Gibraltar's seafront that the GSD Government has handed over to any property developer. Unlike the vast tracks of Gibraltar's seafront that were handed over to luxury developers by the previous Government. So there is not more and more, thanks to the election of the GSD Government there is less and less. On the airport, when airlines pull out they blame the Government, when airlines come back in they call them clouds over the optimism. I just do not know, the hon Member is almost impossible to please. Perhaps he is determined not to allow himself to be pleased by anything that we do or that happens during our watch. There have never been more flights to more destinations than there are now. "The new terminal cannot be justified in terms of the present use being made by airlines, nor indeed the bus service". The bus service is not provided at the considerable cost per passenger that he helpfully worked out for us, because the Government want to deliver……… It would be cheaper, if Government were doing it to provide a transport service for the lucky passengers, it would be cheaper for me to sort of buy a limousine and put it at their disposal. But I have explained to him in the past that the reason for this is that that is what the Government agreed to do in exchange for early and immediate removal of the Gibraltar suspension clause from all new aviation measures, which is priceless and which is worth much, much more to Gibraltar than the cost of £2,000 per passenger on the bus. See how it is not important just to know the cost of everything, there has also got to be some understanding of the value of things as well. "The number of tourists coming in by coach continues to fall", I do not care how they come so long as they come, and they are coming in record numbers. In fact, the fewer coaches that come the better. That way there is less traffic chaos for them to complain about, less pollution on our roads for them to complain about, less parking problems for them to complain about. What does it matter whether they are coming in on coaches or on foot? The fact is that they are coming in all time record numbers, and the hon Member ignores that to focus, like a sort of poisonous arrow, into the fact that there are fewer buses cluttering our streets. Well, if there were fewer buses cluttering our streets and fewer tourists in Gibraltar that would be legitimate. But that there should be fewer buses cluttering and polluting our streets whilst the number of tourists that actually spend the money……… Buses do not spend money, they get parked and they are not allowed to go to the shops, the buses. It is the people that come on the buses that go to the shops and they are rising in record numbers. Does he not think that that is a slightly more relevant statistic when measuring the performance of tourism than standing there counting buses, as if buses was the measure of

the economic value of tourism? I believe that Gibraltar is still the first or the second most popular destination for day excursionists for tourists up the Costa del Sol. I would have thought that was a more relevant measure. In other words, they obviously get together before they draft their Budget speeches and agree the common themes, because one of the other common themes is that, apparently, we are masters of multiple repetition of projects. As they have all used exactly the same terminology I can only assume that this is all sort of decided in an executive committee meeting or something. This year the key phrase, the catchphrase is "masters of multiple repetition of projects", so they all scribble it down in case they forget it. They all scribble it down and then they go rushing back and when they come to write their Budget speeches, they all scribble down "because the hon Members are masters of multiple project repetition". Well, then he goes on to give three examples, yes. About the only three examples that he can give of the £500 million worth of projects that have been done, of the multiple number of projects that are in progress, he finds three examples where there have indeed been delay and uses it to try and prove the fact that the Government systemically, endemically and chronically delays in all its projects. Whilst at the same time the people of Gibraltar look around and say, this place is a building site it takes me too long to get to the beach. This place is a building site and there is traffic chaos, this is a concrete jungle, he accuses us of. Yet he says in fact nothing happens. Well which is it? Does nothing happen or is the Government converting Gibraltar into a concrete jungle, because it cannot be both? Of course the Government are sensitive to the needs of business. But I think the hon Member must know that all single pressure groups, all single purpose pressure groups maximise their case. Or has he ever heard a business representative organisation ever in any country saying, "business is fine, in fact we are making so much profit that we think that the Government should raise taxes, raise import duty, raise the minimum wage, raise electricity prices, and here is a long list of more things that the Government could do to get our surplus profits out of our pockets and into theirs". But this is what is required of the Government, this is what organisations do. They project a circumstance designed to create pressure for Government to do things helpful to their members. The Government know that, they know that, they know that we know that, I know that they know that we know that and this is how the world carries on going round. See, but nobody except the hon Member actually uses it as a sort of scientific measure of the state of the economy. But of course, if business in Gibraltar were really bad, the taxpayer would expect, before the Government dips into the taxpayers' pocket, to help out businesses, I am sure the taxpayer would expect businesses to help themselves first, and one way that they can help themselves first, especially the shops on Main Street, is that when Gibraltar is teeming with cruise passengers and other tourists on a Saturday afternoon or on a Sunday, they might deign to open their shops, because if I were running a business that was having the hard time that the hon Member thinks we have imposed on them, I would not sit at home watching a film on television whilst customers were walking bored up and down the Main Street right past my shop front. I am not saying, people make their own lifestyle choices, some in business indeed do open, others do not. But the ones who do not cannot rush to say that business is bad and that the taxpayer needs to prime their pump. At least not until they have done as much as they can to help themselves. Then there may be things that the Government do have to do to help business. We do not reject that possibility. Certainly whatever the Government can do, which is affordable, the Government will do, because particularly the retail and wholesale trade, as I said yesterday, is a very important part of our economy, which the Government have every interest in assisting to remain successful. Whenever we get suggestions by business representative organisations, they get the serious consideration that they deserve. The delay appears to have been the only substantial content of their political discourse. As I say, despite the record of performance by the Government, and despite the level of activity, despite the progress, despite the transformation, despite the reform and modernisation of Gibraltar that is evident for everybody to see, they only talk about delay as if whether it took five minutes or ten minutes to do something, was the object of the thing itself. Of course there is delay and some things are delayed more than

others. But delay must be seen in the context of the unprecedented hyperactivity and progress that this Government have made in taking Gibraltar's interest forward over the years. He mentioned again Rosia Tanks and now the No. 4 Dock. Well, look, in the event, which I think is still pretty distant, that he should find himself on this side of the House, he will learn that whereas in Opposition one can put one's ear to the ground and just mimic the views of every single purpose pressure group, on this side of the House in Government, when we have got the whole of Gibraltar's range of conflicting interests and needs to address, accommodate and satisfy, one has got to make balanced judgements. One of the balanced judgements that the Government made, in the case of No. 4 Dock, is that Gibraltar has four docks and that heritage preservation, particularly in a small place like Gibraltar does not require every dry dock to be preserved. Much more important are other needs of Gibraltar. I mean, alright, one, two, three docks but when it comes to the fourth we start to think that some of the other needs and requirements of Gibraltar may start to take over in lead position. In any event, the Government's political manifesto at the last election contains a glorious photograph of that area of Gibraltar, and indeed, there was a huge model which showed all of these things. I have never heard the hon Member complain about the No. 4 Dock until after it happened. He knew it was going to happen, he did not think there was anything wrong with that but when it has happened then he says, "terrible No. 4 Dock being filled in". I do not know, he then said that people are opposed to large blocks along the seafront because it blocks the view. I do not know how this city is going to grow, as grow it must, if it is to continue to prosper. So we say, well we do not build in the old town because we need to keep the heritage of the old town and it is out of character, so let us reclaim land and we do all the modern building, well no we cannot build buildings there because it blocks the view from the sea, for the fishermen presumably. Well, I do not know who has been doing the blocking, but it was not the Government, it was not this Government that made the decision to build Harbour Views with huge tall towers on the waterfront. It was them, despite the effect on blocking the buildings and the landscape behind it. Or them or their predecessors or whoever it was. Who decided to build Westside on the seafront, and block the sea view? It was not me. Who decided to build Europort? A huge concrete jungle, pre-fabricated concrete jungle. Who decided to build it there on the waterfront, blocking the views of the much lower buildings behind it? It was not me. Who decided to build Queensway Quay? On this occasion I do not think it was them either, but it certainly was not me. Who built Watergardens on the seafront there? Five lovely huge tall tower blocks on the seafront, well it was not me. Although I do agree that we built Euro Plaza, in front of Europort which was already there and therefore blocked nothing, and that we did allow the building of Ocean Village and Tradewinds, in front of Glacis which is already tall and therefore blocked nothing. Those are the ones that we have done.

Well, and so we come to the performance of the Hon Mr Picardo. He started by saying that the whole House was the poorer for the absence of Mr Bossano's analysis. Well, no, we do not agree, only his side of the House is obviously poorer for the absence of Mr Bossano's analysis. We do not agree with Mr Bossano's annual analysis on the economy and, therefore, its absence cannot therefore be poverty for us. But it must be clear to anybody that has heard the debate on this Budget this year, just how much poverty Mr Bossano's absence as Leader of the GSLP results on that side of the House. We do not regret the absence of Mr Bossano's analysis, although we do of course regret his absence, personally, and especially the reason for it. But we do not think that we are poorer for the absence of his analysis. The hon Member, Mr Picardo, showed that he really does not understand financial or economic matters and that he does not know what he is talking about. Well, they can start murmuring now or wait until they have heard the reasons for my statement in case the murmurs turn out to be unjustified, or perhaps not loud enough. So, the question is whether the things that he has said, he has said out of sheer ignorance, or whether he has said them with an intention to deceive the public. That is the question. Or perhaps it is both, and I am about to demonstrate that it is both. "My Budget statement", he

said, "was designed to create a feel good and it was a veneer". Just in case any of the hon Members opposite do not know what he meant by the word "veneer", veneer is a covering, a top layer of cover that disguises something else underneath. "A veneer" he said, well, the only thing that that statement demonstrates is that his ignorance of economic matters is not a veneer. It goes solidly to his core. "Bogus figures" he said I had presented to this House. "Bogus figures", which bogus figures? Or does he think that I personally compile the Government's economic data? Which senior Civil Servant does he think has armed me with bogus figures? Let us see who is bogus in this House. Never before will I have enjoyed repeating a part of an Opposition Member's speech as I am about to enjoy this. He may come to regret that childish reaction. "The hon Gentleman", this is the Hon Mr Picardo speaking about me, "the hon Gentleman has told us that he is going to be micro-monitoring the economy and that micro-monitoring shows that it is performing broadly in keeping with what was expected, and that yields have increased from PAYE et cetera. Well, all of that has been said in the context of an attempt, to show that the surpluses in the Consolidated Fund have increased, and that even in this moment of global credit crunch, Gibraltar is doing better than ever". That is indeed what I had meant to say. "Well, looking at the blue pages of the Estimates Book, it is obvious to anyone that the hon Gentleman did not hide it but he did actually make such a short point of it that one might be forgiven for saying that he did not really emphasise it as much as he emphasised anything else. That the £18.5 million up from £17 million that was taken from the Savings Bank depositors and put into the Consolidated Fund is what ensures that the surplus is there". Mr Speaker, "we were told that there was a surplus of £16 million in that Fund. Well, without the £18.5 million or the £17.2 million of surplus overall, without the £18.5 million that came from the depositors of the Gibraltar Savings Bank, it is clear that that surplus would not have been there at all. It is clear that the creative accounting that was necessary was done in time by passing in this House of the legislation necessary to appropriate those funds into the Consolidated Fund, and without that appropriation the reality is that that surplus would not be there". I have only been in this House for 20 odd years, I have never heard such bunkum in all my days. What the hon Member is saying is that the £18.5 million that was transferred from the Savings Bank to the Consolidated Fund Reserve, is what explains the existence of the recurrent budget surplus, and that without that stealing of money from the poor depositors, the Government would have had no reserve at all and no surplus at all. See, that is the veneer that is the bogus. Well, not only does the hon Member not understand anything about public finances and the economy, despite having been in this House now for six years pontificating about them, he cannot even read a simple financial statement in the Budget book, because if he opens the Budget book at page two, helpfully entitled for his benefit "Summary of Forecast Financial Outturn 2008/2009", he would see clearly there that the recurrent surplus, that is to say, the budget surplus was £18.947 million before the exceptional revenue item of transfer of Savings Bank surplus. Does he not understand them? Obviously he does not understand it. The question is to what extent is it lack of understanding and to what extent is it the sort of mischievous misleading that the hon Members were at pains to ensure us yesterday they never engage in? That is the only question that remains to be answered. The size of the budget surplus that I spoke to above, has absolutely nothing whatsoever to do with the transfer of the surplus reserve in the Savings Bank, exists with or without the transfer and is additional to the transfer of £18.5 million. So when he says it is obvious to anybody, what he means is it is obvious to anyone as ignorant as himself. The very opposite would be obvious to anyone who understands economic matters or can just read a simple financial statement. Understand what is happening to public finances in Gibraltar, he cried in closing his address. It would help if he started to understand them himself before offering advice to the people of Gibraltar about them. The people of Gibraltar have a much better understanding of public finances than he has. The risk is that they become confused as a result of his false and ignorant public statements about them. That is the only risk here. Then, of course, he did not even need to know what he was talking about. He did not even need to understand, he did not even

have to do his own analysis, which he is clearly incapable of doing. All he had to do was listen properly to what I said to him in my Budget speech. I quote from myself now in my Budget speech, "Mr Speaker, exceptional expenditure, the £19 million recurrent budget surplus achieved represents a very healthy 8.5 cushion over recurrent Consolidated Fund expenditure. In addition, last year we transferred £18.5 million from the Savings Bank surplus account to the Consolidated Account Government Reserve". What does he think the words "in addition" mean? So I explained the surplus and then I say, "in addition", and he says, no, not in addition, instead of, there is no in addition about it. He does not understand, he cannot read a financial statement and he cannot even listen to what is being explained to him by somebody who does. That is the extent of his political mischievousness and his intellectual arrogance. The only even more dangerous thing about arrogance is arrogance mixed with ignorance, it is a lethal cocktail. So there we have it, his whole speech, his whole wake-up call to Gibraltar, "wake up Gibraltar". His whole wake up call to Gibraltar, his whole things are not as rosy as they seem, his attempt to take the shine off the Government's excellent economic policy and reality, all of it, his entire edifice, his entire speech was based on a basic error, a basic act of incompetence and ignorance on his part. Now he understands why I think that in the absence of the Leader of the Opposition and the Hon Mr Licudi, I think that Mr Costa led the line. The hon Member comes bottom of the class, do not pass go, do not collect £200.

So even on this basis, even on the basis of his own ignorance he is willing as always to talk Gibraltar down, if he thinks that it advances his own personal political ambition. "Clouds" he said, "bogus figures", "creative accounting", "veneers", "attempt to show that Gibraltar is going well". Well, he thinks it is going badly. "An attempt to show that Gibraltar is going well", as if it were not going well. On the basis of his own ignorance, his own lack of experience and his own unpreparedness, and his own failure to do even the most basic of homework, he is willing to send the false signals at Gibraltar's expense that things in Gibraltar are not going well. The only thing that is not going well is the rate of progress that the hon Member has made in learning, after seven or six years in this House, that is the only thing that is not going well. So, at the time when the rest of the world is in economic crisis, when jobs are being lost hand over fist, when economies are shrinking, when Government revenues are tumbling, when Governments are taking on huge public debts just to cover their annual recurrent budgets, and when Governments are reporting – the United Kingdom Government is going to have an 8 per cent budget deficit this year. Yet we here in Gibraltar have stability of employment, a record number of jobs, a large budget surplus, a growing and buoyant economy and record low public debt, and he, economic guru, thinks that it is all a storm cloud, a veneer, a pretence by the Government based on a trick performed by bogus figures. His performance has been a disgrace, a disgrace of ignorance, a disgrace of insulting professional Civil Servants who compile these figures, a disgrace of mounting a false attack on false grounds, and worse and most serious of all, a disgrace of falsely talking Gibraltar's interests down, damaging investor confidence, just for his own selfish political ambitions.

So was this just ignorance or was it also an attempt to mislead the public? Let us see, I am not sure which of the two outcomes he would prefer. Anyway, let us go through it together. Later on in his speech, when he was talking about tax, he forgot what he had just said. Or, more likely, given his economic illiteracy, he simply did not appreciate the conflicting implications of what he was saying. Anyway, he said that given the state of the economy and of the Government's finance and of the Government's position, Government could have done more to cut taxes for companies and people. He said that Government had "real margins for real tax cuts". Well, if he believed, as he has just said, that the surplus was non-existent, that the budget surplus was non-existent and that it was the product of bogus figures and creative accounting, and the proceeds of theft from the Savings Bank, how could he also think that we had real margin for even more generous tax cuts, because if he thinks that there was not a real budget surplus, but for the money that we had plundered from the Bank the Government's budget was

in effect balanced or worse, how could he then five minutes later think that the Government's financial position was so strong that we had missed a great opportunity for real tax cuts, real margins he said that we had. Well, which is it? A bogus non-existent surplus or plenty of scope, because of the surpluses, to cut more tax? It cannot be both. If he thinks that it was a bogus surplus, he could not also have thought that there was plenty of margin for bigger tax cuts. If he thought that there was plenty of margin for bigger tax cuts he could not also have thought that there was a non-existent bogus surplus. Of course, this business of the amount by which taxes are cut being a reflection of the state of the economy is novel, because at the time that the GSLP in Government were supposedly perpetrating the economic miracle, over which they are alleged to preside and which they so much like boasting, taxes did not fall at all. So if falling taxes are a sign of a prospering economy, presumably, taxes that do not fall are a sign of an economy that is not prospering, and since they did not cut taxes at all, neither for companies nor for individuals, in eight long years of GSLP economic famine in Gibraltar, by their logic their economic miracle was not an economic miracle. It must have been an economic disaster.

Leaving to one side the question of the ignorance that he has shown in the reading and in the understanding of these issues, it does not stop there. He then says that the transfer that did take place from the Savings Bank, not above the line to the Consolidated Fund recurrent budget where it would have contributed to a surplus, which it did not, but below the line straight into the Reserve, where it is disregarded for the purposes of calculating the annual budget, he then said it was depositors' money. Well, how can he possibly believe that it is depositors' money? I mean, what does he think that the Government sort of robbed the Bank? How can he possibly believe that it is depositors' money? He does not even understand how the Savings Bank works. These are not depositors' money. The depositors' monies are safely deposited in the Bank of England. He must not worry, obviously he thinks that we are kleptomaniacs on this of the House and that we go round heist, this makes the Great Train Robbery look like child's play. I have never heard such ignorant nonsense in all my days. Surpluses in the Savings Bank are not depositors' monies, they are the Government's monies. They are the money that the Government leaves there for a possible rainy day. We made alternatives for the rainy day, these are surplus profits of capital profits of investments held. It is surplus accumulated annual profits, it is the Government's money and for ever Governments have transferred surpluses to the Consolidated Fund Reserve. Why he thinks, first of all that it was the stolen money that creates the surplus, and then that it was stolen at all is a double whammy of astonishing ignorance for somebody who claims to be an experienced finance centre lawyer, who presumably sells his advice at great cost by the hour to people and who has been in this House for six years and has now heard six Budget debates.

Well, if the price of fuel has fallen why has there been an increase in electricity costs? See, there must be something fishy going on here. Very fishy. I mean they raise electricity prices when the price of fuel goes up. Then the price of fuel comes down, I remember reading about it in the newspaper between client appointments last week, I am almost certain the price of fuel has gone down, yet here comes this creative accounting bogus figure juggling Chief Minister, to put up the price of electricity. There is something terribly fishy. This is how the economic seminar must have gone in the hon Member's mind. Well, first of all he must be aware that the price of oil is not the only cost element of generating electricity. No, there are salaries that go up as well, there are all sorts of things, it is not just crude oil or refined oil that the Electricity Authority has to procure. Secondly, I do not know if he has had enough gaps between appointments to follow the story so closely, but he must know that when we increased last time, in March last year, the price of oil had gone up to $104, that subsequently it peaked at $143, that it subsequently dropped to $37 and has now climbed again to $71, and that these temporal volatility in prices does not make a calculation of cost in relation to consumption tariff a simple straight line. But if he does not understand the difference

between stolen money and budget surplus, I suppose he can be forgiven for not understanding the difference how the economies of a utility provider functions.

Of course, having shined his own medals in this way, he then made sure that there was no shine on any of mine. Is the hon Member saying that he foretold ten years ago what would happen, because I had said that we had been foretelling for ten years the fact that the world was a changing place and we had been repositioning our finances? Well, yes, one of the advantages that the people of Gibraltar have enjoyed as a result of having elected four GSD Governments in a row, is that they did in 1996 elect a Government that knew and understood that the Finance Centre, as then constituted, was on a short fuse, and that it was necessary to reposition the Finance Centre away from tax havenism and brass plateism, to a more mainstream, added value, financial services centre and insurance fund management and things of that sort. Exactly foretelling what has happened this year, which is that the rest of the world has said enough of these tax havens, you are either a proper finance centre or you are not. So thanks very much, perhaps he should consider joining this party at all. He is unlikely to make a candidacy but he can certainly join the Executive. That is exactly what the Government did, we foretold that in a number of years, the precise number of which we did of course not know, the model of the economy in the Finance Centre as it then was would one day be pulled from under our feet, and therefore, we started repositioning long beforehand, and the beneficiary of it, the people who will now collect the dividend, are the thousands of people who owe their job to the Finance Centre and the Finance Centre operators who he thinks regard me as the villain of the piece and not the hero. They are the beneficiaries of the Government's foresight and intelligence in recognising things before they have arrived and the need for doing things before they have arrived. Something which he has shown he will never be capable of. Have we astutely negotiated a new agreement? Wow, he had predicted the credit crunch he asked? Well, we had not predicted the severity of the credit crunch, but most economists, not people with economic degrees, most economists were predicting that the profligacy in the credit market could not continue indefinitely, and that at some point the credit bubble would burst and then we would have what always happens when credit bubbles burst, and that is a tightening of credit conditions. Yes, and for that reason we negotiated £150 million of borrowing facilities when we only needed £50 million. We negotiated a revolving credit of £150 million for which we had no use and for which we were paying, year in, year out, a non utilisation, non drawdown fee for the privilege of having the facility in place and negotiated. Absolutely, so I am glad the hon Member thinks, by his own observations, that this is a remarkable piece of prudent financial and economic planning, because that is exactly what the Government did.

It is terrible this business about tabling the Employment Survey at the last minute, on the morning of the Budget debate. "If they believed in transparency" he said, "they would not do it" and it is not good for the Leader of the Opposition's need to give a major economic speech. Well, just as well that the Leader of the Opposition was not in the House, because he certainly could not have complained about the effect of tabling of the Employment Survey at that stage in relation to the Budget, because when he was Chief Minister, the Employment Survey was always tabled after the Budget speech, not before, and months and months after when the information was so historical as to be of economic management monitoring no use whatsoever.

"If the economy is so good" said the economic guru, "why is corporate tax only going down 5 per cent to 22 per cent?" I mean this is a one third reduction nearly we have reduced Corporate Tax from 35 per cent to 22 per cent over the last couple of years. That is a one third reduction in the rate of tax and he wants to know why we have not reduced it further still. Well, can he point out to any country in Europe that has done that in two years? But of course, since we now know that his economic analysis capacity is zero, I suppose everybody is now forewarned to ignore all the judgements and all the assessments that he has made. Social security increase of 4 per cent is a

stealth tax, back door tax, stifles local business. Well, we can argue about the effective rate of inflation but I have never heard it argued that increasing the cost of something by more or less the rate of inflation is a stealth tax. If we did not do it, it would be tantamount to reduction, or does he not understand the effect of inflation on the value of money, and that to maintain things at the same real value one has got to increase, otherwise one is in effect decreasing. I suppose we should now appreciate that he probably does not understand that either. Four per cent when pensions, which is what this funds, has gone up by 4.2 per cent. So we increase pensions by 4.2 per cent, we increase the contributions by 4 per cent in what is a pay as you go scheme and he says it is a stealth tax, which stifles local business to boot. Well, I do not know whether it stifles local business or whether it is a stealth tax. Well, I know they are not but he appears to think that they are, both of those things. Well look, I hate to think what the hon Members opposite were doing to business when they were in Government because they used to increase social insurance every year by ten per cent, regardless of the rate of inflation, regardless of the rate by which they increased pensions. Ten per cent one year, ten per cent the next year, ten per cent the next year and on the last year, just before they happily lost office, they did not. So, if I am stifling business and introducing stealth taxes through the back door, they presumably were introducing stealth tax at 2.5 times the rate through the front door. Now we know why they increased personal taxes for ordinary citizens in Gibraltar, for working people, for the lowest paid, every year, by not increasing the personal allowances by inflation. We found out yesterday why they inflicted this terribly socialist measure on the working classes of Gibraltar, because he thinks it is a gimmick. He said yesterday that increasing the personal allowances was a gimmick. Well of course, if it is a gimmick for the first year, the second year, the third year, for seven years in a row, because if it is a gimmick one does not do it, the effect is that at the end of seven years people are paying much more tax than they were at the beginning. So now the people of Gibraltar know that they spent seven years paying more and more and more in tax under the so-called socialist GSLP Government because they think that keeping allowances in line with inflation increase is a gimmick. Then the gross income based system, apparently, is just for foreigners and it discourages people from living in Gibraltar. Goodness gracious me, what an illiberal government we are! I mean, fancy losing the opportunity to use the tax system as jail bars to keep people in Gibraltar against their will. I mean, what a terrible loss of sight of the ball that was. If I had known that the hon Member thought that I should have been using the tax system as a sort of jailor, to make sure that the people of Gibraltar who wanted to live outside of Gibraltar felt that the tax system discouraged them from doing so, if I had known that sort of keeping the people of Gibraltar imprisoned in Gibraltar is one of the functions of the office of Chief Minister as he sees it, then of course, I would xxxxxx have done it. But he is wrong on that too. The gross income based system is not just for foreigners. There are thousands of local people who are single, thousands of local people who have no mortgage because they might have paid it off, thousands of local people who have no mortgage because they might be tenants of a Government house, or tenants of a private house. Thousands of people for which the other allowance based system was penal because it has got very high rates and it only makes it a little bit more reasonable because of the very high allowances. Of course, if he has not got the married mans allowance and he has not got the mortgage allowance, one is just left with the high rates, and these presumably, are the Gibraltarians that the hon Member regrets I did not imprison in Gibraltar by forcing them to carry on paying more tax here. I have never seen somebody with a greater willingness to pontificate in public about things about which he clearly understands nothing and has taken no trouble to do any thinking or research, and he just says whatever he thinks he has got to say to appeal to the electorate and to damage the Government politically. That is all. That is all he does, presumably that is all he has time to do between appointments. I can only assume that he was the learned author of the GSLP manifesto on tax. In fact, I am sure he must be because there cannot be two people as ignorant as this in the party. Yesterday, he said, repeating the same rubbish contained in his manifesto, “the standard rate of tax has not

changed under this Budget and if the GSLP had been in Government it would be 20 per cent by now". Twenty five per cent I think he said. Well, he has no clue what the standard rate of tax is. I will tell him what the standard rate of tax is. By lowering the standard rate of tax, which is what he has promised to do in his manifesto and in his Budget speech yesterday, he is not lowering anybody's tax. The standard rate of tax is the tax paid by people who have not lodged a tax code with the employer. In other words, it is the default interim rate which people without a tax code have got to have tax deducted until an assessment is made and they pay the right amount. He thinks and he thought, he is supposed to be a tax lawyer, he is supposed to be a finance centre lawyer, there are people who pay hundreds of pounds an hour for his advice, and he appears to think that the standard rate of tax, what he has promised to the electorate in his manifesto and here again last night, is something that he can lower to 20 per cent, 25 per cent, or any per cent for that matter, as a means of lowering people's tax. Well I have got news for him, the only people whose tax he would be lowering are the people who are irregular in the tax office, because he certainly would not be lowering the tax of anybody that has a tax code, or that is a law abiding citizen of this community. This is not just a defect in yesterday's speech he clearly is ignorant on the matter. He repeated it in the manifesto, which presumably was not drafted in three minutes between appointments. This is the extent of his knowledge of tax matters in Gibraltar. Then of course he goes on to contradict himself. "These uncertain times" he said "and the uncertainty of the new tax scheme, because of them the Government should have done more to lower taxes". Well, this is like saying to a very old man, stop taking your medication. The times are uncertain, the new tax scheme is uncertain, therefore revenue for the Government uncertain, and he thinks that the prescription for that is that we should have lowered taxes more. What to run more risk with public finances? If he thinks that uncertain tax schemes and uncertain times, and all these storm clouds that he thought were gathering on the horizon, and all these storm clouds that the veneer and the bogus accounting and the creative accounting were all sort of shielding. I suppose we should all march down Main Street and we must tell people who do not know, no, no. Never mind about all the people in employment, never mind about Main Street being full of tourists, and never mind all the cruise ships and never mind all the xxxxxx, no that is all a veneer. This is the very clever crafty Chief Minister, this is creative accounting by the Chief Minister and it is all bogus and it is all down to a mirage. None of it is real. Well, the only thing that is real is the hon Member's complete lack of grasp of most of the things about which he pontificates with an air of authority, which is staggered.

"Gibraltar does not feel as if £500 million has been spent on it" he declared. This gives me a wonderful opportunity to remind everybody what we spent the £500 million on, to see who else does not feel better for it. That £500 million has contributed to a new hospital, a new health centre, a massive amount of extra hospital equipment, the redecoration and refurbishment of most of Gibraltar's housing estates, the refurbishment and reroofing of Varyl Begg, the building of houses for the elderly at Bishop Canilla House, the refurbishment and rental, not sale, of Edinburgh House, the salvaging of Brympton Estate and Harbour Views, the building of Waterport Terraces, Bayview, Cumberland and Nelson's Views affordable homes, the building, now under construction, of Gibraltar's first new rental estate since the early 1970s, the building, almost ready, of 140 houses for rental for 140 senior citizens in Gibraltar at Albert Risso House, the installation of lifts in Government houses so that senior citizens can stay in their houses for longer, the transformation of Mount Alvernia into an almost luxury hotel standard. The beautification and renovation of Gibraltar physically in almost every respect, Casemates Square, John Mackintosh Square, Cathedral Square, Catalan Bay Village, a huge number of street refurbishments all over Gibraltar, Main Street, Irish Town, Engineer and Bell Lane, Sir Herbert Miles Road, Europa Road, Sir Winston Churchill Avenue, Lover's Lane, Waterport Road, North Mole Road, Fish Market Road, Chatham Counterguard, Orange Bastion, King's Bastion and the renewal of the frontier fence. We have built a spankingly impressive new sports complex at Bayside. We have built a

spanking luxury quality marina for local boat owners. We have built a petanque club for some of our senior citizens. We have built a swimming pool for our elderly citizens. We have built new tennis and paddle tennis courts at Sandpits. We have built a magnificent Retreat Centre. We have built a promenade at Westside, on a piece of land that they had already sold to developers for more building on Gibraltar's waterfront. We have built the King's Bastion Leisure Centre. We have refurbished the Laguna Estate Adventure Playground and we have refurbished the Camp Bay and the swimming pool areas. We have refurbished the retrenchment block at Lathbury Barracks. We have refurbished the coach park, the ferry terminal, we built the new coach park, refurbished the ferry terminal, we have enhanced the cruise terminal. We have built a new road in the upper town and in the Chatham Counterguard, we built new car parks at Landport Ditch, Commonwealth Parade, Sandpits, New Harbours and Willis's Road. We provided for the refurbishment of all our hotels. We provided Bruce's Farm and the Main Street Aftercare Centre for those members of our community with a dependency on drugs. We have built a new prison and three industrial parks. Well, that is not bad. I am sorry that the hon Member feels none of that………, it is perhaps because he spends too long on the fifth floor of his plush lawyer's office and none of these other things are important to him. I suppose, that when one spends all one's time as he spends it, I suppose he does not use any of these things because he is not a normal citizen in that respect. Well, that is just by the way not a complete list. If he wants, next time he can make the same point and I will give him the other half of the list of what the £500 million was spent on.

Well, I do not know whether we are divided on the need for a new air terminal or not. What I can tell him is that it is was a prominent part of the Government's election manifesto on which the people of Gibraltar returned us to office. If we had not done it, presumably he would be accusing us of breaking an election promise. The new terminal is not for Cordoba, the new terminal would have been built regardless of Cordoba, or does he think that the terminal that Gibraltar has today is fit and appropriate for a modern, prosperous community like we have today? It is third world dump. Even I know that and I do not have to use it because I get driven in my plush Jaguar with light beige leather interior, I go airside straight to the aircraft, and even I know that. He, who has to use these third world facilities, presumably he does know if even I, who do not have to use them, know. We are not building an air terminal in order to create business for Spanish companies. That is incidental. We are building a new terminal because we think it is one of the remaining pieces of the jigsaw for a modern, prosperous Gibraltar in the 21st century, capable of signalling to the world that we are a successful location for them to base their economies, and in that way create jobs for our future generations so that they will enjoy the same high standard of living that this GSD Government has given them for the last 13 years. That is why we are building a new terminal, and we can argue if he wants about whether it is 40,000 square metres, or whether it should be 35,000 square metres, or 33,000 square metres or 50,000 square metres. But they are not interested in that, they are just interested in tarnishing the medals. If it is good we have got to find some way……… God forbid that the people of Gibraltar should think that the Government have done anything well, the hospital, the health centre, this, that, an airport terminal. We have got to just counteract this somehow. How can we counteract this? I have got a good idea, it was probably his, I have got a good idea, we will say that it is in the wrong place. Well, alright, it is in the wrong place and if it is not in the wrong place we did not really need it, because yesterday Monarch cancelled the flight and tomorrow……… and now there are only three passengers on the aeroplane, as if one built an airport looking at yesterday's or tomorrow's traffic. What lack of vision. Of course, if we cannot say either of those two things, if we cannot say it is in the wrong place and we cannot say that it is not needed, I know, we will say it is taking too long, delay. That is the entirety of the political philosophy of the hon Members opposite. Wrong place, not needed or too much delay. One could write their next manifesto on the back of a postage stamp.

I do not know whether he thinks the Budget book is………, I do not know whether he really thinks that. I suppose after what he has heard already it is not worth saying any more of this. I do not know whether, he says that the Budget book is practically a waste of time. Well, if he thinks that this is a waste of time, which estimates revenue and expenditure to really some impressive percentage points, he should really look at some of the Budget books before May 1996 to see what a real waste of time of a Budget book, of an appropriation xxxxxx, of a House of Assembly, all of them were. Still, I suppose Mr Bossano's absence from the Chamber spared him his blushes on this occasion. I do not know whether it is even worth commenting on GSD, the name of the airport should be "Gibraltar Stands Desolate" airport. The hon Member has got to understand that he has left school already. This is just too immature for the Parliament of Gibraltar. "Gibraltar Stands Desolate" airport. Oh by the way, in case anybody had not worked it out, that is anagrammed GSD, Gibraltar G, Stands S, Desolate D. GSD ha, ha, ha. If he spent less time thinking up silly clever lines and more time researching his economic matters, he might make less of a fool of himself in this Chamber. But as he thinks that everything is a glib moment, as he appears to think that this is somehow theatre and that all he has to do to get his seat on this side of the House is somehow talk his way into, regardless, that bubble is beginning to burst now. The bubble is beginning to burst. If he is not careful and the Leader of the Opposition is inastute enough to give up the leadership of his party at this point in time and condemn it to almost perpetual opposition, if he is not very careful he will find himself overtaken by more than just Mr Licudi in the race for the leadership of the GSLP. This is also the vein in which we should all interpret his absurd remarks, with the same degree of understanding as he has shown of public finances, and the same degree of understanding that he has shown on the concept of taxation and standard tax and other economic matters, that is the credit that belongs to his ridiculous analysis about the alleged delays, because there have not been any, and the effects of that delay in relation to the publication of the new tax system. I have explained it to him a million times before, I am not going to explain it to him again. But of course, he is not motivated by anything that he knows, nor is he motivated by any inconvenient things like the truth, God forbid. All he wants is to discredit and to tarnish medals, as one of my colleagues said to him before. So he rushes to say, for example, "the court case was a certain outcome, a foregone conclusion", lest anybody should think that the Government have done well in articulating, fighting and winning the case, to make sure that nobody in Gibraltar could possibly give the Government any credit for that, amongst anything else, let us repeat time and time again that this case was in effect a walk in the park. There was never any danger, there was never any risk. Well, then what was all this doom and gloom predictions that he has been making for the last two years about the risks that the Government have taken with notifying to the European Commission and all of this. He is not interested in the truth, he does not even know whether the Government did well or badly. He has not seen the case, he has not followed it, he just says if the Government is thought to have done well people might think they have got a good Government. So I know, I must say that the Government have not done anything and that this was a walk in the park, that a lawyer, even as ignorant about tax matters as he has shown himself to be, could have won this case for the Government. He says that I have failed to provide true leadership on this issue. Well, God help us all if the leadership that I have provided is a failure, because there is certainly no leadership better than the one on this side of the House sitting on that side of the House. That much we have seen in the last two days. The only hope for the GSLP, slim as it is, is that the Leader of the Opposition reneges on his commitment to retire and sticks around as leader, because there is no point this smoke and mirrors trickery of standing down as leader but staying as a candidate, and anybody believing that Mr Picardo is the leader with Mr Bossano sitting here as Minister for Housing. I mean how silly does he think the people of Gibraltar are? Well, I do not know whether he appears to think that presiding over the most successful economy period that Gibraltar has ever had, steering Gibraltar in growth through this terribly uncertain time for our Finance Centre which these EU challenges have faced, fighting and winning a case, he appears

to think that that is a lack of leadership. By his statements, people will judge his integrity and people will judge his credibility, which right now stands at below zero on the scale. He regrets that the Government had not acted sooner and that all decisions are taken by me and that I need to take advice from the industry. It cannot be ignorance because I have told him before, so it must be a premeditated desire on the hon Member's part to mislead the public, because he must know that the Government have been closely consulting the industry, have an industry panel that have been advising on all of these matters, including people from his firm and even though he wants us to believe that they never talk to each other, which I do not accept, but even if that were true he must at least know that they are sitting on the panel. So why does he come to this House to say things that he knows are not true? Then a bit more tarnishing of medals, this Caruana character there is a risk that he will have too many medals on his chest, and I am not sure that I can scrape the shine off them fast enough. I mean, he has described the signing of our tax information exchange agreement with the United States as being dragged kicking and screaming to the table. We are the only, the only Government in the world that has signed a TIEA with the Secretary of State for Finance. The only one and instead of recognising what a coup that was for Gibraltar, as the rest of the world including Spain have done, that is why they are so upset about it, he thinks it is being dragged kicking and screaming to the table. If this is the quality of his judgement, if this is the quality of the integrity that he brings to his public pronouncements, he should not be surprised that the people of Gibraltar that are intelligent and astute will condemn him to that side of the House for a very, very long time to come. The lack of products in the Finance Centre, for example, falling company formation, he still has not understood that the Finance Centre of Gibraltar has moved away, has repositioned, it is no longer based on the number of companies that are formed. That is a tax haven. A thousand times I have explained to him that we spent 12 years repositioning Gibraltar's Finance Centre away from that, and in 2009 he comes to tell this House, he who supposedly thinks that he is a clever lawyer, comes to tell this House that one of the symptoms of lack of success is the falling company formations. The more that the company formations fall the better, the more mature we will have become as a Finance Centre. The only other person that I have heard say that Gibraltar is responsible for the policies that allowed the Fedra to crash into Europa Point are people in Spain. Nobody else, and they always systematically, they will sign up with Spain, with Spanish ecologists, they will sign up with anybody so long as that somebody is lined up against the Government of Gibraltar. They do not care who they go to bed with, so long as it is an opportunity to criticise the Government. Now, let me see, how is it the Government's responsibility the policy that the Fedra crashed into the rocks at Europa Point? But the next time somebody else in Spain says that, to criticise Gibraltar for reasons of politics and sovereignty, the Gibraltar Government's defence on behalf of Gibraltar will be a little bit less credible. Why, because the Hon Mr Picardo thinks so too and has said so in Parliament.

With a bit more thought it might have been possible to locate the power station in the area of the refuse incinerator. Look, the fact that he gives such little thought to the things he says or undoes should not persuade him that everybody else suffers the same lack of fortitude and commitment. Does he think that the Government have not considered every other possible site in Gibraltar, including the refuse incinerator? Indeed, the Government are required by law to have done it. He probably does not know that either, despite being the Shadow Opposition Spokesman for the Environment. The Government do not do or not do things because it gives more or a little more thought. Only he does things with more or a little less thought. He says that he had a vivid imagination. On the basis of yesterday's performance I think that a vivid imagination is about all that he has. Dredging off Sandy Bay despite having a report that doing so would degrade Sandy Bay. That was the charge, I am sure he remembers it. Except that it is not true. There is no such report and this Government have not dredged off Sandy Bay, but I do know a Government that did dredge off Sandy Bay, the GSLP Government. We have dredged off the northern end of

Eastern Beach and off the end of the airport. A quantity of sand, one tenth of the amount that the GSLP dredged off Sandy Bay. Now is that not an interesting truth? So, the environmental terrorists, the vandals with Sandy Bay, the reason why the people of Gibraltar cannot today enjoy the very popular Sandy Bay beach is not anything that this Government have done, but if it is because of anything that any Government have done it is because of what the GSLP had done. Another reason why another 500 people should not vote for them. Another reason, because when they say things they are either untrue or nonsense, or rubbish. Then when we say that they are rubbish they get terribly offended. Well, look I am sorry, if he speaks rubbish then people can either accept it, as if he were a whizz kid, or say that he is talking rubbish. But I accept that if I am going to say that anything that anybody has said in this House is rubbish, the onus is on me to demonstrate that it is rubbish, which is what I am doing today.

Then he went on to his favourite subject, the media. See, here we have irrefutable proof of the hon Member's dishonest instinct to mislead the public, because he gets accurate information and he packages and presents it in the way to make it look as damaging and persuasive of something bad as possible. So I give him the Government Press Secretary's annual salary since 1996 and he puts out a statement saying, "the Government have paid Mr Cantos £750,000". Without saying, of course, that it is annual salary, bla, bla, bla, to see if he can persuade people that the Chief Minister, or the Government, have written a cheque for £750,000 to Mr Cantos so that he can spin press releases on behalf of the Government. Not even when he is telling the truth is he willing to be honest in his presentation and in his use of the truth. That is the extent of the political personality that he is. When he says in exactly the same vein that the Government have paid £100,000 in advertising to the 7 Days, why does he not also say that in exactly the same period the Government have paid the Panorama £122,000, because the Panorama is owned and edited by the father of the leader of the party who sits on that side of the House and is in coalition with him. Why does he not say that as well? The answer is that he is not interested in even making honest use of accurate facts. Even of accurate facts his instinct is to make dishonest use, and that is who the hon Member opposite is as a person and as a politician. Well, I suppose one way of manipulating the press and of trying to degrade their independence is to try to make oneself the champion of their pension scheme. I suppose that if there are Chronicle journalists present, or even not present but listening on the radio and one becomes the champion of the pension scheme that their employer cannot afford and is contributing to the bankruptcy of the company, one way to manipulate the press, exactly what he says that we do, sort of using the controlled press, is to say "my colleague Mr Linares can be the champion of customs officers and firemen and supply teachers and prison officers, and I will be the champion of the Chronicle journalists and printing staff". Well, except that it does not sit comfortably on the mouth of any member of a GSLP party, because this is the party who when they were in Government were happy to allow hundreds of workers in Government-owned and Government contracted companies to work without any occupational pension at all, not even the endowment scheme. These are the guys who today want to sound like credible champions of the taxpayer. What he thinks is that the Government of Gibraltar should put its hands into the pockets of every Gibraltar taxpayer to fund the generous final salary scheme of the Gibraltar Chronicle Limited employees, using the tax monies of taxpayers, most of whom do not have a final salary pension scheme themselves. But of course, he does not care about the rationality or the coherence or the logic of anything that he says, he is just interested in what six more votes he can harvest today. Regardless of principle, regardless of coherence and regardless of comparison of behaviour with, when they had the right and the power to make all these decisions when they were in Government. I remember that I once stood up in this House to suggest that the hon Member opposite might have something to do with the writing of the Vox and he rose to his feet in a fit of rage to deny it. Well, today what I say is one or the other, in the alternative he can choose. Either he writes the Vox or the Vox writes his speeches in this House. It has got to be one or the other and I do not care which

of the two he picks, because surprise pees, surprise pees just leads to wet pants, which is what he is about to get. Well, it is no worse than Basil Fawlty. People who are much more serious than Basil Fawlty get wet pants. Well, let us see now. Does the Vox write the hon Member's Parliamentary speeches, or does the hon Member write the Vox? That is the $64 million question. Of course different people might come to different conclusions when I have laid out the evidence before them. Indeed, I am reading now from his Budget speech because I had better make that clear, otherwise he may not know which of the two I am reading from. Indeed, the biggest increase in spending on the media since 2006 has been in respect of £100,000 given to the 7 Days publication to do the work of, I think, will not say spin, I will just say advertising the GSD. In the years since he was first employed by the hon Gentleman, immediately after winning the first General Election in 1996, the Government's Media Director has cost us £725,000. Coupled with the expenditure on 7 Days, that is in the view of Members of this side of the House, amounts to £825,000 already spent on advertising, the hon Members opposite, money spent for GSD partisan purposes. This is an indictment of the hon Member's approach to media funding. Then one paragraph later on he says, as members of the public will be aware after the last Question Time, the pension fund of our local daily newspaper of record, the Gibraltar Chronicle, is in dire strait and could have serious consequences for that company. Then an astute observer, not me because I do not read rubbish of this sort, said, my goodness I have read all that somewhere before, where have I read it? Could it have been in the New People, because of course we write in so many different places that it is difficult to keep track now? What article did I send to the Vox and what article did I send to the New People? Well, this one was the Vox, but is he still free to say that the Vox writes, he can still say no it is the Vox that writes his speeches. I am now reading from the Vox, issue No. 2829 of 24 June 2009, "the most startling statistic revealed in Parliament this time", by the way, this is after two columns worth by somebody called "Joyce", two columns of extolling the virtues of the hon Member opposite. So if he did not write this himself, there is some journalist in the Vox who thinks that the Hon Mr Picardo is the best thing since sliced bread. One, two, three, four, five, six, seven, eight, nine excellent references to him, whereas I am referred to as "Baldrick, Basil Fawlty and the idiot in Blackadder". Now, where have we heard that before? After two columns of this sort of sickening eulidisation of the hon Member opposite, it then goes on to say the following, and I just ask the hon Members whether they are hearing an echo or whether this is something they have not heard before? "The most startling statistic revealed in Parliament", this is Vox, "this time round was elicited by Picardo. The 7 Day newspaper has now received an incredible £96,900". They did not round up, he did. "Odd from the Government in respect of advertising". That certainly explains to everyone who might bother to read the dribble in it, why 7 Days is a scrap book of Government press releases of party photographs. "Taxpayers need to understand that Mr Caruana is in effect using our tax pounds to make publicity for himself and for his Government". To add insult to injury, "Francis Cantos, GSD spin doctor in chief, has now received almost £750,000 as salary from Mr Caruana. The reality is that the GSD are feathering their beloved nest. Oh, and did you know that Mr Caruana has now spent £22,000 at the VIP lounge at Gatwick?" Which he also said in his speech yesterday making a reference to my expensive VIP lounge stays. Then just to round it all off and to make sure that nobody could be in any doubt that he is the author of both, "these last days of this Government really should be put to music". The first phrase of which, the first phrases of the Evita song spring to mind, "Oh what a circus, oh what a show". Admittedly that he also referred to a song but it was another one. What was the song that he referred to? So, I thought I had better mention another song. But does he not think that it is extraordinary that the same points are made in almost precisely the same order in this Vox article as in his Budget speech, and both end up with putting a song to describe the Government of the day? He can choose, because he cannot treat us all as idiots. He can choose, either he is the author of both the Vox and the Budget speech, or the Vox is the author of his Budget speech. One or the other, but people in

Gibraltar are not so stupid that he can persuade them that neither of those propositions is the case.

Only 36 more Gibraltarians found work. Since the GSD has been in office, over a thousand more Gibraltarians have found work. But he has got to understand, I realise that numbers is not his forte now, so in the future I promise to be less harsh in judging him. He must understand that in a population which is not increasing in number as far as Gibraltarians are concerned, and which is getting older so more and more of those numbers fall into retirement, it is hardly surprising that the number of extra Gibraltarians going into work cannot rise at the same rate as foreigners finding work in Gibraltar. It would require real bogus numbers, it would require real creative accountancy, it would require real veneer and real mirages to produce more Gibraltarians of working age than the mothers and fathers of Gibraltarians have chosen to create in the procreative process. There is nothing that I can do to increase the number of Gibraltarians of working age that exist. I know that they expect me to solve everything in this community, but there is something that I cannot do anything about. But what I can do something about is to encourage as many Gibraltarians as possible to work and we have done that to the tune of over a thousand of them.

We promised that we would build new roads and parking on a huge scale and nothing has happened. Nothing means the Upper Town Road, the new road through the Chatham Counterguard and the dualling of Devil's Tower Road, the new road through Rooke and the Trafalgar interchange, all of which are in progress. Nothing means building the Willis's Car Park, the Sandpits Car Park, the New Harbours Car Park and the thousand space park and ride in Devil's Tower Road which is also under construction. That needs to be the definition of nothing if the hon Member's statement were to be truthful. I commend progress for the community, we cannot afford to stay stymied. Well look, there are many people in Gibraltar who for one reason or another are not supporters or voters of the GSD. But most of those would be honest enough to recognise that of whatever the GSD is guilty, of whatever might be the reason why they do not support the GSD, it is not because we have made no progress for this community. It is not because Gibraltar is stymied. The only people who think that Gibraltar has made no progress and that Gibraltar is stymied are them, the hon Members sitting opposite, who have demonstrated in the last 48 hours that they would not see progress if it hit them in the form of an articulated lorry in the face. Then the hon Member accuses me, these are the hon Members who are civilised, who do not get personal and who are the victims of terrible nastiness on the Government's part. He then accuses me of being a ponsischeme of ideas. In case anybody does not know, ponsischeme is a fraud, and he accused me of being the Madoff of Gibraltar politics. Mr Madoff is an Amercian fraudster who is alleged to have stolen £50 billion of investor's money, and just to confirm again the degree of hypocrisy of which he is capable, the very next thing that he said after that, see I have avoided invective and all personal insults, that was the very next thing that he said. The very next thing that he said, after saying that I was a ponsischeme and the Madoff of Gibraltar politics. The man is so hypocritical that he says one thing whilst doing the contrary at the same time, an almost impossible feat. Most people feel the need to disguise them by at least putting time between the inconsistent. No, no, he calls me a fraud one moment and at the same time he has already got half the words out to say that, of course, he has avoided invective and all personal insults and that he hopes we will do the same. What he means is that him having insulted me in the most serious way that he could, he is now going to plead with me not to give him a dose of his own medicine. That is what he meant, because he is a coward to boot. Well, nothing is pretty much what he has in terms of political integrity right now. Well in the eyes of anybody that has heard him, including me. Now, he says that we must make this House a place of dignified debate. Well, I could agree with that but one cannot have a dignified debate unless one is truthful, and one cannot have a dignified debate unless one injects it with a modicum of integrity, of debating integrity, and the obstacles to dignified debate in this House are the hon Members opposite, because they bring in to the debates in this House the same deceiving, distorting mis-representational style

that they deploy in their public statements outside of this House. They are the obstacle to more dignified debate in this House. He finished, nearly, by commenting, somebody must have told him, I have got a good idea who, that I was in my office until 10 pm last night putting the finishing touches. Oh, if only he had done the same. If only he had stayed until midnight instead of going off to watch some television programme. If only he had spent a bit more time preparing his Budget debate, he may have made less of a fool of himself than he has done. So instead of criticising me for diligently researching and preparing, as I always do, my input into this House, he should xxxxxx a leaf, he should learn a lesson from the person he says he has nothing to learn from. When he learns that lesson he may start to eliminate some of the extraordinary, ignorant arrogance which afflicts him. Cast, he said in conclusion, cast a cynical eye on announcements. The only cynical eye that anybody in Gibraltar needs to cast is on the statements of the hon Member opposite, as I think I have demonstrated amply this afternoon, and they must be cynical because it is evident that his assessments, his judgements and his statements are steeped and informed by staggering ignorance. They are informed by an unprecedented willingness to talk down the interests of Gibraltar to satisfy his personal political ambitions, and they are informed by a systematic distortion and misrepresentation of facts and events. That is the reason why people should cast a cynical eye, as he suggests, but about what he says. Understand what is happening to public finances, his cry in conclusion. He should understand public finances himself before he urges other people to do so. A patchwork quilt of measures. Of course a patchwork quilt of measures, it is only by having a patchwork, he cannot be expected to understand even this. It is only by a patch, what he calls a patchwork quilt of measures, that one can do things in a Budget that benefit people across all sectors of the social interest groups in Gibraltar. Or perhaps he wanted me to do a seamless quilt, which is presumably the opposite of a patchwork quilt, would have been a Budget that had things only for business in it. Is that what he wanted me to do? Well, any properly balanced Budget has necessarily got to be a quilt patchwork. So, wake up, the future is not as bright as the Government say it is. What he means is, I tell you that even though the future is very bright, I tell you that it is not very bright, regardless of the consequences of that to Gibraltar and confidence in Gibraltar by foreign investors, in the hope of persuading you, Mr Voter, to vote for me and not for the Government that has presided over the most successful, prosperous, socio-economic decade in Gibraltar's development ever. That is what he means. That is the wake up call that he has given to the people of Gibraltar. A wake up call that the people of Gibraltar have now rejected four times, and that if he does not improve his debate, if he does not develop a political vision, if he does not start behaving in a way which inspires confidence in the people of Gibraltar, is almost certainly going to be a fifth.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

I have the honour to move that the House should resolve itself into Committee to consider the Appropriation Bill 2009, clause by clause.

THE APPROPRIATION BILL 2009

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

Clause 2

CONSOLIDATED FUND EXPENDITURE

HEAD 1 EDUCATION AND TRAINING

Head 1-A Education
Subhead 1 Payroll
Subhead 2 Other Charges
Head 1-A Education – was agreed to and stood part of the Bill.

Head 1-B Training
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 1-B Training – was agreed to and stood part of the Bill.

HEAD 2 CULTURE, HERITAGE, SPORT AND LEISURE

Head 2-A Culture and Heritage
Subhead 1 – Payroll
Subhead 2 – Other Charges

HON DR J J GARCIA:

In relation to Other Charges, (3) Heritage Expenses, (f) Gibraltar Heritage Art Work, can the Minister say what the £45,000 under that Subhead was for and why only £1,000 is estimated for this financial year?

HON E J REYES:

Yes, during the last year the Government took the opportunity to purchase very valuable pieces of art work by a Gibraltarian artist. In fact, a member of the Freedom of the City of Gibraltar, that is, the late Gustavo Bacarisa, that was the expenditure. What we have done is, in case something should come up again this year, we have put in the £1,000 provision. In due course, I shall inform this House when those paintings will be presented to the public and formally come out through a good exhibition, so that the whole of Gibraltar can benefit from its heritage from a Gibraltar-born artist.

Head 2-A Culture and Heritage – was agreed to and stood part of the Bill.

Head 2-B Sport and Leisure
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 2-B Sport and Leisure – was agreed to and stood part of the Bill.

HEAD 3 HOUSING

Head 3-A Housing - Administration
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 3-A Housing - Administration – was agreed to and stood part of the Bill.

Head 3-B Housing - Buildings and Works
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 3-B Housing - Buildings and Works – was agreed to and stood part of the Bill.

HEAD 4 ENVIRONMENT AND TOURISM

Head 4-A Environment
Subhead 1 – Payroll
Subhead 2 – Other Charges

HON F R PICARDO:

Yes, in subhead 2 at (3)(d), there is an increase in the actual for 2007/2008 of £219,000, up to £420,000 this year, almost a

doubling of the figures estimated for last year. Does that include the new equipment which might be necessary to deal with the surfeit of PM_{10}s which the Minister told us was going to be analysed with equipment that was to be acquired but he was not sure what the equipment was and the cost might be, is that included in that figure or not included?

HON LT-COL E M BRITTO:

Yes, the existing contract has been extended to provide a programme to submit an application for time extension notification for PM_{10} and Nitrogen Dioxide. I described earlier on today what the programme does. I can give him the details if he wants them.

HON F R PICARDO:

It is inclusive of that figure?

HON LT-COL E M BRITTO:

It is inclusive, it is an extension to the existing programme.

HON F R PICARDO:

In respect of the same subhead at (3)(i)(II), the Other Contract in respect of the control of seagulls, we see a forecast outturn this year of £8,000 rising to £100,000 in the estimate for next year. Is it that the operation is going to continue throughout the year, it is not going to be seasonal, or is it that they are provisioning for a different type?

HON LT-COL E M BRITTO:

No, that was the provision for the contract to carry out the intensive exercise that has just been concluded.

HON F R PICARDO:

I see, so that is for the two or three months of work, £100,000 for the two or three months of work?

HON LT-COL E M BRITTO:

Yes, it includes the visits previously, the recce, the work that has been done and also the planning and the exercise for preparing proposals for future work, should the Government decide to accept proposals when they come.

HON F R PICARDO:

But not the cost of that future work?

HON LT-COL E M BRITTO:

Not the cost of that future work.

HON F R PICARDO:

So, should I read the £100,000 and the £8,000 together? So it is £108,000 for the work that was done straddling the end of the financial year?

HON LT-COL E M BRITTO:

The hon Member is correct, the £8,000 is the initial costs in the last financial year and £100,000 estimate of costs for this year.

HON F R PICARDO:

So it is estimated cost or did the Minister say they had already done, it is £108,000, the contract price?

HON LT-COL E M BRITTO:

It is about that order of costs, I have not got the exact contract figure here but it is that order of costs.

HON F R PICARDO:

How many individuals were involved in this process?

HON LT-COL E M BRITTO:

Quite a lot, off the top of my head, in the order of ten different individuals or maybe more at different stages.

HON F R PICARDO:

What was the period of the contract?

HON LT-COL E M BRITTO:

Six to eight weeks, if I remember rightly.

HON F R PICARDO:

Okay, a bit further down on (j), the Water Framework Directive, there is a provision there of £95,000. Is that in terms of works for compliance with that Directive or equipment?

HON LT-COL E M BRITTO:

No, these are funds that have been expended or are being expended in developing the monitoring programme for coastal and ground waters. They were previously met from I&D because they were capital funds, this is now, because the capital has been expended and the equipment is in place. These are now recurrent costs so they have been brought from the I&D into the recurrent.

HON F R PICARDO:

Okay, there is no note to that effect as the Minister will see, but so be it. Mr Chairman, in respect of (4)(d) there, the Street Cleansing with Master Service (Gibraltar) Limited, that said, there is an increase of £500,000 in the estimate for last year, and of the actual for the year before, £300,000 extra on the forecast outturn, is that employment cost, wage costs?

HON LT-COL E M BRITTO:

I am told that it includes expenditure on equipment, and also an increase in recurrent expenditure.

HON F R PICARDO:

So we buy the equipment for Master Service and we meet their costs of doing business, their increase in cost for doing business for us, is that right?

HON LT-COL E M BRITTO:

That is correct. It is cost plus contract and this is the financing of it. They get a loan and we pay for the service as we go along.

HON F R PICARDO:

They get a loan did the Minister say?

HON CHIEF MINISTER:

They acquire the equipment using their own resources and then they pass through the contract charge, increases by the financing costs that they have incurred.

HON F R PICARDO:

On (5)(b)(1), Disposal of Refuse, we can see an estimated drop there of £900,000 on the forecast outturn. What is the reason for that, we are now estimating that we will be able to dispose of part of that with the operation of the new incinerator?

HON LT-COL E M BRITTO:

Which subhead exactly are we talking about?

HON F R PICARDO:

(5)(b) Refuse Disposal (I).

HON LT-COL E M BRITTO:

2(5)(b)(I) Disposal of Refuse.

HON CHIEF MINISTER:

That is the fact that we are now disposing of our own clinical waste………

HON F R PICARDO:

Exactly, that is what I was suggesting. Is that operational already? Are they confident it will be operational within the financial year so that they are making………

HON LT-COL E M BRITTO:

It has been operational for quite some time.

HON F R PICARDO:

For all purposes?

HON LT-COL E M BRITTO:

For the disposal of clinical waste.

HON F R PICARDO:

For the disposal of clinical waste. Is it being used for other purposes as well?

HON LT-COL E M BRITTO:

What other things are we thinking about?

HON F R PICARDO:

Burning of animals, for example.

HON CHIEF MINISTER:

Just so that there is no misunderstanding, the balancing figure is now in the Gibraltar Health Authority budget, because that is where most of the clinical waste comes from.

HON F R PICARDO:

In terms of the Epidemiological Study, which has challenged so many of us as we have attempted to pronounce it throughout the session, the £150,000 is the total contract price or is this financial year only going to be part of the period when the study is going to be financed?

HON CHIEF MINISTER:

Yes, I am told that at the time that the book was published, printed, the tenders had not yet been received and evaluated and that was just a provision. In fact, the tender sum is lower than that.

HON F R PICARDO:

That is the full amount of the cost of the epidemiological study?

HON CHIEF MINISTER:

It is less.

HON F R PICARDO:

It is in one financial year, or is this the sum for one financial year?

HON CHIEF MINISTER:

The full amount is less than that, but I cannot be certain that the study does not straddle more than one financial year.

HON F R PICARDO:

How is the consideration payable?

HON CHIEF MINISTER:

Well, I suppose they will take a cheque.

HON F R PICARDO:

I mean in one lump sum or in instalments?

HON CHIEF MINISTER:

No, I think there is a programme.

HON F R PICARDO:

What is that programme?

HON CHIEF MINISTER:

I do not know. I am being told that it is envisaged that it will all be finished during this financial year, because I am just being reminded that the results are expected by January.

HON F R PICARDO:

If the Chief Minister has the agreement there or has access to it, could he tell us how the consideration is payable, in what period the consideration is payable? Did the Minister say that he had not been involved?

HON LT-COL E M BRITTO:

I have not been involved in the negotiation of the contract.

HON F R PICARDO:

The Minister has not been involved?

HON CHIEF MINISTER:

These things are done by the Chief Technical Officer and his department, as is appropriate.

HON F R PICARDO:

I would have thought he would want to know as the Minister for the Department.

Head 4-A Environment – was agreed to and stood part of the Bill.

Head 4-B Technical Services
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 4-B Technical Services – was agreed to and stood part of the Bill.

Head 4-C Tourism
Subhead 1 – Payroll
Subhead 2 – Other Charges

HON DR J J GARCIA:

Can I ask in relation to the two new subheads, (1)(f) and (3), can I ask exactly what the House is being asked to vote on there? What is that for?

HON LT-COL E M BRITTO:

Subhead (1)(f) is not a new subhead, it is for the Upkeep of Plants, the Green Arc contract and last year this expenditure was being charged to another subhead, General Embellishment 2(2)(e). So it is just a change of subhead, no new expense. The next one, (3), is for History Alive, this is what the hon Member sees on Saturday mornings, the Re-enactment Society marching up and down Main Street. Again, it was previously charged for as Sites Expenses. It is now, as I said, a new subhead but not new expenditure.

HON DR J J GARCIA:

In relation to (4), which is the Tourism Marketing vote, if I remember correctly traditionally this has just been one vote with one sum of money. This year it is divided into two. Can the Minister say why that is?

HON LT-COL E M BRITTO:

Yes, I certainly can, for a start, the hon Member may see a difference in the total amount from what it has been in previous years, this is not a reduction in the marketing vote but the fact that it is £110,000 of expenditure which has been transferred to another Ministry, because they were not, strictly speaking, tourism events and the division between what is seen there is, in effect, the expenditure of the marketing controlled by the GTB, the £712,000, whereas the London Office heading is for back-up and expenses incurred directly in London.

HON CHIEF MINISTER:

The hon Member can find those other items that have been taken out of this vote in the Heritage and Culture, things like the Dog Show and things like that, which used to be there and are now thought better to belong in the Heritage and Culture vote.

Head 4-C Tourism – was agreed to and stood part of the Bill.

HEAD 5 FAMILY, YOUTH AND COMMUNITY AFFAIRS

Head 5-A Family and Community Affairs
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 5-A Family and Community Affairs – was agreed to and stood part of the Bill.

Head 5-B Youth
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 5-B Youth – was agreed to and stood part of the Bill.

HEAD 6 ENTERPRISE, DEVELOPMENT, TECHNOLOGY AND TRANSPORT

Head 6-A Enterprise
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 6-A Enterprise – was agreed to and stood part of the Bill.

Head 6-B Transport - Port and Shipping
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 6-B Transport - Port and Shipping – was agreed to and stood part of the Bill.

Head 6-C Transport - Aviation
Subhead 1 – Payroll
Subhead 2 – Other Charges

HON DR J J GARCIA:

Can we go back to 6C? This is 6C(2)(d), Aviation Security Assessments, can I ask the Minister what the £8,000 is for?

HON J J HOLLIDAY:

The £10,000, £15,000, the £100,000?

HON DR J J GARCIA:

No, the………

HON J J HOLLIDAY:

What Head is the hon Member looking at?

HON DR J J GARCIA:

Head 6C 2(d). 2(I)(d) sorry.

HON J J HOLLIDAY:

Aviation Security, yes, that is the Transec contract.

HON DR J J GARCIA:

The Transec contract is for what? What exactly is that contract for, the security of the airport, the terminal?

HON CHIEF MINISTER:

The Government have a contract with Transec to carry out a periodic assessment of the compliance by Gibraltar airport with aviation security norms and standards. They are the ones with the expertise, it is an audit. I mean, the management has responsibility but they come out to audit to make sure that our systems, baggage handling, et cetera, airport perimeter, are up to the required IATA standards, and Chicago Convention standards.

Head 6-C Transport - Aviation – was agreed to and stood part of the Bill.

Head 6-D Transport - Vehicle, Traffic and Public Transport
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 6-D Transport - Vehicle, Traffic and Public Transport – was agreed to and stood part of the Bill.

Head 6-E Postal Services
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 6-E Postal Services – was agreed to and stood part of the Bill.

Head 6-F Broadcasting
Subhead 2 – Other Charges

HON F R PICARDO:

Yes, the forecast outturn for this year is £130,000 over the estimate which was zero for the GBC Review and Audience Survey. Is that the total cost of the King Review?

HON J J HOLLIDAY:

Yes, that is the total of the King Review.

HON F R PICARDO:

Is the £1,000 a provision?

HON J J HOLLIDAY:

Well, it is a provision in case there are further reviews to be undertaken during the course of this year.

HON F R PICARDO:

Right, and what is the cost of the Review and what is the cost of the Audience Survey?

HON J J HOLLIDAY:

The Audience Survey was £79,105 and the GBC Review was £50,750.

HON F R PICARDO:

Who carried out the Audience Survey?

HON J J HOLLIDAY:

There was some consultant company which was appointed by Alan King to actually do the survey.

HON F R PICARDO:

Do the Government anticipate that that provision will result in greater expense? We are already a few months into the year, have they seen the need to increase the spend there already?

HON J J HOLLIDAY:

No, we do not foresee that but we are making a provision for it in case.

Head 6-F Broadcasting – was agreed to and stood part of the Bill.

Head 6-G Utilities
Subhead 2 – Other Charges
Head 6-G Utilities – was agreed to and stood part of the Bill.

HEAD 7 HEALTH AND CIVIL PROTECTION

Head 7-A Health
Subhead 2 – Other Charges
Head 7-A Health – was agreed to and stood part of the Bill.

Head 7-B Civil Contingency
Subhead 2 – Other Charges

HON DR J J GARCIA:

Can I ask in relation to subhead 2, Civil Contingency Planning, what the £65,000 we are being asked to vote there is? What that money is for?

HON MRS Y DEL AGUA:

Precisely to cover civil contingencies, training………

HON DR J J GARCIA:

What is it leaflets, training?

HON MRS Y DEL AGUA:

Training equipment, necessary equipment for the different essential services, that sort of thing.

Head 7-B Civil Contingency – was agreed to and stood part of the Bill.

Head 7-C Fire Service
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 7-C Fire Service – was agreed to and stood part of the Bill.

HEAD 8 ADMINISTRATION

Head 8-A No. 6 Convent Place
Subhead 1 – Payroll
Subhead 2 – Other Charges

HON F R PICARDO:

Yes, in respect of 2(4), the Statistics Office, we see that the estimate this year is exactly the same as the estimate for last year, but the forecast outturn this year did not make it to £57,000, at least at the time that the book was being prepared, does this include the cost of the new retail price index review? The review to create a new retail price index, the family allowance?

HON CHIEF MINISTER:

Yes it does, I think there are relatively few extra costs because most of the work is done by the staff of the Unit. There may be some enumerator costs there but they will be small.

HON DR J J GARCIA:

There is a vote also for the Madrid Office at £147,000. Is that indicative of the intentions of the Government in relation to its future? Subhead 2(8)(c).

HON CHIEF MINISTER:

It is not indicative of a decision not to close it. It is just that the decision has not been made and, therefore, the funding should stay there in case the decision is made to keep it. But it may very well close.

HON DR J J GARCIA:

Is that money mainly rental of the office space?

HON CHIEF MINISTER:

Yes, all the running expenses, rental, things of that sort, yes. Mainly rental.

HON F R PICARDO:

Just above that, in respect of the London Office, we have seen the cost go up from an actual in 2007/2008 of £400,000 and I think this straddles the period when the offices moved that has more than doubled, or almost doubled. Is there a reason for that? Is it that there are greater operating expenses in the new building, or is it transitional?

HON CHIEF MINISTER:

Yes, it includes the rent so there has been an increase in rent. Remember that the Government, this is the Consolidated Fund, whereas the landlord is actually the Strand Property Company Limited. So the Government are paying this rent, which is in a higher sum than was previously being paid to the previous landlord, certainly, so there has been an increase in rent, but the increase is mainly rent. I think that there is also a couple of staff members' increase but the lion's share is not that. The lion's share is the higher rent that is being paid by the Gibraltar Office to the landlord, now albeit a Government-owned company. That is the revenue that the Government-owned company uses to service the mortgage on it.

HON DR J J GARCIA:

Can I ask, in relation to 2(3), which is the Governor's Office expenses, we are being asked to vote £50,000, what is that money for?

HON CHIEF MINISTER:

It is a historical thing, where the Government have always made a contribution to the administrative costs of running the Governor's Office. I suppose it is on the basis that he does have some constitutional, but it is very historical and it does not increase. So it is economically decreasing if not in absolute terms, and the Government just have not seen fit to sort of withdraw the funding altogether. The Governor, after all, is not the Foreign Office's representative here, he is the Queen's representative here, the Queen in her capacity now we know as Queen of Gibraltar. We think it is appropriate, therefore, that we should make a contribution to the costs of running his office. On top of that he has got some constitutional functions within Gibraltar, relating mainly to internal security and police and things of that sort.

HON F R PICARDO:

This increase in the cost of Government Communications, Information and Lobbying, which we see a provision being made for £248,000, which is a very precise figure, is that a new employee?

HON CHIEF MINISTER:

Xxxxxxxxxx

HON F R PICARDO:

He takes a commission as well?

HON CHIEF MINISTER:

Yes, if he did not include a commission I would expect the sum to be higher.

HON F R PICARDO:

What is it based on the advertising in 7 Days or something else?

HON CHIEF MINISTER:

I think that is a combination, there used to be another xxxxxxx

HON F R PICARDO:

There is no note.

HON CHIEF MINISTER:

It is a combination of two things, first of all the hon Members will see that the Washington Office is a disappearing vote, even though we are still paying the functions, that is a physical office, but we have still retained Mr Stieglitz in a capacity which is now categorised as Government communications and lobbying, and there is also a small increase in the provision, since this is an item that is almost xxxxxx. So, it is not just that there is also a small xxxxxx

HON F R PICARDO:

Just in point 18, over the page, which is the Theatre Royal rent, now, there is a provision there of £69,000 which from what the Chief Minister has said in one of the few facts contained in the three hours that we have been listening to the Chief Minister, appear to suggest that the Government had exercised their

option to acquire the lease of the Theatre Royal. Now, does that mean that this £69,000, therefore, will not be paid as rent?

HON CHIEF MINISTER:

There were lots of facts in my address, he may not have liked the rest of them but they were certainly factual.

HON F R PICARDO:

We can have the argument again if he likes. I have got all day.

HON CHIEF MINISTER:

It is not a matter of opinion, it is a matter of record.

HON F R PICARDO:

It is my opinion that it is a matter of opinion.

HON CHIEF MINISTER:

It is in my view, which I will demonstrate publicly as often as he entices me to, is that that is a provision for rent because until completion takes place we have to carry on paying rent.

HON F R PICARDO:

Does the Chief Minister have a price already in respect of the exercise of the option?

HON CHIEF MINISTER:

I have not got the exact figure, I think it is somewhere in the order of £1.5 million.

HON F R PICARDO:

Does the rent that has already been paid go towards the option?

HON CHIEF MINISTER:

No.

HON F R PICARDO:

That is not the way the option was phrased, otherwise it would have been paid for already. Now that really would have been astute.

HON CHIEF MINISTER:

It would not have been astute, it would have been theft.

Head 8-A No. 6 Convent Place – was agreed to and stood part of the Bill.

Head 8-B Human Resources
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 8-B Human Resources – was agreed to and stood part of the Bill.

HEAD 9 FINANCE

Head 9-A Finance Ministry

Subhead 1 – Payroll

HON F R PICARDO:

We see a reduction in the estimate for this year to below the actual for two financial years ago, what is the reason for that? Is there a reduction in the numbers there?

HON CHIEF MINISTER:

There is no reduction, the bottom line is higher, but the build up information is now split into two divisions. In other words, the gambling division has been separated from the other, but the bottom line is the same. The bottom line is estimate £317,000 forecast £369,000, estimate for this year £415,000.

HON F R PICARDO:

So there are less numbers in the salaries that are accounted for under the Ministry and they are accounted for somewhere else, they are accounting for them under the gambling division then.

HON CHIEF MINISTER:

I have just explained it to the hon Member, it is all there, it is all above the line. I know he has difficulty distinguishing between above and below the line.

HON F R PICARDO:

No, I have no difficulty with that however petulant he wants to be about things. I was asking him why the figure was not there, and he has kindly told me where it is and that is quite enough, thanks.

HON CHIEF MINISTER:

Next time I will not tell him then.

HON F R PICARDO:

He will be failing in his obligation to account for the people of Gibraltar. That is what he will be doing but it is a matter entirely for him.

Subhead 2 – Other Charges

Head 9-A Finance Ministry – was agreed to and stood part of the Bill.

Head 9-B Treasury
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 9-B Treasury – was agreed to and stood part of the Bill.-

Head 9-C Customs
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 9-C Customs – was agreed to and stood part of the Bill.

Head 9-D Income Tax
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 9-D Income Tax – was agreed to and stood part of the Bill.

Head 9-E Finance Centre
Subhead 1 – Payroll
Subhead 2 – Other Charges

HON F R PICARDO:

Yes, in 2(1)(e), the Office Rent and Service Charges, that seems to be going down. It is not as low as the actual for two years ago but it is going down to £84,000 from a forecast outturn this year of £98,000. Is there a reason for that? We are reducing the office space?

HON CHIEF MINISTER:

I am told that this reflects the fact that there is a dispute about the rent payable there, and that the figure of £98,000 relates to that. It has an element of arrears, the current figure there for £88,000 is the right amount for one year. There is not yet a final agreement on what the rent level is, either for this year or, indeed, for the previous year.

Head 9-E Finance Centre – was agreed to and stood part of the Bill.

HEAD 10 EMPLOYMENT, LABOUR AND INDUSTRIAL RELATIONS.

Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 10 Employment, Labour and Industrial Relations – was agreed to and stood part of the Bill.

HEAD 11 JUSTICE

Head 11-A Justice Ministry
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 11-A Justice Ministry – was agreed to and stood part of the Bill.

Head 11-B Courts – Supreme Court
Subhead 1 – Payroll
Subhead 2 – Other Charges

HON F R PICARDO:

In (2)(c) Law Reports Production, there is an outturn of £68,000 this year backed to the estimate of £40,000 for next year. Is that because of catching up with the reports that have not yet been printed?

HON D A FEETHAM:

No, the reason, in fact, was explained in my Budget speech last year and it is because we extended the contract, not only for the books but also for the production of those books onto the website, so that accounts for the extra expenditure last year. Now we are turning to what it has been historically, which is the £40,000 a year.

HON F R PICARDO:

Does the £40,000 now provide for the maintenance of the website or was that just a one off provision?

HON D A FEETHAM:

No, the maintenance of the website, the website itself, will be either a Ministry of Justice website that we, in fact, one that is under construction at the moment generally for the Ministry of Justice, or alternatively, the website that we have the laws of Gibraltar on. It is exactly the same website so there would not be an extra expenditure in relation to that.

HON F R PICARDO:

So what is the £28,000 being spent on, if we are still not clear which website it is going to be but we have already spent it, what is it exactly that we have spent it on? Scanning the reports or?

HON D A FEETHAM:

The hon Member means last year? Yes, well, it is for 1812 to 1979 there is an element of scanning in relation to that, and subsequent to that, as the hon Member knows, there are a number of gaps. Some of those gaps have in fact been plugged, others have not been plugged. The money was, in fact, paid in advance for the work that they are going to be doing in relation to the plugging of all those gaps. Of course, it involves an element of editing of the judgements, because they receive the judgements raw from us, they have got to edit it, they have got to add the head note, they have got to add the various references so that everything, in fact, correlates the head note to the judgement et cetera.

Head 11-B Courts – Supreme Court – was agreed to and stood part of the Bill.

Head 11-C Courts – Magistrates' and Coroner's Court
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 11-C Courts – Magistrates' and Coroner's Court – was agreed to and stood part of the Bill.

Head 11-D Attorney General's Chambers
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 11-D Attorney General's Chambers – was agreed to and stood part of the Bill.

Head 11-E Prison
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 11-E Prison – was agreed to and stood part of the Bill.

Head 11-F Policing
Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 11-F Policing – was agreed to and stood part of the Bill.

HEAD 12 IMMIGRATION AND CIVIL STATUS

Subhead 1 – Payroll
Subhead 2 – Other Charges

HON F R PICARDO:

On the EU Format Passports, I recall we were told in a recent debate, I do not know whether it was last year or the year before, that the expenses had been great because we had had to acquire new machinery, I believe, but now the expense seems to be staying in the region of over £100,000, when the actual in 2007/2008 had been down to £73,000 exactly. What is it that we are paying for? Is it the actual passports themselves or do we still have equipment costs?

HON CHIEF MINISTER:

There is no easy, simple explanation because it is a netting off effect. Basically, last year, a large sum of money was spent on the purchase of a stock of passports, but on the other hand, there are other things that have gone up, there are other things that are being bought in smaller amounts. So, there is not a single item which is declining which explains the difference, it is the effect of a netting.

HON F R PICARDO:

I accept that, but the subhead says "Passports" and we were told last year that this is the cost of the passports. What other things is it that we are buying that it is appropriate to book under that subhead?

HON CHIEF MINISTER:

Well, generally in relation to passports, which includes EU Format Passports, there is a sum of money spent on annual hosting, support maintenance and contract management by the FCO. There is an annual maintenance charge and support charge for the hardware, the genie equipment. There is the purchase of some more passports, a smaller number of passports than last year and there is the purchase of something called, I do not know what they are, 200 merrill sheet plus carriage. That must be some element of the passport ingredient. Then there is the provision for replacement of hardware and ancillary items, including consumer goods, ink and that sort of stuff. So that is what goes up to make the £120,000.

HON F R PICARDO:

Okay, most of that makes sense to me except the first item the hon Gentleman referred to which was "hosting". Is that hosting people from the FCO who need to carry out some maintenance?

HON CHIEF MINISTER:

No, I think that is the fact that it is all plugged in to a Foreign Office computer, it is part of a network.

HON F R PICARDO:

Hosting in the web sense, right.

Head 12 Immigration and Civil Status – was agreed to and stood part of the Bill.

HEAD 13 PARLIAMENT

Subhead 1 – Payroll
Subhead 2 – Other Charges

HON F R PICARDO:

There is an amount of £40,000 put in for CPA expenses, which is back to more or less the actual in 2007/2008, is that because we are not hosting anything this year? Is that what provided for the increased cost?

HON LT-COL E M BRITTO:

That was a one off expense for the hosting of the conference here in Gibraltar.

HON F R PICARDO:

Is it fair to assume that the cost of hosting the conference was the difference between the £40,000 that we provide for and it cost £70,000?

HON LT-COL E M BRITTO:

Yes.

Head 13 Parliament – was agreed to and stood part of the Bill.

HEAD 14 GIBRALTAR AUDIT OFFICE

Subhead 1 – Payroll
Subhead 2 – Other Charges
Head 14 Gibraltar Audit Office – was agreed to and stood part of the Bill.

HEAD 15 SUPPLEMENTARY PROVISION

Subhead 1(a) – Pay Settlements
Subhead 1(b) – Supplementary Funding
Head 15 Supplementary Provision – was agreed to and stood part of the Bill.

HEAD 16 EXCEPTIONAL EXPENDITURE

Subhead 1(a)
Head 16 Exceptional Expenditure – was agreed to and stood part of the Bill.

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

Clause 3

HEAD 17 CONSOLIDATED FUND CONTRIBUTIONS

Subhead 1 – Contribution to the Improvement and Development Fund
Subhead 2 – Contribution to Statutory Benefits Fund

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

Clause 4

IMPROVEMENT AND DEVELOPMENT FUND EXPENDITURE

Head 101 – Departmental

Subhead 1 – Works and Equipment

HON DR J J GARCIA:

Can I ask whether under 101 subhead 1(g), the Gibraltar Port Authority, whether that includes provision for the VTS system?

HON J J HOLLIDAY:

Yes it does.

HON DR J J GARCIA:

Also, the Chief Minister referred earlier to the purchase of gun boats or boats, something like that, larger vessel, is that included there?

HON CHIEF MINISTER:

I said nothing about gun boats.

HON DR J J GARCIA:

Where would the vessels be shown in the Estimates, or provision for them?

HON CHIEF MINISTER:

Only in the most notional sense, there is not substantive provision for them.

HON F R PICARDO:

In respect of (c), is that the provision being made for the move to digital, the £300,000 estimated for this year?

HON CHIEF MINISTER:

No, there may be some digital compatible equipment, this is their annual replacement programme, which I suspect they deploy with that in mind. So, there will be stuff that will be useable when they digitalise but it is not in any sense the cost of digitilisation.

Subhead 2 – Public Administration

Head 101 – Departmental – was agreed to and stood part of the Bill.

Head 102 – Projects
Subhead 1 – Environment

Subhead 2 – Beautification Projects

HON F R PICARDO:

In respect of Main Street South, does this include the areas just beyond Main Street, beyond Ragged Staff Gates or just up to Ragged Staff Gates?

HON CHIEF MINISTER:

I am almost certain that this is the original contract just for the Main Street South part of it.

HON CHIEF MINISTER:

This is where the Trafalgar interchange is.

Subhead 3 – New Roads and Parking Projects

HON F R PICARDO:

The sum for the Dudley Ward Tunnel Access Safety Works, is that the total estimated contract price for the works, or just for what it is anticipated will happen in this financial year?

HON CHIEF MINISTER:

Well, that is the significance of the balance to complete column. The balance to complete suggests that there is £1.5 million to be left, that is what that column indicates.

HON F R PICARDO:

If we spend the £3 million, will we have spent enough to have the tunnel reopen or do we have to spend more?

HON CHIEF MINISTER:

Yes, because the tunnel is hopefully reopening by the end of this year, calendar year. The work is divided into phases so the £3 million will see the tunnel reopen.

Subhead 4 – Tourism

Subhead 5 – Relocation Costs

Subhead 6 – Other Projects

Head 102 – Projects – was agreed to and stood part of the Bill.

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

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

The Schedule, Parts 1 to 3 – was agreed to and stood part of the Bill.

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Appropriation Bill 2009 has been considered in Committee and agreed to, without amendments, and I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Monday 29th June 2009 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 6.00 p.m. on Friday 26th June 2009.

MONDAY 29TH JUNE 2009

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 F R Picardo
The Hon Dr J J Garcia
The Hon C A Bruzon
The Hon S E Linares

ABSENT:

The Hon J J Bossano – Leader of the Opposition
The Hon G H Licudi
The Hon N F Costa

IN ATTENDANCE:

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

BILLS

FIRST AND SECOND READINGS

THE IMPORTS AND EXPORTS (AMENDMENT) ACT 2009

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this is the belated principal Act to amend the Imports and Exports Duty Act, to implement not this year's but last year's amendments to the import duty regime announced by me at my Budget speech last year. It deals with the elimination of the exemption from import duty of fuel for boats below a certain size, below 250 gross registered tonnes, the effect of which is, effectively, that yachts no longer buy duty exempt fuel, whereas cargo merchant ships do. It also increases the various rates of duty on the products that I announced last year, motor spirits and cigarettes, to the figures set out there in clauses 4 and 5 of the Bill, and also deals with the increase in automotive gas oil in sub clause (4) of clause 5 of the Bill. Hon Members will recall the measures, petrol, diesel and cigarettes, and this Act with retrospective effect, as permitted, makes the necessary amendments to the Act itself. I commend the Bill to the House.

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

HON DR J J GARCIA:

Mr Speaker, really our main point of concern in relation to this Bill, or one of them, is the fact that it has taken so long. What I was wondering, by way of clarification, is whether the Chief Minister could clarify why it is that we are implementing a Bill which seeks………, first of all the time taken and the point of clarification is whether this could not be done earlier. Is there a way it could be done sooner rather than wait until practically a year later to pass a Bill to give effect to last year's Budget measures? That is the first point. The second point is, in relation to the retrospective……… Obviously we are applying it retrospectively, it is something with which we are not really……… A measure of taxation, we are giving retrospective effect to a measure of taxation. It is something with which we are not really very comfortable, so really, the Opposition are going to abstain on the Bill.

HON CHIEF MINISTER:

First of all, the law, he may or may not be comfortable with it, but the law specifically provides for the circumstances in which taxation legislation can be retrospective, and when it cannot be. It can be retrospective when done by principal Act in this House, it cannot be retrospective when done under subsidiary legislation under any enabling power. This is entirely within the terms of the Constitution and entirely within the terms, indeed, of the Interpretation and General Clauses Act, which is the legislation that deals with these points. That said, so there is nothing untoward, it is not the first time it has happened, it is the first time that it has happened so far delayed. In other words, twelve months nearly and that is regrettable and I agree with the hon Member's comment that it has taken too long. There are reasons and explanations of an entirely bureaucratic nature,

they are not acceptable, there is no justification, reason or excuse for legislation taking this long to prepare and bring to the House. The Government feel it should have happened much more quickly than this and I can give him a commitment that it will happen more quickly than this in the future, even if it means Ministers personally exercising oversight over the legislation drafting process as well. So I agree with the tenor of his implied, albeit gently delivered criticism about the delay, I think he is right. I do not agree that it justifies them abstaining, this is a Budget measure, which arose last year. The measure itself is clearly not opposed by them, otherwise they would have opposed it during the last 12 months. They are opposing only the delay, that is not a reason not to provide statutory cover for increases that have not been imposed retrospectively. This, of course, has been paid by people from the day that I announced it in the Budget. So this is not a retrospective taxation in that sense of the word. Nobody now has to recalculate their tax backwards, nobody suddenly has to pay arrears of tax, this is just the legislation catching up with the events as they happened on the ground from day one. So, whilst I acknowledge and, in fact, agree with his criticism of the tardiness of this legislation, I can assure him that this is not a case of retrospective legislation as such. Still, I acknowledge his criticism.

Question put. The House voted.

For the Ayes:

The Hon C G Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon J J Holliday
The Hon L Montiel
The Hon J J Netto
The Hon E J Reyes
The Hon F J Vinet

Abstained:

The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon F R Picardo

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

THE COMPANIES (ACCOUNTS) (AMENDMENT) (NO. 2) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to transpose into the law of Gibraltar article 49(1) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC, and matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill transposes article 49(1) of Directive 2006/43/EC, as amended, and the Bill follows the Directive in its

language and content. The Bill requires entities falling within the scope of the Fourth Directive, whether they be public or private companies limited by shares or guarantee, partnerships, limited partnerships or unlimited companies, to specify separately in the notes to their annual accounts the fees paid to the statutory auditor for the following matters: the statutory audit, other assurance services, tax advice and all other services. This need not be applied to subsidiaries where they are included in the consolidated accounts of the group, and the appropriate information is given in the notes to those accounts. As small companies are not caught by the EU statutory audit regime, the Bill allows the Minister to dis-apply the requirement for small and medium size companies, provided the information can be provided on request to the public oversight system. Finally, the Bill requires an equivalent of disclosure in group accounts. The threshold for small and medium size companies are those set out in the Companies (Accounts) Act 1999. I commend the Bill to the House, with the comment that there is a small amendment to be proposed in clause 2, sub clause 2(p), the very last line in the first page of the Bill, where the first word "make" in that last line is a typographical error and should be deleted. I shall be moving an amendment to that effect at Committee Stage. Hon Members will find in Part 1 of Schedule 2 the matters from which small and medium size companies may be exempted, provided that they give out the information set out in Part 2 of Schedule 11. Sorry, did I say Schedule 2, I meant 11. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE COMPANIES (CONSOLIDATED ACCOUNTS) (AMENDMENT) (N0. 2) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to transpose into the law of Gibrlatar article 49(2) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC as amended by Directive 2008/30/EC, and matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill transposes article 49 of Directive 2006/43 as amended in relation to consolidated accounts of group companies, and as in the previous Bill, it follows the language and content of the Bill. So this Bill, together with the previous one, completes the transposition of Directive 2006/43 on statutory audits of annual accounts and consolidated accounts. The distinction between the two Bills is that one deals with accounts and the other deals with consolidated accounts. As I have said in respect of the previous Bill, this one makes an

even simpler amendment because it is a single one, to section 11(b) of the Companies (Consolidated Accounts) Act to require the disclosure in the accounts of the total fees for the financial year charged by the statutory auditor or audit firm, for the statutory audit of the consolidated accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non audit services. I commend the Bill to the House.
Discussion invited on the general principles and merits of the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

The House recessed at 9.50 a.m.

The House resumed at 10.30 a.m.

THE CHILDREN ACT 2009

HON J J NETTO:

I have the honour to move that a Bill for an Act to make provision with respect to children in general, parental responsibility, guardianship and fostering; to safeguard the well-being of children; to preserve the integrity of and to safeguard meaningful family relationships; to promote the amicable settlement of disputes that arise between parties to marriage and to mitigate potential harm to parents and their children caused by the process of legal dissolution of marriage or separation; to provide for different services by the Care Agency for children in need and others; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J NETTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill before Parliament today makes provision with respect to children in general, parental responsibility, guardianship and fostering; to safeguard the well-being of children; to preserve the integrity of and to safeguard meaningful family relationships; to promote the amicable settlement of disputes that arise between parties to marriage and to mitigate potential harm to parents and their children caused by the process of legal dissolution of marriage or separation; to provide for different services by the Care Agency for children in need and others. In November 2007, my Hon Friend Mr Daniel Feetham and myself, announced the creation of a working group on family law reform. Within the group, we have had lawyers from various chambers, who habitually practise in the area of family law, as well as representatives of Childline, the women's association Women in Need, the Parental Support Group, the Citizens Advice Bureau and representatives of the former Social Services Agency. The purpose of the working group was to put forward and consider proposals for law reform, which are intended to help those undergoing parental separation to better resolve disputes so that children's needs, are better met and allow proposals to focus strongly on what children need and how parents can be assisted better to meet those needs during and after the relationship breakdown. It has been clear, both to my Hon Friend and myself, from the very beginning of this process, that all of us within the group have worked tirelessly to produce a Bill in which

the interests of the child is paramount, and that the Bill is fair to all stakeholders involved in the process. I would like to profoundly thank all members of the group for their dedication in this endeavour, and in particular to Daniel Feetham for his stewardship and indefatigable contribution to this whole venture. As we are aware, many children suffer a sense of loss or grief as a result of losing contact with one of their parents. Some claim that the current law, or its interpretation in practice, does not give non-resident parents, usually fathers, the relationship with their child that they should have. Some non resident parents, usually fathers, feel the courts are biased towards the status quo and favour the resident parent, most often mothers, and that delays in arriving at decisions worsen these tendencies. Relatives in the wider family, particularly grandparents, lose contact following separation, in particular, where their contact is linked to the non resident parent. Some resident parents usually mothers, feel frustrated that the other parent makes insufficient effort to keep in touch with their child. The process for identifying and verifying safety issues is ineffective and slow. The current legal aid structure rewards litigation rather than settlement. The lengthy and adversarial nature of the court proceedings can exacerbate acrimony between separating couples, making things worse rather than better. Some resident parents, mostly mothers, feel that the courts allow contact in a way that puts their or their child's safety or well-being at risk. Resolution is treated as a one-off event rather than an on-going process of which parents need to work over a long term. Court ordered contact is poorly enforced and as some cases go back to court repeatedly, with the court being unable to resolve them. The likelihood of adverse outcomes for children from separated families is roughly twice that for other children, and the UK Social Exclusion Unit Part 12 reports, highlighted poor family relationship and parenting as key risks to children's chances of success in later life. Up to half of young offenders come from separated families. Young people with a lone parent are twice as likely, and those living with a parent or step-parent, are three times as likely to run away as young people living with two birth parents. Girls from separated families are at greater risk of teenage pregnancy and the daughter of a teenage mother is one and a half times more likely to become one herself than the daughter of an older mother. By the age of 33, those who have experienced parental divorce as children, 16 and under, were almost twice as likely to lack formal qualifications as adults, 20 per cent compared to 11 per cent. At the age of 33, men who experienced divorce when aged 0 to 16, were twice as likely to be unemployed than those who experienced no parental separation, 14 per cent compared to 7 per cent. Post separation parental conflict can lead to emotional and behavioural difficulties for the child, and the weight of evidence suggests conflict has a negative impact on a child's development and adjustment. In view of the above, the proposed Children Act 2009 sets out the principles having a court decision concerning a child, the child's welfare must be paramount consideration. Further, the child's wishes and feelings should be ascertained and taken into account, depending on the child's age and level of understanding. This principle pervades all aspects of the legislation and not just those areas involving parental separations. The Bill in Part 2 outlines pre-hearing procedure in the court where lawyers are involved. It is important that they promote resolution rather than conflict. The Government are currently restructuring legal aid and we hope many of the measures introduced in the proposed Children Act 2009 serve to incentivise early dispute resolution in cases where a solicitor is consulted. The Government want to use legal aid to promote resolution and agreement, rather than to promote disputes to go to court. Collaborative law is a system in which both parents and lawyers are committed to promoting settlement. They cannot take the case into court if these fail. Instead another solicitor would have to be instructed. If necessary, settlement can be underpinned by the court being asked for a consent order to be made. Family mediation involves couples sitting down together with a mediator, with a view to reaching agreement. The parties to mediation are encouraged to seek independent legal advice on any agreement reached. As with collaborative law, agreements may be underpinned by a consent order from the courts. The Government recognise that in some cases mediation can play an important role in family dispute resolution. The Bill, in its Part 3, provides for parental rights and

responsibilities. The Bill aims to ensure equality between parents and parental responsibility. On the issue of parental separation, the Government firmly believe a child's welfare is best promoted by a continued relationship with both parents, as long as it is safe to do so. This approach has been confirmed by a series of court decisions in England and Wales, and is widely supported among all those who work with parents and children within the current system. The Government are taking a step further than the Anglo Welsh system, by enshrining the principle in the legislation. The Bill also recognises that grandparents may also, in certain circumstances, have a proper interest in applying for parental responsibility in relation to a child in a separation/divorce situation. For example, because they have been effective carers of the child, and in relation to other parts of the Act, for example, care proceedings. This is particularly important in a community such as Gibraltar, where grandparents play a special and important role in respect of children. The Bill aims to move away from the terms such as "custody" or "care and control", which in our view, not only contributed to the adversarial nature of matrimonial proceedings, but also reflected an antiquated ethos that a child is the possession of his parents. The term "parental responsibility" which now replaces the old terminology, better describes the modern relationship between a child and his parents and between the parents themselves in relation to their child. There will be a resident parent and a non resident parent, but both have parental responsibility towards the child. Further, the term "parental responsibility" denotes that on the basis of equality between them, parents have a responsibility to care, educate and maintain the child or the children. In order to do so, they exercise powers to carry out their duties in the interests of the child, and not because of an authority which is conferred on them in their own interest. Part 4 of the Bill provides for guardianship. The Bill in Part 5 provides for orders in respect of children in family proceedings. The Bill aims to introduce the concept of residence and contact orders. There will be a resident parent with parental responsibility and a non resident parent, also with parental responsibility with given contact. For those cases where there is a failure to comply with the terms of a court order, more diverse enforcement mechanisms are needed by the court, despite the range of improvements described above. The Bill gives the court powerful tools to enforce court orders. Far too many parents are reporting to Government the fact that despite having the legal right to see their children, those children have been alienated from them. At the moment, a judge can commit someone to prison where they refuse the other parent from seeing the child. Imprisoning a parent, however, is rarely in the best interests of the child. Further, in some cases, it is the child himself or herself that refuses to see one parent because of pressure, often subtle, by the parent with care and control that is resident, or the extended family of that parent. Part 6 of the Bill provides for contact with children. Parental alienation is a real issue and by section 31 and sections 38 to 47, the Bill gives the court extensive powers. These include reversing a residence order and restraining members of a wider family from having any dealings with the child, where they are responsible for alienating that child as against one of his parents. They also include unpaid work orders, fines, and where the non resident parents has a holiday booked with his children and the resident parent obstructs or prevents the children from going on that holiday, the court has the power to order compensation for the non resident parent. The court also has the power to place the child with a member of the extended family, for example, grandparents until it is satisfied the issue of parental alienation is dealt with. Part 7 provides for financial provisions for children. This Part aims to make provision for financial relief against parents. Section 49 of the Bill provides for financial relief for any person over the age of 18 in certain circumstances. Part 8 of the proposed Children Act 2009, contains extensive provisions to protect all children at risk. Section 93 of the Bill provides for the child protection community to provide a joint forum to allow for a close working relationship between the agency, the police service, medical practitioners, community health workers, the Education service and others, who share the common aim of protecting children at risk, and for developing, monitoring and reviewing child protection policies. The Bill also provides for care and supervision orders. Care proceedings are a central area of child care law and the Government propose to improve them and the interests of a

better outcome for the child involved will be a better feature of the new legislation. In particular, new improved grounds for the making of a care order and a discharge will be provided in addition to a strengthened supervision order and a new custody order, for those cases where responsibility for the child can be satisfactorily assumed by someone other than the agency, such as a grandparent. The Bill also proposes that the court should have the power to make an interim care order, only after care proceedings have been initiated under strict rules as to the grounds and duration. The limits and duration should be maintained because of the crucial importance of determining the child's future as soon as possible. It will be necessary for there to be reasonable cause to believe that only the first two limbs on the grounds for a full order may exist, that is harm or likely harm attributable to the absence of a reasonable standard of parental care or adequate control. Secondly, that the power to remove or detain the child is necessary in order to safeguard his or her welfare during the interim period. Thus the agency, under an interim care order, could allow the child to remain at or return home. The maximum duration for an interim care order will be eight weeks, though it will be possible to apply for extensions of up to 14 days in exceptional circumstances. The agency will be expected to say how they intend to manage the care of this child during this period. The Bill proposes significant changes in the resolution of disputes about parental access to children in care. To begin with, there is to be a presumption of reasonable access enshrined in the legislation. The agencies encourage, where possible, to agree on access with the parent at an early stage, so that in the few cases where agreement cannot be reached, the dispute can be dealt with by the court at the time that the care order is made. The court will also have the power to determine subsequent disputes about what is reasonable access. Thereafter, the agency will be able to propose variations in access arrangements specified in an order, but if a parent or child objects, the agency will either have to refer the matter through a court or maintain the previous arrangement. These proposals will lead to some additional court work but they will mark an important step in making the legal framework fairer to parents who disagree with the agency's restriction on access to a child subject to a care order. The Government believe that this will be in the interests of all parties. Part 9 of the Bill provides for emergency protection orders. Under existing law, an application can be made through the courts for removal of the child to a place of safety. The place of safety order is unsatisfactory in various ways. For example, the grounds to not address the emergency nature of the need to remove the child. It is proposed to replace it by an emergency protection order. The new order will deal with circumstances where there is reasonable cause to believe that damage to the child's health or well-being is likely, unless he can immediately be removed or detained in a place of protection, for a period of up to the duration of the order. The responsibility for the child during this period will be with the applicant for the order. It will be explicit that he will have the responsibility of a person with actual custody of the child, in the interests of the child's well-being. The Bill also gives the police limited but important power to protect children. It provides that where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he can either remove him to suitable accommodation and keep him there, or take such steps as are reasonable to ensure that the child's removal from any hospital or other place in which he is then being accommodated is prevented. No child may be kept in police protection for more than three working days. During that time, specific duties are imposed on the police to act in the best interests of the child. This power cannot be seen in isolation but as part of the other provisions, for example, emergency protection orders, designed to protect children and the aim is to ensure there is no gap in the protection regime. For example, from a point at which a child is deemed to be at risk to the point at which an order is obtained from the court. The Bill imposes duties on the agency to take steps to protect children whom they have reasonable cause to believe are suffering from harm, or at risk of harm. That includes making such enquiries as are necessary, in order to take action to safeguard and promote the welfare of the child, or whether an emergency protection order should be made, or whether the child should be taken into care. Where access is obstructed or refused, the agency has to apply to the court for

an emergency protection order. Part 10 of the Bill provides for services to children in need. The Bill attempts to provide a detailed and holistic framework for services provided to children in need and to rationalise the law in this area. The Bill covers children being cared for by the agency in accommodation provided by the agency, as well as agency sponsored fostering or private fostering. The Bill places an obligation on the agency, where it appears to the agency that a child in need, who is less than seven years old, requires accommodation to place the child with a family relative or any other suitable person, or make any other arrangement as it deems appropriate for the care of the child. Section 115 of the proposed Children Act 2009, provides for establishing family centres. Family centres will play a vital role in facilitating contact. In particular, in those cases where contact has been, for whatever reasons, problematic. This may include a situation where there are safety issues, or simply where a child has to get accustomed to one of its parents. It will no longer be possible for one of the parents to keep a child from seeing the other parent, on the basis that the child does not want to go to the latter's home. Family centres will allow initial contact, which can then develop and expand into other types of contact, for example, overnight stays. Part 10 also provides for fostering. There are also detailed rules relating to agency foster carers, designed to ensure that children are protected and well cared for. There are rules in relation to numbers and the standards of care. When reviewing the legislation in relation to the protection of children, it became clear that there was a potential lacuna in this area of fostering, when it came to private fostering as opposed to agency fostering. The law at the moment does not require parents, who may privately foster a child to someone else, either for reward or not, to inform the agency. A private fostering is defined as caring and providing accommodation for a child under the age of 17 for a period of more than 28 days by someone other than the parent, a parent in parental responsibility to the child or a relative. This does not include children taken care of by the agency or any home approved by the agency. The distinguishing feature of private family placement is that, unlike voluntary care or fostering placement arranged by the agency in consultation with the parents, they are generally not paid for or arranged by the agency. The Bill requires that any child left with anyone for a period of 28 days, should be notified to the agency by the parent or the carer. The agency will then decide whether to take the child into care, or exercise any other power it has under the Act, or indeed, allow the child to remain with that carer. The Bill, however, provides for specific rules as to the minimum standard necessary before a child is allowed to remain in private foster caring. The Government, of course, believe that a child is best cared for by his or her own parent, but there are cases where the child is left with private carers and we want to make sure that the agency is notified of that fact. Once notified, the Bill recognises that there may be circumstances where the continuity of arrangement the agency may find, may be in the best interests of the child as long as certain standards are maintained. Part 11 of the Bill provides for enforcement of contribution towards the maintenance of children, and for enforcement of contribution orders. This Part also provides for the recovery of costs of services rendered by the agency and other procedures to make decisions in respect to a child. Part 12 provides for a duty to maintain a list of individuals unsuitable to work with children. The Bill creates a duty on the agency to maintain a list of people who, due to their record of working with children, are unsuitable to do so. The Government recognise they have to provide safeguards for individuals who are reported. Included within the legislation are detailed procedures to allow affected people to make representation that they should not be on the list, first to the Minister for Family Affairs and then a right to appeal to the courts. While the list will not be made public, prospective employers will be able to ask the agency whether a prospective employee is on the list. These measures are included following the experience in the United Kingdom involving high profile abusers of children by those who have previously lost a job working with children, on the grounds that they have either harmed children in their care or place them at risk but those same persons are then employed elsewhere. The Bill is an attempt to provide wholesale protection for children, from divorce proceedings to children in need, from disabled children to children without disability. The Bill will represent a C

change in the way these matters are approached, to ensure that our children receive the protection they need and deserve. I commend the Bill to the House.

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

HON F R PICARDO:

We certainly welcome the introduction of this Bill. It is right to say that this Bill represents a C change in the way that these matters will be dealt with. Too often these are matters which lead only to emotional moments for children, as much as they do for the parents involved in disputes. The law in Gibraltar has clearly fallen behind in terms of the needs of this community, and it is right that we should be dealing with these issues today. We will not be taking, of course, therefore, any substantive issue with the principles or merits of the Bill. I see that there are only very minor transitional provisions in respect of the Minors Act and the Fostering Act, in section 159, and perhaps in reply the Minister can tell us whether they feel that there is no need for any further transitional provisions in respect of on-going proceedings, which may not relate to those Acts in particular, but which may relate to the general powers inherent in the court and to the provisions of the Matrimonial Causes Act, which have given the courts jurisdiction to deal with similar issues, or some of the issues which arise under these new provisions already. Hon Members will have seen that I circulated at the end of May proposed amendments, to include in this Act provisions to deal with indecent photographs of children. The Minister has told us that the police are given limited but important powers for the protection of children in respect of this Act. We believe that the police should also be given wider powers in respect of the protection of children who are abused by the taking of indecent images of them, and those amendments have been circulated. I have had an indication, in the public pronouncements from the Minister, that they intend to do these things in a different way and they will not be supporting our amendments. We will put them nonetheless, at the Committee Stage. We would propose, although I have not given any numbering to the proposed amendments, for the reason that I set out in my letter, that I was happy to hear where the Government thought they should go, if they were to agree to the introduction of them, but given that it appears that they will not, we would propose that these amendments should be provided for in a new Part 13, so that sections 156 to 159 at present would be renumbered as a new Part 14, so therefore these will be included as the penultimate part of the Bill. The Opposition will be supporting the Bill.

HON D A FEETHAM:

Just dealing with the first point that the hon Member made, which is the point about transitional provisions in relation to the Minors Act and the other Act he mentioned, in fact, if the hon Member would care to read section 159(2), he will see that it says “notwithstanding the repeals of the Acts by subsection (1) any order may, or any action taken or proceedings started under the repealed Act, shall continue in operation as if this Act had not come into operation”.

HON F R PICARDO:

That is exactly my point, that that subsection deals only with orders made in respect of the Minors Act and the Fostering Act, which I understand are the ones that deal principally with children. But the Minister will know that there are provisions which allow the court to deal with issues relating to the general sweeping up after a marriage has ended. Like, for example, the provisions to make ancillary orders under the Matrimonial Causes Act, which is often the provision that is relied on by the court. Neither of those are the Act, the Matrimonial Causes Act is not mentioned there. That is why I am saying, do the Government feel that those are the only two provisions in respect of which they need to make transitional provision?

HON D A FEETHAM:

In actual fact, subsection (2), although it is expressly stated, it does not need to be expressly stated in the sense that this Act only comes into operation from the day there is notice of commencement in the Gazette. The Act itself does not affect any steps that have been taken under proceedings, under any other Act, prior to the coming into operation of this Act. So, in other words, the point that the hon Member makes, it does not arise because it does not affect orders that have been taken previously or proceedings that have been taken previously. Now, in proceedings where, for instance, there may well have been orders that have been made for care and control and custody et cetera, it is open to the judge in those proceedings, in fact it is open to the parties in those proceedings, to invite the judge henceforth, from that point onwards, to effectively deal with the case in accordance with the Children Act. But technically speaking, it does not affect any steps that have been taken in relation to those proceedings under previous Acts. The other points that the hon Member made, in relation to the amendments, if I may, the Government will be voting against the amendments that the hon Member proposes on three grounds. The first ground is that generally we do not think that it is proper for these amendments to be made in this particular Bill, and I will come to that in a moment. The second point is that we cannot support a cut and paste job of outdated UK legislation that does not take into account the most recent advancements in this particular area. Thirdly, we cannot support the hon Member's amendments because, quite frankly, he confuses the very same UK regime that he purports to introduce into the Children Act. If I may take those one at a time. The general point, although the Children Act does create some criminal offences, they are essentially regulatory in nature and not related to sexual conduct or sexual offences. Sexual conduct is regulated by Part 12 of the Criminal Offences Act, which will be replaced in its entirety by the Crimes Bill. In the UK, in fact, child pornography is now dealt with in the Protection of Children Act, not the Children Act in the UK, Protection of Children Act, as amended by a whole series of criminal legislation. So, essentially, it is an Act that deals with criminal offences. This is not such an Act and it would be, in our view, quite inappropriate to deal with a criminal regime in the context of an Act of this nature. In fact, from a practical point of view, separating these offences, the offences that the hon Member wants to introduce into the Children Act, from the Crimes Bill would mean that the general provisions on, for instance, liability, accomplices, territoriality offences et cetera, will have to be read into the Children Act from the Crimes Act, and some of the definitions and transitional provisions of the Crimes Act would also need to be read into the Children Act. In our view, that is not desirable and, quite frankly, would create a mess of a regime that has taken the Government a long time, it is very well thought out and has taken the Government a year and a half to produce, both this one and, indeed, the Crimes Bill. Turning now to the second point that the hon Member seeks to introduce amendments, a cut and paste job of outdated UK legislation. In fact, the hon Member, when he circulated a copy of his proposed amendments to the press, he also annexed a copy of the Protection of Children Act 1978, and it is a copy from the UK statute law database. The second paragraph of that legislation that the hon Member circulated to the press says this, "there are effects on this legislation that have not yet been applied to the statute law database". In other words, to the database from which this legislation is actually printed out, for the following years, 2003, 2004, 2005, 2006 and 2008. That in itself ought to have led the hon Member on a trail of enquiry, he should have read what amendments there had been in 2003, 2004, et cetera, and he would have seen that, in fact, he has left out very important amendments indeed. These include, for instance, a defence that the photographs had been sent to someone, without that someone soliciting those photographs, either directly or indirectly, and that he had not retained those photographs for an unreasonable period of time. Now, one must bear in mind that these are quite draconian provisions, and to deprive ordinary members of the public potentially of that defence, in our view is not desirable indeed. He has also, for instance, left out the provision introduced by the Sexual Offences Act 2003 in the UK, which excludes from the offences the taking and use of

photographs by police forces in the course of investigations, and also in the course of criminal proceedings. Now, the hon Member would obviously not want our own Gibraltar Police force to be fighting crime in this area with both hands tied behind their backs. Now turning to my third point, the regime in the UK is a layered regime. At the bottom, there is the offence which we have in Gibraltar of publication of an obscene item. The sentence, in fact, for publication of an obscene item, until very recently in the UK, was three years, that is precisely the sentence that we have in our own statute here in Gibraltar, very recently it has gone up to five years. Then we have simple possession, which is introduced by section 160 of the Criminal Justice Act 1988, which also varies the Protection of Children Act, and that deals with simple possession with its own set of defences and the sentence for simple possession is, in fact, five years. We then have possession with an intent to distribute and there the sentence is ten years. Now, what the hon Member has, in fact, done is originally he circulated his amendments and he left out the words from his section 11A "possess or to". He then added in the second draft that he circulated, those words "possess or to". The effect of that, in fact, is to mix up simple possession with possession with intent to distribute. So, in other words, if we allow these amendments here today, somebody who has simple possession is deprived, for instance, of the defence that I outlined a few moments ago about receiving, because that defence, in fact, applies to simple possession, and he is then, to boot, faced with a sentence of ten years. So, what he has done he has not understood really the UK regime, the very same regime that the hon Member purports to be introducing by way of amendment today, and he really creates or potentially creates an injustice in relation to somebody who may not have invited receipt of any photographs, and then to boot he finds himself faced with a maximum sentence of ten years, when in the UK it is five years. I know that the hon Member's mantra in this House recently has been that we should not personalise matters and we should stick to the issues. It does not, of course, apply to Joyce from Vox, either his speech writer or, alternatively, his auto ego, the jury is still out in relation to that. But it is very difficult indeed, when faced with work of this nature, not to use the words or the phrases "incompetence", "has not done his homework properly", "lacks preparation", "shoddy work" and for all those reasons, the Government will not support these amendments.

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 today, if all hon Members agree.

Question put. Agreed to.

THE WILLS ACT 2009

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to revise and consolidate the laws relating to wills in Gibraltar, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill before Parliament revises and consolidates the provisions of the Wills Act 1964 No. 8 of Gibraltar. In accordance with our stated objective of repatriating all the statutes in the English Law (Application) Act to Gibraltar, the Bill repatriates the provisions of sections 1, 3 to 11, 13 to 33

of the UK Wills Act 1837, as applied by virtue of item No. 50 of Part 1 of the Schedule to the English Law (Application) Act 1962. The new Bill takes on board almost every provision of the Wills Act 1964 of Gibraltar, and amends the Schedule to the English Law (Application) Act by deleting item No. 50 of Part 1. The Bill will facilitate legal practice by way of using a single piece of modern legislation on wills. I commend the Bill to Parliament.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Imports and Exports (Amendment) Bill 2009;
2. The Companies (Accounts) (Amendment) (No. 2) Bill 2009;
3. The Companies (Consolidated Accounts) (Amendment) (No. 2) Bill 2009;
4. The Children Bill 2009;
5. The Wills Bill 2009.

THE IMPORTS AND EXPORTS (AMENDMENT) BILL 2009

Clauses 1 to 5 – stood part of the Bill.

The Long Title – stood part of the Bill.

THE COMPANIES (ACCOUNTS) (AMENDMENT) (NO. 2) BILL 2009

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

Clause 2

HON CHIEF MINISTER:

At the very bottom of the page, the last line, the first word in clause 2(2)(p), strike out the word “make”. “The Minister may by regulations provide” it should read, not “The Minister may make by regulations provide”.

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

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

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

THE COMPANIES (CONSOLIDATED ACCOUNTS) (AMENDMENT) (NO. 2) BILL 2009

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

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

THE CHILDREN BILL 2009

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

Clause 2

HON J J NETTO:

Mr Chairman, if I may? In clause 2(1), in the definition of "child care organisation", after the words "for the purpose of" substitute "Part XII" for "Part X", and substitute "or" for "and" at the end of paragraph (b).

Furthermore, still in clause 2(1), in the definition of "child care position", after the words "for the purpose of" substitute "Part XII" for "Part X", and substitute "or" for "and" at the end of paragraph (a).

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

Clauses 3 to 26 – were agreed to and stood part of the Bill.

Clause 27

HON J J NETTO:

In 27(5) delete "or" at the end of paragraph (c)(ii), substitute "or" for the full-stop at end of 27(5)(c)(iii), and finally, insert the following paragraph "(d) in respect of a contact order only, the grandparents.".

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

Clauses 28 to 116 – were agreed to and stood part of the Bill.

Clause 117

HON J J NETTO:

In clause 117(1)(b), insert "and inclusive" after the word "normal". So it will read "normal and inclusive".

Clause 117, as amended, was agreed to and stood part of the Bill.

Clause 118

HON J J NETTO:

In clause 118, I would like to substitute that clause for the following one:

"(3) The Minister may by regulation make provision generally for the opening and maintenance of a register, for the information to be contained in it, and for the manner in which such information shall be collated.".

It is a new subsection (3).

Sorry, if I can say that again, in section 118(1), the Agency "may" as opposed to "shall". Subsection (2) remains and then there will be the new subsection (3) which I have just read out.

Clause 118, as amended, was agreed to and stood part of the Bill.

Clauses 119 to 151 – were agreed to and stood part of the Bill.

Clause 152

HON J J NETTO:

The addition of a new sub clause (4), which will read:

"(4) The Minister may by regulations make provision generally for the maintenance by the Care Agency of the list, for the inclusion and exclusion of persons from it, and creating obligations upon any other person to provide such information and notification as the Minister may specify.".

HON C A BRUZON:

Mr Chairman, the actual aspect of confidentiality. In clause 152(1), the Care Agency shall maintain a list of individuals. Would it not be wise, unless it is already included in the law somewhere else, that the aspect of confidentiality should be stressed by inserting, "the Care Agency shall maintain a confidential list of individuals", something on those lines?

HON CHIEF MINISTER:

Such element of confidentiality, as is implicit in all the professional dealings in this Act is already reflected in the Act. The whole purpose of the list is that, from time to time, there may need to be action taken on it, and if one is shrouded in specific confidentiality relating to the list, what is the purpose of keeping it if one cannot use it to alert employers, or to protect children when the situation requires it. So there is a presumption throughout the legislation that professional care workers are bound by confidentiality, except where the whole purpose of their professional role requires them not to do so. So it would be inappropriate to shackle this particular provision with a particular confidentiality provision, but I think the hon Member can rest assured that the list is otherwise confidential.

Clause 152, as amended, was agreed to and stood part of the Bill.

Clause 153

HON J J NETTO:

Finally, in clause 153(1), substitute "was employed or engaged" for the words "has been employed" after the words "who is or". So the words "have been employed" are substituted by "was employed or engaged".

Clause 153, as amended, was agreed to and stood part of the Bill.

Clauses 154 and 155 – were agreed to and stood part of the Bill.

Clause 156

HON F R PICARDO:

We propose the inclusion of a new Part XIII, which for the reasons the Government have given, it appears they are not going to support. The purpose of this section is to accelerate the increase in protection for children, and in particular, the increase in maximum sentences for those who circulate photographs of children. The suggestion is that this should be a new Part XIII, numbered sections 156 to 163, and that the existing Part XIII should be, therefore, renumbered sections 164 to 167. The amendments are as follows:

After clause 155 , and under new Part XIII insert the following new clauses:

"**Indecent photographs of children**

156(1) It is an offence for a person–

(a) to possess or to take, or permit to be taken or to make, any indecent photograph or pseudo-photograph of a child; or

(b) to distribute or show such indecent photographs or pseudo-photographs; or

(c) to have in his possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself or others; or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.

(2) For purposes of this Act, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Attorney General.

(4) Where a person is charged with an offence under subsection (1)(b) or (c), it shall be a defence for him to prove–

(a) that he had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) having them in his possession; or

(b) that he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

Evidence

157(1) In proceedings under this Act relating to indecent photographs of children a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of 18.

Offences by corporations

158(1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Entry, search and seizure

159(1) The following applies where a justice of the peace is satisfied by information on oath, laid by a constable, that there is reasonable ground for suspecting that, in any premises in Gibraltar, there is an indecent photograph or pseudo-photograph of a child.

(2) The justice may issue a warrant under his hand authorising any constable to enter (if need be by force) and search the premises, and to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before a justice of the peace.

(4) This section and section 160 below apply in relation to any stall or vehicle, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

Forfeiture

160(1) The justice before whom any articles are brought in pursuance of section 159 above may issue a summons to the occupier of the premises to appear on a day specified in the summons before the Magistrates' Court for that Court to show cause why they should not be forfeited.

(2) If the court is satisfied that the articles are in fact indecent photographs or pseudo-photographs of children, the Court shall order them to be forfeited; but if the person summonsed does not appear, the Court shall not make an order unless service of the summons is proved.

(3) In addition to the persons summonsed, any other person being the owner of the articles brought before the Court, or the persons who made them, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the Court on the day specified in the summons to show cause why they should not be forfeited.

(4) Where any of the articles are ordered to be forfeited under subsection (2), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the Supreme Court.

(5) If in respect of any articles brought before it the Court does not order forfeiture, the Court may if it thinks fit order the person on whose information the warrant for their seizure was issued to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the photographs or pseudo-photographs should not be forfeited; and costs ordered to be paid under this subsection shall be recoverable as a civil debt.

(6) Where indecent photographs or pseudo-photographs of children are seized under section 159 above, and a person is convicted under section 1(1) of section 153 of the Criminal Offences Act of offences in respect of those photographs, the Court shall order them to be forfeited.

(7) An order made under subsection (2) or (6) above (including an order made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose–

(a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Punishments

161(1) Offences under this Act shall be punishable either on conviction on indictment or on summary conviction.

(2) A person convicted on indictment of any offence under this Act shall be liable to imprisonment for a term of not more than ten years, or to a fine or to both.

(3) A person convicted summarily of any offence under this Act shall be liable–

(a) to imprisonment for a term not exceeding six months; or

(b) to a fine not exceeding Level 5 on the standard scale, or to both.

Interpretation

162(1) The following subsections apply for the interpretation of this Act.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Act as indecent photographs of children and so as respects pseudo-photographs.

(4) References to a photograph include–

(a) the negative as well as the positive version; and

(b) data stores on a computer disc or by other electronic means which is capable of conversion into a photograph.

(5) "Film" includes any form of video-recording.

(6) "Child", subject to subsection (8), means a person under the age of 18.

(7) "Pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include–

(a) a copy of an indecent pseudo-photograph; and

(b) data stores on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.".

HON CHIEF MINISTER:

For reasons that my Colleague, the Minister for Justice, has already explained, the Government will be voting against all of these amendments.

MR CHAIRMAN:

Having regard to the indication given by the Chief Minister, does the hon Member want a vote taken.

HON F R PICARDO:

No, I am just assuming that they are going to vote against.

MR CHAIRMAN:

They are saying they will be voting against.

Question put. The House voted.

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

For the Noes: The Hon C G Beltran

The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon J J Holliday
The Hon L Montiel
The Hon J J Netto
The Hon E J Reyes
The Hon F J Vinet

The amendments were not agreed to.

Clause 156,as originally drafted, was agreed to and stood part of the Bill.

Clauses 157 and 158 – were agreed to and stood part of the Bill.

Clause 159

HON F R PICARDO:

There is a need for a correction in section 159. There is a "the" and a "this" in subsection (2). In the last line, which do not make sense together. The "the" should disappear.

MR CHAIRMAN:

Which of the words is to be deleted? "The" or "this"?

HON F R PICARDO:

I assume it is the "the" that should be deleted, but it is up to the Government.

Clause 159, as amended, was agreed to and stood part of the Bill.

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

THE WILLS BILL 2009

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

Clause 2

HON D A FEETHAM:

I have an amendment in relation to clause 2(1), and that is deletion of the definition of "child". Mr Chairman should have a tracked version that I circulated of my amendments.

HON F R PICARDO:

It has not made its way to this side of the House.

HON D A FEETHAM:

I circulated, or I gave the Clerk 17 copies, but it does not matter, it is deletion from the word "child" all the way to 18, the entirety of it.

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

Clauses 3 to 17 – were agreed to and stood part of the Bill.

Clause 18

HON D A FEETHAM:

I have another amendment in the nature of the tracked copy, the addition of subsection (3) which should read:

> "(3) Subsection (1)(b) is without prejudice to any right of the former spouse to apply for financial provision under the Inheritance (Provision for Family and Dependants) Act.".

Clause 18, as amended, was agreed to and stood part of the Bill.

Clause 19 – was agreed to and stood part of the Bill.

Clause 20

HON D A FEETHAM:

I have another amendment here, it is a typographical error. In subsection (2), the second line from the bottom, delete the word "of" after "end" and substitute with "or".

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 D A FEETHAM:

I have another amendment here. The deletion of the "(1)" and then the entirety of subsection (2).

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

Clauses 24 to 26 – were agreed to and stood part of the Bill.

Clause 27

HON D A FEETHAM:

An amendment to add the words after "simple" in section 27, "or other the whole estate or interest which the testator had power to dispose of by will in any such real estate". Well, in fact, the full-stop was there already.

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

Clause 28 – was agreed to and stood part of the Bill.

Clause 29

HON D A FEETHAM:

Yes, in section 29, first paragraph, it is exactly the same as the amendment that we have made in section 27, "or other the whole estate or interest which the testator had power to dispose of by will in any such real estate" after the words "pass the fee simple".

Clause 29, as amended, was agreed to and stood part of the Bill.

Clause 30

HON D A FEETHAM:

In subsection (2) exactly the same amendment in the nature of the tracked copy. In clause 30(2), insert the words "or other the whole legal estate which the testator had power to dispose of by will in such real estate" after the words "the fee simple.".

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

Clauses 31 to 35 – were agreed to and stood part of the Bill.

Clause 36

HON D A FEETHAM:

Insertion of a clause 36 Repeals and Savings in the nature of the one that Mr Chairman has in front of him.

Delete the words:

"Repeal

36. The Wills Act is repealed.".

and replace with the words:

"Repeal and saving.

36.(1) The Wills Act is repealed.

(2) Notwithstanding the repeal by subsection (1), a will or codicil executed before coming into operation of this Act–

(a) shall not be treated as made on or after the coming into operation of this Act by reason only that the will or codicil is confirmed by a codicil executed on or after such operation; and

(b) shall be treated as if this Act has not come into operation.".

Clause 36, as amended, was agreed to and stood part of the Bill.

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Imports and Exports (Amendment) Bill 2009;

2. The Companies (Accounts) (Amendment) (No. 2) Bill 2009;

3. The Companies (Consolidated Accounts) (Amendment) (No. 2) Bill 2009;

4. The Children Bill 2009;

5. The Wills Bill 2009,

have been considered in Committee and agreed to, some with and some without amendments, and I now move that they be read a third time and passed.

Question put.

The Companies (Accounts) (Amendment) (No. 2) Bill 2009;

The Companies (Consolidated Accounts) (Amendment) (No. 2) Bill 2009;

The Children Bill 2009;

The Wills Bill 2009,

were agreed to and read a third time and passed.

The Imports and Exports (Amendment) Bill 2009.

The House voted.

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

Abstained: The Hon C A Bruzon
The Hon Dr J J Garcia
The Hon S E Linares
The Hon F R Picardo

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Thursday 9th July 2009, at 11.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 11.45 a.m. on Monday 29th June 2009.

THURSDAY 9TH JULY 2009

The House resumed at 11.30 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 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

OPPOSITION:

The Hon F R Picardo
The Hon Dr J J Garcia
The Hon G H Licudi
The Hon C A Bruzon
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon J J Holliday – Minister for Enterprise, Development, Technology and Transport and Deputy Chief Minister
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

The Hon J J Bossano – Leader of the Opposition

IN ATTENDANCE:

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

BILLS

FIRST AND SECOND READINGS

THE CONSTRUCTION (GOVERNMENT PROJECTS) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to enable work on important Government projects to be undertaken during normally restricted hours when this is necessary or desirable in the public interest, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of the Bill is to allow the Government to authorise work on important Government projects during restricted hours, when this is necessary or desirable in the public interest, by virtue of the nature, importance or other characteristic or circumstance of the project, or by virtue of the effect of the works on any other activity or amenity of Gibraltar, or on the operation of any facility in Gibraltar that is affected by the project and/or the construction works. In these circumstances, the Minister, who is defined as the Chief Minister, may under clause 3(2) of the Bill issue a certificate to that effect, and may only issue a certificate in respect of construction works and projects which are first listed in Schedule 2. A project can only be listed in Schedule 2 of the Act after receiving the approval of Parliament by resolution of the House. The form of application for certificate and the form of certificates are set out in Schedule 1, Part 1 and 2 respectively. Pursuant to clause 3(6), the Minister may at any time in his absolute discretion, amend, modify or revoke a certificate issued under clause 3(2) of the Bill. Clause 4 provides that the Chief Environmental Health Officer shall be responsible for monitoring that any condition, restriction or limitation imposed in a certificate are observed. Under clause 5, a person who considers that there has been a breach of any condition, restriction or limitation imposed by a certificate, may lodge a complaint with the Chief Environmental Health Officer. The Chief Environmental Health Officer, on being satisfied that there has been a breach, shall issue a notice to the person carrying out the construction works giving details of the breach and setting up the date by when the breach is to be remedied. In the event that the breach is not remedied, the Chief Environmental Health Officer shall notify the Minister and submit recommendations for remediation. Under clause 5(4), the Minister has power to vary or extend the conditions, limitations and restrictions imposed in the certificate, or indeed, to revoke the certificate. Under clause 6, construction works covered by a certificate are exempted from noise and other nuisance laws that curtail such activity during night time hours. Clause 7, provides that a certificate issued under the Act is cumulative to and does not replace a requirement for authorisation of construction works under the Town Planning Act, or any other

enactment. Under clause 8, the Minister has to publish every certificate issued as a Legal Notice in the Gazette. Similarly, under clause 9, if the Minister revokes a certificate this too needs to be published as a Legal Notice in the Gazette. At present, Schedule 2 of the Bill contains only two projects, namely, the airport tunnel project and the project to install approach lights in the sea at both ends of the runway. As the Explanatory Memorandum of the Bill states, this is required because the necessary cranes and equipment to carry out the works on these projects cannot be deployed on site during the day whilst the airport is in operation. So these two projects are an example of works which affect another activity in or amenity of Gibraltar, or works which affect the operation of any other facility in Gibraltar. That is to say, hon Members will know that there are aviation safety related rules about the vertical penetration of air space by structures of a given height, and that there are rules that these structures need to be less tall the nearer they get to the centre line of a runway. To build the tunnel at the end of the runway, and also to install offshore at both ends of the runway these approach lighting structures that have to be erect, one needs cranes and other equipment. Now, with those cranes erected aircraft will not be able, in accordance with airport safety operation rules, to land or take off. Therefore, the project can only be done at times that the airport is closed so that these cranes can be erected and then dismantled before the airport reopens the next morning, and that is only during the silent hours. There will be no other way of doing this project. The Government, in any event, in relation to these two projects, are entirely satisfied that there will be no appreciable nuisance to any residents, it is not a particularly residential area, as the hon Members know, but it is important that there should be statutory cover for it so that the contractor and the Government do not get into contractual difficulties as a result of the interference by external agencies with the execution of expensive works, and the consequences for additional cost to the taxpayer should there be external interference of the sort that causes contractual delays, it would be very significant indeed. I commend the Bill to the House.

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

HON DR J J GARCIA:

Yes, Mr Speaker, I am grateful to the Chief Minister for the comprehensive explanation he has provided as to why the Bill is required, and why the legislation is necessary in relation to the two projects in the Schedule. I do not propose to go into the contents of the Bill as such, because it is the general principles that we are actually opposed to. In short, the Government are seeking power from the House to be able to authorise, at their discretion, the continuation of Government construction works during the night. It may not happen in every case but the Bill creates a framework which allows for that possibility. In such circumstances this will, indeed, cause considerable inconvenience to many people. Indeed, the Government's definition of what the public interest is may not actually be universally shared by everyone, particularly by those affected. Section 6 of the Bill, as the Chief Minister says, removes the rights of citizens to seek redress in the courts if anyone wants to challenge such works on a number of grounds. No civil action will be possible even if the work interferes with the person's enjoyment and use of land. These are principles that this side of the House are unable to endorse. At the moment the Bill would apply to two Government projects, as the Chief Minister has said, the airport tunnel project and the project to install approach lights in the sea at both ends of the runway. If the Bill had restricted itself to those two projects only, perhaps its focus might have been different even though the other misgivings outlined above would obviously remain. The Government would have the right, if the Bill becomes law, to add to the two projects and to build this special designation to Government works in any part of Gibraltar, on, over or under land or sea. It could even happen next to a built up residential area. We know that the addition of new projects would require a resolution of Parliament, which I acknowledge is a significant step in the process. However, where the Government have a majority on

an issue of Government policy, they too must accept that in those circumstances their will is very likely to prevail. It is therefore the view of the Opposition that the powers that the Government are requesting from this Parliament could xxxxxx. We will be voting against this.

HON CHIEF MINISTER:

It seems to me that the hon Member has formed an intention to oppose the principles of the Bill on a false premise. The Government, contrary to what he has said, both at the beginning and at the end of his contribution, is not seeking to empower itself to authorise such works. It is seeking to empower Parliament to authorise these works. Now, as the Bill specifically says that the Government cannot list a project in Schedule 2, and unless it is in Schedule 2 it cannot be authorised, unless Parliament has approved, which means that the Government would have to bring a motion in this House, there would have to be a debate, which of course the Government majority can ensure prospers, but the onus will be on the Government to explain and justify. Well, the hon Member may wish to render Parliament redundant in that way, but I think he should think very carefully before he adopts a formal position. I am talking about the Hon Mr Linares now, not Dr Garcia, ought to be very careful before adopting the formal position that there is no difference between Parliament and the Government. In most Parliaments of the world, the governing party, the Government, has a majority, that is why it is the Government. If they did not have a majority it would not be the Government. So, there is an important distinction between something that the Government can do in their office without giving explanation to anybody, and something that they can only do after they have explained themselves to Parliament and obtained the approval of Parliament for doing so. The hon Members may still disagree with the Bill, even in those circumstances and vote against it, but they should understand that they are voting for it, on the basis of what the Hon Dr Garcia has said, on principles which are not the principles which inform this Bill, and they are voting against the principle of allowing the Government to do something after and if, and only if, Parliament has first approved it.

Question put. The House voted.

For the Ayes:
The Hon C G Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon L Montiel
The Hon J J Netto
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

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to transpose into the law of Gibraltar Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay, and matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill updates the 1997 Act in the following respects. Clause 2(2) modifies the definition of "qualifying deposits" in section 2 of the 1997 Act, in order to take into account the coming into operation of the Crime (Money Laundering and Proceeds) Act 2007. The Bill imposes, in clause 2(3), a duty on the deposit guarantee scheme board to cooperate with its counterparts in other EEA States, where an institution has applied to participate in the Gibraltar scheme in circumstances where it already participates in a scheme in its home EEA State. In such a case, the Gibraltar board must first satisfy itself that the scheme in that home state does not offer equivalent protection to the Gibraltar scheme. Clause 2(4) of the Bill, has the effect of reducing, as required by the Directive, from 21 days to five working days, the time during which the Commissioner of Banking is to make a declaration that a participant is in default of in the process of being wound up. Clauses 2(5) and 2(6) address the issue of compensation. Clause 2(5) reduces from three months to 20 working days the time during which the board has to pay compensation, and reduces to ten working days the time to which this period can be extended. For its part, clause 2(6) imposes a duty on the board to carry out tests on the deposit guarantee board's administrative systems. There is, in addition, the duty on the Banking Commissioner to keep the Minister informed of any problems he may suspect in a credit institution, which may necessitate the board's intervention. Clause 2(7) groups together a number of amendments in section 12 of the Act, including updating the reference to ECUs and ensuring that compensation will henceforth be paid by reference only to a financial threshold and no longer also to a percentage of the total amount of a qualifying deposit. These financial thresholds are upped from the existing £18,000 to 50,000 euros. In addition, the Minister is given the power to alter the scope or level of coverage of the deposits, and the duty to keep the European Commission informed of any exercise of such power. Clause 2(8) imposes a duty on the board to consult and seek instructions from the Minister, where it is considering imposing a levy on participants in the scheme, where a particular participant is in default. Clause 2(9) imposes a duty on credit institutions to inform depositors where a deposit is not covered by a guarantee scheme. Clause 2(10) deletes section 26 of the 1997 Act, which is now spent. Clause 2(11) amends section 27 of the Act, to require that communications with the European Commission is the responsibility of the Minister. Finally, clause 2(12) amends paragraph 1(2) of Schedule 2 in line with the Directive requirements. It amends the manner in which compensation is to be calculated, by making its reference point the aggregate of all qualifying deposits in the EEA currency, where the balance of those deposits is the total amount of compensation payable under section 12 of the 1997 Act, as amended, or less as the case may be. The current calculation contains an arbitrary ceiling of 90 per cent of the deposit, not exceeding £20,000 and £18,000 multiplied by the total number of accounts exceeding £20,000. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, as we have already indicated publicly, this Bill will enjoy the support of the Opposition. In fact, hon Members will be aware that the Opposition, when we became aware of the fact that the Directive was going to be changed, for the purposes of providing these additional amounts and these quicker payments, we made very clear to the Government publicly, and across the floor of the House, that this would be the sort of Bill in respect of which the Government would enjoy the support of the Opposition to bring legislation to this House, even without the six week period necessary of publication having expired. Subsequently, the Chief Minister indicated to me privately, reasons for not wanting to do that in the public interest of Gibraltar, which we accepted. Today, when the Bill is finally in the House, we will support it.

HON CHIEF MINISTER:

Only to point something out that I did not point out before, just so that the hon Members are aware of it, and that is to point out to the hon Members the commencement date provisions. It has not been possible to bring this Bill to the House as had originally been my intention, before 30th June, the commencement date is nevertheless 30th June, even though it is now the 9th July, so there is a short nine days of retrospection, which is entirely academic because there has been no failure of an institution during that period.

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, if all hon Members agree.

Question put. Agreed to.

THE ENVIRONMENTAL PROTECTION (ENERGY END-USE EFFICIENCY) ACT 2009

HON LT-COL E M BRITTO:

I have the honour to move that a Bill for an Act to transpose into the law of Gibraltar Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC as amended, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT-COL E M BRITTO:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill requires the Government to draw up a national action plan to achieve a cumulative annual energy saving, in order to meet the indicative target of 9 per cent by 2016, in the retail supply and distribution of electricity, natural gas, urban heating and other energy products, including transport fuels. The national action plan must be reported to the European Commission on the date of the coming into force of this Act, and subsequently, in 2011 and 2014. The Bill seeks to increase energy efficiency all along the supply change, right up to the retail stage, when energy is sold to the end user. It covers the retail supply and distribution of electricity and natural

gas, as well as other major energy services, including urban heating, heating oil fuel, coal and lignite forestry, agricultural energy products and transport fuels. Some of these, quite evidently, do not apply to Gibraltar but are an EC Directive requirement. The issue of targets for energy savings remained central to discussions on the Directive. Member States repeatedly stated their preference for a non-binding target and a flexible approach, while the European Union has supported higher legally binding targets. The compromise agreement reached is as follows, (a) Member States to draw up national action plans to achieve cumulative annual energy savings, in order to meet the indicative energy saving target of 9 per cent by 2016. Sectors covered are households, agricultural, commercial and public sectors. The target is only indicative. The national action plans, which show how the Member States intend to achieve the target, have to be reviewed every three years and have to be reported to the Commission; (b) a public sector obligation to take energy efficiency into account in public procurements, related to the purchase of vehicles, buildings and other equipment; (c) a supply side obligation for energy distributors and retailers to offer energy improvement measures to their customers; (d) a harmonised measurement system for energy savings will be put in place, so that energy savings can be compared from one Member State to another; (e) the Directive also sets up a harmonised framework for common definitions, consumer information, certification schemes for energy services providers, as well as dedicated contractual, financial and legal instruments aimed at creating a single EU market for energy efficiency. Clause 2 transposes articles 1 and 2 of the Directive. Sub clause (1) adds very little to the Bill but is useful for interpretation purposes. Clause 3 is the interpretation clause and includes the relevant definitions. Responsibility has been vested on the Minister for the Environment. Under clause 4, the Minister has the duty to appoint a competent authority. He must also use the very technical material set out in the schedules to publish guidelines, in order to aim to achieve an overall national indicative energy savings target of 9 per cent for the year commencing 17th May 2016, taking cost effective, practicable and reasonable measures, designed to contribute towards achieving the target, and set and calculate the national indicative energy savings target, in accordance with the provisions and methodology set out in Schedule 1. Clause 5 imposes a duty on the Minister to ensure that the Civil Service, and indeed Government companies and agencies, fulfil an exemplary role in the application of the Act, and to publicise this fact. The clause imposes a duty on the Minister to appoint a competent authority to spearhead the Civil Service reports. Clause 6 enables the Minister to instruct the competent authority to properly design and implement energy efficiency improvement programmes, and to promote and monitor energy services. Other energy efficiency improvement measures, energy distributors, distribution system operators and retail energy sales companies must submit an annual report to the Minister setting out aggregated statistical information on their final customers. For its part, the competent authority must ensure that energy distribution system operators, or retail energy sales companies, give their customers the option of a number of energy improvement measures, including energy audits. The competent authority must ensure that there are sufficient incentives, equal competition and level playing fields for market actors, other than energy distributors, distribution system operators and retail energy sales companies, such as ESCOs, installers, energy advisers and energy consultants, to independently offer and implement the energy services, energy audits and energy efficiency improvement measures. Under clause 7, the competent authority must ensure that information on energy efficiency mechanisms and financial and legal frameworks published with the aim of reaching the national indicative energy savings target, is transparent and widely disseminated to energy distributors, distribution system operators or retail energy sales companies, and must ensure that greater efforts are made to promote energy and end-use efficiency. Under clause 8, the competent authority must ensure the availability of appropriate qualification, accreditation or certification schemes for providers of energy services, energy audits and energy efficiency improvement measures. In this respect, the competent authority must act on the Minister's instructions. Clause 9 makes two important points, (1) any law

other than the Income Tax Act that unnecessarily or disproportionately impedes or restricts the use of financial instruments, such as collective investment schemes, derivatives et cetera, for energy savings in the market for energy services or other energy efficiency improvement measures, is declared to be of no effect to the extent that it conflicts with the provision of the Bill, and (2) the competent authority must make model contracts available for those financial instruments available to existing and potential purchasers of energy services, and other energy efficiency improvement measures in the public and private sectors. Under clause 10, the Minister is imposed a duty to amend any electricity tariff that serves to encourage the consumption of energy. Under clause 11, the Minister may establish a special fund under the provisions of the Public Finance (Control and Audit) Act, to subsidise the delivery of energy efficiency improvement measures and to promote the development of a market for energy efficiency improvement measures, including the promotion of energy auditing, financial instruments for energy savings and, where appropriate, includes metering and informative billing. The fund may provide for grants, loans and financial guarantees or other types of financing. Under clause 12, the competent authority must ensure the availability of energy audit schemes, designed to identify potential energy saving improvement measures, to all final customers, including small, domestic, commercial and small medium-sized industrial owners. Clause 13 provides for the metering of the consumption of energy on an individual basis. This is something that Gibraltar has been doing for a long time. In addition, energy distributors, distribution systems operators and retail energy sales companies must make available the following information to final customers in clear and understandable terms in or with their bills. (a) Current actual prices and actual consumption of energy; (b) comparisons on the final customers current energy consumption with consumption for the same period in the previous year, preferably in graphic form; (c) whenever possible and useful, comparisons with an average normalised or benchmarked user of energy in the same user category; (d) contact information for consumer organisations, energy agencies or similar bodies, including website addresses from which information may be obtained on available energy efficiency improvement measures, comparative end user profiles and/or objective technical specifications for energy using equipment. Under clause 14, the Minister must submit reports to the Commission within defined time periods, describing the energy efficiency improvement measures planned to reach the targets set out in clause 4, as well as how compliance is being achieved, with the duty of the public sector in the enforcement of the Bill and the provision of information and advice to final customers set out in clauses 5 and 7. Clauses 15 and 16 are regulation making and offence creation provisions. I commend the Bill to the House.

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

HON F R PICARDO:

This is, in fact, a very welcome development. It is a very welcome Directive but this is no home-grown piece of legislation that should be seen as any indication that the Government are serious about the reduction of Gibraltar's carbon footprint. This is the transposition into our law of an obligation imposed on us by the European Community, and good that it is, because otherwise this Government would have done nothing to ensure even an attempt at reduction in Gibraltar's carbon footprint by the energy end-use efficiency provisions of this Directive. In fact, there has been some talk in respect of the types of legislation that is brought to this House, or the proposed amendments that are brought to this House to legislation, about whether they are just cut and paste jobs. Well, the best example of that are the Government Bills and this one is a cut and paste job of the Directive, where there has been removed for the words "Member State" the words "competent authority or Minister". In effect, what we have before this House today is almost an identical document to Directive 2006/32, as it appeared in the Official Journal. So much then for cut and paste not being the order of the day. But one question to ask the

mover is who will be the competent authority? We have not had a clear indication of that, as I understand it, and I am keen to know who will be designated the competent authority. In the United Kingdom, the Climate Change Act is making provision for there to be a 50 per cent reduction in the carbon footprint in the UK by 2015. That is a home grown not European Directive driven attempt to increase energy efficiency and to reduce the carbon footprint of the UK. We are seeing no such initiatives from Gibraltar. The Directive set up an eight year scheme, an eight year regime on energy efficiency. One may ask how it can be an eight year regime if we are in 2009 and the report has to be in by 2016. Well, the fact is that the transitional provisions of the Directive, in article 18, make abundantly clear, and if hon Members do not have it I will read it to them, that this Directive should have been made law in all of the Member States by 17th May 2008, last year, giving sense to the fact that the report should be in by 17th May 2016. The transitional provision is article 18, it reads as follows, "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 17th May 2008, with the exception of the provisions of article 14(1), 14(2) and 14(4), for which the date of transposition shall be at the latest 17th May 2006". Even earlier, so, even though this Directive is over a year out of the date when it should have been transposed, we will be supporting that the Government are being forced, at least by the European Commission, to do something positive about the environment. We will be supporting this Bill. For a Government that were truly supportive of increasing energy efficiency, that were truly committed to the environmental charter that all the other overseas territories have implemented and which we were the last to implement, that were truly committed to the environment of Gibraltar and its protection, this should have been a flagship measure, done in time and improved upon so that the European Directive would be the minimum that we would want to do. That is not the case in Gibraltar with this Government. I am particularly interested to see the requirements of section 5, that the Minister shall make the public sector an exemplary institution in the increased efficiency of energy. I am particularly drawn to letters (m) and (n) of Schedule 3, that talk about improving modes of travel, modal shifts from energy consuming modes of transport to less energy consuming ones. I look forward to the Minister for the Environment persuading the Chief Minister that it is time to leave the Jaguar behind. This is too little too late but we will support it.

HON CHIEF MINISTER:

The hon Member's political rhetoric gets no more accurate and no easier for those that sit on the same benches as him when they were in Government. The question is not whether cut and paste, the hon Leader of the Opposition is not present today. The issue is not whether cut and paste is the order of the day. If the hon Member had taken in the past the trouble to read the Government's Bills transposing the EU Directives, he would have seen that sticking as closely as possible to the language of the Directive is a systemic drafting approach of the Government, precisely to ensure that we do not do anything which exceeds the requirements of the Directive. So this suggestion that this Bill is somehow novel evidence of a so-called cut and paste of the text of the Directive, the only novelty is that this might be the first Bill that he has read. Now, that we have established that the issue is not whether the order of the day………

MR SPEAKER:

Order, Order.

HON CHIEF MINISTER:

Now that we have established, with difficulty because the hon Member will not even accept calls for order from the Chair, but now that we have established that the order of the day is not whether cut and paste is new or legitimate, what we ought to draw the correct distinction, the issue is not whether cut and paste, by which he means following as closely as possible the

language of the Directive in transposing legislation is new, old, good or bad, which has always been done in Gibraltar, it is frequently done in Gibraltar and in other Member States. The issue is whether the cutter and the paster can do it accurately. In other words, there is all the difference in the world between our accurate cutting and pasting of an EU Directive and his inability, even to spot the latest version of the UK Act which he seeks to copy to cut and paste. That is the accurate distinction because as my Colleague the Minister for Justice pointed out, in his attempt to cut and paste a UK Act in connection with a previous matter that came before this House, the Hon Mr Picardo had failed to notice that he was doing so inaccurately, in the sense that he was not even using the latest version of the UK law in question.

MR SPEAKER:

Order.

HON CHIEF MINISTER:

I do not know whether the hon Member thinks that we would have done more or less but for this Directive. What I can tell the hon Member is that the record of this Government in relation to the environment is immeasurably better than the record of the Government that we replaced in office, and that applies especially to transposing EU environmental Directives. It is all very well for the hon Member to lament the fact that we are late in transposing this EU Directive on the environment. When the party of which he is now the aspirant leader was last in Government, they would systematically not delay but decline to implement EU environmental Directives, year after year, after year.

HON F R PICARDO:

Will the hon Member give way?

HON CHIEF MINISTER:

No, the hon Member will not give way. The hon Member will respect the Rules of this House.

MR SPEAKER:

Order, Order.

HON F R PICARDO:

In that case he can make all sorts of accusations without being replied to. It is a matter for him. But he is misleading the House.

MR SPEAKER:

Order, Order.

HON CHIEF MINISTER:

Like his sixth form debating society, there are rules in this House. There are rules for sixth form debating societies and there are rules in this House.

MR SPEAKER:

Order, Order. There are Standing Orders to be observed. Order, the Chief Minister is addressing this House, he has not agreed to give way, he must be heard in silence. Order.

HON CHIEF MINISTER:

The hon Member's persistent disrespect, in this regard, for the chair is becoming notorious and unacceptable on this side of the House.

MR SPEAKER:

Order, Order, will the hon Member please observe the Standing Orders of this House.

HON CHIEF MINISTER:

As well as normal rules of decorum and courtesy in debate. He has had his say, he has said whatever critical of the Government he has chosen or has had the wit to contrive to say, and when he gets a response he jumps up and down like a nervous flea, refusing to allow me to speak, disrespecting the Speaker and pretending that he is in a school playground. The hon Member has got to grow up both personally and politically. So, the hon Member and I might both be able to agree on the fact that it is regrettable that for a number of reasons there has been a delay in bringing this environmental Directive to the House. However, it is not an observation that lies well on the mouth of any spokesman for the GSLP, given as I have said, that when they were in office such was their disdain for the environment, such was their unwillingness to accept financially onerous obligations in relation to the environment, that they would ignore environmental Directives and then when we came into office in May 1996, the first thing that we had to do is implement a raft, in arrears, of environmental Directives that the so-called "green" GSLP had refused to implement. That is the truth and that is the reality and the rest are further examples of which we had an overdose during the Budget debate, of the hon Members' inaccurate and hypocritical political rhetoric. I have no intention of changing my car, it is a wonderful, excellent Chief Ministerial vehicle. Given that it is a newer model than his and given that the Prime Minister of the United Kingdom professes to be very green, and given that he is bound by the same Directive, and given that he does not appear to believe that running an older model, and therefore environmentally less friendly version of my car, is in breach of the United Kingdom's green obligations which he espouses personally and loudly, I feel no need to change my car for any such measure. The whole of Gibraltar now knows that the hon Member appears to have allowed the shape, colour, interior decoration and mark of my vehicle to get deep under his skin. It is one of the many foibles for which he is now well known in Gibraltar. As I say, when this car becomes due for replacement I hope to be still in office and I hope to replace it with the next, newer, more modern and certainly even more environmentally friendly version of this excellent Chief Ministerial vehicle.

HON LT-COL E M BRITTO:

Yes, only briefly, just to make a couple of points. Firstly, I have to say I am a little bit surprised at the comments that have been raised on the other side of the House, on a Bill as extensive and as wide ranging as this one, introducing principles that are new, introducing intentions to bring in measures that are new and that, rather than comment on those either favourably or unfavourably, the hon Member who has spoken from the Opposition benches has restricted himself to very minor, and in one particular case, grossly inaccurate issue. That is the one that has already been dealt with in great detail by the Chief Minister, so I will not go into detail on it, other than to reiterate and confirm what he has said in respect of environmental Directives by the GSLP when they in office. I, like my

Colleague, was on the other side of the House at the time and the hon Member who was trying to shout us down and make comments about showing the evidence and it is not true, well, I can tell him quite clearly that it is true that it was………

HON F R PICARDO:

Produce the evidence.

HON LT-COL E M BRITTO:

Well, I do not have to produce the evidence, all the hon Member has to do is look at the records of the House. It is there for all to see. All he has to do is look at the Hansard from 1996 onwards and see the number of environmental Directives that we as a Government brought into being and check the dates. I cannot from memory give dates and I will not attempt to so as not to………

HON F R PICARDO:

He might be wrong.

HON LT-COL E M BRITTO:

I am not wrong, I am 100 per cent right because I was here at the time and there was a policy not to enact environmental Directives. There was a policy not to enact environmental Directives and that can be easily proved by looking. We do not have to ask anybody, all the hon Member has to do is read the Hansard, and he will see from the Hansard the number of environmental Directives that were brought in, then check the dates and he will see how backdated they were.

HON F R PICARDO:

We will check it.

HON LT-COL E M BRITTO:

Yes, of course, he can check it then he can come back and tell me I was wrong. I look forward to quiet in that front because he will not be able to do so. So, therefore, it is not correct to say, as the hon Member has done, in saying he welcomes the legislation because the Government have been forced to bring this legislation into force. That is not true, this Government have a policy of enacting environmental legislation and have proved it by their track record over the last number of years.

HON F R PICARDO:

Will the hon Member, of course, not accept that it was the GSLP in Government that introduced the Nature Protection Ordinance and created the Upper Rock Nature Reserve, which was actually a home grown piece of environmental protection legislation, not imposed from Brussels or anywhere else, but actually a home grown piece of legislation to protect our environment? Does that not factor into the equation when the hon Members make these accusations?

HON LT-COL E M BRITTO:

When the hon Member does his exercise on the Hansard and lists the number of environmental Directives based on EU Directives that were not enacted by the GSLP, he can then equate the one he has mentioned against the dozens of ones that were not enacted and tell us what percentage that represents. But I will carry on now just to tackle the other questions that he asked me on who will the competent authority be by telling him that no decision has been made on that at this

stage. But obviously, a competent authority will be appointed. I commend the Bill to the House.

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 later today, if all hon Members agree.

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 Construction (Government Projects) Bill 2009;
2. The Deposit Guarantee Scheme (Amendment) Bill 2009;
3. The Environmental Protection (Energy End-Use Efficiency) Bill 2009.

THE CONSTRUCTION (GOVERNMENT PROJECTS) BILL 2009

Clauses 1 to 9 – stood part of the Bill.

Schedules 1 and 2 – stood part of the Bill.

The Long Title – stood part of the Bill.

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) BILL 2009

Clause 1

HON F R PICARDO:

Before it stands as part of the Bill, why is it that Government do not wish to simply amend it to today's date? Is there a reason for that?

HON CHIEF MINISTER:

The Government do not wish to amend it to today's date.

HON F R PICARDO:

Is there a reason for that?

HON CHIEF MINISTER:

The Government do not give reasons for amendments that they have not brought.

HON F R PICARDO:

The Government should consider giving reasons for making retrospective legislation. I accept it is largely academic that it is retrospective legislation because no bank has failed in the process, or in the period from 30th June to today, but I think it is very bad practice to not simply want to utter the words which persuaded the Government to keep the date as it is and not

simply tell us why it is that we are going to legislate for the 30th June.

HON CHIEF MINISTER:

Mr Chairman, first of all it is not bad practice, it is common practice for legislation to have retrospective effect. Secondly, whether it is good or bad practice, it cannot be a very important point, given that the hon Member did not spot it, or perhaps he had not read the Bill either, he never mentioned it in his address on the principles of the Bill and I had to stand up to speak a second time to bring it to the attention of the hon Member after he had finished speaking. Now, he wants to make an issue of it. Well, if he wants to make an issue of it now, he has got to explain to the House why he did not raise it in the Second Reading. Perhaps he did not spot it. The Government will neither explain it nor amend it.

HON F R PICARDO:

I do not have to explain anything. The hon Gentleman raised the issue and the publication of these Bills sometimes envisages meetings of the House by a particular date and they do not happen. We do not always raise it because the change is made usually by letters circulated by the hon Gentleman at the last minute, when we see that he wants to make myriad changes to Bills. This one refreshingly does not carry that, but the need to insult, the need to constantly come back and suggest that people do not read things, that people do not do things, simply because the hon Gentleman believes that by tainting people in that way he achieves something, says more about the hon Gentleman than it does about anybody else.

HON CHIEF MINISTER:

No one has to taint the hon Members, the hon Member taints himself by the nature of the points that he takes and his endemic lack of preparation. The only point that I have made now, and of course, everybody in Gibraltar now also knows, that when the hon Members run out of substantive arguments on each and every issue, the argument of last recourse is to accuse the Government of being very unpleasant, of being very offensive and very personal. They have used it so many times now that it is completely ineffective. The point that we are discussing here is his suggestion that I should explain the absence of an amendment when it relates to an issue that he has not thought it important enough, either to bring his own amendment or, indeed, to comment on when he considered the Bill. Either, therefore, he did not spot it or he does not think it is important. But having not spotted it, or spotted it and not thought it important, he cannot now think that I have a huge onus to explain why it is there and why I am not amending it. If he wants to bring an amendment, let him bring an amendment and the Government will defeat it. But it is not his right to ask me to explain why I do not bring amendments.

HON F R PICARDO:

The Opposition will simply allow the hon Gentleman to continue to behave as he does, because in doing so, in resorting to insults, in resorting to personalities, constantly, all he does is say more about himself than he does with his insults about those he is purporting to insult. This is a simple point on a Bill that is agreed across the floor of the House, and the hon Gentleman, perhaps because he obviously dislikes me so much, does not want to xxxxxx to particulars and explain why it is that he is not going to bring the simple amendment, having raised it himself, because he obviously, believed it was important enough to raise it himself, and that is why I am asking him about it. But it is a matter entirely for him what he does. He is the Chief Minister of Gibraltar who will go down on Hansard as saying that

making retrospective legislation is perfectly proper and that he is not going to explain himself. The Court of Appeal has already described him as a bit of a Caligula for wanting to impose legislation, impose regulations that are not published on citizens, so I will not be surprised if they do not do the same. Those who do not remember, because I see puzzled faces on the other side, it was in the gold coin case, a judgement which I commend to all of them.

HON CHIEF MINISTER:

Well, at least now we have established that when the hon Member refers to other people being unpleasant to him, it is very probably just a case of him getting a dose of his own medicine, because obviously, the hon Member appears to think, the hon Member's definition of unpleasantness appears to depend on whether he is the victim or the accuser. It is not a question of liking him or disliking him. The issue is simply that he is wrong, even when he is being nervous he is wrong. It is not true that the onus is on me. If the hon Opposition Member, I do not know if he is acting Leader of the Opposition, or whether the dispute about whether he sounded and behaved like the Leader of the Opposition, which appears to have ……, whether there is issue, I do not know if he is the acting Leader of the Opposition or not, or whether they have been able to resolve between themselves who that is in the absence of the Leader of the Opposition. But if he thinks that this ……, he is wrong in saying that the onus is on me. If he believes, as he appears to believe, that this issue is not good, or is wrong, the onus is on him to move an amendment. This is why the Parliament debates legislation, so that when the Opposition feel that there is something wrong in a Government Bill, they can propose amendments. He thinks it is very important, he does not propose an amendment, he thinks the onus is on me to propose an amendment and when I tell him that the onus is not on me but on him, he says I am very unpleasant and I obviously do not like him. Well, look, I used to accuse him of sixth form debating techniques but I think that is an insult to most sixth formers that I have met. If he wants to move an amendment let him move an amendment.

Clause 1 – stood part of the Bill in the absence of any proposed amendment.

Clause 2 – was agreed to and stood part of the Bill.

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

THE ENVIRONMENTAL PROTECTION (ENERGY END-USE EFFICIENCY) BILL 2009

Clauses 1 to 17 – were agreed to and stood part of the Bill.

Schedules 1 to 6 – 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 Construction (Government Projects) Bill 2009;
2. The Deposit Guarantee Scheme (Amendment) Bill 2009;
3. The Environmental Protection (Energy End-Use Efficiency) Bill 2009,

have been considered in Committee and agreed to without amendments, given that none were moved, and I now move that they be read a third time and passed.

Question put.

The Deposit Guarantee Scheme (Amendment) Bill 2009;

The Environmental Protection (Energy End-Use Efficiency) Bill 2009,

were agreed to and read a third time and passed.

The Construction (Government Projects) Bill 2009.

The House voted.

For the Ayes: The Hon C G Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon L Montiel
The Hon J J Netto
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

The Bill was read a third time and passed.

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 three Government motions.

Question put. Agreed to.

GOVERNMENT MOTIONS

HON CHIEF MINISTER:

I have the honour to move the motion standing in my name which reads as follows:

> "This House bestows the Gibraltar Medallion of Honour, upon the following persons who have served and contributed to the interest of Gibraltar and its people in an exceptional manner that is particularly worthy of special recognition by this House on behalf of the people of Gibraltar:
>
> 1. Joseph (Jose) Netto, for services to trade unionism and workers;
>
> 2. Adolfo Canepa, for public services and services to politics;
>
> 3. Joseph (Joe) Gaggero, for services to aviation, shipping, business and commerce;
>
> 4. Maurice Xiberras, for public service and services to politics.".

Mr Speaker, Jose Netto has devoted his working life to the trade union movement in Gibraltar. He first became involved with unions at the age of 18 as a member of the War Department section of the Gibraltar Confederation of Labour, during his first job as an engine fitter at the Dockyard. But it was even before that, from an early age, that Jose was involved in activities in support of his ideals and beliefs. He lived through the Spanish Civil War and the Second World War, and it was during this time that Jose's father thought it best to send him away to stay with his grandmother in Atajate, at the time other Gibraltarians were evacuated to Britain, Morocco, Madeira and other places. From

then onwards, he tied his flag to the anti-Franco mast and well and truly became part of the movement in the struggle to defend workers rights. Back in Gibraltar he continued to play an active part in distributing propaganda against the Franco regime in Spain. He later founded the Free Workers Union and campaigned enthusiastically to do away with discrimination in the local work place, as he highlighted the difference in treatment of MOD employees, depending on whether they were UK, Gibraltarian or Spanish. Believing that unity equals strength, Jose Netto's Free Workers Union amalgamated with the Transport and General Workers Union prior to the link-up between the latter and the Gibraltar Confederation of Labour in 1963. From that moment onwards, Jose Netto became the leading force of the TGWU, eventually taking over the role at the head of the union as Resident Officer. Notwithstanding the very direct part he played as a union activist locally, always at the head of demonstrations and addressing workers at public rallies very eloquently in the Spanish language, there was a marked internationalist flavour to his brand of trade unionism and he had influential friends in the workers movements elsewhere, such as the legendary Jack Jones in Great Britain and Candido Mendez, the Secretary General of the Union General de Trabajadores in Spain. Even today he maintains his contacts with like minded personalities, for example, Miguel Alberto Diaz, the former Comisiones Obreras trade unionist. Jose has been described as a historic pillar of trade unionism in Gibraltar. Indeed, I think it is difficult to identify any individual that has achieved and tried more for trade unionism and workers in Gibraltar than Jose Netto, and I think he stands out by a long mile above everybody else. Earlier this year, the JM Memorial Foundation awarded Jose Netto one of their awards for making a difference to others. They wanted to recognise Jose's contribution to the trade union movement, his untiring defence of others and his commitment to equality, respect and dignity. It is for these same reasons that it is now proposed that the official recognition on behalf of the people of Gibraltar be bestowed upon Jose Netto, through the award of the Gibraltar Medallion of Honour.

Adolfo John Canepa has dedicated most of his life to politics and the development of Gibraltar, having served both as Leader of the Opposition and as Chief Minister, during his prominent career at the then House of Assembly. One of the main exponents of the "right to our land" philosophy within the AACR, Adolfo Canepa was perhaps the closest political colleague of the late Sir Joshua Hassan. He was his right hand man at meetings in London with Margaret Thatcher over the Dockyard agreement, and also accompanied Sir Joshua as his Deputy Chief Minister to meetings leading up to the Brussels Agreement in the early 1980s. Prior to his involvement in politics, Adolfo Canepa had already made his mark as one of a team of dedicated teachers at the Gibraltar Grammar School, who had helped the Christian Brothers to mould a generation of students who today are at the helm of Gibraltar's community in most walks of life. He left teaching, at considerable sacrifice to himself, his wife and his young family, at the time to pursue a career in politics. Since 1972, he has also served firstly as Minister for Labour and Social Security, during which time he led a wide ranging review of the social security system, and in later years as Minister for Economic Development and Trade, a Ministry he held until he succeeded Sir Joshua Hassan as Chief Minister. He served as Leader of the Opposition from 1987 to 1991. Since then, Adolfo Canepa has assisted successive Gibraltar Governments as a consultant, putting his experience and expertise into good use, advising on legislative and constitutional matters. He served in my Committee on Foreign Affairs, he supported me in the lobbying campaign and subsequent referendum, which led to the derailing of the infamous joint sovereignty proposals in 2002. Later, in the Constitutional Reform Committee, he played a leading role in the Gibraltar delegation, which achieved today's Constitution. Adolfo Canepa succeeded Sir Joshua as leader of the AACR and on 10th December 2007, was presented with the Gibraltar Award on behalf of the founding fathers of the AACR. The award was given by the Self Determination for Gibraltar Group, in recognition of the AACR's contribution to the political development and democratisation of Gibraltar. For the last 15 years, he has worked in the Government's Legislation Support

Unit, the prime function of which is to scrutinise EU documents and see how they might affect Gibraltar. Throughout, Adolfo Canepa's priorities have always been his family, Gibraltar and the interests of the Gibraltarians. For his exceptional, dedicated and extended public service to the political interests of the people of Gibraltar, it is now proposed that Adolfo John Canepa receive the Gibraltar Medallion of Honour.

Joseph Gaggero has headed the Bland Group of companies for 60 years, and through GB Airways has made a major contribution to aviation, the global travel industry and Gibraltar tourism in particular. Joe Gaggero became a director of the Gibraltar Chamber of Commerce after the Second World War, and led the Gibraltar Government's Tourist Department in the early 1950s. He started to develop Gibraltar's tourist trade by encouraging day visitors, by opening up sites which had previously been under the control of the military, namely, St Michael's Cave, the Upper Galleries and the Apes Den. In those early days, he also achieved considerable tourist development from Gibraltar to the Costa del Sol, by using Gibraltar as a stepping stone, even before Malaga International Airport opened. The Bland Group was instrumental in Gibraltar surviving the Spanish economic blockade, providing a mantle for Gibraltar in the form of sea and air services to Morocco, to relieve siege conditions, carrying Moroccan workers to Gibraltar and bringing in fresh fruit and vegetables, whilst at the same time building up their relationship with British Airways, with whom they worked in partnership during this period, maintaining the link with the United Kingdom throughout these difficult times for Gibraltar. After the land border opened in the early 1980s, Joe Gaggero relocated GB Airways with its BA franchise to the United Kingdom, and bought their beehive headquarters building at Gatwick. GB Airways, prior to selling to Easy Jet, covered 35 destinations across the Mediterranean, from Egypt across to Atlantic islands of Madeira and the Canaries, as well as preserving the daily link between Gibraltar and the United Kingdom. Today they continue to provide enhanced handling facilities at Gibraltar airport and also at Gatwick. The beehive building is being converted into a service centre, and they of course, still own and run a leading Gibraltar hotel, the Rock Hotel. Despite his marked international dimension in business, he is also Vice-President of the Moroccan/British Business Council, Joe Gaggero has a long record of involvement in Gibraltarian activities, having left his mark over the years in leading numerous Government and private sector committees, ranging from the Hotel and Shipping Associations to having been the President of the Gibraltar Rotarians and a Knight of the Holy Sepulchre of Jerusalem, to having served on the Gibraltar Branch of the Royal Life Saving Society and the Gibraltar Society for Handicapped Children. Above all, Joe Gaggero has long been a strong defender and promoter of the Gibraltarian identity, and is on record as having written, in his widely read biography "Running with the Baton", that in finely justifying the Rock's struggle for our own identity, he fervently believes that the people of Gibraltar must anticipate and drive the agenda, instead of being led into simply reacting to moves by Spain and the United Kingdom. For his exceptional and outstanding service to aviation, shipping, business and commerce in Gibraltar, it is now proposed that Joseph James Gaggero receive the Gibraltar Medallion of Honour.

Maurice Xiberras rates as one of Gibraltar's outstanding politicians, who have left their mark in ensuring that Gibraltar remains British in the face of Spanish efforts to the contrary. An integrationist from the outset, he was involved in the drafting of the Pro Integration Movement's manifesto back in 1967. Maurice Xiberras sat alongside Major Robert Peliza as a member of the Integration with Britain Party team, at the Constitutional Conference in 1968, from which emerged the Preamble to the Constitution, providing Gibraltarians with peace of mind ever since. Generally considered a political heavyweight, the movement encouraged him to leave his job as one of the team of top Gibraltarian teachers assisting the Christian Brothers at the Grammar School at the time, to join the IWBP and stand in the 1969 Elections. This meant a considerable sacrifice for him, as he had a young family and even his house was tied to his job at the time. He was also encouraged to make this dramatic move by MPs in London, who

reportedly told him that although he had a great future as a teacher, this must be given up for the greater good of Gibraltar. He became the Minister for Labour in 1969 and by 1970, he was de facto Deputy Chief Minister and deputised for Major Peliza as Chief Minister in his absence. After the 1972 Elections, Maurice Xiberras became Leader of the Opposition, when Bob Peliza left politics, and again in 1977, as a result of defections from the GDM to the then AACR Government benches. As Leader of the Opposition, Maurice Xiberras accompanied Sir Joshua Hassan as part of the British delegation to Strasburg, for meetings with the Spanish Foreign Minister Marcelino Oreja. This was the first official Spanish Government recognition of Gibraltar's elected representatives. Throughout his political career, Maurice Xiberras gained a deserved reputation for being a strong defender of British sovereignty, forever wary of any move that may weaken or place such sovereignty at risk, actively opposing any such ideas, wherever and whenever they arose. Today, Maurice Xiberras remains of the same view that has driven his politics throughout, in that he is not able to conceive a future for Gibraltar without the continuing close relationship with the United Kingdom. Whilst integration may not have materialised, he is down on the record as stating that the all important British future of Gibraltar is now more secure than it has ever been. Maurice Xiberras may no longer be actively involved in politics, but he has certainly not lost interest in the subject. His letter writing in the local press has a wide following in Gibraltar, and Gibraltarian readers truly benefit from his political expertise and experience, which he imparts as an elder statesman of Gibraltar politics. For his exceptional service to the political interests of Gibraltar and its people, it is now proposed that Maurice Xiberras receives the Gibraltar Medallion of Honour. I commend my motion to the House.

Question proposed.

HON DR J J GARCIA:

Just to say we will be voting in favour of the motion.

Question put. The House Voted.

The motion was carried unanimously.

HON CHIEF MINISTER:

I have the honour to move the motion standing in my name which reads as follows:

"This House:-

1. Notes that the tenure of office as Mayor of Mr Solomon (Momy) Levy ends on the 31st day of July 2009, and thanks Mr Levy for his work and commitment in the discharge of the functions of that Office;

2. Notes that Mrs Olga Zammit, presently the Deputy Mayor, will assume the Office of Mayor on the 1st day of August 2009, until the 31st day of July 2010;

3. Appoints Mr Anthony J P Lombard to be the Deputy Mayor of Gibraltar, with effect from the 1st day of August 2009 to assist and support the Mayor, and to substitute for the Mayor in the discharge of Mayoral duties; and

3. Appoints the said Mr Anthony J P Lombard Mayor of Gibraltar from the 1st day of August 2010 to the 31st day of July 2011.".

Mr Speaker, I think that whatever different Members of the House may have thought of the choice of Momy Levy as Gibraltar's first Mayor under the new regime, so to speak, whereby mayors should be drawn from the ranks of the wider community and not from the ranks of this House, it is, I think, irrefutable that he has carried out his duties and his functions

with a degree of seriousness, commitment and solemnity, which has ensured that the new system would take a good hold and root, and that it would continue as a successful model which will give numerous citizens the opportunity to adopt this civic representational role on behalf of all of the people of Gibraltar. I wish beyond the formal terms of my motion to record my personal appreciation for the way in which Mr Levy has carried out his duties, and it is a matter of regret to me, as I am sure it will be to everybody in this House, that the last month of his reign, which I know that he was particularly looking forward to, had been tarnished and spoiled by a very serious illness, from which I am sure this whole House will wish to join me in wishing him a speedy and total recovery.

Mr Speaker, the other half of the first team was Mrs Olga Zammit, who as last year's resolution appointed and foresaw, now takes over as Mayor, having served one year as Deputy Mayor, during which she has supported Mr Levy, whenever Mr Levy has not been able to, or wherever there has been a conflict of commitments, and I would wish to thank her for that year's service as well. She now takes over as Mayor in her own right and I have no doubt that the views which led the Government to propose her last year as Deputy Mayor, now reinforced by the style and manner that she has brought to the office whilst she has deputised in it for a year, augur well for her year's term of office as Mayor, and I would like on behalf of the House to wish her every, or at least on behalf of that side of the House for which I am free to speak, to wish her every success in her tenure of office during the coming 12 month period.

The Government have proposed Mr Anthony J P Lombard to be the Deputy Mayor during the year beginning on 1st August, and he then in turn will take over as Mayor in August of next year. In the Government's view, Mr Lombard is a person that will bring to both the Deputy Mayorship and the Mayorship, the degree of commitment, of time, to ceremony, to formality and to solemnity that the job requires, and I think that he is a person with an ability to engage at every level with all persons in the community, regardless of their political afilliations, and therefore, I believe, as do my Colleagues on this side of the House, that Mr Lombard is a person that has all the attributes required to successfully discharge for a period of one year the civic function of Deputy Mayor, and then for one year, as of next summer, the functions of Mayor in his own right, and I think we are confident that he will be as successful a choice as Mr Levy and Mrs Zammit have already shown themselves to have been. I commend the motion to the House.

Question proposed.

HON DR J J GARCIA:

On behalf of the Opposition I would like first of all to also wish Momy Levy a prompt and a total recovery, and only to say the Opposition will be supporting the motion.

Question put. The House voted.

The motion was carried unanimously.

HON J J NETTO:

Mr Speaker, I have the honour to move the motion standing in my name which reads as follows:

> "That the Gibraltar Parliament approves by resolution the making of the Social Security (Insurance) Act (Amendment of Contribution) Order 2009.".

Mr Speaker, in his Budget address the Chief Minister stated that with effect from 1st July 2009, the maximum weekly social insurance contribution will rise by 4 per cent, in respect of both employers and employees contributions. The Draft Order attached to the resolution brings these things into effect, albeit as from the date when the Order is published in the Gazette. The Order is made under section 52 of the Social Security

(Insurance) Act, and it is a requirement under that section that such an Order obtains the prior approval of Parliament. Since the Government are in the ordinary course of events required to publish a Bill not less than six weeks prior to its First Reading, and since it is the Government's stated intention that the change in the rates of contribution be effective as of 1st July, the Government will be bringing a Bill in the Parliament to cover the period from 1st July to the date of commencement of the Order.

Question proposed.

HON DR J J GARCIA:

Mr Speaker, for the reasons indicated at the time of the Budget debate, we will be voting against.

Question put. The House voted.

For the Ayes:
The Hon C G Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon L Montiel
The Hon J J Netto
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

The motion was accordingly carried.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Thursday 30th July 2009, at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 1.10 p.m. on Thursday 9th July 2009.

THURSDAY 30TH JULY 2009

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 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 N F Costa
The Hon S E Linares

ABSENT:

The Hon J J Holliday – Minister for Enterprise, Development, Technology and Transport and Deputy Chief Minister

The Hon J J Bossano – Leader of the Opposition
The Hon C A Bruzon

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of documents on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table:

1. The Report and Audited Accounts of the Gibraltar Regulatory Authority for the year ended 31st March 2009;

2. A letter addressed to me from Mr Maurice Xiberras who recently received the Gibraltar Medallion of Honour by vote in this House, expressing his thanks and asking me as Leader of the House to convey my thanks to all hon Members of the House for voting in favour of his award, and I do so by laying a copy of his letter in the House.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE TOWN PLANNING (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Town Planning Act 1999 for the purpose of transposing into the law of Gibraltar Article 1(7) of Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Town Planning Act 1999, in order to transpose into the law of Gibraltar Article 1(7) of Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances. Directive 2003/105 has been transposed, except for Article 1(7), by the Public Health (Amendment) Act 2006, which was Act No. 9 of 2006. Although the other Articles of the Directive have been transposed by amendments to the Public Health Act, Article 1(7) of the Directive, regarding land use planning, is not relevant to the Public Health Act, and thus Article 1(7) which amends, as I have said, Article 12 of the earlier Directive of 1996, was transposed by amendments to the Town Planning Act of 1999. For this reason, Article 1(7) of Directive 2003/105, which is what concerns this Bill, is being transposed by amendment to that same Town Planning Act. In effect, it is an update of a provision in Article 12 of the 1996 Directive. Article 12 of Directive 96/82 requires that the objectives of preventing major accidents and limiting the consequences of such accidents, are taken into account in land use policies, and that these objectives are achieved through controls and the requirement to ensure that planning authorities set up appropriate consultation procedures to facilitate the implementation of these and other policies established under the Article. It also requires the Member States to take account of the need, in the long term, to maintain appropriate distances between establishments, which is defined basically as an establishment in which dangerous substances are present, covered by the Directive and residential areas, areas of public use and areas of natural sensitivity or interest. In other words, the maintaining of distances between dangerous substance establishments and all these other things that I have just recited. Directive 2003/105 extends this requirement to include buildings in public use, major transport routes, as far as possible, and recreational areas. So it is an extension of the definition of "protected areas" that should be distanced from establishments where there are dangerous substances. That is the effect of the 2003 Directive in amending the 1996 Directive. Clause 3(2)(a) and clause 4(2)(a) of the Bill, seek to transpose Article 1(7) of the Directive. There are some consequential provisions in the Bill as well. In clause 2 of the Bill the definition of "dangerous substance", "Directive" and "operator" have been inserted as consequential to this new Directive. Clause 3(2)(b), clause 4(2)(b) and clause 5, provide for other consequential provisions. The definition of "establishment" gives the provision of sections 5 and 22 of the Town Planning Act more clear meaning. The amendment to the definition of "Minister" reflects the fact that this area is an environmental protection measure, and therefore, the Minister responsible should be the Minister for the Environment and not the Minister for Town Planning. Clause 5 of the Bill inserts a new provision for notification of dangerous substances, in order to make the mechanisms provided for in the Bill more workable in practice. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Insurance (Motor Vehicles (Third Party Risks) 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 Bill is one of a series of five legislative measures which implement within the laws of Gibraltar, European Community Directive 2005/14/EC, amending various European Directives relating to insurance against civil liability in respect of the use of motor vehicles. In normal English, motor vehicle insurance. The principal amendments made by the Directive, and therefore by the Bill in our domestic legislation, concern the following matters. Vehicles with temporary number plates, vehicles with false or illegal number plates, the regime of random checks of vehicles registered in European Union country territories when they are entering one's territory, the regime on vehicles in respect of which there is no general obligation to take out compulsory insurance, an updating of the minimum amounts of insurance coverage required, across all of these things to create a standard regime around the whole of the European Union, compulsory coverage for an injury caused to non motorised users of the road, various new provisions aimed at enhancing the protection of victims. The Bill amends our Insurance (Motor Vehicles) (Third Party Risks) Act as follows. Clause 2(2) of the Bill, amends section 2(2) of the Act so that the territory in which a vehicle is normally based, shall be the territory of the State of which the vehicle bears the number plate, irrespective of whether the plate is permanent or temporary. The last bit being the novelty introduced by this Directive. Clause 2(2) also amends section 2(2) of the Act, by the insertion of a new paragraph (d), pursuant to which, where a vehicle involved in an accident does not bear any registration plate, or one which does not correspond to the vehicle, that vehicle shall be considered to be normally based in the territory of the State where the accident took place, for the purposes of settling claims under an agreement between national insurers bureaux, or pursuant to EC Directive 84/5. Clause 2(3) of the Bill replaces section 3(5) of the Act. Its purpose is to clarify the obligation on persons which use vehicles, which by virtue of section 2(4) of the Act, are exempt from the obligation to take out a policy of insurance in respect of third party risks, in accordance with the provisions of that Act. Owners of such vehicles must now ensure that a valid policy of insurance is taken out in respect of such a vehicle. Clause 2(4) of the Bill places a reporting obligation on the Minister for Transport, who is required to inform the European Commission of the vehicles and insurance policies listed and referred to in sections 3, 4 and 5 of the Act. Clause 2(5) of the Bill amends section 4 of the Act, in order to increase the minimum financial level of coverage, which presently stands at £250,000, and that needs to be increased as from 11th December 2009 to £500,000, and then again as from 11th June 2012 to £1 million. Clause 2(5) of the Bill also inserts a new subsection (4) to section 4, so that all contracts of insurance insofar as they provide for compulsory insurance against third party liability, shall be on the basis of a single premium, payable for the term of the contract and covering the entire territory of the European Community. Clause 2(6) amends section 12(1)(a) of the Act, so as to remove the existing exclusion applying to vehicles normally based in the non European territories of Member States. This amendment now brings those non European territories of Member States within the main European regime of the Directives and of our Act. Clause 2(7) inserts a new section 12(1)(a) to the Act, empowering the person appointed so to do in Gibraltar, to carry out random checks on vehicles entering Gibraltar via the land frontier, for the purposes of ensuring that any loss or injury which may be caused by such vehicle is covered throughout the

European Community. In short, random checks to ensure that vehicles entering Gibraltar have Europe-wide insurance coverage. The Directive, and therefore the Act, provides that such checks may only be random and cannot be systemic, so as not to interfere with European citizens' rights of freedom of movement. Clause 2(8) inserts a new section 13(1)(aa) to the Act, to the effect that an insurer may not rely on excess clauses as against a claim by an injured third party. Clause 2(8) also amends the minimum financial level of coverage in section 13(1)(a), consistently with the new levels introduced by clause 2(5). Clause 2(9) introduces a new section 13A to the Act, providing that where an insurer would be liable to satisfy judgements against persons injured against third party risks, the insured party or parties shall enjoy a direct right of action against the insurer. Clause 2(10) inserts a new paragraph (aa) to section 18(1) of the Act, thereby introducing a further circumstance on which an insurer may not rely upon in order to restrict the coverage of the insurance. Namely, he may no longer rely as a defence, that is the insurer, where a passenger making a claim knew or should have known that the driver was intoxicated at the time of the accident. There is a small clerical error in this latter clause, the word "done" should read "known". I commend the Bill to the House.

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

HON G H LICUDI:

Mr Speaker, this Bill transposes certain matters contained in a European Directive, and as such, we will be supporting it.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

THE INSURANCE COMPANIES (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Insurance Companies Act for the purpose of transposing parts of Directive 2005/14/EC amending various Directives relating to insurance against civil liability in respect of the use of motor vehicles, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill is the second measure before Parliament today which implements in our laws EC Directive 2005/14/EC, amending various European Directives relating to insurance against civil liability in respect of the use of motor vehicles. I have already discussed, in the context of the presentation of the previous Bill, the purpose and principal amendments introduced by the Directive. In these circumstances, I will move directly to explain the clauses of the Bill. The Bill amends the Insurance Companies Act as follows. There is a drafting error in the first clause, which does not say, obviously what I am about to say that it says, but I will be moving the appropriate amendment. Clause 2A inserts a new paragraph (bb) to section 2(10) of the Act. Section 2(10)

determines the territory in which the risk for insurance purposes is deemed to be situated. The new section 2(10)(bb) should provide, it does not, but it should provide that where the insurance relates to a vehicle dispatched to Gibraltar from an EEA State, or to an EEA State from Gibraltar, in respect of a period of 30 days beginning with the day on which the purchaser accepts delivery, the risk will be situated in the territory of destination. This will work as an exception to the rule of the territory of registration of the vehicle, set out in section 2(10)(b) of the Act. So normally, the regime is that the risk lies in the territory of registration of the vehicle. This amendment alters that regime for the first 30 days when a vehicle is exported from and to one EEA State and the other, and it displaces the usual rule, territory registration, and replaces it with territory of destination as the territory where the risk is deemed to lie for the purposes of the Act. But of course, the Bill, as it has been printed, does not say that because it says "where the insurance relates to a vehicle dispatched to Gibraltar from an EEA State, or from an EEA State to Gibraltar, both of those phrases describe the same direction of travel, and of course, one of them should be to Gibraltar from an EEA State and the other one should be to an EEA State from Gibraltar. So the amendment will be to replace the phrase "from an EEA State or from an EEA State to Gibraltar" by the phrase "to Gibraltar from an EEA State or to an EEA State from Gibraltar". Clause 2(b) inserts a new subsection 10(a) to section 2 of the Act. It is related to the previous amendment. It provides that where a vehicle is involved in an accident during the 30 day period referred to in new section 2(10)(bb), while being uninsured, the national insurers bureau in the territory of destination shall be liable for the compensation. Hon Members know that this whole area of EU law that we are amending today, and therefore the principal Act that we are amending today, relates to, amongst many other things, national insurance bureaux which are composed by all the insurance operators in a particular territory, who have to collectively accept responsibility for non-insured events when there was a legal obligation for the event to be insured. In other words, that victims of accidents should not be the further victim of lack of insurance cover, because the driver of the vehicle happened to be unlawfully uninsured. So the whole question of what is the territory of risk becomes very important, because it would be the national bureau, therefore the insurance industry in that country that would assume the risk of uninsured accidents involving a particular vehicle. So when we are talking in this Bill of transferring the risk for 30 days from the country of registration to the country of destination, what we are in effect doing is transferring the risk for those 30 days to the national insurance bureau of the country of destination, away from the country of registration. Clause 2C amends section 31 of the Act, in order to clarify that that section applies to accidents caused by a vehicle normally based in Gibraltar. Clause 2D amends clause 12 of the Act, by inserting a new paragraph 6 concerning information to be disclosed by an insurer, rather, by an insurer upon request by the current owner of the vehicle relating to third party claims involving the vehicle during the preceding five years. I commend the Bill, as so amended, to the House.

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

HON F R PICARDO:

Mr Speaker, yes, first of all to thank the Chief Minister for pointing out to the whole of the House the manifest error in section 2. In fact, this Bill has been in circulation now for six weeks and the error is such in that section as to have made the whole of the section, and most of the rest of the Bill, completely incoherent. Simple regard to Article 4 of the Directive, which this Bill transposes into our law, would have shown the draftsman that the purpose of the Bill is to deal with the movement of vehicles from one Member State to another, not simply from EEA States to Gibraltar. Therefore, the language in that section renders the section totally incomprehensible. There is also this point, we are told that by this Bill we are amending the Insurance Companies Act. In fact, Gibraltar no longer has an Insurance Companies Act and we are amending an Act that no longer exists. We are, in fact, amending the Financial

Services (Insurance Companies) Act, we passed the change to the title of that Act in this House earlier this year, and I think it is appropriate that an amendment be moved, if necessary by the Leader of the House, to ensure that anybody reading this Bill once it becomes an Act, knows exactly what Act we are amending.

HON CHIEF MINISTER:

I will certainly make sure that the draftsman is aware that his obvious and glaring errors have been stridently reprimanded by the hon Member opposite. Of course, as to his inability to comprehend the Bill, I have no doubt that in the thorough preparation that I have no doubt that he has done for these proceedings, he will of course have considered the terms of the Directive, and therefore, the error would have been as obvious to him as it was to everybody else that did homework in relation to this. Drafting errors are drafting errors, but nevertheless, I shall pass the hon Member's obvious irritation to the draftsman of the Bill. I have nothing further to add.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

It has just been whispered in my ear that perhaps the hon Member thinks that a particular person has drafted it, one in which he was engaged in correspondence.

HON F R PICARDO:

No, I did not for a moment think that. I was pointing out exactly what I said, I do not think there is any need for asides.

HON CHIEF MINISTER:

I beg to move that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE SUPPLEMENTARY APPROPRIATION (2008/2009) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to appropriate further sums of money to the service of the year ending 31 March 2009, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill, as the Explanatory Memorandum attached to the Bill suggests, is to appropriate further sums of money required to meet expenditure from the Consolidated Fund and the Improvement and Development Fund, for the year ended 31st March 2009. Hon Members will have received the Statement of Supplementary Estimates No. 1 of 2008/2009 sent to the Clerk on 18th June and distributed to Members on 25th June, which provides details of the additional funding requirement covered by this Bill. Of course, hon Members will also be aware that this supplementary funding is in addition to, and therefore different from, the distribution, the allocation of the provision of £8.5 million which was voted at last year's Budget under the heading "Supplementary Funding". In respect of the latter, Reallocation Warrants Nos. 1 and 2 of

2008/2009 were laid in Parliament on 25th June, and those give full details of how those £8.5 million of that supplementary funding has been allocated in fact. As the hon Members will have noted, the supplementary funding sought under this Bill is to fund Consolidated Fund Recurrent Expenditure during the year of £3.9 million, Consolidated Fund Exceptional Expenditure during the year of £2.285 million and Improvement and Development Fund Expenditure of £60.466 million. The additional Consolidated Fund Recurrent Expenditure, of £3.9 million as I have said, is required towards meeting the increase in the subvention to the Gibraltar Electricity Authority. This additional subvention required is as a result of the increased cost of fuel incurred by the Authority during the year. The House may be interested in knowing that the total subvention by the Government to the Gibraltar Electricity Authority for the last year will be around £10 million, representing an increase of around £5 million on the original estimate. Of the £2.285 million of supplementary funding required for Consolidated Fund Exceptional Expenditure, £1.943 million represents the expenditure incurred during the year to meet the expenses of the tribunal appointed under section 64 of the Constitution, to enquire into certain aspects relating to the Chief Justice. The remaining £342,000 is to meet the cost of the appeal for a bone marrow donor in October 2008, in connection with a sick young baby. The supplementary funding required under the Improvement and Development Fund is mainly in respect of the Education Department, who spent £450,000 on relocating themselves to their splendid new offices, and also in respect of £14.27 million in respect of MOD relocations relating to various Government projects around town. Additionally, £1.75 million is required to meet expenditure incurred on the new airport terminal project, where only a token provision was included in the estimates for the last year. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Town Planning (Amendment) Bill 2009;
2. The Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Bill 2009;
3. The Insurance Companies (Amendment) Bill 2009;
4. The Supplementary Appropriation (2008/2009) Bill 2009.

THE TOWN PLANNING (AMENDMENT) BILL 2009

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

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

THE INSURANCE (MOTOR VEHICLES) (THIRD PARTY RISKS) (AMENDMENT) BILL 2009

<u>Clause 1</u> – was agreed to and stood part of the Bill.

<u>Clause 2</u>

HON CHIEF MINISTER:

In clause 2(10), new paragraph (aa), delete the word "done" and replace with the word "known".

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

<u>The Long Title</u> – was agreed to and stood part of the Bill.

THE INSURANCE COMPANIES (AMENDMENT) BILL 2009

<u>Clause 1</u>

HON F R PICARDO:

In the Long Title and in clause 1 and clause 2, on two occasions, there is a reference to the Insurance Companies Act. I believe that reference should be to the Financial Services (Insurance Companies) Act.

HON CHIEF MINISTER:

Yes, on this exceptional occasion I am inclined to assume that the hon Member is right and I will support that amendment. I have no specific recollection of having done it for this particular Act, but I know we have been doing it systematically for Financial Services Acts. So if he has looked it up and he has found that then I am sure it is right, and it would involve not just inserting the words "Financial Services" at the front but also putting the words "(Insurance Companies)". So we would have two sets of brackets.

In clause 1(1), delete the words "Insurance Companies (Amendment) Act 2009." And replace with the words "Financial Services (Insurance Companies) (Amendment) Act 2009.".

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

<u>Clause 2</u>

HON CHIEF MINISTER:

In clause 2 there is this point where it should read after the first words "Gibraltar and from an EEA State" and then after the word "or" delete the word "from" and put the word "to". So it would read "or to an EEA State" and then delete the word "to" and put the word "from", after the word "State", so it would read, "from an EEA State or to an EEA State from".

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

<u>The Long Title</u>

HON CHIEF MINISTER:

There are one or two other minor amendments just of a secretarial nature, the word "to" I think is missing after the word "Act" in the Long Title. "An Act to amend the Insurance Companies Act" and the word "Insurance" should be in capital letters. The letter "i" should be a capital "I".

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

THE SUPPLEMENTARY APPROPRIATION (2008/2009) BILL 2009

Clauses 1 to 4 – were agreed to and stood part of the Bill.

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Town Planning (Amendment) Bill 2009;

2. The Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Bill 2009;

3. The Insurance Companies (Amendment) Bill 2009;

4. The Supplementary Appropriation (2008/2009) Bill 2009,

have been considered in Committee and agreed to, with amendments in the case of the Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Bill 2009 and the Insurance Companies (Amendment) Bill 2009, without in the case of the rest, and I now move that they be read a third time and passed.

Question put.

The Town Planning (Amendment) Bill 2009;

The Insurance (Motor Vehicles) (Third Party Risks) (Amendment) Bill 2009;

The Insurance Companies (Amendment) Bill 2009;

The Supplementary Appropriation (2008/2009) Bill 2009,

were 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 sine die.

Question put. Agreed to.

The adjournment of the House was taken at 10.15 a.m. on Thursday 30th July 2009.

REPORT OF THE PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

The Eighth Meeting of the Eleventh Parliament held in the Parliament Chamber on Monday 12th October 2009, at 2.35 p.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for 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 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

ABSENT:

The Hon J J Netto – Minister for Family, Youth & Community Affairs

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 10th June 2009 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 31st March 2009;

2. The Income Tax (Allowances, Deductions and Exemptions) (Amendment) Rules 2009;

3. The Rates of Tax Rules 2009;

4. The Interest Swap Agreement with Barclays Bank Plc dated 31st July 2009.

Ordered to lie.

ORAL ANSWERS TO QUESTIONS

The House recessed at 5.30 p.m.

The House resumed at 5.53 p.m.

Oral Answers to Questions continued.

ADJOURNMENT

HON LT-COL E M BRITTO:

I have the honour to move that the House do now adjourn to Tuesday 13th October 2009 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 7.43 p.m. on Monday 12th October 2009.

TUESDAY 13TH OCTOBER 2009

The House resumed at 9.35 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana, QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development, 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 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

ABSENT:

The Hon J J Netto – Minister for Family, Youth and Community Affairs

The Hon S E Linares

IN ATTENDANCE:

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

ORAL ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 12.45 p.m.

The House resumed at 2.15 p.m.

Oral Answers to Questions continued.

The House recessed at 4.00 p.m.

The House resumed at 4.10 p.m.

Oral Answers to Questions continued.

WRITTEN ANSWERS TO QUESTIONS

HON CHIEF MINISTER:

Mr Speaker, I have the honour to Table the answers to Written Questions numbered W111/2009 to W176/2009 inclusive.

BILLS

FIRST AND SECOND READINGS

THE QUALIFICATIONS (RIGHT TO PRACTISE) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to transpose into the law of Gibraltar Directive 2005/36/EC of the European Parliament and of the Council of the 7th September 2005 on the recognition of professional qualifications as amended from time to time, and matters connected thereto, be read a first time.

Question put. Agreed to.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Friday 23rd October 2009 at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 6.25 p.m. on Tuesday 13th October 2009.

FRIDAY 23RD OCTOBER 2009

The House resumed at 10.00 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development, 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 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 L Montiel – Minister for Employment, Labour and Industrial Relations

The Hon F R Picardo
The Hon S E Linares

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Private Members' Motion.

Question put. Agreed to.

PRIVATE MEMBERS' MOTION

HON CHIEF MINISTER:

I have the honour to move the Motion standing in my name which reads as follows:

> "That this House do give leave for the introduction by me of a Private Members' Bill namely the Royal Bank of Scotland (Gibraltar) (Transfer of Undertaking) Bill 2009."

Mr Speaker, the Royal Bank of Scotland Group which owns both the Royal Bank of Scotland and NatWest and that operate in Gibraltar under both those brands has already stated publicly that it intends to convert the Royal Bank of Scotland franchise in

Gibraltar into a second branch of the NatWest franchise so that it exploits in Gibraltar the NatWest franchise rather than operating under two, which it believes dissipates its brand and corporate recognition in a small market like ours. It has explained that in public. There is no closure of branches. I am assured that there are absolutely no job losses arising from this rebranding and the issue is that those two operations currently, that is to say, the NatWest operation that operates in Line Wall Road and the RBS operation that operates in Corral Road are carried out in separate legal entities. Therefore, transferring the business including accounts, powers of attorney, customer mandates, assets, liabilities, mortgages, interest in mortgage security, that sort of thing, from one corporate entity to another would normally require a huge amount of legal documentation and a huge amount of paperwork, and it has become something of a tradition in Gibraltar, as hon Members who have been in this House for some years will know, that we facilitate institutions that wish to take action of this sort by allowing them to bring about the necessary legal transactions to implement those changes by an Act of Parliament which cuts right through the need to do all that documentation and all those individual legal steps with individual legal transactions. That is the nature of this Bill. Indeed, the Bill is, I believe, in identical, and if it is not identical it is very minor changes, but I believe it is in identical form to the one that was introduced back in 2001, when NatWest Offshore became RBS, when NatWest Offshore Transfer of Gibraltar Undertaking Act which was taken by this House in a Private Members' Motion moved by a Government Minister to facilitate that earlier corporate restructuring by this Bank. The RBS Group in Gibraltar remains a very important and indeed a very welcome part of our financial services system and they have remained committed and remain committed to Gibraltar. They are significant participators in funding of Gibraltar projects, whether they be private sector projects or whether they be Government projects. They are significant and good employers in Gibraltar and I believe that it is right that this House should assist them in this way by the passage of Bills of this sort. I commend therefore the Motion to the House.

Question proposed.

HON J J BOSSANO:

We supported the previous occasion, so we will be voting again in favour, obviously.

Question put. The House voted.

The motion was carried unanimously.

BILLS

FIRST AND SECOND READINGS

THE QUALIFICATIONS (RIGHT TO PRACTISE) ACT 2009

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, first of all can I just mention to the hon Members that I have this morning, and I think it has now been circulated to them, given them notice of a number of amendments that I will be introducing to this Bill at Committee Stage. None of them have a huge impact on the technical provisions of this Bill in terms of its impact and effect on the mutual recognition of qualifications and the right to practise which is the underlying objective of the Bill. Mr Speaker, before I comment then on the content of the Bill, one more item, a word about its background. This Bill transposes a Directive establishing rules whereby a host Member State, in our case it would be Gibraltar, must recognise the qualifications of a regulated profession from another Member State otherwise referred to as the Home Member State. This applies to all nationals wishing to pursue a regulated profession across the

EU and also includes those in the liberal professions. The legislation is intended to strike a balance between the free movement of skilled professionals on the one hand, and consumer protection on the other. As far as the provision of services is concerned, the Bill follows the principle of mutual recognition with host country control. Thus, the recognition of professional qualifications by Gibraltar will allow the beneficiary to gain access to the same profession to which he or she is qualified in her home country and to pursue their profession under the same conditions as those offered to people who are qualified and registered in Gibraltar and that is true whether it is either on self-employed or employed basis. The Bill is divided into a number of parts. Part I lays down the general provisions including the relevant definitions and scope of the Directive. Part II lays down the provisions relating to the Free Provision of Services. Part III relates to Freedom of Establishment. Part IV makes provision for Detailed Rules Pursuing the Profession. Part V deals with Administrative Cooperation and Part VI provides for a number of ancillary matters. Under Part III, a general system for the recognition of evidence of training is established. In the general system of recognition, the various national education and training systems are grouped together according to a number of levels solely for the purposes of the arrangements operation, without in any way affecting educational structures in Gibraltar. Under the general system, professional qualifications may be recognised on the basis of co-ordination of minimum training conditions or based on professional experience. At the same time, the Bill recognises that there are certain special cases which need to be taken into account. For example, as regards doctors and dentists, the principle of automatic recognition of medical or dental specialities to two or more Member States applies. Clauses 2, 4 and 5 are interpretation clauses. They essentially maintain the definitions currently contained in the General System Directives concerning the concepts of regulated professions, professional qualifications and evidence of formal training, including any evidence of formal qualifications obtained in a third country once it has been recognised by a Member State where the applicant has pursued the profession for at least three years. Clause 6 establishes the principle of mutual recognition of professional qualifications in accordance with the EC Treaty. This clause lays down that the Bill applies solely to Community nationals when the profession which the applicant wishes to pursue is regulated in Gibraltar and when the applicant has obtained his professional qualifications in another Member State. Clause 7 sets out the effects of professional recognition and introduces the obligation to allow access in Gibraltar to a regulated profession. Clause 8 lays down that the Member State may not, for reasons relating to professional qualifications, restrict the freedom to provide services when the beneficiary is legally established in another Member State. This is immediately applicable when the profession is regulated in the Member State of establishment. When the Member State of establishment does not regulate the profession, the person providing services in that other Member State must, in addition, have pursued the activity in question for two years in the former Member State. So, when it is a regulated profession, the right of establishment is automatic. When it is not a regulated profession, the right of establishment in the host country depends on having had at least two years practice in your home country. Clause 9 takes over the acquis of the sectoral Directives as regards the dispensation from any authorisation or registration with a professional or social security body. Hon Members will be aware that there are already some professions for which this recognition of qualifications doctrine exists and this is an omnibus Directive which is being adopted by the Community to bring it all together with a view of harmonising the principles that apply across all the professions to this mutual recognition of qualification and practise rights. Clause 10 lays down the obligation to inform the Gibraltar competent authority when the services are provided by movement of the provider. Pursuant to this clause and clause 11, the nationality of service providers and their lawful pursuit of the activity in Gibraltar, must be verified by the competent authority through an exchange of information with the competent authority of the Member State of establishment. Where applicable, the competent authority may also verify, through the Member State of establishment, whether the provider has exercised the profession for at least two years

in that Member State. With a view to consumer protection, clause 12 contains the obligation on the service provider to provide the recipient of the service with a certain amount of information. This provision is taken over from Directive 2000/31/EC on Electronic Commerce and hence extended, in the case of the regulated professions, to all forms of the provision of services. Clause 13 sets out the scope of clauses 13 to 18. They apply to professions not covered by the rest of Part III. Clauses 14 to 16 set out the various categories of qualifications and certificates that may be relied upon in conferring rights on migrants. Clause 17 maintains the possibility for the competent authority to make recognition of qualifications subject to the applicants completing a compensation measure which can be either an aptitude test or an adaptation period. Clause 18 provides xxxxx from compensation measures where the applicant's qualifications meet the criteria laid down by a common platform of EEA States submitted to the Commission and providing adequate guarantees as regards the applicant's level of qualifications. Clauses 19 to 22 take over the principle and subject to the amendments set out below, the provisions of Article 4 of Directive 99/42 which provides for the automatic recognition of qualification on the basis of the applicant's professional experience in the cases of the craft industrial and commercial activity set out in the restrictive list in Schedule 5. Clauses 30 to 54 take over the relevant existing provisions for coordination of the minimum training conditions, automatic recognition of evidence of formal training and, if necessary, the detailed arrangements for such recognition. Access to the professions concerned. The exercise of professional training activities in question. The procedures for including the evidence of training in the schedule and also of acquired rights. In accordance with clause 55, when deciding on a request to exercise a regulated profession in the implementation of the provisions on establishment, the competent authority may require the specific documents and certificates set out in the schedule. Clause 56, strengthens the existing rules of procedure. In particular, through the generalised application of the one-month period granted to the competent authority to decide the requests for recognition and by introducing the obligation on those authorities to acknowledge receipt of the file and where applicable to inform the applicant of any missing document. Clause 57 essentially takes over the existing rules on the use of the professional title of Gibraltar and lays down, in this respect, the rules applicable in the event of partial access to the profession. Clause 58 requires the applicant to have the language skills needed to practice the profession in Gibraltar. Assessment of the compatibility of requirements imposed with Community law by the competent authority must be based on its proportionality as regards the need of the profession, that is to say, the language skill requirement must be proportional to the need regarding the practise of that particular profession. Where the competent authority considers that the applicant does not have the necessary language skills, it is for the host Member State to ensure that the applicant can acquire the missing skills. Clauses 59 and 60 lay down the arrangements for practising the profession relating to the use of academic titles and the conclusion of an agreement with a health insurance fund which are common to the provision of services and establishment. Clause 61 extends to the whole of the Directive the obligation on the Gibraltar competent authority to cooperate closely with the competent authorities of the Member States of origin in order to ensure that the provisions of the Bill are applied adequately and to avoid the rights deriving from it being deflected from their objective and used in a fraudulent fashion. In addition, a coordinator responsible for promoting the uniform application of the Bill and collecting information useful for its implementation is appointed in and for Gibraltar. Clause 64 deals with transitional provisions. The general rule here is that no existing practitioner in Gibraltar loses his right to practice by virtue of this new law. The principle is also established that in case of a conflict between this Bill and an existing enactment, this Bill prevails. Schedule 1 comprises a list of professional associations or organisations for filling the conditions of section 3(2). Schedule 2 lists the courses having a special structure referred to in section 14 point (c) subparagraph (ii). Schedule 3 deals with recognition on the basis of coordination of the minimum training conditions. Schedule 4 sets out the documents and certificates

which may be required in accordance with section 55(1). Schedule 5 sets out the activities relating to the categories of professional experience referred to in sections 20, 21 and 22. Schedule 6 sets out the acquired rights applicable to the professions subject to recognition on the basis of coordination of the minimum training conditions and Schedule 7 lists the regulated education and training referred to in the third sub-paragraph of section 16(2).

Mr Speaker, I beg to give notice that the amendments set out in my letter be taken by me at Committee Stage and I will speak to those amendments at that time. In the meantime, I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE INCOME TAX (AMENDMENT OF THE QUALIFYING (CATEGORY 2) INDIVIDUALS RULES 2004) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend rules made under the Income Tax 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, the Bill amends rule 9(4) of the Qualifying (Category 2) Individuals Rules 2004 with retrospective effect to the 1st July 2009 by increasing the sums which appear in paragraphs (a) to (d) of that rule in accordance with the Budget measures which I announced in the Budget earlier this year. The minimum tax payable rises from £18,000 to £20,000 and the minimum tax payable rises from £60,000 to £70,000. Any hon Member that is wondering why we are having recourse to primary legislation to amend subsidiary legislation will recall that we have done it in the past and the reason for that is that the changes have retrospective effect and taxation can only be amended retrospectively by primary legislation and not by amendments to subsidiary legislation. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE PUBLIC HEALTH (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Public Health 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, the need for this Bill is the same as the previous Bill. The need for retrospective implementation of the Act. On this occasion, relating to amendments to section 277A of the Public Health Act which gives effect to a measure that I announced in the Budget. This measure provides for an increased discount for the prompt payment of rates in respect of hereditaments used for certain qualifying activities including activity as a bar or restaurant. The discount for prompt payment of rates is increased by another 10% to 20%. This measure will be deemed to have come into operation on 1st July 2009. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE SOCIAL SECURITY (AMENDMENT OF REGULATIONS) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Social Security (Open Long-Term Benefits) (Voluntary Contributors) (Amendment) Regulations 2009, 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, again, this is to introduce the Budget announcement which increased the weekly rate of contributions payable by voluntary contributors to £12.38 and which came into operation on the date of publication, that is to say, the 3rd of September 2009. This Bill amends those regulations in order to provide that the increase be retrospective to the 1st July 2009 in accordance with what I said at the Budget. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE GIBRALTAR PORT AUTHORITY (AMENDMENT) ACT 2009

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Act to amend the Port Authority Act 2005, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that a Bill be now read a second time. Mr Speaker this Bill amends section 3 of the Gibraltar Port Authority Act 2005 to make the Financial Secretary a member of the Port Authority. It also inserts a new section 21 to enable the Minister with responsibility for public finance to make regulations for the financial control and regulation of the Authority and the conduct of its financial affairs. I commend the Bill to the House.

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

HON DR J J GARCIA:

Yes Mr Speaker, simply to say that when the Bill setting up of the Port Authority was adopted by this House in December 2004, the Opposition abstained on the Bill. So, we will be abstaining on this Bill today as well.

HON CHIEF MINISTER:

Yes, Mr Speaker, I recognise that the hon Member's position may be motivated by a desire for consistency and of course I would understand it if that were the case. I do not think you need to be in favour of the Port Authority to be in favour of the Government exercising financial control of the Authority if indeed it exists. In other words, the fact that the hon Members disapprove of the Port Authority, surely does not take them to a position where they disapprove of the Financial Secretary and the Accountant General exercising financial control of public funds once they are passed on to the Treasury. I do not say this in order to persuade them to change their minds although, of course, they are perfectly free to do. I just want to make it clear that whilst we acknowledge their logical desire to be consistent with their previous voting, in fact I do not think that this is a case of consistency. Rather the Port Authority exists. This House is now voting not on whether it likes or dislikes the Port Authority which already exists but rather given that it exists, should the Government's financial controllers be able to account for the use of public funds which are paid to the Authority. That is all that this Bill is intended to do.

Question put. The House voted.

For the Ayes: The Hon C G Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon J J Holliday
The Hon J J Netto
The Hon E J Reyes
The Hon F J Vinet

Abstained: The Hon J J Bossano
The Hon C A Bruzon
The Hon N F Costa
The Hon Dr J J Garcia
The Hon G H Licudi

The Bill was read a second time.

HON J J HOLLIDAY:

I beg to give notice that the Committee Stage and Third Reading be taken later today, if all hon Members agree.

Question put. Agreed to.

THE INTERNATIONAL CRIMINAL COURT (AMENDMENT) ACT 2009

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to amend the International Criminal Court Act 2007, be read a first time.

Question put. Agreed to.

SECOND READING

I have the honour to move that a Bill for the International Criminal Court (Amendment) Act 2009 be now read a second time. Mr Speaker, this Bill contains three important amendments to the International Criminal Court Act 2007 but before I speak on the effect of the actual amendments, I would like to say a few words on why they had become necessary and why the Hon the Chief Minister has issued a Certificate under section 35(3) of the Gibraltar Constitution Order that the Bill is too urgent to permit a delay of six weeks before it can be proceeded upon. Hon Members will recall that the International Criminal Court Act transposes the Rome statute of the International Criminal Court into Gibraltar law. The Rome statute, as it is often referred to, is the Treaty that established the International Criminal Court, its functions, jurisdiction and structure. The United Kingdom has enacted the International Criminal Court Act 2001 (Overseas Territories) Order 2009 that applies to all Overseas Territories except Gibraltar. This will enable the Rome statute to be extended to the Overseas Territories listed in its Annex 2. The effect of that Order is that all statutory instruments made under the UK Act as it applies in the UK automatically apply to the Overseas Territories listed in its Annex 2. The UK Order does not apply to Gibraltar which, of course, has its own legislative framework, the International Criminal Court Act 2007. There is however, Mr Speaker, some doubt as to whether the Gibraltar Act provides sufficient vires to make subsidiary legislation that would be equivalent to three UK statutory instruments. The first of these is the International Criminal Court Act 2001 (Darfur) Order 2009 which I shall refer to as the Darfur Order which makes provision for certain individuals allegedly involved in genocide, crime against humanity and war crime in Sudan to be stripped of state or diplomatic immunity if charged or convicted by the International Criminal Court as a result of a referral to that Court by the United Nations Security Council. The Darfur Order has been an Act pursuant to section 1(1) of the UK United Nations Act 1946 which allows the UK Government to implement any resolutions of the United Nations Security Council by Order and section 23(5) of the UK International Criminal Court Act 2001 which allows the power to make subsidiary legislation under the UK United Nations Act to be used in circumstances where state immunity or diplomatic immunity is involved following a referral to the ICC via the UN Security Council. Gibraltar has no equivalent provisions. Therefore it cannot enact an equivalent of the Darfur Order.

Secondly, the International Criminal Court Act 2001 (Elements of Crimes) (No. 2) Regulations 2004, which I shall refer to as the Elements of Crime Regulations, which set up the Elements of

Crimes adopted by the parties to the Rome statute which are to be taken into account by a domestic court considering offences of genocide, crime against humanity and war crime. For example, in relation to genocide by killing in Article 6A of the Rome statute, the elements of that crime agreed by the state parties are: Firstly, that the perpetrator kill one or more persons; secondly, that such person or persons belong to a particular national, ethnic or racial or religious group; thirdly, that the perpetrator intended to destroy in whole or in part that national ethnic or racial or religious group as such; and fourthly, that the conduct took place in the context of manifest patterns of similar conduct directed against that group or was conduct that could itself affect such a destruction. Now, our current section 57 provides that in interpreting and applying the articles on genocide, crime against humanity and war crime, the Court shall have regard or take into account any relevant judgement or decision of the International Criminal Court and take into account any other relevant international jurisprudence. Of course, Mr Speaker, the jurisprudence of the ICC will apply the Elements of Crimes involved in proving genocide, crime against humanity and war crime but those elements are not a matter of jurisprudence of the International Criminal Court. They have actually been set out, by agreement, by the parties to the Rome statute. It is those elements that have been set out in the Elements of Crime Regulations which we do not have in our Act the vires to enact by way of subsidiary legislation.

Thirdly, the International Criminal Court Act 2001 (Reservations and Declarations) Order 2001 which sets out the reservations and declarations which each state party has made or may make in relation to their domestic construction of the Rome statute. Section 54 of the UK Act provides that in relation to criminal offences created under Part V of the UK Act, certain articles of the Rome statute, that is, genocide, crime against humanity and war crime, shall be construed subject to and in accordance with such reservations and declarations made in the ratification of any Treaty or Agreement relevant to the implementation of those articles. Now our section 58(2) has the same provision but whereas in the UK the certification is done by way of subsidiary legislation, under section 58(3) of our Act, the certification is done by the Attorney General and not by way of subsidiary legislation.

Mr Speaker, these issues have come to our attention because in August of this year, in fact, I received a call when I was away on holiday in the United Kingdom, the UK Government notified us that they had undertaken to lodge a Note Verbale with the UN in New York by the 1st September that the Rome statute had been extended to its Overseas Territories and asking whether we had implemented equivalent statutory instruments to those that I have just described a few moments ago. A Note Verbale in respect of the other Overseas Territories is being deposited and once the Gibraltar Act is amended and the relevant subsidiary legislation is in place, and these Mr Speaker, have already been drafted, the UK Government intends to deposit a Note Verbale at the United Nations that the Rome statute is being extended to Gibraltar. With this background in mind, hon Members would be able to appreciate the urgency necessitating the Certificate by the Chief Minister under section 35(3) of the Gibraltar Constitution Order.

Mr Speaker, the amendments to section 3 of the Act allows the Minister to give effect by Order to any decision of the Security Council of the United Nations under Article 41 of the Charter of the United Nations as it affects the International Criminal Court. This reflects the powers that exist in the UK under the International Criminal Court Act 2001 and, as I have just explained, their United Nations Act. The new section 3.5A is derived from section 11 of the UK's United Nations Act 1946. The new sections 3.5B is derived from section 23(5) of the UK's International Criminal Court Act 2001 which I said earlier expands the power to make subsidiary legislation under the UK United Nations Act in certain circumstances where state or diplomatic immunity is involved following a referral from the United Nations Security Council. The amendments to section 58 do two things. Firstly, they clarify that when interpreting the provisions of the Articles of the Rome statute referred in section 57, being the definitions of genocide, crime against humanity

and war crime, the Court shall take into account the Elements of Crimes adopted by the state parties to the Rome statute not simply the jurisprudence of the International Criminal Court. It also imposes a duty on the Minister responsible to publish those elements as regulations. Secondly, the amendment to section 58(3) changes who may certify the reservations and declarations made in the ratification of any Treaty or Agreement relevant to the interpretations of Article 6 to 8 of the Rome Treaty from the Attorney General to the Minister for Justice and whereas the Act was silent on the manner in which the Attorney General certified those reservations or declarations, the Minister must certify by regulations. Finally, the amendment to section 72 provides a general regulation making power to make provisions to give effect to any international measure in respect of Gibraltar or to fulfil any other international obligations in relation to the International Criminal Court. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE CRIMES (VULNERABLE WITNESSES) ACT 2009

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to make provision for the protection of vulnerable and intimidated witnesses in court proceedings, for restricting reporting about certain offences generally, for restricting the reporting of the identify of victims of certain offences, for the making of orders to secure the anonymity of witnesses in criminal proceedings, and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill for the Crimes (Vulnerable Witnesses) Act 2009 be now read a second time. Mr Speaker, the main aim of the Bill is to protect vulnerable witnesses and in some cases vulnerable defendants in court proceedings in situations that might make them reluctant to testify due, for instance, to intimidation or other factors that might otherwise negatively affect the quality of their evidence. In so doing, it seeks to ensure the court has access to the evidence necessary to reach the best possible decision in a criminal case. The particular problems that the Bill seeks to deal with include over-intrusive cross examination of a witness, by or on behalf of a defendant; unsettling and intimidating encounters by victims of attacks with their alleged attackers; inappropriate exposure to the media of details of certain offences; and witnesses reluctant to give evidence because of fear of reprisals from defendants. In the most serious of crimes where the court is satisfied that there is a real risk of serious harm to a person, a witness anonymity order may be appropriate. Mr Speaker, the Government intend to build on these provisions, protecting witnesses or parties to proceedings from intimidation when it

publishes legislation to reform the jury system later this year. This Bill draws upon, inter alia, three UK enactments. The Youth Justice and Criminal Evidence Act 1999, the Sexual Offences (Amendment) Act 1992 and the Criminal Evidence (Anonymity of Witnesses) Act 2008. Part 2 of the Bill is entitled Special Measures and provides that the court may give special measures directions in relation to eligible witnesses. Such measures may be available for child witnesses, witnesses who have had mental disorders, learning difficulties, physical disabilities or disorders. They may also be made available in respect of witnesses who are fearful or distressed about giving evidence, for example, because of the behaviour of the defendant or the family of the defendant towards the witness. Under clause 4(4), a witness in a case of a sexual nature is automatically eligible for special measures, unless he or she indicates they are not needed. Clause 6 enables a special measure direction to be given on the application of a party or on the court's own initiative. Sub clauses 2 and 3 set out the matters that a court must have regard to if it determines that a witness is eligible for assistance. Clauses 8 and 9 make particular provisions for children or young persons where the offence is a sexual offence or is a serious offence against the person and the witness is under the age of 17 years. The aim of these clauses are to maximise, as far as possible, the quality of the evidence of a child witness or a young person. Clauses 10 to 17 set out the various special measure directions which can be made where appropriate. These include screening the witness from defendants; permitting a witness to give evidence by means of a live link; the power to exclude certain persons form the courtroom whilst the witness is giving evidence; the power to order the removal of wig and gowns; the power to allow video recording of an interview to be admitted as evidence xxxxx of the witness; the power to allow video recorded cross-examination or re-examination; the power to allow a witness to give evidence through a court approved intermediary; and, in cases where the witness has difficulty with communication, that a device be used as an aid to communication. Where evidence is admitted in accordance with a special measure direction, the status of that evidence is set out in clause 18. In general, that evidence is to be treated as though it has been made by the witness through direct oral testimony. The judge may however give a jury a warning as to the evidence submitted in accordance with a special direction, if he considers it to be necessary. Part 3 of the Bill makes general provisions for the protection of some witnesses. Clause 20 provides that certain defendants may be permitted by the court to give evidence by live television link if certain conditions are met and the interests of justice are so served. These are that the defendant is under the age of 18 and his ability to participate effectively in the proceedings as a witness would be compromised by his level of intellectual ability or social functioning and the use of a live link would enable him to participate more effectively in proceedings. If the defendant has reached the age of 18, the same measure could be directed if he suffers from a mental disorder or impairment and the same concerns arise. The court may also prohibit defendants in person from directly cross-examining certain witnesses. For example, a person charged with a sexual offence would be prohibited under clause 22 from directly, that is in person, cross- examining the alleged victim of the offence. Clause 23 affords protection from cross- examination of a child witness by a defendant in person in relation to certain offences. These are, in the main, sexual offences and very serious offences against the person under Part X1 of the Criminal Offences Act, for example, murder and manslaughter. In cases where the defendant is not permitted to cross-examine the witness in person, he may do so through a legal representative instructed by him or one appointed by a court under clause 26. Where a defendant is not being permitted to cross-examine the witness in person, the court must, under clause 27, consider the fairness of the process for the defendant, and, if appropriate, warn the jury as to the influences that can properly be drawn. Further, in cases involving sexual offences, a witnesses sexual history may only be raised with leave of the court, and under clause 28, after an application is heard by the judge, in private, pursuant to clause 30. Part 4 restricts the reporting that can be done in certain types of proceedings. It limits the reporting of offences and alleged offences involving children and in relation to other criminal offences. Publications that breach these

provisions are liable to prosecution for a criminal offence. Clause 31 concerns the restriction on the reporting of investigations where a person who is alleged to have committed the offence is under 18 and the court proceedings have not been instituted. These may be dispensed with if a court so orders because it is in the interests of justice to do so. Clause 32 has effect once the court proceedings have been instituted and also applies to persons under the age of 18. Clause 33 of the Bill applies to persons who are over 18, other than the accused, but who require protection from publicity. As with the earlier clauses, the information that may be restricted is that which may lead to a person being identified, such as, for instance, an address or a place of work. In such cases, the court will have to balance the competing interest prior to imposing a restriction on reporting. Clause 35 provides for the prosecution of persons who contravene restrictions which are to be ordered, whilst clause 36 sets out the nature of the defences which are available to a person charged under clause 35. Part 5 of the Bill provides that in cases involving sexual offences, no matter relating to the victim may during that persons lifetime be included in any publication if it is likely to lead members of the public to identify that person as a person against whom the offence is alleged to have been committed. Clause 39 sets out the offences in respect of which restrictions apply, namely, (a) an offence under any provision of Part XII of the Criminal Offences Act, that is the sexual offences; (b) an attempt, or conspiracy to commit or incitement of another to commit any of the offences included in (a) and (c) aiding, abetting, counselling or procuring the commission of any of those offences. Under clause 40, the rule can be displaced in the public interest but the mere fact of an acquittal of the defendant does not, of itself, displace it. Part 6 deals with witness anonymity orders, Mr Speaker. The part in response to the House of Lords' judgement in the Crown against Davis of the 18th June 2008 which held that the use of anonymous witness evidence in criminal proceedings was not permissible at common law. Clause 43 creates a statutory power for the court to make a witness anonymity order in criminal proceedings, for example, by using screens or voice distortion mechanisms in the interests of the safety of a witness or other person or for protecting serious damage to property or for the prevention of real harm to the public interest, provided (a) that it is consistent with the defendants right to a fair trial and (b) that it is in the interests of justice to do so. This means that in addition to ensuring that the defendant receives a fair trial, the court must consider that the anonymous evidence is in the wider interest of justice by reason of the fact that it appears to the court that it is important that the witness should testify and that the witness could not testify if the order were not made. The key factor to be determined is whether the proceedings as a whole, including the way in which the evidence was taken, were fair. In addition, clause 46 requires the court to consider various non-exhaustive list of factors which highlight the exceptional nature of these orders. These include the general right of a defendant in criminal proceedings to know the identity of a witness in those proceedings. The extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed. Whether the evidence given by the witness might be the sole or decisive evidence implicating the defendant. Whether the witness's evidence can be properly tested, whether on grounds of credibility or otherwise, without his or her identity being disclosed. Whether there is any reason to believe the witness has a tendency to be dishonest or has any motive to be dishonest in the circumstances of the case having regard in particular to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant and whether it would be reasonably practical to protect the witness's identity by means, other than making a witness anonymity order. There is also, Mr Speaker, a requirement that a warning is given to the jury in such terms as he or she considers appropriate to ensure that the defendant's right to a fair trial is not prejudiced. An application can be made in respect of both the prosecution witness or indeed a defence witness. These provisions are based on the UK Criminal Evidence (Witness Anonymity) Act 2008 which is in itself broadly based and modelled on the New Zealand Evidence Act 2006. The English Act, as I have said, was introduced as an

emergency measure in response to the decision in the Crown against Davis on the basis the United Kingdom had 580 cases where witness anonymity orders had been made under the common law rules and a failure to act quickly could have led to a significant number of very serious on-going and pending trials having to be abandoned. Because it was introduced as an emergency measure, the Justice Secretary included a Sunset Clause into the Bill whereby the Act, if passed, would lapse automatically on the 31st December 2009 unless extended by Order of the Secretary of State. Mr Speaker, at the time of the decision of the Crown against Davis, there had been no witness anonymity orders made in Gibraltar. The Gibraltar Government therefore had more time to carefully consider the position and has had the benefit of looking not only at the UK provisions but also the New Zealand Act, which I mentioned a few moments ago. We have taken the view that if the provisions are worthwhile and they comply with our constitutional obligations, we should introduce the legislation on a permanent basis. That is what we have done with this Bill. We have also kept a close eye on further legislative developments in the United Kingdom in this area. Indeed, this House will note that in January this year the UK Government re-enacted the provisions of the Criminal Evidence (Witness Anonymity) Act 2008 in the Coroners and Justice Bill 2009 without a Sunset Clause and, therefore, on a permanent basis. The Bill has its third reading in the House of Commons in March of this year and is going through, as we speak, its reporting stage in the House of Lords. Once passed, the provisions relating to witness anonymity orders will commence on the 1st July 2010, the day after the Sunset Clause in the Criminal Evidence (Witness Anonymity) Act 2008 expires. With the exception of transitional provisions, the provisions relating to anonymity of witnesses in the new Bill in the UK is identical to the Bill before the House today. It is also noteworthy, that the Joint UK Parliamentary Committee on Human Rights has said about the UK Bill that it is, and I quote, "broadly welcome from a human rights perspective", and that it agrees, and I quote "with the analysis in the Bill's Explanatory Notes that the Bill is compatible with Article 6 of the European Convention of Human Rights on the basis of the expressed provision for the right to a fair trial and the discretion left to the trial judge on this issue". The Bar Council in England and Wales also welcome the fact that applications of this nature are now underpinned by a proper statutory framework despite opposition by some criminal barristers at the time of the introduction of the original Bill. A draft of this Bill was sent to the Gibraltar Bar Council before it was published in green paper format and as part of the Government's consultation process on these matters. The Bar Council wrote to me on the 16th June 2009 stating that they had no comment on the Bill. We then proceeded to publish the Bill. The reality is that these kind of Orders will be very rare indeed and confined to exceptional cases. In Gibraltar, the old common law rules were invoked, for example, albeit not in the context of a criminal trial, during the IRA inquest and it is right and proper that in the very serious of cases, where the risks justifies it, that a judge is given the power to protect critical witnesses from harm. I commend the Bill to the House.

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

HON G H LICUDI:

Mr Speaker, we will be supporting this Bill. We consider that these are appropriate measures to be introduced. The Bill will increase and improve the powers of the court in giving orders, in giving directions for the protection of vulnerable witnesses. As the hon Member has said, it will be the rare occasion when these powers may have to be used but one never knows when that rare occasion may arise. It may arise in a case next week or next month, so it is appropriate to have this as part of our legislation. As the hon Member has mentioned, the Bill deals with vulnerable witnesses and, to a certain extent, with vulnerable defendants as well. Although I recognise that this Bill deals primarily with the issue of people as witnesses, whether as defendants or just as witnesses, I also note that the hon Member has indicated that the Government intend to build upon this legislation. We are a little bit in the dark as to what is

proposed and I look forward to seeing what those measures may be and reviewing those measures and being able to comment and be able to debate those particular measures. The only issue in relation to this Bill which I would raise at this stage is, quite simply does the Bill go far enough in dealing with all issues which affect children that go through he criminal justice system. I premise that by saying, I note, as I said, that further measures will be introduced and perhaps what I do say may or may not be in the Government's thinking already. There are of course two sides to the coin in dealing with children as part of the criminal justice system. One is children as defendants, and the other is children purely as witnesses. The legislation that is currently before the House, as the Explanatory Memorandum and the hon Member has said, is taken in part from the UK Youth Justice and Criminal Evidence Act of 1989. There are provisions in that Act which do not appear in this Bill and I simply raise it just to welcome the hon Member's thoughts as to whether this is part of the Government's thinking or part of the Government's plans going forward. The English Act, and I am not suggesting for one minute that we should slavishly follow whatever English legislation, says we have to adapt and consider the appropriateness for Gibraltar, and I do not know whether this has been considered but Part I of that Act deals with referrals to youth offender panels when dealing with children as defendants in cases. I will not go into details of all the provisions of that Act in connection with youth offender panels because that might be outside the ambit of the Second Reading of this particular Bill which deals primarily with witnesses. But broadly speaking, it provides for powers to the court to refer young offenders to this panel where meetings are held with the offender, with the participation of victims to the crime and what is sought ultimately is to put in place a contract with the offender whereby certain measures are required to be taken, for example, maybe work in the community and it is all part of the rehabilitation process rather than simply finding measures to punish the offender. It is part of the process to rehabilitate young offenders. I raise this, particularly, because not very long ago we had occasion in Gibraltar, generally, to debate and to consider the position of two young persons who were involved, as defendants, in an assault and there was an issue as to whether sentencing options in Gibraltar were appropriate in order to rehabilitate and provide properly for those defendants. So there seems to be a lacuna in the legislation in dealing with young offenders in that particular way. The legislation which is in part adopted for the purposes of this Bill does provide a mechanism and I would welcome the hon Member's thoughts as to whether that forms part of the Government's strategy and plans for young offenders generally.

HON D A FEETHAM:

Mr Speaker, the provisions specifically that the hon Member has just referred to are not provisions that were or are appropriate to be included in a Bill of this nature which refers specifically to protecting witnesses and vulnerable defendants in very specific set of circumstances. The Government are, as I have mentioned in the past, undertaking, and in fact the Bill itself has already been drafted and it has been circulated with the Bar Council. The Criminal Evidence and Procedure Bill which also draws upon other provisions from the Youth and Justice Criminal Evidence Act 1999. I cannot, from memory, confirm to the hon Member in the context of this debate today whether, in fact, it deals with the question of youth offender panels but it does overhaul the legislation on how one treats youth offenders in Gibraltar. I know it does not go as far as the United Kingdom because there are other implications and we can debate that in the context of that Bill as and when that comes to the House but I cannot, at the present moment, tell the hon Member whether this particular issue is in the Criminal Evidence and Procedure Bill. What I can tell him is that the bulk of the provisions from this particular Bill, the Youth and Justice Criminal Evidence Act that we have left out from here, are included in that particular Bill. I cannot really take it much further than that.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading be taken today, if all hon Members agree.

Question put. Agreed to.

THE CRIMES (INDECENT PHOTOGRAPHS WITH CHILDREN) ACT 2009

THE HON D A FEETHAM:

I have the honour to move that a Bill for an Act to prohibit the taking possession and distribution of indecent images or pseudo-images of children, the abuse of children by causing, controlling or arranging for their participation in pornography, and for related purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that a Bill for the Crimes (Indecent Photographs with Children) Act 2009 be now read a second time. Mr Speaker, this Bill is an important piece of legislation to help law enforcement agencies to prevent the exploitation of children and for the protection of children generally. This Bill builds upon other measures we have already introduced into this House this year such as the Children Act but in a criminal rather than civil legislative framework. We shall continue to build on our work later this year and early next year with other measures such as the Crimes Bill which will deal specifically with sexual offenders, prostitution and the grooming of children, amongst other things. At that stage, the legislative framework in this Bill will be subsumed by the Crimes Bill that will consolidate much of our criminal offences. Mr Speaker, this Bill draws upon not only UK legislation but also on the Council of Europe Convention on the Protection of Children against Exploitation and Sexual Abuse (the Convention on the Protection of Children), Council Framework Decision 2004/68/JHA on Combating Sexual Exploitation of Children and Child Pornography, and the Council of Europe Convention on Cybercrime. The full implementation of all these measures will be finalised with the Crimes Bill. Mr Speaker, we are also keeping a close eye on the draft Council Framework Decision on Combating Sexual Abuse and Exploitation of Children and Child Pornography circulated amongst Member States on the 25th March 2009. The UK Government itself has expressed some doubt about its provisions and it is unlikely to be adopted sometime soon but we are keeping a brief in relation to its progress. This Bill can be broadly divided into four main areas. Firstly, possession of indecent images of children. Secondly, distribution of such images or possession with aggravating features. Thirdly, the use and exploitation of children through pornography and fourthly, forfeiture of images. The penalties for each of these offences progressively increase from five to fourteen years. We are not only talking about actual images of children but realistic images purportedly depicting a child. For example, artificially created or generated computer images of a child. Possession. Clause 2 creates the offence of possessing an indecent image of a child. A child in this case will be a person under the age of 18 years. The clause purposely uses the term photograph and pseudo-photograph in connection with an image since the technologies that exist allow for the traditional photographic paper image to be created and held in a variety of ways and mediums and for the image to be artificially created or generated. The procuration and attempted procuration of such images is also prohibited by this clause which is within the purview of the Convention on the Protection of Children and also the Cybercrime Plan Convention but not the UK legislation. This clause will close a lacuna in our current statutory framework where possession without distribution of obscene images is not an offence. On conviction, a maximum custodial sentence of five years is available in the Supreme Court. That is, in fact, the

punishment in the United Kingdom. Sub clause 2 provides certain defences to this offence. In this regard, particular attention is given to circumstances where in today's electronic society it is possible for a person to be sent such images in an unsolicited manner and electronically possess such items without being conscious of their presence. Of course, the defences will not bite unless the person establishes, for example, that he had not seen the image and did not know or suspect these to have been indecent. Distribution or possession with aggravating features. Clause 3 concerns the more serious conduct whereby a person is concerned with the production and dissemination of indecent photographs. The distribution of indecent images has been a longstanding offence in Gibraltar. This section widens the scope of our existing provisions and more than doubles the penalty available to the court. Thus the section punishes production, taking or allowing images to be taken, offering such images, distribution of such images. Possession with intent to distribute or share such images to others or to procure or attempt to procure for those purposes. The publishing of adverts likely to be understood as conveying that the advertiser distributes or shows such images. Copying or moving any indecent photographs from one storage medium to another. Mr Speaker, in this regard, the Government take the view that transferring images from one storage device to another creates the propensity for distribution and is an aggravating feature which is punishable under section 3 and not section 2 on simple possession. These offences are all punishable with a maximum sentence of ten years in prison and are double that available in the case of simple possession. Mr Speaker, there are various defences to these offences in Gibraltar and also in the United Kingdom. We have, for instance, ensured that law enforcement agencies and crime prevention agencies do not commit a crime under clauses 2 or 3 where they are acting in the prevention, detection or investigation of crimes. As in the United Kingdom, the taking of photographs of a person over 16 who is in a marriage or enduring family relationship is not an offence if no third party is involved, there is consent and there is no distribution. The UK is currently extending this defence to pseudo-photographs as well as photographs through the Coroner and Justice Bill 2009 and that is the effect of the amendment that I am also going to be moving at Committee Stage. That amendment will also cure an inconsistency in section 4 of the Bill on this issue. Namely, that some of the subsections apply to photographs and pseudo-photographs but some only apply to photographs. Clause 6 together with the Schedule provide the basis for the search and seizure of indecent material to which the Bill applies including the forfeiture of any seized material. These forfeiture provisions are based on the UK Police and Justice Act 2006 which amend the Protection of Children Act 1978 in April of last year. The abuse of children generally. Clauses 8 to 10 are concerned with the abuse of children through pornography. This term is defined in clause 11 to mean the making, production, recording or storing of an indecent image. It will be a question of fact for the court to determine what constitutes an indecent image. The issue is one of impression conveyed by the image. Clause 8 is concerned with the person who intentionally involves a child in pornography in any part of the world, not just Gibraltar. The offence is aimed at persons who recruit children to pornography. The offence is made out if a person who is subjected to pornography is under the age of 18 years of age. Where the child is 18 but not under the age of 16, the defendant must reasonably believe that the child is in fact 18 or over. In the UK, the position is that if a person has reasonable belief that a child is over 18 but in fact the child is at least 13 years old, there is a valid defence. The Government do not believe that 13 is the appropriate age for Gibraltar. Clause 9 builds on the proceeding clause and creates the offence of intentionally controlling the activities of another person who is involved in pornography. An example of the behaviour that might be caught by this offence, is where a person requires or directs the child to pose for a photographer and the child complies with the request or direction. As with the proceeding clause, the reasonable belief defence applies. Clause 10 creates the offence of arranging or facilitating the involvement of a child in pornography. Thus the person who delivers the child to a place, that may be anywhere in the world, where the child is used to make pornography, commits an offence. As with the proceeding clauses, a reasonable belief

defence is available where the child is under 18 but not under 16 years old. In the UK, as I say, that is 13 years old. All three offences carry severe penalties and on conviction or indictment that all three carry a maximum sentence of imprisonment of 14 years. Mr Speaker, these provisions do not affect the law on pornography and distribution of indecent material generally which continue to be offences under existing provisions in other statutes. The provisions in this Bill are an overlay and constitute tougher provisions as they relate specifically to children. Mr Speaker, these are important sections in the fight against organised crime and organised paedophile rings that may attempt to establish a connection with Gibraltar. I commend the Bill to the House.

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

HON G H LICUDI:

Mr Speaker, we will be supporting this legislation today. The only comments I would have on the Bill as presented by the hon Member concerns two issues, and I should say, that at Committee Stage there may be one or two minor drafting matters that I will raise, and I will give notice of that in Committee rather than in the Second Reading. But the two issues, again on which I would welcome the hon Member's thoughts, concern firstly, a defence of reasonable belief that a child is over 18 which applies to some offences but not others, and secondly, in connection with the difference in sentencing options, maximum sentences, ten years on the one hand for some offences and 14 years for others. Clauses 2 and 3 create the offences of possession in the case of clause 2 and taking and publishing indecent photographs, there are a number of offences in clause 3, including producing or making a photograph or a pseudo-photograph. As I see it, in these clauses, for these particular offences in which clause 4 is also relevant, there is no defence of the person who is charged having a reasonable belief that the child is over 18. Whereas if we go to clauses 8, 9 and 10, which deal with causing or inciting, controlling a child, arranging or facilitating, these are the sections which generally have been described as exploitation offences, those do contain a defence of reasonable belief that the child is 18 or over. I am just wondering whether there is any particular reason why there is a difference for the treatment of the two offences, whereas in one case someone can be acquitted for having a reasonable belief, and in the other case the person may not. There may be a good explanation for that. The other issue which is related in part to this is the maximum sentences. Ten years on the one hand under clause 3, taking or publishing and 14 years under clauses 8, 9 and 10. The issue arises primarily because of the use of the words in clause 3, "producing or making". So a person who produces or makes an indecent image of a child commits an offence under clause 3. The definition of being involved in pornography at clause 11 includes making, producing, recording or storing and in fact clause 3 also has provision for an offence in respect of storing an image. The issue which may arise is where someone simply makes an image or incites someone to make an image. If you make an image, you are liable at clause 3 to a maximum of ten years. If you incite or assist someone, call someone to make that image, because of the definition in clause 11, you are liable under clause 8. Yet for inciting, you have 14 years and for making, you have ten years. In inciting is generally something which is considered being an accessory, aiding, abetting, procuring or inciting, whereas the main and, generally, the sentence for an accessory to a crime, is considered to be the same on a par because he is as guilty as the main offender. But there is also a practical issue which may arise from this. If, for example, there are two persons who are charged with an offence, one is charged for making an image, an indecent image, and that person is a principal offender charged under section 3 and you have someone who has aided or incited that person and charged jointly, or in the same case, as the main offender. Now, that second person can be charged either, simply, as an accessory, as an aider or abettor, in which case he is charged under clause 3 with a sentencing option being a maximum of ten years or he can be charged for the second

offence of inciting under clause 8 which carries a maximum sentence of 14 years. The issue really is in terms of the terminology where you have some language, producing, making and storing which catches both offences. So you can have a situation where those two people are charged and yet one is charged as an accessory but liable to receive a higher prison sentence. If someone is charged as an accessory under clause 8 in the same case as someone is charged under clause 3, potentially, and that is why I said the issues were linked, one has the defence of reasonable belief but the other one does not, and does that give rise to any practical issue or inconsistency in dealing with the case. These are just concerns about practical possibilities that may arise in the future, particularly, as regards charging options where someone simply makes or incites the making or the storage of an image. Does one charge under clause 3 or does one charge under clause 8. Those are the two issues, apart from, as I have said, a couple of minor matters for Committee.

HON D A FEETHAM:

The hon Gentleman is right to raise the issue because it was a matter that, in fact, concerned me when I was looking at this. In fact, the hon Gentleman has also not mentioned, I thought that he was going to do so, the fact that under sections 2 and 3, in particular, there is the marriage defence, but under sections 8 to 10 there is no marriage defence. Now, that is exactly the position as in the United Kingdom. In the United Kingdom what we have is section 3 where you have punishable by ten years, permitting to be taken, the making et cetera of indecent photographs and then you have these other offences that are punishable by 14 years with a reasonable belief defence. Now, the reason for the distinction appears to be, from explanations in the text books et cetera that, in fact, sections 8 to 10 attempt to deal with something more than just the basic taking in section 3. We are dealing with people who are recruiting children into pornography where it is almost organised. We are into the realms of organised crime. So, rather than, in fact, create an entirely different regime here in Gibraltar in respect of this aspect of it, we decided, in fact, to follow the United Kingdom regime which was section 3. You have a marriage defence. You are dealing with something that is lesser than your sections 8 to 10 which intends to deal with the recruitment, the arranging for children to……… What it attempts to deal with is organised paedophile rings and organised crime. That is the explanation that is afforded in some of the text books for the difference in the treatment in the two. We have decided to really follow the UK regime in relation to this aspect of it because we felt that when the courts were considering the relevant sections, that was the appropriate way to proceed.

HON G H LICUDI:

Mr Speaker, will the hon Member give way before he sits down? I understand fully that argument and the logic of that argument and that is why I said at the beginning, to echo his words, that the offences under clauses 8, 9 and 10 are really exploitation, therefore can be considered more serious. But that does not actually deal with the point I raised that you can have equivalent offences which fall under clause 3 and also under clause 8 and you can have two people charged and you have discrepancies in terms of sentencing option. As I mentioned in an earlier contribution, we can be guided by the UK, we do not have to follow slavishly and I know that the hon Member does look at things from the Gibraltar point of view rather than just following what happens in the UK but is there not a case for looking at that practical issue and maybe adapting the legislation for Gibraltar?

HON D A FEETHAM:

No, because I prefer to leave it to the common sense of prosecutors, Mr Speaker. That is the reality of it. Prosecutors looking at a situation such as this, have to make a judgement call. They make it all the time. In the United Kingdom and

everywhere else where they have to make that judgement call as to whether to just simply charge under section 3 or charge under sections 8 to 10. To charge under sections 8 to 10 there has to be an extra element. That is what the authorities actually indicate. That is the judgement call that needs to be undertaken by the prosecutors and it is not for me to undertake it. It is for them to do so.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

THE LIMITATION (AMENDMENT) ACT 2009

HON D A FEETHAM:

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

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill for the Limitation (Amendment) Act 2009, be read a second time. Mr Speaker, this short Bill amends the Limitation Act, that is, the amount of time someone has to sue someone else before they are barred from doing so in the Limitation Act, in relation to actions for damages, for negligence not involving personal injury or death. As it currently stands, section 4 of the Limitation Act provides for a limitation period of six years for any action founded on tort other than in respect of personal injury and this period begins to run on the date on which the cause of action accrues subject to various exceptions contained in Part II of the Act. There are a number of decisions including the House of Lords decisions in Pirelli General Cable Works against Oscar Faber and Partners and Nykredit Mortgage Bank plc against Edward Erdman Group Ltd which have held that a cause of action accrues when the potential claimant suffers damage. In the context of negligent advice for instance, Mr Speaker, that was held to mean the date in which the person relies on any negligent advice to enter into the financial product and not the often later date when a downturn in the market causes or may cause him to lose his money. In other words, the negligence takes place in the mis-selling of the product which may have been unsuitable for that person, not the later date at which a downturn in the market unravels the negligent advice. In these types of cases, as in cases involving latent damage in buildings, these amendments will obviously be significant. Indeed, the amendments are based on the Latent Damage Act 1986 of England and Wales which followed the recommendations of the 24th Report of the Lord Chancellor's Law Reform Committee. The Report found that the law setting a time limit of six years from the date of accrual of the course of action in negligence actions, not involving personal injuries or death, was unsatisfactory because sometimes the defendant's negligence or its effects may lie hidden for years. Claimants can become statute barred before they know or could even be in a position to know that they had suffered damage. The Report concluded that a claimant who has no means of knowing that he has suffered damage, should not as a general rule be barred from taking proceedings by a limitation period which can expire before he discovers or could discover his loss. Mr Speaker, this Bill inserts a new Section 10A which extends the normal limitation period so as to give a plaintiff in latent damage negligence cases, not involving personal injury or death, an additional three years from the date on which he

knows or ought reasonably to have known that he has suffered significant damage. However, there is also a need to create certainty so that a person knows the length of time during which he remains liable for past action or omissions. Further, it is right that defendants should be protected from stale claims for which they no longer have the evidence to contest. Section 10B therefore introduces a long stop which would operate to bar legal action in cases of latent damage after 15 years. Clauses 2(4) and 2(5) of the Bill introduces certain amendments consequential upon the insertion of the new 10A and 10B. The new section 28A makes special provisions for cases where the plaintiff is under a disability at the time when the special time limit begins to run. The amendments to section 32 also prevent the new time limits provided by sections 10A and 10B applying cases which involve deliberate concealment by the defendant. That is also the position in the UK. This means that deliberate concealment will operate to disapply the long stop and the initial limitation period so that if there is deliberate concealment in a latent damage case, the limitation period of six years, generally applicable to torts, will apply but commencing on the date when the claimant discovered or could with reasonable diligence have discovered the concealment. The House will note that I am moving an amendment to clause 10A and 10B to substitute the words, "in respect of personal injury or death" for "one to which section 5 of this Act applies", to make it absolutely clear that only cases in respect of personal injury or death are excluded from sections 10A and 10B. The House will also be interested to learn that we are undertaking a much wider review of the Limitation Act together with some members of the Bar which include personal injury and other causes of action. This is a far more complex exercise, not least because the English Limitation Act in areas such as personal injury has been subject to criticisms by academics and professionals and we need to make a choice as to whether we develop some other model. Finally, the amendments introduced by this Bill will have effect in relation to causes of action accruing before as well as after the amending Act comes into force but shall not affect any actions which have already been statute barred or any actions commenced before the Act comes into operation. Those were the same transitional provisions that the UK introduced at the time of the introduction of the Latent Damage Act. I commend the Bill to the House.

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

HON G H LICUDI:

Mr Speaker, we will be supporting this legislation once again.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

HON G H LICUDI:

Mr Speaker, maybe I missed something that I did not hear. On the Agenda which was published yesterday, there is at (9) the Bill in connection with computer systems. Can we just be told what has happened to that?

HON CHIEF MINISTER:

Yes, Mr Speaker, that was the subject matter of my little informal exchange with the Clerk. We are not proceeding with that Bill. That Bill contains important omissions which need to be corrected before it can be taken in this House.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Qualifications (Right to Practise) Bill 2009;
2. The Income Tax (Amendment of the Qualifying (Category 2) Individuals Rules 2004) Bill 2009;
3. The Public Health (Amendment) Bill 2009;
4. The Social Security (Amendment of Regulations) Bill 2009;
5. The Gibraltar Port Authority (Amendment) Bill 2009;
6. The International Criminal Court (Amendment) Bill 2009;
7. The Crimes (Vulnerable Witnesses) Bill 2009;
8. The Crimes (Indecent Photographs with Children) Bill 2009;
9. The Limitation (Amendment) Bill 2009.

THE QUALIFICATIONS (RIGHT TO PRACTISE) BILL 2009

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

Clause 2

HON CHIEF MINISTER:

Yes, Mr Chairman, in clause 2, in the definition of EEA State, I propose to insert the words "if it were" immediately before the words "a separate EEA State" in the last line. So that it should read "Gibraltar shall be treated as if it were a separate EEA State" rather than as it reads at present that "Gibraltar shall be treated as a separate EEA State". The point of the amendment is that of course Gibraltar is not a separate EEA State but for the purposes of the Bill, when there are different rights and different obligations imposed and recognition powers imposed in respect of EEA States, that for those purposes Gibraltar is deemed to be an EEA State.

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

Clauses 3 to 9 – were agreed to and stood part of the Bill.

Clause 10

HON CHIEF MINISTER:

Yes, Mr Chairman, in clause 10 I have given notice of a small amendment which is really to add into the sentence, into the section, an element of the ingredient of it which is required by the Directive but it was omitted from the section. So that this whole section only applies in the case of regulated professions having public health and safety implications. That is an essential part of the article in the Directive from which this section is drawn but had been omitted by oversight from the language of the section so that the section was in fact much wider than the Directive. So that amendment is to prefix the existing language with the words "In the case of regulated professions having health and safety implications" and therefore narrows the scope of the section to that which is what the Directive permits.

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

Clauses 11 to 53 – were agreed to and stood part of the Bill.

Clause 54

HON CHIEF MINISTER:

Yes, Mr Chairman, in clause 54 I have proposed an amendment to sub clause (2) by the addition of a letter "(c)" to make provision for the date as it applies to Bulgaria and Romania by adding "(c) 1 January 2007 for Bulgaria and Romania" and therefore the consequential re-lettering of the existing letter "(c)" which related to a different date for other EEA States. That then becomes letter "(d)".

Clause 54, as amended, was agreed to and stood part of the Bill.

Clause 55 – was agreed to and stood part of the Bill.

Clause 56

HON CHIEF MINISTER:

Yes, Mr Chairman, in clause 56 I proposed an amendment which is to delete the restrictive words "on a point of law" from the right of appeal so that it would now read that "The decision or failure to reach a decision within the deadline, shall be subject to appeal to a judge of the Supreme Court" and not limited to a point of law as the section presently says. So the amendment there is to strike, to delete the words "on a point of law".

Clause 56, as amended, was agreed to and stood part of the Bill.

Clause 57 – was agreed to and stood part of the Bill.

Clause 58

HON CHIEF MINISTER:

In clause 58, Mr Chairman, again the language as drafted is too permissive of restriction. More permissive of restriction than is allowed by the Directive and it requires to be limited by the words that I alluded to in my speech on the Second Reading by adding the words "necessary for practising the profession in Gibraltar". So it is not a question of having need to have knowledge of the English language, as the Bill now reads. It has got to be "knowledge of the English language necessary for practising the profession in Gibraltar" and those latter words are the ones that the amendment seeks to add, which is what the Directive requires.

Clause 58, as amended, was agreed to and stood part of the Bill.

Clauses 59 and 60 – were agreed to and stood part of the Bill.

Title to Part V

HON CHIEF MINISTER:

Yes, Mr Chairman, here there is just some reorganisation and representational amendments. The provisions relating to the competent authorities and the previous provisions which are also to be deleted relating to the contact point are being recast and I will speak separately to the different amendments for the two sections which are sections 61 and old section 62. At the moment the Clerk has just called the amendment to the heading to Part V, which used to read "ADMINISTRATIVE COOPERATION AND RESPONSIBILITY FOR IMPLEMENTATION" and we are striking from that the words "AND RESPONSIBILITY FOR IMPLEMENTATION" because indeed the provisions of the competent authorities, the powers of implementation of the competent authority are cast throughout the Act and not just in this part. So there are other

parts of the Act that give power to the competent authority. So this is just, I am only speaking now to the reason for the removal of the heading of the words "AND RESPONSIBILITY FOR IMPLEMENTATION".

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

Clause 61

HON CHIEF MINISTER:

Yes, Mr Chairman. Here is an amendment to the Bill in so far as deals with this question of the competent authority. At present it reads: "61(1) The competent authorities in Gibraltar shall work in close collaboration with the competent authorities of other EEA States and shall provide mutual assistance." That section is being simplified and indeed made wider by being made to read: "61(1) The competent authorities in Gibraltar shall collaborate with and provide assistance to the competent authorities of other EEA States", and deleting the words "and shall provide mutual assistance". So the concept of collaboration and providing assistance is retained, but the concept of "work in close collaboration", simply becomes "collaborate" and the concept of "provide mutual assistance", simply becomes the concept of "provide assistance" on the basis that every other country that has legislated this, has the equivalent provision for providing assistance to us. So we cannot legislate for mutual assistance provided. We legislate for providing assistance and the others, who have to do the same, legislate for providing assistance to us. The other amendment, a little but further down in subsection (3) is simply to state… At present it says, "The Minister shall designate the authority". It does not say in what method. Now it says "by Legal Notice". In other words, that we cannot just designate it in some private document that we put in a file and that was just, I think, an omission from the original drafting. In subsection (4), there is a……… This coordination of the authorities. The hon Members may have noticed that the Bill provides for different authorities, different competent authorities in Gibraltar perhaps been designated for different professions and there is a need to provide a coordinator of the activities. If there are multiple competent authorities in Gibraltar, there is a need to designate under the Directive a coordinator of the various competent authorities in Gibraltar to make sure that the various competent authorities in Gibraltar are, amongst other things, uniformly applying the Bill in Gibraltar. So, the amendment is that: "The Minister shall designate a coordinator for the activities" which was there already "within Gibraltar of authorities" delete the word "the" of authorities, however many there may be, "referred to in this section and shall ensure that the other EEA States and the European Commission are informed thereof", adding there……… The phrase therefore changes from "and shall inform the other EEA States and the European Commission thereof". That becomes "shall ensure that the other EEA States and the European Commission are informed thereof". The reason for this, Mr Speaker, is one that I wish to explain to the House and it is one that may become more polemic as the European Union post… it now looks as if it may go through, post Lisbon Treaty, where we shall be more automatically subject to Justice and Home Affairs measures in respect of which the UK previously had a general exclusion and had an opt-in clause. All that is changing under this but……… So we will find ourselves much more frequently and automatically subject to JHA measures. JHA measures have traditionally had things called "contact points". "Contact points" have to be distinguished from competent authorities. In other words, the competent authority is the authority within Gibraltar that has responsibility for exercising the powers in relation to a particular area. In the area of Justice and Home Affairs, the practice has established over the years of their being an addition to competent authority, something called "contact points" which is basically a formal or informal gathering of Member State contact points where they meet to see how are things working. Is it working well? Nothing to do with the administration or the exercising of powers, just really a contact forum to keep things under review. In the past, because Gibraltar's participation in these things has been optional, because it was optional for the UK, so the UK used to

give us the option, "look we are planning to participate in this, do you want to?" We were free to take the view whether we were happy to participate notwithstanding that there was not a separate contact point for Gibraltar. In other words, France……… The Member States had contact points but because Gibraltar is not a Member State they almost never made provision for multiple contact points in Member States. So where you have measures, like this one for example, where the Directive specifically provides for one contact point per Member State, there is no possibility for Gibraltar to have its own contact point. In those circumstances, any Gibraltar related contacting, which is not to be confused with "competent authorities" contacting each other through, for example, in our case the post-box. This is something else. This is not that. This is Member States reviewing and talking to each other about how cooperation is going. There is no possibility of Gibraltar participating in its own right in that forum because the Directive says that the Member States shall each appoint only one contact point. Now this is an issue. This is an issue because we believe that the United Kingdom should do its utmost when the texts of European measures are being negotiated which is not a forum at which we are present. They should do their utmost to ensure, as is the case with competent authorities where it usually says, that "Member States are free to appoint competent authorities", more than one, which lets us in. That they should adopt the same attitude in respect of contact points. There is no reason why Gibraltar should not have its own contact point for other Member States to ask questions of, in this less non-competent authority area. It has not been the case until now. So this will become a bigger issue or at least a more frequent……… It is up to people to form their own view about whether they think it is a big issue or not, but it certainly will become a more frequent question because post Lisbon, Gibraltar's automatic obligation to participate in many of these JHA things will become an automatic obligation compared to in the past, where in most cases, it has become an optional choice. This explains why the provisions in relation to contact points in section 62, which is, and if the Clerk, the House bears with me, I will speak to now because they are connected in this way. Why the contact point in section 62 has been recast. By eliminating the reference to contact point, it is simply a breach of the Directive as it is recast for Gibraltar to have a separate contact point because the Directive specifically says that Member States shall only have one each. But rather than do away with the substance of the function of the contact point in Gibraltar, we have added it to the functions of the competent authority, so that is why section 61 and section 62, following this amendment, merge into one section. So that, for example, whereas it was the contact point, under section 62, that had the obligation in Gibraltar to provide citizens with information, as is necessary concerning recognition or to assist citizens in realising their rights, the fact that Gibraltar cannot have its own contact point in the Directive, does not mean that these are not functions that somebody needs to carry out in Gibraltar. So they have been added to the responsibilities and functions of the competent authority which is the formula that we have found. For making sure that there is somebody with the obligation to do these things in Gibraltar and for Gibraltar whilst at the same time not infringing the terms, or not purporting to infringe the terms of the Directive which does not allow for the UK Member State to have multiple contact points. I apologise to the House for that somewhat lengthy explanation but I think it was important. First of all, this is a more significant amendment to put it into its full and wider context and also to signal to the House that this is an issue where unless the UK takes care to ensure that language is negotiated for EU Directives and Regulations in the future that allows for multiple contact points, we will have this problem every time that there is a measure that simply says that "every Member State shall have only one contact point".

HON J J BOSSANO:

Mr Chairman, can I ask the hon Member, from the explanation that he has given, does it not follow that, in fact, we were not making this provision in our own law, under the EU requirement the UK contact point would have then to take the responsibility

for doing in Gibraltar what we are providing here. Is that not the case?

HON CHIEF MINISTER:

Correct, which is why I have only gone so far as to make this legislation compatible with the Directive rather than exclude all the language about contact point functions because it is not acceptable to Gibraltar for the UK contact point to have domestic competences in Gibraltar, and this is the way that the line is drawn. So that, for example, where it says in the Directive that the contact point shall communicate this or that to other contact points. For example, in our law this is now written following the amendments as, "The Gibraltar competent authority shall ensure that" without specifying how that will happen. So we will ensure that leaving it for a future debate, an arrangement with the UK as to the scope that exists for Gibraltar to do the communicating directly. Obviously, when it is competent authority we can communicate directly because of the post-box arrangements. But when the communicating is to be done with or through contact points, because for the Directive purposes the UK can only have one contact point, there is an issue there which we are going to have to work an arrangement with the UK for how that happens in our case and the language now is neutral in that respect. It speaks of the Gibraltar domestic authority ensuring that necessary information is transmitted leaving it open to doing therefore directly or, if it should be so required when we have sat down with the UK to discuss these things, perhaps through the UK contact point but acting on our behalf and not quoi the UK domestic situation.

Clause 61, as amended, was agreed to and stood part of the Bill and clause 62, as drafted originally, was deleted.

Clauses 63 to 69

HON CHIEF MINISTER:

Mr Chairman, these are simply renumbered consequentially on the deletion of 62. So, consequent on the deletion of 62 all subsequent sections are reduced in numbering by one.

Clauses 62 to 68, as renumbered, were agreed to and stood part of the Bill.

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

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

Arrangement of clauses

HON CHIEF MINISTER:

Yes, Mr Chairman, consequent to the amendment to the heading, to the title to Part V, the equivalent amendment should be made in the arrangement of clauses in the index part of the Bill. Simply to delete "ANY RESPONSIBILITY FOR IMPLEMENTATION" from the heading and also to the reference in subsection 62 and to renumber the subsequent sections.

The arrangement of clauses, as amended, was agreed to and stood part of the Bill.

THE INCOME TAX (AMENDMENT OF THE QUALIFYING (CATEGORY 2) INDIVIDUALS RULES 2004) BILL 2009

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

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

THE PUBLIC HEALTH (AMENDMENT) ACT 2009

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

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

THE SOCIAL SECURITY (AMENDMENT OF REGULATIONS) BILL 2009

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

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

THE GIBRALTAR PORT AUTHORITY (AMENDMENT) BILL 2009

Clause 1 and 2 – stood part of the Bill.

The Long Title – stood part of the Bill.

THE INTERNATIONAL CRIMINAL COURT (AMENDMENT) BILL 2009

Clause 1 to 4 – were agreed to and stood part of the Bill.

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

THE CRIMES (VULNERABLE WITNESSES) BILL 2009

Clauses 1 to 53 – were agreed to and stood part of the Bill.

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

THE CRIMES (INDECENT PHOTOGRAPHS WITH CHILDREN) BILL 2009

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

Clause 2

HON G H LICUDI:

Mr Chairman, there are references in clause 2 as in other clauses to pseudo-photograph and I see that notice has been given of amendments because the hon Member in his contribution, in the Second Reading, said that there were some inconsistencies because there were some references to photographs which did not say "or pseudo-photograph". What I was going to suggest is whether it is not better, if all references to photographs are going to follow with the words "or pseudo-photograph", whether is it not better in the definition of photograph to include a reference to pseudo-photograph and that would be later on at clause 7(4) which says, "references to a photograph include" and there could be a little (c) there which says "a pseudo-photograph" which would mean that we could take away all the references to pseudo-photograph everywhere else, unless of course there is any provision that I have missed and I have not looked in detail at the proposed amendments and whether that covers everything. Whether there is any situation at all where you can have an offence in respect of a photograph but not a pseudo-photograph.

HON D A FEETHAM:

No, for this reason there are two different concepts and, in fact, pseudo-photograph is defined in section 7 subsection (7) as an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph and the difference between a photograph and a pseudo-photograph is obviously a photograph is a photograph and then there are……… The definition of photograph is, in fact, expanded to

include film et cetera, but a pseudo-photograph is designed……… For instance, an example of a pseudo-photograph would be, you take a picture of somebody, of a child, and you transpose the head, just the head of the child, a picture and you transpose that head over, say for instance, an indecent image of someone. That is a pseudo-photograph. It is intended to deal with, though they are related, two separate concepts. Throughout the Act we are referring separately to photograph and to pseudo-photograph although of course the offences are made in relation to both. The mistake is in relation to section 4 which I will speak to in a moment when we come to considering the defence of marriage because in relation to section 4 the defence in some of the subsections apply to photograph and in some of them it applies to photographs and pseudo-photographs. But apart from that, it is consistent throughout, the references both to photograph and to pseudo-photographs. In fact again, and I am the first to say, as I did in the debate a few weeks ago with exchanges with the hon Member Mr Picardo who is not here today, that we should not slavishly follow the UK in respect of everything. But in this particular instance we have decided to follow the UK. That is exactly how they have dealt with it as well.

HON G H LICUDI:

Mr Chairman, I understand the argument. I was not suggesting for one moment that the definition of photograph which is clause 7(3) should include a pseudo-photograph so that……… No. What I said was, in clause 7(4) references in the legislation to photograph should include pseudo-photograph but as two different concepts. So one thing is the definition of photographs which is covered by sub clause (3) of 7, another thing is the definition of pseudo-photograph which is covered by (7) of clause 7 and there are two different concepts. But for the purpose of legislation, this is just a drafting issue rather than a technical issue, whether it is necessary at every single stage to say photographs or pseudo-photographs when it could be simply included, for the purposes of this legislation, under sub clause (4). If it does not work, it does not work. It is only a suggestion as to whether drafting it makes more sense or not.

HON D A FEETHAM:

I am very grateful to the hon Member for making this constructive suggestion but, with respect to him, they are both separate concepts, the concepts of photograph and pseudo-photograph, although they are linked, and therefore they ought to be separately dealt with in the Act.

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

Clause 3

HON G H LICUDI:

Mr Chairman, there is possible drafting typographical issue here. Clause 3 (1) starts “subject to section 4, it is an offence for a person” and then “to produce, to distribute, to have, to publish” and then (e) “copies or moves”. So if you just look at (e) in the context of the beginning “it is an offence for a person” I suppose it must be “to copy or to move”. Should it not be “to copy or to move” rather than “it is an offence for a person, copies or moves”?

MR CHAIRMAN:

Yes. The infinitive is missing.

HON G H LICUDI:

So I would simply suggest replacing "copies or moves" with the words "to copy or to move".

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

Clause 4

HON D A FEETHAM:

Yes, Mr Chairman, I am moving amendments in relation to clause 4. There are two reasons for moving these amendments. The principle reason is in fact that the intention of this particular clause is to cover both photographs or pseudo-photographs. Now, hon Members will recall that in my speech I said that in the United Kingdom the defence of marriage as presently drafted, the legislation as is presently enacted, only extends to photographs and not pseudo-photographs. That really does not make sense because of course, in reality there is very little……… there is no reason why we should be granting the defence of marriage to a photograph and not in fact to a pseudo-photograph when in many respects it can be the lesser of the two. Now, in the United Kingdom, they are extending that at the moment to include both photographs and pseudo-photographs. This defence in section 4 by the Coroners and Justice Bill 2009 as I said is going through the House of Lords as we speak. In fact, that was the intention all along because if one looks at subsection (2) of section 4, the defence as it applies to section 3(1)(a), (b), (c) or (e) applies to both photographs and pseudo-photographs. But then pseudo-photographs is left out of section 4(1) and it is also left out in subsections (3), (4) and (6). An additional point is of course that if one looks at subsection (4)..……. Subsection (4) is limited to applicability to section 3. It should also be extended to section 2, otherwise the defence of marriage in this particular section, taken as a whole, is out of kilter as regards possession and possession with intent to distribute and the aggravating features. So Mr Chairman, in relation to section 4(1), after the word "photograph" in the third line, insert "or pseudo-photograph". In subsection (3), first line, after the word "photograph", insert "or pseudo-photograph". In subsection (4), where it says "in the case of an offence under section" after the word "section" insert "2(1) or". So it should read "2(1) or 3(1)(a)" and then it carries on and where it says "photograph" insert the words after photograph "or pseudo-photograph being in the defendant's possession". That is the point. So it extends to possession as well as the section 3 offences. The more aggravated offences. Then in subsection 6(a) after the word "photograph" insert "or pseudo-photograph", in (b) after the word "photograph" insert "or pseudo-photograph" and (ii) after the word "photograph" insert "or pseudo-photograph".

HON G H LICUDI:

Mr Chairman, we have no difficulty with that proposed amendment. We will support that. In relation to general comment on the defence of marriage, it was a point that the hon Member made in his last intervention, in the Second Reading, as to why I had not mentioned the defence of marriage which applies to these sections but not the other sections. It seems to us that there is a very logical reason and a good reason why that should be the case. It is one thing for one to have possession of an indecent image of ones own spouse and it is quite another where the spouse is a child to use that child for exploitation purposes notwithstanding that that person is a spouse. It cannot be right that one exploits whether it is a wife or a husband, a 17 year old, just because of marriage and the defence of marriage should not properly apply to the question of exploitation. So we agree that the defence of marriage is in the right place in the legislation. We will not be proposing any amendments to that.

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

Clauses 5 to 11 – were agreed to and stood part of the Bill.

The Schedule

HON D A FEETHAM:

Yes, Mr Chairman, there is a typographical error in the heading for clause 8 of the Schedule and that is the word "forfeited". The letters "ted" at the end have slipped out of the formatting, in fact. It is caused by the formatting of the Bill. So I would move an amendment to add the letters "ted" so that it reads "forfeited". I have no other amendments to the Schedule.

The Schedule, as amended, in respect of the heading to paragraph 8, stood part of the Bill.

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

THE LIMITATION (AMENDMENT) BILL 2009

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

Clause 2

HON D A FEETHAM:

Yes, Mr Chairman, in clause 2(3), in section 10A(1), replace the words "one to which section 5 of this Act applies" with the words "in respect of personal injury or death". Now, there is in fact another amendment in 10B(1) which is identical to this one. Now, the reason for this is because, although strictly speaking section 5, does deal with personal injury, we felt that, in fact, the safer course of action is, rather than to refer to section 5 to make it explicit that this particular section does not apply in respect of personal injury or death. Just in case somebody came up with a point in court that it should be read in a more narrow way because it only referred to section 5 of the Act. It is to really make it clear beyond per adventure that all that is excluded is personal injury or death. Sub clause 5, the number 32 has been omitted before the number 1 in brackets. So it should read, "by renumbering sections 32 as section 32 (1)".

Clause 2, as amended in respect of all three matters spoken to by the Hon Minister, was agreed to and stood part of the Bill.

Clause 3 – was agreed to and stood part of the Bill.

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Qualifications (Right to Practise) Bill 2009;
2. The Income Tax (Amendment of the Qualifying (Category 2) Individuals Rules 2004) Bill 2009;
3. The Public Health (Amendment) Bill 2009;
4. The Social Security (Amendment of Regulations) Bill 2009;
5. The Gibraltar Port Authority (Amendment) Bill 2009;
6. The International Criminal Court (Amendment) Bill 2009;
7. The Crimes (Vulnerable Witnesses) Bill 2009;
8. The Crimes (Indecent Photographs with Children) Bill 2009;
9. The Limitation (Amendment) Bill 2009,

have been considered in Committee and agreed to, some with and others without amendments, and I now move that they be read a third time and passed.

Question put.

The Qualifications (Right to Practise) Bill 2009;

The Income tax (Amendment of the Qualifying (Category 2) Individuals Rules 2004) Bill 2009;

The Public Health (Amendment) Bill 2009;

The Social Security (Amendment of Regulations) Bill 2009;

The International Court (Amendment) Bill 2009;

The Crimes (Vulnerable Witnesses) Bill 2009;

The Crimes (Independent Photographs with Children) Bill 2009;

The Limitation (Amendment) Bill 2009,

were agreed to and read a third time and passed.

The Gibraltar Port Authority (Amendment) Bill 2009.

The House voted.

For the Ayes: The Hon C G Beltran
The Hon Lt-Col E M Britto
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon J J Holliday
The Hon J J Netto
The Hon E J Reyes
The Hon F J Vinet

Abstained: The Hon J J Bossano
The Hon C A Bruzon
The Hon N F Costa
The Hon Dr J J Garcia
The Hon G H Licudi

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do now adjourn to Thursday 26th November 2009 at 10.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 12.33 p.m. on Friday 23rd October 2009.

THURSDAY 26TH NOVEMBER 2009

The House resumed at 10.00 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development, 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 & 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

ABSENT:

The Hon N F Costa
The Hon S E Linares

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Private Members' Bill.

Question put. Agreed to.

PRIVATE MEMBERS' BILL

FIRST AND SECOND READINGS

THE ROYAL BANK OF SCOTLAND (GIBRALTAR) (TRANSFER OF UNDERTAKING) ACT 2009

HON P R CARUANA:

I have the honour to move that a Bill for an Act to make provision for and in connection with the transfer of the Undertaking of The Royal Bank of Scotland (Gibraltar) Ltd to The Royal Bank of Scotland International Limited, be read a first time.

Question put. Agreed to.

SECOND READING

HON P R CARUANA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the House is already aware of some of the background to this Bill following my comments at the time of the motion to seek leave to bring the Bill. The hon Members of the House will recall that at the moment the Royal Bank of Scotland (Gibraltar) Limited, which is a Gibraltar registered company, carries on business from premises in Corral Road under the name RBS International. As opposed to Royal Bank of Scotland International Limited, which is registered in Jersey as a company and carries on business in Line Wall Road under the name NatWest. The intention of the Bank, which this Bill is designed to allow them to do without the considerable legal and administrative effort that would be required to do it by non-legislative means, is that a result of the provisions of this Bill, the Royal Bank of Scotland International branch in Gibraltar, that is to say, the structure that is presently operating in Line Wall Road will also be carrying on business under the same name, that is to say NatWest, both from Line Wall Road, as it is at present, and also from Corral Road. In other words, whereas at the moment NatWest, through Royal Bank of Scotland International Limited, is presently carrying on business in Line Wall Road and Royal Bank of Scotland (Gibraltar) Limited through RBS is presently carrying on business in Corral Road, in future, both premises will operate as branches of NatWest under RBSI, the Jersey Company. In other words, both will replicate what has recently been the position in the case of the Line Wall Road operation. Mr Speaker, section 1 of the Bill contains various definitions. I would particularly draw the House's attention to the definition of the changeover date. This is the date on which the current undertaking of Royal Bank of Scotland (Gibraltar) Limited, Royal Bank of Scotland, Corral Road, will under the Bill vest in Royal Bank of Scotland International Limited. The date will be appointed by notice in the Gazette and the present intention is that this will be a date very shortly after the passing of the Bill and its obtention of Royal Assent. Section 2 is the fundamental provision of the Bill. It provides for the vesting of the undertaking of Royal Bank of Scotland (Gibraltar) Limited in Royal Bank of Scotland International Limited with effect that is obviously from the changeover date. Effectively on that date, Royal Bank of Scotland International Limited succeeds to the undertaking of Royal Bank of Scotland (Gibraltar) Limited as if Royal Bank of Scotland (Gibraltar) Limited and Royal Bank of Scotland International Limited were the same person in law. The remainder of the provisions of the Bill, other than section 10, develop, supplement and refine this fundamental provision. Section 3 deals specifically with various types of property. The term "property" is widely defined in section 1 in which immediately before the changeover date, Royal Bank of Scotland (Gibraltar) Limited may have an interest. Subsection 1 of section 3 deals with the generality of property which at that time forms part of the undertaking of Royal Bank of Scotland (Gibraltar) Limited. The remaining provisions of this section deal with property held jointly, third party rights, property subject to a trust or similar obligations and property held as custodian. The overall effect of these provisions is to put Royal Bank of Scotland International Limited in the shoes of Royal Bank of Scotland (Gibraltar) Limited whilst ensuring that the rights of third parties are safeguarded. Section 4 excludes five descriptions of property from the vesting provisions of the Bill. In other words, five descriptions of property which are not transferred in this way. The details are set out in the Explanatory Memorandum of the Bill but two of these, the Corral Road premises and any rights or liabilities in which only RBS(G) and RBSI, that is "Gibraltar" and "International" have an interest, remain for "Gibraltar" and "International" to deal with themselves. In other words, where there is property in which only the two companies have an interest and they can do the documentation privately between them, then the legislation does not substitute that bilateral transaction between them which remains necessary for them to pass property. The exclusion of banking and similar licences and authorisations, which also are

not transferred, follows from the fact that as a matter of law, licences are not transferable. That is to say, licences issued under the Financial Services Licensing and Regulatory legislation. The specific exclusion of contracts and other property of which the proper law is not that of Gibraltar, simply reflects the basic proposition derived from international law that this Parliament cannot effectively legislate so as to modify matters which are governed by the law of another state. Finally, as a piece, as a fifth type of property that is not transacted by this Bill, the share capital and reserves of Royal Bank of Scotland (Gibraltar) Limited remain as the essence of the corporate entity which is Royal Bank of Scotland (Gibraltar) Limited. The remaining provisions of the Bill, other than section 10, are technical provisions which are well precedented in this type of legislation when this House has assisted banking reorganisations in the past. Perhaps the most significant is section 6 which provides that on the changeover date existing accounts, that is to say, customer bank accounts with the Royal Bank of Scotland (Gibraltar) Limited, become accounts of that customer with the Royal Bank of Scotland International Limited but subject to the same terms and conditions as applied before the changeover date to that account. Section 10, which also is contained in similar pieces of legislation, ensures that any Government expenditure in connection with the introduction and enactment of the Bill is to be paid by Royal Bank of Scotland International limited. Mr Speaker, Royal Bank of Scotland International Limited is a welcome part of Gibraltar's economic community. It provides many well paid, quality and stable jobs. It is supportive in the context of the local lending market and environment. The Royal Bank of Scotland has always been supportive of Gibraltar, its aspirations and its socio-economic growth and development needs and the Government believes that it is right that this House should therefore assist them in their corporate reorganisation and therefore I commend the Bill to the House.

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

HON J J BOSSANO:

Not so much on the Bill itself because, Mr Speaker, we know that this has been done before when banks have needed a less expensive route and I think it is a good thing that we should have the possibility of doing these things because it makes Gibraltar an attractive place to do business from. My question would be to ask whether, am I right in thinking that with the present structure they have two banking licences , one for the Corral Road operation and one for the one round the corner and that following that, one of the banking licences will be given up. That is, the one in the name of the Royal Bank of Scotland and they will be using……… They will have one licence and two branches presumably. Is that the correct interpretation?

HON P R CARUANA:

It would be a correct interpretation if the basic factual premise of the analysis were correct. In other words, if it is true that Royal Bank of Scotland International Limited will be able to operate both its branches with one banking licence. In other words, at the moment they had two banking licences because they are two separate legal entities, each operating separately and differently. So the effect of this Bill and when the bank uses the provisions of this Bill to consolidate and to establish in effect two branches of NatWest instead of one branch of NatWest, will be that both branches, in Corral Road and in Line Wall Road, will be operating under the present single Royal Bank of Scotland International licence, which is not necessarily to say, that they intend to surrender the licence. They have not yet decided whether they will continue to use Royal Bank of Scotland (Gibraltar) Limited and its licence for some other niche banking activity, separate and different to the branch network, which they are now wanting to brand for purposes, I think, also of market presence. NatWest is their main retail brand. They have not yet made a decision about whether they will surrender the licence or not surrender it and use it for some other purpose. That is one

of the things that they will let us know when they have made a decision.

Question put. Agreed to.

The Bill was read a second time.

HON P R CARUANA:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

I have the honour to move that the House should resolve itself into Committee to consider the Royal Bank of Scotland (Gibraltar) (Transfer of Undertaking) Bill 2009, clause by clause:

THE ROYAL BANK OF SCOTLAND (GIBRALTAR) (TRANSFER OF UNDERTAKING) BILL 2009

Clause 1 to 10 – 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 Royal Bank of Scotland (Gibraltar) (Transfer of Undertaking) Bill 2009 has been considered in Committee and agreed to, without amendments, and I now move that it be read a third time and passed.

Question put. Agreed to.

The Bill was read a third time and passed.

SUSPENSION OF STANDING ORDERS

HON J J NETTO:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Government Motion.

Question put. Agreed to.

GOVERNMENT MOTION

HON J J NETTO:

I have the honour to move the Motion standing in my name which reads as follows:

> "That the Gibraltar Parliament approves by resolution the making of the Social Security (Open Long-Term Benefits Scheme) (Amendment of Benefits) Order 2009."

Mr Speaker, the Order simply increases the amount of pension benefits payable under the Social Security (Open Long-Term Benefits Scheme) Act 1997 with effect from the 1st April 2009, as per the last budget announcement. In accordance with the provisions of the Act, amendments can only be made by Regulation with the prior approval of Parliament indicated. I commend the Motion to the House.

Question proposed.

HON J J BOSSANO:

Mr Speaker, the benefits have been paid of course, presumably from the 1st April already and it is not that we are now approving a payment which is backdated to the 1st April and has to be made. What I would like an explanation of is, if the law has got the old rates in it until today, how is it that the money can be paid from the fund in terms of amounts higher than what the existing law says until we approve this? I understand that sometimes things get overlooked but I mean this seems to be the normal way it is done all the time nowadays.

HON CHIEF MINISTER:

Yes, Mr Speaker, it is not the result of being overlooked, it is a result of the xxxxx impossibility of complying with the chronology of the law as it presently stands and I will answer him how it is done mechanically in that context. One of the Bills that we are discussing today is designed to permanently remedy this feature. In other words, the law as it presently stands, as he correctly says, says in effect, that these things are operative, effective, once they are approved by the House. Of course, I stand up in the budget session, which is at variable times of the year, and I announce or at some point of the year, in not necessarily in the budget, there is an announcement about what the pension rise is going to be. The effective date of that commencement cannot coincide with a motion having already been brought and passed so that there is already the approval of the House before the commencement date starts. So, the way that the problem has been overcome now for several years, because this is not the first time that we do this, is that regulations are passed on the basis of which the Financial Secretary makes payment, in a sense, as an advance from the fund. We then have to bring a Bill, which we did last year and it is on the Order paper for later today, giving retrospective effect by primary legislation to the increase. So later today, hopefully, if the House agrees, we shall be passing a Bill that says that notwithstanding that under the regulations, the increase is only effective from the day that the House approves it, the House retrospectively by primary legislation, back dates it earlier. Now, I entirely agree with what I think is the underlying point that the hon Member was making, that it hardly seems the best way to organise business, if there was some other way of doing it and indeed the Bill this year does that. In other words, in addition to authorising this year's increase retrospectively, this year's Bill on a once and for all basis, which will make such Bills unnecessary in the future, changes the reporting mechanism to this House. At the moment, the reporting mechanism to the House is that the regulation increasing the rate is not effective until it is approved by this House. Well, the hon Member knows that there are several control mechanisms by Parliament available to us using Parliamentary precedent in the UK. One is, which is the one that we have opted for and is reflected in the Bill that the House will debate later. One of them is that the regulation is effective from the moment it is promulgated subject to it being debated in the House and subject to its annulment retrospectively if the House disapproves of it. This is a mechanism that exists and is very widely used. It is one of the two or three mechanisms for Parliamentary approval of subsidiary legislation and it will allow us to not have to amend retrospectively the primary legislation every year. By primary legislation to give it retrospective effect to the commencement date, the House will still be able to debate it. If the House disapproves it, the regulation would be annulled. The Government would then have a problem of what it does with the payments that have been made but I think that as a procedural matter, as a procedural method it is better than the way we do it at the moment.

Question put. The House voted.

The motion was carried unanimously.

SUSPENSION OF STANDING ORDERS

HON C G BELTRAN:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with the laying of Regulations on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON C G BELTRAN:

I have the honour to lay on the Table the Children With Special Needs (Assessment Panel) (Amendment) Regulations 2009.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

PORT OPERATIONS (REGISTRATION AND LICENSING) (AMENDMENT) ACT 2009

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Act to amend the Port Operations (Registration and Licensing) Act 2005, be read a first time.

Question put. Agreed to.

SECOND READING:

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. This short Bill, Mr Speaker, removes the right of appeal against the registration of an entity under the Act from another entity who objects to that registration. It also makes a small amendment to the Forms Regulations to reflect the change. Under section 3 of the Act, the Port Authority may register an entity to carry out port operations if, essentially, it is fit and proper to conduct that business. Another entity - usually a competitor - may object to the registration and the Authority will consider the objection. If the registration is then granted despite the objection, the objector may then appeal and this Bill removes that possibility. The Bill does not remove the right of objection or proper consideration of the objection, but does remove the right of appeal from the objector because that right can be used as a delaying tactic which is not justifiable. Of course, judicial review of the decision remains open. I commend the Bill to the House.

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

HON DR J J GARCIA:

Sorry Mr Speaker. Can I just clarify, in relation to what the Minister has just said, what the Bill does is obvious, it is quite clear, it is a very short Bill and the hon Member has explained it again in this House. He has given us the reason for removing this right. That is to say, the right of objectors to appeal to the Port Tribunal, the fact that the right might be, if I heard him correctly, abused or used as a delaying tactic. Is that something which has been happening continuously in the last four years since 2005 and that is why Government has taken these steps?

HON J J HOLLIDAY:

No Mr Speaker. It has not been usual but there have been cases when that has been the case and it has been clear to the Port Authority that it has been done purely for that purpose.

Question put.

HON J J BOSSANO:

We are voting against Mr Speaker. I do not think that explanations have been given. If the Government provided a right to people that if they were not satisfied with the original decision in terms of feeling perhaps that their objections had not been gone into sufficiently and they thought it was worth giving them the right to object to that licence, it is obviously a good thing from the point of view of giving people the right to protect their business interests and now we are taking it away because one or two times or somebody or maybe. I think we need more solid evidence than what was there before, which seems a good thing, needs removing.

HON CHIEF MINISTER:

I do not know if Mr Speaker has already brought his hammer down on the debate or not.

MR SPEAKER:

I was half way through the word "carried".

HON CHIEF MINISTER:

With Mr Speaker's leave, I think it goes a bit further than that. It goes a little bit further than that. The fact of the matter is that the right to conduct business and remember that this is used also against local people that want to establish business. The right to object to a licence application by somebody else. In other words, my right to object to you as a citizen having the right to compete with me is for reasons set out in the Act. In other words, to protect the public interest, xxxxx satisfied, rather like in the Trade Licensing Act. This is not intended as a mechanism to protect monopolistic situations or to prevent competition or to keep potential competitors out of your market place. It is right that the applicant for the licence whose right to do business is being denied to him if it is refused, that he should have the right to appeal through the law courts against the refusal of the grant of the licence to him, the applicant, but, and that of course is preserved by the Bill. But the rights of the objector are different to the rights of the applicant. The objector is doing the business. He is already in the business and to most objectors the right of objection is not pursuant to some…, the protection of some public interest, but a protection of his own commercial interest because the less competition there is the better. This is not to say that the objection cannot be made. It can be made, that has not been changed. It does not mean that the licensing body, whoever it is in this case, does not have to take the objections into account in the same way as it did before. It does not even mean that if the objector thinks that his objection has been ignored in a way which is procedurally objectionable, in other words, which renders the process unfair, he can still judiciarily review the decision of the Licensing Authority. What he cannot do is appeal the outcome simply because he does not like it. In other words, nobody wants to see a competitor licensed. Therefore necessarily everybody would challenge it and that is how the sense of using it to delay the entry of competition comes into effect but even the competitor, the objector let us call him that, still has the right under this legislation to object and to ensure that the decision is made properly, lawfully and correctly, including the consideration given to his objection. But he cannot appeal simply on the basis of the outcome. In other words, that if he does not like the decision because it results in somebody else competing against him in the market place. It is simply a

question of the legislation reflecting the different nature of rights. Government believes that it is right that the applicant for a licence who is being denied a right to do business should have the right of appeal against the decision through the courts. But the objector's rights, really, should be limited to having his views on the matter recorded, properly taken into account and lawfully, correctly considered by the decision-making body which he should be able to challenge for those reasons, if they are not properly taken into account, but not simply because he does not like the idea of somebody competing with him in his business, which nobody ever likes.

Question put. Agreed to.

This 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, if hon Members agree.

Question put. Agreed to.

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) ACT 2009

HON J J NETTO:

I have the honour to move that a Bill for an Act to amend the Social Security (Insurance) Act to provide for the laying in Parliament of orders made pursuant to section 52; and to provide for the retrospective effect of legislation that revised social insurance contributions rates, 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, section 52(3) of the Social Security (Insurance) Act currently states: "(3) No order increasing the weekly rate of contribution shall be made under this section unless it has been approved by resolution of the Parliament". This means that an order made pursuant to that subsection cannot come into operation until approved by the Parliament. Clause 2(1) of the Bill seeks to amend the Act so that future orders come into operation when published in the Gazette. Any such order will still have to be laid before the Parliament and is liable to annulment. Provision is made for that eventuality in the new subsection (4). In addition to the foregoing, clause 3 of the Bill gives retrospective effect to the Social Security (Insurance) Act (Amendment of Contributions) Order 2009 so that these shall be deemed to apply as from 1 July 2009. This is in keeping with the Budget 2009 announcements made to that effect. I commend the Bill to the House.

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

HON J J BOSSANO:

When we had the motion to increase the benefits just now, we were told that this Bill was in fact altering the mechanism for increasing benefits. In fact the Bill refers to the provisions of section 52(3) which we are told deals with increasing contributions as opposed to benefits. I do not know……… I am having somebody look at the section to see if it covers both. But here we are talking about the other side of the coin which is when the contributions go up and here it seems to me that the wrongness of the mechanism is even worse than in the previous one because that affects something else. That is that it affects the legislation that there is which protects people from having

contributions to anything taken from their pay packet without a law authorising it or the individual giving his approval. The hon Member knows, as I do, when we organise payroll deduction for Unions, that the employer is not permitted to take the money from the employee's pay without his approval and that is because the law makes it very clear that you must either give permission to the employer to remove things from your pay or there must be a legal mechanism that allows it. So, it seems to me that it must follow that all the employers in Gibraltar since the 1st July have been illegally withholding from peoples' pay higher amounts in respect of social insurance contributions than the law provided. Therefore they have been deducting money that they were not permitted to deduct and paying into the fund money which the fund was not entitled to receive. Now, even in the case of the other one, I can understand that if you are going to raise the benefits or indeed raise the amounts, you may not be able to print this ahead of the statement because then effectively the statement would be announcing something that everybody already knows. But surely, when we have the statement made in the House, there is nothing to stop this being printed a week later and not that the decision should come to the Parliament of something that was supposed to be happening in April and here we are nearly on the 1st December, retrospectively authorising it. Certainly, whatever the level of workload they have got in the Department, I cannot imagine that they are so bogged down with work that it takes them seven months to produce something that is a one page thing and which frankly, apart from editing the figures, is the same whenever the rates of benefit go up. But in any event, it seems to me that in the case of the increase in contributions, in addition to the need that was explained earlier to ensure that if we have got this happening after the event then it can still happen after the event without the need for changes in primary legislation because instead of us having to approve the thing retrospectively after the passing of this Bill, what we will have to do is to decide whether we annul it or not. Certainly annulling an increase in social insurance benefits would not create the same problem because we would be given more money back as it would be getting them to pay back higher pensions. But I think, in addition to the mechanism for social insurance, there is another dimension to it which is in fact the protection that employees have, that they cannot have money removed from their pay packet. I do not know under what particular provisions it is, but it may be that it is something to do with the xxxxx Act which is very clear that people have to be paid and that you cannot deduct money for lodgings or money for anything else. So, that is the only concern we have about this Bill. The rationale of the mechanism that was explained earlier in relation to the motion we can see the logic of and we are supportive of, but this part of it is not something that we are too happy about.

HON CHIEF MINISTER:

Yes Mr Speaker, everything that the hon Member has just said is entirely justified as a response to a misstatement on my part when I spoke earlier, which I misspoke in confusing the motion as relating to the contributions. I am grateful to him for spotting it and for giving me the opportunity of disentangling the consequences of my misspeaking. The Bill which we are now debating deals with contributions only, not with benefits. The motion……… and I will explain that in a moment, the motion deals with benefits and attached to the motion is the order increasing the benefits, which has already been promulgated and pursuant to which payments have already been made. That order says that it comes into effect on the 1st April and the House is now approving that order through the motion, including, the 1st April commencement date. So the motion, contrary to what I said when I spoke to it, only speaks and relates to the payment of benefits to benefit receivers which this House is today, by this motion, authorising, not just the rates of benefit but its retrospection to the 1st April. The Bill does everything that I said it would do but in respect of contributions, not in respect of benefits. In other words, we announced an increase in social insurance contributions which normally kick in on the 1st July, either a few days before or a few days after the Budget, depending on exactly when we do the Budget session. Regulations are passed and now the House is saying, by this

piece of primary legislation, when the Minister, or whoever it was that signed the regulation, increasing backdated to the 1st July by regulations, this House is now by primary legislation endorsing that 1st July commencement date. It is not usually by very many days that the retrospective element takes place. That is the process which we think is unnecessarily clumsy and unnecessary and hence the system of changing it to one of subsequent annulment by the House which, as he correctly says, the hon Member correctly says, means that in the event of annulment by the House, it is the Government that has got to return to the employers and the employees, if there was an increase in employees' contribution rate as well as employer contribution rate, the excess contributions that we have been collecting since the 1st July, but which Parliament has disapproved of and has annulled. So, I do apologise to him and to the House. What he has said was entirely justified but all as a correct comment to an incorrect comment and an incorrect analysis on my part.

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 today, if hon Members agree.

Question put. Agreed to.

THE CRIMES (COMPUTER HACKING) ACT 2009

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to provide for the protection of computer systems and computer data from unauthorised access, use or modification; and for related purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill for a Crimes (Computer Hacking) Act 2009 be read a second time. Mr Speaker, this Bill seeks to criminalise the various forms of abuse and misuse of computers and computer systems. Amongst the matters which the Bill will criminalise are the unauthorised access to another person's computer data, computer hacking, and unauthorised interception. It also gives the police limited powers to require preservation of data and interception although interception can only be undertaken on the basis of an appropriate Court Order, as I shall be explaining later. In bringing this Bill to Parliament, some of the issues raised in the Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems and the 2001 Council of Europe Convention on Cybercrime are transposed and implemented. Clause 1 of the Bill relates to the ordinary domestic matters relating to citation and commencement. In this case, I shall be moving an amendment at Committee Stage to enable the staggered commencement of the various provisions. The reason for this is that the Government does not want to make some of the provisions effective until the codes of practice have been drafted under clause 30. The question of the codes of practice relates to a further amendment that I shall speak to at the appropriate juncture. Clause 2 of the Bill provides for the interpretation of the terms used throughout the Bill. At Committee Stage, I shall be moving amendments in relation to clause 2 so as to insert a definition of "internet" which for the purposes of this Act will include intranet networks. Without this, the Bill may not have caught the intranet system because the relevant communications were sent via the intranet as opposed to the

internet. Clause 3 creates the offence of unauthorised access to computer material. The offence is only made out if the person seeking access to another computer intends to secure such access and he does not have permission. Clause 4 builds on clause 3. This clause applies where the reason for committing the offence of unauthorised access under clause 3 is to enable that person to commit a further offence. Accordingly, whilst the maximum penalty on conviction on indictment under clause 3 is two years imprisonment, under clause 4 the maximum is a term of imprisonment of five years because of the aggravating feature. Clause 5 makes it an offence for a person to do an act, whether temporary or permanent, which he knows or is reckless as to whether it will cause an impairment of the operation of a computer or any programme or data held in a computer or an impairment of the reliability or the authenticity of any such data. The interception of any non-public transmission from a computer without the appropriate authority is prohibited by clause 6, where the person knows he is not authorised to intercept that transmission. Clause 7 makes it an offence for any person to produce, sell or procure for use any device, programme or data which is designed or adapted with the intention that it should be used to commit an offence under clauses 3, 5 or 6. The disclosure of any password, access code or other means of access to a computer is prohibited under clause 8 if the disclosure is made for wrongful gain or an unlawful purpose and where access is not authorised and is likely to cause loss to any person. Clause 9 punishes as an offence any aiding and abetting of the commission of any offence under the Act. Clauses 10 to 14 provide for various scenarios under which there would be jurisdiction for offences to be tried in Gibraltar's courts. Clauses 10 and 11 taken together require that either the person committing the offence or, as the case may be, the computer is based in Gibraltar. Clause 12 relates to conspiracies and attempts, and sets out the elements required for the legislation to bite where there are international factors. Clause 13 provides the basis for considering the relevance of external law with respect to a prosecution brought in Gibraltar. Clause 14 refers to the national status of the accused and provides that the law applies irrespective of whether the accused is, with the amendments I shall be moving later, a British person. Clause 15 empowers a magistrate to issue a search warrant to a police officer, who, upon executing it, may seize any computer or computer programme or data if he believes it is evidence that an offence under the Act has been committed or is about to be committed. Clause 16 concerns the investigation of offences in circumstances where a particular computer has been used or evidence is held in that computer. In such cases the police may apply to a magistrate for an order authorising entry into premises, and thereafter undertaking the activities set out in subsection (2) including accessing the computer and searching data stored within it. At Committee Stage, I shall be moving the deletion of the words "under this Act" so as to allow for warrants to be issued in connection with computers used in connection with any offence, for example, child pornography. Clause 17 makes provision for a record to be made following a search pursuant to a warrant issued under clause 5. Mr Speaker, I have given notice of amendments to clauses 18 to 22 and will speak on the effect of these clauses as amended. Clause 18 relates only to the preservation of a programme or data which is stored in a computer and which is at risk of being lost. This clause will enable the Commissioner of Police to act expeditiously to require the preservation of the relevant material for up to 30 days. Should this prove to be insufficient, the Attorney-General may then apply to the Magistrates' Court for an order extending the time during which the programme or data must be preserved. The total period during which a person may be under an obligation to preserve material is 90 days. It should be noted that the notice relates only to the preservation of relevant information and is not accompanied by a duty to disclose the information to the Commissioner of Police. Disclosure of preserved information requires a court order under the other provisions in the Bill. Clause 19 refers to traffic data; in layman's terms this may be described as information relating to the route a certain communication has taken. It is distinct from content data, which is the term used to describe the detail contained in the actual communication itself. This clause allows a court to make an order requiring the collection and recording of traffic data, where

doing so may reasonably be required for the purpose of a criminal investigation. At Committee Stage, I shall be amending this clause so that the Attorney-General will replace the Commissioner of Police as the party who may apply for an order to the Magistrates' Court. Clause 20 is entitled "Order for disclosure of stored traffic" and it provides the means whereby a court may order that information held in a computer be preserved and disclosed to a police officer investigating a crime or in connection with criminal proceedings. The information that may be disclosed pursuant to an order under this clause is information in relation to a specified communication which is sufficient to enable the identification of the internet service providers and the path through which the communication was transmitted. In essence, the route taken by a particular communication and which ISP handled that communication. At Committee Stage, I shall be moving an amendment to this clause so that the Attorney-General will replace the Commissioner of Police as the party who may apply for an order. Clause 21 will enable a magistrate to order the production of data and other information where this is required for a criminal investigation or in criminal proceedings. This clause includes provision for the production of computer programmes and even printouts, where so ordered. With respect to service providers, these may be ordered to produce subscriber information, which includes a subscriber's name and address, amongst other matters. Again, at Committee Stage I shall be moving an amendment to this clause so that the Attorney-General replaces the Commissioner of Police as the party who may apply for an order. Clause 22 relates to content data, that is the content of a message or communication. This clause enables a magistrate to order the collection and recording of contents of electronic communication where this is reasonably required for the purposes of a criminal investigation or in connection with criminal proceedings. Again, at Committee Stage I shall be moving an amendment so that the Attorney-General replaces the Commissioner of Police as the person who can make or apply for an order. The purpose of clause 23 is to provide protection for persons making disclosures under and in conformity with the Act. Subsection (2), however, creates an offence for a service provider to disclose the fact that the powers under clauses 19 to 22 have been used, or to disclose any data that has been collected and recorded. Clause 24 gives law enforcement officers the powers of interception, search and seizure notwithstanding the requirement for consent under clause 3(1). Clause 25 sets out the range of penalties available to the courts in connection with the various offences provided for. Clause 26 makes it an offence for a corporate body to benefit from the commission of an offence under clauses 3 to 6, whether or not the person was acting as an agent of the body. It also provides that officers of the company may incur personal liability in addition to that incurred by the corporate body. Clause 27 empowers a court to order forfeiture of a computer and other articles used in connection with an offence. Clause 28 enables a court to make an order for payment of compensation by the offender to any person for damage caused to that person's computer or any programme or data held in his computer. The compensation is treated as a civil debt for recovery purposes. Clauses 29 creates an offence of unauthorised disclosure of information obtained during the course of an investigation or of information received from the competent authorities of a Party to the Convention for the purposes of, or to assist in the investigation of offences. Mr Speaker, at Committee Stage I shall be moving an amendment whereby I shall be inserting a new clause 30. Clause 30 relates to issues of codes of practice by the Minister with responsibility for justice. The codes may be issued for the purposes of regulating the exercise and performance of powers and duties contained in this Bill. In particular, in issuing a code of practice, the Minister must have regard to the fundamental rights and freedoms which are enshrined in our Constitution. Particular regard must be had for the right to privacy in such matters as well as the need for proportionality in the investigation and prevention of crime. This consideration applies equally to orders that may be made under sub clause (3), through which the period of retention of material or data obtained can be regulated. A code of practice issued under clause 30 must be laid before Parliament. Where a code is amended, or where it is replaced by another, the amended code or where the code is to be

replaced, the replacing code is also laid before this Parliament. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that Committee Stage and Third Reading of the Bill be taken today, if hon Members agree.

Question put. Agreed to.

THE MATRIMONIAL CAUSES (AMENDMENT) ACT 2009

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to amend the Matrimonial Causes Act for the purpose of updating the legislative provisions in line with the relevant United Kingdom legislation; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that a Bill for the Matrimonial Causes (Amendment) Act 2009 be read a second time. The Bill enacts some fundamental amendments to the Matrimonial Causes Act for the purposes of:- (a) reducing the waiting period for divorce underpinning a finding of irretrievable breakdown of a marriage in respect of desertion and separation and in addition reducing the period during which a divorce petition can be presented after marriage; (b) effecting a radical overhaul of the financial relief provisions for parties to marriage and children of the family after divorce; (c) introducing pre-nuptial and post-nuptial financial agreements; and (d) making provisions for pension sharing orders as between spouses. In addition, by way of amendment to the Bill at Committee Stage, the Government intends to take this opportunity to enshrine Articles 3 and 5 of Council Regulation No 2201/2003 concerning recognition and enforcement of judgements in matrimonial matters and parental responsibility together with amendments to the provisions on domicile. I start by outlining the new waiting periods for divorce. The present law on divorce is that a petition may only be presented on the grounds that the marriage has broken down irretrievably and the court cannot hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the points set out in section 16(2)(a) to (e). Paragraphs (c) to (e) of that section provide periods during which spouses have to be separated or a spouse has to be deserted to justify a finding of irretrievable breakdown of a marriage. By way of amendment to this Bill, we will also be reducing the period justifying divorce on a finding of unreasonable conduct based on unsoundness of mind from five years to three in section 16(3)(c) (i) and (ii). With regards to the current waiting period of three years in the case of desertion, that period is reduced to two years. In the case of the waiting period for those who are separated and both parties consent to divorce, the period is reduced from three years to two years. In the case of parties who are separated but one of them does not consent to the divorce, the period is reduced from five years to three years. As a counterbalance, Mr Speaker, it is proposed to introduce a new section 17A, where the respondent may oppose the decree of divorce on the grounds that the dissolution of the marriage will result in grave financial or other hardship and it would in all circumstances be wrong to dissolve the marriage after three years of separation. The current restriction under section 18(1) on petition for divorce within five years of marriage

is also to be reduced to three years. In England, the period of marriage that has elapsed before someone can petition for divorce is one year and in Spain a divorce by consent is possible after only three months of marriage. In our view, these short time periods are not enough for a marriage to get over its problems and we believe that we have struck the right balance at three years. On the other hand, where a marriage has clearly failed, it is not right that one of the parties should be able to prevent the other from getting on with the rest of his or her life by effectively vetoing a divorce for the next five years and that is why we are reducing it to three. Mr Speaker, before one gets to that stage where a petition is presented, there is an existing statutory duty on legal advisors to advise their clients to consider reconciliation and refer them to conciliators. These provisions will be strengthened next year as part of the duties imposed on lawyers who undertake legal assistance work and by encouraging practitioners to undertake specific conciliation courses. These provisions are there to be observed and that will be reflected in the way that the Government will in future fund family cases. The Bill also amends section 25 of the Matrimonial Causes Act which provides for the grounds on which a decree of nullity may be made. The current provisions are unclear and confusing. The proposed changes by the new sections 25, 25A, 25B, 25C and 25D will clearly specify the grounds on which a marriage is either void or voidable and the powers of the court to grant relief thereon together with the effects of the decree of nullity in such cases. We have also inserted a new section 26A which deals with the postponement of a decree absolute based on two or three years separation, unless the court is satisfied that the petitioner should not be required to make financial provision for the respondent, or the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances. A court may consider holding up the decree absolute, as an option, if the petitioner is deliberately evading his financial responsibilities. For instance, to a child of the family. Pre and post nuptial agreements. Clause 15 of the Bill inserts a new Part in the Matrimonial Causes Act. The new Part VI A formally recognizes pre and post nuptial agreements and their enforceability if certain conditions are met. They are a novel concept in this jurisdiction and they represent a departure form the legal position in England and Wales. They are however recognised in other jurisdictions such as Canada and Australia. In fact the provisions in this Bill are modelled on Australian legislation. Honourable Members who practice law will know that at present parties can enter into separation or maintenance agreements under the Maintenance Act. In such cases, two particular rules apply; certain provisions are void by statute. For example, a restriction on the right to apply to the court for an order containing financial arrangements is void and if the parties agree the financial payments to be made by one party to the other, the parties can still apply to the court to re-open the bargain between them. The result is that in some cases the financially weaker party, usually the wife, will have the best of both worlds, because she can hold the other party to his covenants, for example, in respect of property arrangements, but also take proceedings to open the bargain and obtain better maintenance payments. In our view, this is not only unfair but discourages agreements between the parties. Anecdotal evidence suggests that potential disputes over property and finances are putting people off, particularly young people, from getting married. We hope these measures will protect the institution of marriage by offering a consensual way in which to deal with these concerns. Again, consonant with our stated aim of placing the well being of children as a paramount consideration, these agreements will not be enforceable if they relate to financial arrangements or provision for children without the supervision of the court. In other words, under these provisions couples can agree the division of all their assets and make whatever financial arrangements they feel work for them but they cannot oust the overriding jurisdiction of the court in relation to whether adequate provision is made for their children. That does not mean that maintenance agreements in respect of children are not possible. They are, but they still continue to be dealt with under existing provisions in Part V of the Maintenance Act in relation to which the jurisdiction of the court cannot be ousted. Mr Speaker, there are two types of financial agreements envisaged by Part VI A of this Bill. Firstly, the Bill

provides for written financial agreements between the people who are contemplating entering into a marriage with each other, that is, what is commonly referred to as pre-nuptial agreements or during marriage between them, that is, post-nuptial agreements with respect to any of the following matters:- (a) how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and before divorce, is to be dealt with; and (b) the maintenance of either of the spouse parties, but not the children, during the marriage, after divorce or both during the marriage and after divorce. Secondly, it also provides for financial agreements after the decree of divorce is made, that is, post-divorce agreements and that relates to any of the following matters:- (a) how all or any of the property or financial resources that either or both of the spouse parties had or acquired during the former marriage is to be dealt with; and (b) the maintenance of either of the spouse parties but not the children. For financial agreements to be binding, it has to be signed by both parties. It has to be certified by a lawyer that the parties have received independent legal advice. The parties themselves have to acknowledge in the agreement that independent legal advice was provided and the agreement has not been terminated or set aside under new clauses 31K or clause 31G. The grounds for setting aside include non-disclosure of material facts at the time the agreement was entered into. Agreements to defeat creditors, or because there is a change of circumstances relating to a child cared for by one of the parties which will result in hardship to that child if the court does not set aside the agreement. In order for financial agreements to bite, a declaration of separation must also be signed by the parties in the manner prescribed by the new provisions contained in this Part. A declaration of separation is a written declaration pursuant to the new section 31E that complies with sub-sections (5) and (6). That is that the declaration is:- (a) signed by at least one of the spouse parties; and (b) it must state that the spouses have separated and are living apart at the time of the declaration and in the opinion of the spouse making the declaration there is no reasonable likelihood of cohabitation being resumed. Financial Relief. Clause 16 of the Bill inserts extensive new provisions in Part VII of the Act totally reforming the provisions relating to ancillary relief orders made for parties to the marriage and children of the family. It replaces the existing provisions of sections 32 to 43 in respect of alimony, maintenance and property that have been considered inadequate and incapable of meeting the demands of modern times. Under the proposed new provisions, the court shall have statutory power to make an order against either spouse with respect to any one or more of the following matters:-(a) unsecured periodical payments to the spouse or children; (b) secured periodical payments to the other spouse or children; (c) lump sum periodical payments to the other spouse or children; (d) transfer of property to the other spouse or for the benefit of any child of the family; (e) settlement of property to the other spouse or for the benefit of any child of the family; and (f) variation of any marriage settlement. Orders coming within paragraph (a) to (c) are collectively known as financial provisions orders and those coming within (d) to (f) as property adjustments orders which are contained in sections 32, 34 and 35. Where the court makes a secured periodical payments order, a lump sum order or a property transfer order, it can further order a sale of property belonging to either or both spouses and that provision is contained in section 36. An order for financial provision or property adjustment may be made on or after the grant of decree of divorce, nullity or separation, but shall not take effect unless the decree has been made absolute. These changes, Mr Speaker, will give the new family judge more extensive powers in divorce cases to do what is just between the spouses, or former spouses, and to ensure children are properly maintained. These Parts of the Bill are very closely modelled on the English provisions, which was the desire of most of the family practitioners we consulted so that they would be able to benefit from English and Welsh jurisprudence in the area. Pension Sharing Orders. Clause 17 of the Bill inserts the new Part VII A that provides the making of pension sharing orders by the court on a decree of nullity or divorce which is an order which provides that one party's shareable rights under a pension arrangement be subject to pension sharing for the benefit of the other party specifying the percentage value to be

transferred. Indeed under this Part, the court on divorce proceedings is placed under a duty to have regard to the spouses' pension entitlements, being:- (i) any benefits under the pension arrangement which a party to the marriage has or is likely to have; and (ii) any benefits under a pension arrangement, which, by reason of the dissolution or annulment of the marriage, a party will lose the chance of acquiring. For this purpose, a pension arrangement is defined in section 46H as:- (a) an occupational pension scheme; (b) a personal pension scheme; (c) a retirement annuity contract; and (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme. Effectively a pension-sharing order re-adjusts the spouses' pension entitlements and enables each party to make future pension arrangements independently of each other. It may be possible, depending on circumstances, for the spouse in whose favour the order is made to either become a member of the other spouse's pension scheme, in his or her own right, or transfer the value of the ordered share into his or her own pension arrangement. The advantage of this approach is that, by allocating the pension rights at the time of the divorce, the intended recipient knows that she or he can take the benefit of those rights regardless of whether the other spouse dies before retirement. The mechanics of how this will work in practice, vis-à-vis a pension provider, will be the subject of detailed regulations which will be called the Matrimonial Causes Act (Pension or Divorce Regulations) either 2009 or 2010 depending when we finalise them. Mr Speaker, I will also be proposing a number of amendments to this Bill at Committee Stage. The first amendment is the replacement of new section 4 for sections 4 and 5 of the Matrimonial Causes Act. The new section 4 seeks to implement Articles 3 and 5 of Council Regulation EC No 2201 of 27 November 2003 concerning jurisdiction and recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing EC Regulation No 1347/2000. As part of the reform process, we have been constantly reviewing various provisions for compatibility with various regulations. It appears that the provisions of sections 4 and 5 of the Matrimonial Causes Act are not fully consistent with Articles 3 and 5 of the new Regulation. That Regulation contains rules on jurisdiction and recognition in civil matters relating to divorce, legal separation and marriage annulment. The jurisdiction rule in Article 3 sets out the grounds of jurisdiction to determine in which Member State the courts have jurisdiction. There is no general jurisdiction rule in matrimonial matters. Instead, Article 3 enumerates several grounds of jurisdiction ranging from habitual residence to common nationality. These are alternative grounds implying, Mr Speaker, that there is no hierarchy between them. Once a court has been seized of the matter pursuant to Article 3 of the Regulation and declared itself competent, courts of other Member States are no longer competent but must dismiss any subsequent application. The aim of the rule is to ensure legal certainty, avoid parallel actions and the possibility of irreconcilable judgements. The second amendment is the insertion of three new sections, namely sections 5, 5A and 5B of the Matrimonial Causes Act. These three sections will be dealing with the provisions of domicile. Mr Speaker, there is no simple definition of the legal term "domicile". It is a concept that is quite distinct from residence or ordinary residence, for example. At common law, a person's domicile at any given time will have been acquired in one of three ways. He will either have a domicile of origin, a domicile of dependency, or a domicile of choice. At birth, every individual acquires a "domicile of origin". This is usually the domicile of the father at the time of the birth. It is therefore not necessarily the individual's country of birth. A domicile of origin is of fundamental significance and is retained until such time as there is clear evidence that another domicile has been acquired. Children under the age of 16 automatically have the domicile of their father or in certain circumstances their mother, as a "domicile of dependence". Under the common law rules, a woman automatically acquired the domicile of her husband on marriage, regardless of her domicile of origin or any domicile of choice which she might otherwise have acquired. This was the case even if she were a minor; her dependence on her husband prevailed over her dependence on her father. Thus the domicile of a married woman was the same and changed with the domicile of her

husband. This obviously creates difficulties if spouses are separated. That common law rule applied even if spouses had been living apart and in different countries for many years, which reflected social conditions and attitudes of a past age. The rule was abolished in Canada, Australia, New Zealand and in the United Kingdom in 1973. Section 5 abolishes it in Gibraltar. In addition, the proposed section 5A and B of my amendments to the Bill, repatriates the provisions of sections 5 and 6 of the Minors Act, which is being repealed by the Children Act 2009, once that is Gazetted, about the age at which independent domicile can be acquired by a young person and the dependent domicile of children not living with their father. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

THE PENSIONS (AMENDMENT) ACT 2009

HON D A FEETHAM:

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

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill for a Pension (Amendment) Act 2009 be read a second time. Mr Speaker, this Bill amends the Pension Act in sections 2 and 13 in order to make provisions consistent with today's amendments to the Matrimonial Causes Act. Clause 2(a) of the Bill inserts in section 2(1) the definitions of "Agency" and "child of the family" which is also consistent with the Children Act and also "pension sharing order" and "spouse". Clause 2(b) of the Bill replaces section 13 with new provisions. Under the existing provisions of section 13 of the Pensions Act, civil service pension could not be subject to pension sharing orders. In view of the amendments to the Matrimonial Causes Act, section 13 of the Pensions Act is to be amended so that civil service pensions can be subject to financial orders or pension sharing orders made by the court under the Matrimonial Causes Act. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

THE EUROPEAN ARREST WARRANT (AMENDMENT) ACT 2009

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to amend the European Arrest Warrant Act 2004, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that a Bill for the European Arrest Warrant (Amendment) Act 2009 be read a second time. Mr Speaker, this Bill amends the European Arrest Warrant Act 2004. The European Arrest Warrant Act came into force in 2004 in order to give effect to the provisions of Council Framework Decision on the European arrest warrant and the surrender procedures between Member States of the European Union. The Framework Decision is based on the concept of mutual recognition and respect for the judicial processes of Member States of the EU. Honourable Members may recall that a European arrest warrant is a court decision in one Member State, addressed to a court in another Member State, for the purposes of conducting a criminal prosecution or the execution of a custodial sentence in the issuing Member State. It applies to all offences having a penalty of at least 12 months imprisonment in law of the issuing Member State or, where a sentence has been handed down, a sentence of imprisonment of at least four months has been imposed. However, the judicial authorities in Gibraltar have experienced difficulties in executing warrants due to the wording used in parts of our legislation when transposing the Framework Decision. The main difficulties have been in respect of the safeguards sought in the form of undertakings and statements which local authorities require from the judicial authorities abroad, which in our view, are technically unnecessary under the Framework Decision. This Bill is intended to close these technical loopholes and also, in effect, bring the Act closer to the Framework Decision and its underlying principle of mutual recognition. It also introduces the concept of a provisional arrest in relation to the European arrest warrant. In introducing these amendments, we do bear in mind that the Framework Decision allows citizens to be uprooted to a foreign jurisdiction without the ability of the Gibraltar Courts to test the case against them. Such a situation should be curtailed to the greatest possible extent in favour of the citizen but within the terms of the Framework Decision and certainly within the transposition of the Framework Decision in a way that works. The first amendment, amendment 2 (2) in the Bill, is to section 7 subsection (3). This is the subsection which has been causing difficulties in surrendering individuals under the Act, in particular to the United Kingdom but also to some Roman law jurisdictions. It is the critical amendment, in my view, introduced by the Bill. The current subsection reads: (3) Where a European arrest warrant is issued in the issuing State in respect of a person who has not been convicted of the offence specified therein, the European arrest warrant shall be accompanied by: (a) an undertaking in writing of the issuing judicial authority that the surrender of that person is sought for the purpose, only, of his being charged with, and tried for, the offence concerned; and (b) a statement in writing of the issuing judicial authority that– (i) proceedings against the person have commenced and a decision to try him for the offence concerned has been made; or (ii) a decision to commence proceedings against the person and try him for the offence concerned has been made by a person who, in the issuing State or part thereof, performs functions the same as or similar to those performed in Gibraltar by the Attorney General. The main problem has been the requirement for "undertakings in writing" and "statements in writing" to be specifically from the "issuing judicial authority". I am advised by the Attorney General's Chambers that a number of Magistrates' Courts in the United Kingdom, who are the issuing judicial authority in that jurisdiction, have been of the opinion that they are unable to give such an undertaking and statement. This is due to their belief that the giving of such undertakings and

statement is outside their remit. Under the UK legislation, persons surrendered as a result of a European arrest warrant do benefit from similar undertakings or statements as required by the Framework Decision and they have been received here in Gibraltar from the UK Home Office. However, these undertakings were found not to be sufficient in a recent case involving "class A" drugs because they did not emanate from the issuing judicial authority, that is, the UK Magistrates' Court. As a result, the amendment proposed to the Act is that a statement can now be received from any authority competent to issue such a statement in the issuing State. This is intended to ensure that statements can be received by the Gibraltar Courts from whomever in the requesting State has the power or locus to make them. The second issue that has arisen is the fact that the current provision requires both:- (a) an undertaking that the surrender is sought for the purposes, only, of his being charged with and tried for the offence, and in addition, (b) a statement in writing from that judicial authority that:- (i) proceedings have been commenced and a decision to try him for the offence concerned has been made or (ii) a decision to commence proceedings against the person and try for the offence concerned has been made by the equivalent to the Attorney General. That kind of double statement or undertaking is not required by the Framework Decision and has again given rise to some confusion when seeking to comply with European arrest warrants. It is therefore proposed to have one statement instead of an undertaking and a statement. Finally, the current provisions have also made it very difficult to execute European arrest warrants from some Roman law jurisdictions because of the of the words "decision to try" and "charge" and when exactly those decisions are made by examining magistrates in some Roman law jurisdiction. I am advised by the Attorney General that the meaning of the word "charge" or the concept itself in this jurisdiction is very different to that in some Roman law jurisdictions and this has created confusion when it comes to executing warrants. Article 1 of the Framework Decision itself states that a European arrest warrant is "a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution". The first paragraph of the standard or model EAW annexed to the Framework Decision uses the words, again I quote, "I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution." The UK legislation, section 2(3) of the UK Extradition Act also refers to a prosecution. It is therefore proposed to amend section 7(3) as follows:- "Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of the offence specified therein, the European arrest warrant shall include or be accompanied by, a statement in writing from the judicial authority or any judicial authority competent to issue such a statement in the issuing State that the arrest and surrender of the person concerned is sought only for the purposes of conducting a criminal prosecution against him in respect of the offence specified therein or any offence disclosed by the same facts as the offence specified therein". We believe this closely reflects the Framework Decision. The amendment in clause 2(3) of the Bill is to section 8 subsection (11) of the Act. This change reflects the fact that the amendments in clause 2(2) means that there would no longer be a 7(3)(b), that is, the second limb of the current provision. The amendment in clause 2(4) inserts a new section 9A into the Act. This makes provision for provisional arrests in respect of European arrest warrants. Such provision is not required under the Framework Decision. However, following consultation with the RGP and Attorney General, it is our view that such provision is necessary in order to ensure that local authorities are able to act speedily if they are aware of the presence in Gibraltar of a person who is sought by another jurisdiction and in relation to whom a warrant may be issued. This is broadly in line with provisions in the equivalent UK legislation and provisions in the Gibraltar Fugitive Offenders Act 2002 which also allows for provisional arrests. Under the proposed section 9A, a police officer may arrest a person without a warrant if he has reasonable grounds for believing that a European arrest warrant has been or will be issued in respect of the person without having to have possession of the said warrant or without the warrant having arrived in Gibraltar. Once arrested, the authorities have 48

hours to obtain the warrant. If the warrant is not obtained in that time, the person may apply to the Magistrates' Court to be discharged and the Court must order a discharge of the warrant. Where a person has been discharged he may not be arrested provisionally again in relation to the same warrant but he may be arrested under section 9 once the warrant is transmitted to Gibraltar. Amendment 2(5) amends section 10 of the Act. Section 2(5)(a) makes provision for persons arrested under provisional arrest warrants when persons are taken before the court. Section 2(5)(b) deletes the words "being a date that falls not later than 21 days after the date of the person's arrest". There is no requirement in the Framework Decision for this particular time limit and as such it is our view that having it removes flexibility from the court's handling of such cases. The amendment in clause 2(6) has been requested by authorities in order to allow for greater flexibility in dealing with a person who has consented to be surrendered. It will mean that the person need not wait ten days before he is so surrendered. The amendment in clause 2(7)(a) clarifies the wording of section 12(2)(a) allowing for copies to be accepted of certain documents. The amendment in clause 2(7)(b) corrects an error in the original Act. Clause 2(8) contains a number of amendments to section 15 of the Act. The amendment at paragraph (a) extends the regime to offences which may not be disclosed in the warrant but which are included in the facts specified therein. This would cover offences which are available as alternatives. The amendment at paragraph (b)(i) contains a similar amendment to that mentioned earlier in respect of clause 2(2) allowing for statements to be received from competent authorities and not just the issuing judicial authorities. The amendment in (b)(ii) reflects the amendment in paragraph (a). The amendment in paragraph (c) inserts a new subsection 1A into section 15. This is intended to bring local legislation closer to the Framework Decision by reflecting that each jurisdiction which implements the decision is obliged to have legislation in place which reflects these minimum standards and safeguards. However, rather than simply remove these tests from local legislation, this amendment and similar ones in clauses 2(9) and 2(10), create a presumption that safeguards are in place which can be rebutted on a balance of probabilities should the requested person be aware of deficiencies in the requesting states legislation. The amendments in paragraphs (d), (e) and (f) reflect the above. The amendments to paragraphs (a) and (c) of clause 2(9) change the authority to which certain undertakings need to be given to by the issuing State from the Magistrates' Court to the Central Authority. This is in order to streamline matters so as not to create confusion in requesting States as to where different documents need to be sent. There is therefore one point of contact. The amendments in clause 2(10), which do not reflect the above amendments, are intended to tidy up section 17 of the Act by clarifying the situations where a person may be surrendered in relation to the possibility that the person will subsequently be extradited elsewhere. I am informed that there was confusion as to the use in this Act of the terms "surrendered" and "extradited" and the terms "country" and "State". This should no longer be an issue. The amendment in clause 2(11) inserts new sections setting out rules with respect to persons surrendered to Gibraltar. The new section 25A deals with specialty and the new section 25B deals with subsequent surrender or extradition. These closely follow the Framework Decision. The effects of these new sections is that persons surrendered to Gibraltar will have the same safeguards we expect will be given to persons surrendered from Gibraltar. The amendments in clause 2(12) removes subsections (6) and (7) of section 43. These subsections are seen as being too inflexible due to difficulties that may arise in the allocation of court time. Again, this is not a matter covered by the Framework Decision. The amendment in clause 2(13) clarifies the language in section 44. I commend this Bill to the House.

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

HON G H LICUDI:

Mr Speaker, there is just one matter on which I would ask the hon Member opposite, the Minister for Justice, to provide some clarification. The hon Member has described possibly the most fundamental aspect of this Bill, clause 2(2), which introduces certain changes as regards the problem with regard to receiving undertakings or statements from the issuing judicial authorities and the problem in particular with Magistrates' Courts in the UK and he has now proposed that these statements or undertakings be given by any judicial authority. The only matter on which I would ask the hon Member to clarify is how it works in other countries? In other words, is this revised version of the application of the Framework Decision how other countries, not just the UK, but other countries in Europe to which the European Arrest Warrant Framework Decision applies, actually apply it in practice. Are we reciprocating arrangements which are already in place with other countries? I say that quite simply for the reason that, as the hon Member knows, on any matter concerning surrender and extradition arrangements, generally, these are based on principles of reciprocity and you do with regard to other countries what other countries are prepared to do with regard to you? So does this ensure that we have reciprocal arrangements or do we have arrangements which go beyond what other countries are required to do in respect of us?

HON F R PICARDO:

Mr Speaker, just two points. When the hon Gentleman was reading out to us the proposed new subsection (3), in the middle of that he said "from the judicial authority or any judicial authority competent to issue such a statement". The word "judicial" does not appear in the text that we have got here. Is that an amendment that is going to be moved or was it that the hon Gentleman………

HON D A FEETHAM:

No. If I said that……… That is my answer to your question.

HON F R PICARDO:

Fair enough, and the second point, Mr Speaker, if I read the position correctly, in the United Kingdom the relevant wording towards the end of that clause is that the extradition or the surrender of the person concerned is sought for the purpose of being prosecuted. The wording we are going to put in is "for the purpose of conducting a criminal prosecution". Now, as Mr Speaker will be aware, slight differences in wording can have dramatic consequences in the interpretation that a court will put on these issues. Can the hon Gentleman first of all tell us what he believes the difference between the UK wording is and the wording that he is proposing and why we have not decided to follow what I believe to be the wording in the UK; and second, whether he can confirm to this House, as I am sure is the case, that there is absolutely no intention whatsoever of allowing extraditions other than for prosecutions and that there is no suggestion in the amendments being made that people will be subject to extradition for questioning or for the conduct of investigations and that those matters will continue to be dealt with in the appropriate way by way of mutual legal assistance requests Commissions Rogatoire et cetera, which would otherwise be rendered completely nugatory in respect to other members of the EU.

HON D A FEETHAM:

I take the hon Gentleman's point first. In fact, if I said judicial authority or any judicial authority competent to issue such a statement, I was wrong. It is "any competent authority". The second part is "any authority competent to issue such a statement". So, it has nothing to do with……… It is the authorities that are competent to issue such a statement. That,

in fact, is the structure of the regime in the United Kingdom and it is my understanding that it is the structure of the regime in other jurisdictions as well. As to the point that the hon Member made, the last point first, there is no question of this Act allowing somebody to be extradited just simply to act as a witness in a criminal prosecution. There has to be a prosecution in relation to that particular person. That is what the wording quite clearly states. In fact, I believe that the wording that we have used, although different in terms of its effect, is identical to the United Kingdom. If I read section 2(3) of the UK Extradition Act, what it says is: "(a) a person in respect of whom the Part I warrant is issued is accused in the Category 1 territory of the commission of an offence specified in the warrant; and (b) the Part I warrant is issued with a view to his arrest and extradition to the Category 1 territory for the purposes of being prosecuted for the offence." It is the effect, in my view, of our amendments in practice and the way that the UK has drafted their own extradition proceedings are in practice xxxxx.

HON F R PICARDO:

I am grateful to the hon Gentleman giving way and for that information in respect of the second point. The first thing that he said was that there was no intention that this should be used to extradite people who would be witnesses in the prosecution and that is not the point that I was making and I am sorry if I did not make it clearly. The point that I was trying to make is that this Act should not, or the amendments to this Act, should not serve to enable people to be extradited for questioning in their own potential prosecution but that a decision to prosecute should already have been made by the authorities seeking the extradition and that is the position in the United Kingdom as I understand it. I just want to make it clear or understand clearly if that is what the hon Gentleman is telling us the position will be here.

HON D A FEETHAM:

That gloss that the hon Member seeks to make, does not appear anywhere in the United Kingdom legislation. It does not. The question of whether somebody, at what stage, say for instance in a foreign jurisdiction, in a Roman law jurisdiction where the kind of problems that the hon Gentleman is alluding to, because he is alluding to problems with examining magistrates questioning people et cetera. The point at which somebody is prosecuted is a matter for French law. I am not going to … or a matter for Spanish law or a matter for Italian law. It is impossible in the context of this to actually define, which is what the hon Gentleman really wants, when somebody is being prosecuted. It is absolutely impossible. It is quite clear from section 7(3) that what this says is "that the arrest and surrender of the person concerned is sought only for the purpose of conducting a criminal prosecution against him". It is for the purpose of that. In respect of the offence specified therein or similar facts, the question of when there is a prosecution, that is a question for the law of the country that is making the request. Therefore, this is why I am hesitant to provide the hon Gentleman with an all encompassing answer to the question that he has asked me.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Port Operations (Registration and Licensing) (Amendment) Bill 2009;
2. The Social Security (Insurance) (Amendment) Bill 2009;
3. The Crimes (Computer Hacking) Bill 2009;
4. The Matrimonial Causes (Amendment) Bill 2009;
5. The Pensions (Amendment) Bill 2009;
6. The European Arrest Warrant (Amendment) Bill 2009.

THE PORT OPERATIONS (REGISTRATION AND LICENSING) (AMENDMENT) BILL 2009

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

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

THE SOCIAL SECURITY (INSURANCE) (AMENDMENT) BILL 2009

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

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

THE CRIMES (COMPUTER HACKING) BILL 2009

Clause 1

HON D A FEETHAM:

I have already spoken on the merits of the amendments. There is an amendment to section 1 by adding subsection (1) after 1, and then adding a subsection 2 which reads: "(2) This Act comes into operation on the day appointed by the Minister with responsibility for justice by notice in the Gazette and different days may be appointed for different purposes."

It is the intention, I reiterate, not to make these provisions effective until the codes of conduct have been finalised under section 30. This is the first time, in fact, that any kind of intercept provisions have been brought before this House.

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

Clause 2

HON D A FEETHAM:

Mr Chairman, insert the definition of internet. Does Mr Chairman require me to repeat it?

MR CHAIRMAN:

Yes, as set out in the notice of amendments.

""internet" includes a privately maintained computer network that can only be accessed by authorised persons (commonly referred to as an 'intranet');"

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 D A FEETHAM:

Mr Chairman, I have an amendment to clause 14. Substitute "British person" for "Gibraltarian" and delete subsection (3).

Clause 14, as amended, was agreed to and stood part of the Bill.

Clause 15 – was agreed to and stood part of the Bill.

Clause 16

HON D A FEETHAM:

Mr Chairman, yes in the heading, delete "under this Act" and also in subsection 1(a), delete the words "under this Act".

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

Clause 17 – was agreed to and stood part of the Bill.

Clause 18

HON D A FEETHAM:

Mr Chairman, I have amendments to subsection 1, also subsection 2 and the consequential renumbering.

In clause 18 (1), delete the words "as long as is reasonably necessary for the investigation of an offence" and replace with the words "the period stated in the notice, which must not exceed 30 days".

After Clause 18 (1), insert the following new sub clause:
"(2) Before the period stated in the notice issued under subsection (1) has expired, a magistrate may, on the application of the Attorney-General, order that the period stated in the notice be extended for a maximum of up to 90 days from the date of first issue."

Sub clauses "(2)" and "(3)" are re-numbered "(3)" and "(4)" respectively.

In re-numbered sub clause "(3)", delete the words "whether one or more" and replace with the words "how many".

Clause 18, as amended, was agreed to and stood part of the Bill.

Clause 19

HON D A FEETHAM:

Mr Chairman, I have amendments to subsection 1 which I have given notice.

In clause 19 (1) delete the words:

"If the Commissioner of Police is satisfied that traffic data associated with a specified communication or general traffic data is reasonably required for the purposes of a criminal investigation, he may, by written notice given to a person in charge or in control of such data or an internet service provider, require that person or service provider to – "

and replace with the words:

"If traffic data associated with a specified communication or general traffic data is reasonably required for the purposes of a criminal investigation, a magistrate may, on the application of the Attorney-General, order a person in charge or in control of such data or to an internet service provider to – "

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

Clause 20

HON D A FEETHAM:

Mr Chairman, replacing "on an application by a police officer" with "on application by the Attorney-General".

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

Clause 21

HON D A FEETHAM:

Mr Chairman, I have amendments to this section. Again, replacing "on an application by a police officer" with "on application by the Attorney-General".

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

Clause 22

HON D A FEETHAM:

Mr Chairman the same amendment.

In clause 22 (1), delete the words "on an application by a police officer" and replace with the words "on an application by the Attorney-General".

Clause 22, as amended, was agreed to and stood part of the Bill.

Clauses 23 and 24 – were agreed to and stood part of the Bill.

Clause 25

HON D A FEETHAM:

In 25(3)(a), after the words "imprisonment for" insert "12".

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

Clauses 26 to 29 – were agreed to and stood part of the Bill.

Clause 30

HON D A FEETHAM:

Mr Chairman, I am also amending this Bill to insert a new section 30 on Codes of Practice, which I have spoken to during the course of the debate.

> **"Codes of practice.**
>
> 30. (1) The Minister with responsibility for justice may issue one or more codes of practice relating to the exercise and performance of the powers and duties under this Act.
>
> (2) Without affecting the generality of subsection (1), a code of practice made under this section may make provision limiting-
>
> > (a) the class of criminal offences in respect of which warrants and orders under this Act may be applied for;
> >
> > (b) the class of criminal offences in respect of which notices under this Act may be issued;

(c) the class of person in respect of whom a notice under section 18 or an order under section 19, 20, 21 or 22 may be issued;

(d) the duration of notices under section 18 and orders under section 19, 20, 21 and 22;

(e) the number of persons to whom any of the material or data obtained by virtue of this Act may be disclosed or otherwise made available;

(f) the extent to which any of the material or data may be disclosed or otherwise made available;

(g) the extent to which any of the material or data may be copied;

(h) the number of copies that may be made; and

(i) the use that can be made of the material or data.

(3) The Minister may by order prescribe the circumstances under which and the time within which material or data obtained under this Act must be destroyed, and the penalties for failure to comply with the order.

(4) In issuing a code of practice or an order under this section, the Minister must have due regard to the fundamental rights and freedoms under the Constitution and in particular to the right of privacy and the requirement of proportionality in the investigation and prevention of crime.

(5) The Minister must lay before Parliament every code of practice issued by him under this section.

(6) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under this Section must, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under this section.

(7) A failure on the part of any person to comply with any provision of a code of practice issued under this section does not of itself render him liable to any criminal or civil proceedings but may be taken into account in deciding on the admissibility and weight of any evidence obtained in contravention of the provision.

(8) A code of practice issued under this section is admissible in evidence in any criminal or civil proceedings.

(9) Where the Minister has issued a code of practice under this section he may, by notice in the Gazette, revoke, replace or amend it (whether by adding to it, deleting from it, or otherwise).

(10) Where the Minister exercises his power to replace or amend a code of practice, pursuant to subsection (9), the replacing or duly amended code of practice, as the case may be, shall be laid before the Parliament.".

Clause 30, was agreed to and added to the Bill.

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

THE MATRIMONIAL CAUSES (AMENDMENT) BILL 2009

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

Clause 3A

HON D A FEETHAM:

Mr Chairman, again, I have spoken on the general merits of these amendments.

After Clause 3 insert "Clause 3A".

"Substitution of sections 4 and 5.

3A. The principal Act is amended by substituting the following sections for sections 4 and 5 –

Jurisdiction of the court in divorce, judicial separation and nullity.

4 (1) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if –

(a) the court has jurisdiction under the Council Regulation; or

(b) no court of a Member State has jurisdiction under the Council Regulation and either of the parties to the marriage is domiciled in Gibraltar on the date when the proceedings are begun.

(2) The court shall have jurisdiction to entertain proceedings for nullity of marriage if –

(a) the court has jurisdiction under the Council Regulation; or

(b) no court of a Member State has jurisdiction under the Council Regulation and either of the parties to the marriage -

(i) is domiciled in Gibraltar on the date when the proceedings are begun, or

(ii) died before that date and either was at death domiciled in Gibraltar or had been habitually resident in Gibraltar throughout the period of one year ending with the date of death.

(3) In this Section and in other relevant provisions of this Act –

"Council Regulation" means Council Regulation (EC) No 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and matters of parental responsibility;

"Member State" means all Member States with the exception of Denmark and a reference to Member State shall be deemed to include Gibraltar.

Domicile.

5. (1) Subject to subsection (2), the domicile of a married woman as at any time after the coming into force of this section shall, instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) Where immediately before this section came into force a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the coming into force of this Section.

Age at which independent domicile can be acquired.

5A. The time at which a person first becomes capable of having an independent domicile shall be when he attains the age of sixteen or marries under that age.

Dependent domicile of child not living with his father.

5B. (1) Where the father and mother of a person incapable of having an independent domicile are alive but living apart, his domicile is that of his mother if he has his home with the mother and has no home with the father.

(2) Where a person incapable of having an independent domicile had the domicile of his mother by virtue of subsection (1) but she is dead, his domicile is that which she last had, if he has not since had a home with his father.

(3) Nothing in this section prejudices any existing rule of law as to the cases in which a person's domicile is regarded as being, by dependence, that of his mother.

(4) In this section, in its application to a person who has been adopted, references to his father and his mother shall be construed as references to his adoptive father and mother.".

Clause 3A, was agreed to and added to the Bill.

Clause 4

HON D A FEETHAM:

In clause 4, in the amendment to section 16, insert the following new paragraph after paragraph (c):

"(ca) in subsection (3)(c)(i) and (ii), by substituting "3" for "5" where it appears twice,".

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

Clauses 5 to 14 – were agreed to and stood part of the Bill.

Clause 15

HON D A FEETHAM:

Mr Chairman, in clause 15, substitute the following section for section 31A and I have given notice and spoken on the merits of that particular amendment.

Delete the following:

"Interpretation for Part VIA

31A. In this Part –

"dealt with" includes the meaning given by section 31H(3); and "marriage" includes a void marriage.".

Replace with the following:

"Interpretation and application.

31A. (1) In this Part –

"dealt with" includes the meaning given by section 31H(3); and "marriage" includes a void marriage.

(2) Nothing in Part V of the Maintenance Act shall apply to any agreement made pursuant to any provisions of this Part.".

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

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

Clause 17

HON D A FEETHAM:

Mr Chairman, in clause 17, amend section 46H(18), in the definition of "pension arrangement", by inserting after paragraph (d):

"and for the purposes of this Part, "pension arrangement" may include any gratuity that is part of the retirement benefits.".

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

Clauses 18 to 23 – were agreed to and stood part of the Bill.

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

THE PENSIONS (AMENDMENT) BILL 2009

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

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

THE EUROPEAN ARREST WARRANT (AMENDMENT) BILL 2009

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:

1. The Port Operations (Registration and Licensing) (Amendment) Bill 2009;
2. The Social Security (Insurance) (Amendment) Bill 2009;
3. The Crimes (Computer Hacking) Bill 2009;
4. The Matrimonial Causes (Amendment) Bill 2009;
5. The Pensions (Amendment) Bill 2009;
6. The European Arrest Warrant (Amendment) Bill 2009,

have been considered in Committee and agreed to, some with and some without amendments, and I now move that they be read a third time and passed.

Question put.

The Port Operations (Registration and Licensing) (Amendment) Bill 2009;

The Social Security (Insurance) (Amendment) Bill 2009;

The Crimes (computer Hacking) Bill 2009;
The Matrimonial Causes (Amendment) Bill 2009;

The Pensions (Amendment) Bill 2009;

The European Arrest Warrant (Amendment) Bill 2009,

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 to Thursday 17th December 2009 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 12.05 p.m. on Thursday 26th November 2009.

THURSDAY 17TH DECEMBER 2009

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 F J Vinet – Minister for Housing
The Hon J J Netto – Minister for Family, Youth and Community Affairs
The Hon Mrs Y Del Agua – Minister for Health and Civil Protection
The Hon D A Feetham – Minister for Justice
The Hon L Montiel – Minister for Employment, Labour and Industrial Relations
The Hon C G Beltran – Minister for Education and Training
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

OPPOSITION:

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

ABSENT:

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

IN ATTENDANCE:

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

STATEMENT BY THE CHIEF MINISTER

HON CHIEF MINISTER:

Yes Mr Speaker, I am grateful. I would like to make a statement. I am sure the House will welcome the opportunity given the momentous days that Gibraltar has experienced over the last few days and may experience, hopefully weather permitting, will experience again today in relation to Miss Gibraltar's election as Miss World. I am not sure that the proceedings of the House allow the members opposite to respond or to speak on a statement but in case that is so I will sit down and give way to the hon Member just when I am about to finish or just when I finish. I think, Mr Speaker, there are several aspects of the success of Kaiane Aldorino, in her huge success in being elected Miss World, that this House will want to take note of, at this earliest and happily coincidental opportunity. The first of course is that it is a stunning success for her personally but also and of course in that respect the House will wish to congratulate, and certainly I and the Government do and I will allow the hon Members to speak for themselves in a moment. The House congratulates her warmly. The Government congratulates her warmly and her family and her friends. But there are other aspects of this matter which I think are also noteworthy. Not least the fact that this is also a great achievement for Gibraltar as well. Here is a community, a small country of 30,000 people and as in so many other aspects of life, be it the arts or music or the extent to which this community

produces professional people in many walks of life, even the odd decent trade unionist and perhaps the odd not too bad politician. I think that Miss Gibraltar's achievement in being elected Miss World in competition with countries whose populations extend to hundreds of millions of people, is by any measure a stunning achievement which, quite apart from its significance in the worlds of beauty pageantry, has the effect of giving Gibraltar a profile, a status, a recognition which, I think, in a sense just explains the explosion of popular joy that has accompanied her election. The explosion of popular joy that Gibraltar has been gripped by, rightly gripped by, in my view transcends the importance, important as it is though in its own right of a beauty pageant. I believe that the reason is that this community receives this enormous achievement for Gibraltar as, in a sense, almost a confirmation, a relief from the constant attempt by others to deny this community its rightful place on the international stage. Whether it be in the world of politics, whether it be by our political status, whether it be by our ability to participate in artistic or sporting fora. This community constantly lives under the feeling that it is denied the same opportunities to prosper socially, politically as other peoples of the world. Then as if to do divine justice, or celestial justice, for those who may not believe in divinity, along comes Miss Gibraltar, not just to do astonishingly well in the Miss World contest which would have been enough, but to win the Miss World contest and therefore make a statement to the world that Gibraltar, that has participated in this event since 1959 in its own right, not as the fifth entry from the United Kingdom as the more hopeful frustrated, not to say, annoyed elements of the Spanish press that contrive to manufacture. Scotland, Wales, Northern Ireland, England and Gibraltar, why should the United Kingdom have five entries. The United Kingdom did not have five entries. The United Kingdom had four entries and others can debate whether four was too many or not. Gibraltar had one entry, in its own right, quite distinct from any other countries entry. Gibraltar won in its own right and this House, as the whole community I think will do later today, wishes to express at least for that part of the House for which I speak, wishes to express its enduring acclamation, gratitude and appreciation to Kaiane Aldorino for placing Gibraltar in the position in which she has placed us all today. I think also at some future date, appropriate date, this House will no doubt wish to consider other motions and resolutions to more fully and more properly and more appropriately recognise Kaiane's achievement. But rather than rush into that on the very first day, I would like to limit our intervention today just for this earliest possible flagging of this House's recognition and appreciation of her achievements both for herself, she is the principle person to be congratulated. The achievement is hers and only hers but the spin off for the whole of the rest of Gibraltar, thanks to her effort, are huge and I think the community will wish to show its congratulations and acclamations to her in respect of her personal achievement but also its gratitude to her for the collective sense of achievement that she has achieved for the rest of us and the community at large. I realise it is just a little unconventional to extend the invitation across the floor of this House but the Government has had only 48 hours in which to organise these events. There is a reception that I am hosting on behalf of the community for her this evening to which the hon Members are all invited and I hope they have each now received their invitation. For those members who wish to do so there will be a special enclosure in Main Street just in front of the Parliament building from which they and their spouses are welcome to view the parade if they wish to avail themselves of that facility. The family will be in an enclosure there too, next to the dignitaries' enclosure. So Mr Speaker, I now sit down. That is the end of my statement. Just to repeat the Government's congratulations and ecstatic sense of moment for Gibraltar and I give way to enable the hon Member to add whatever he may wish to.

HON J J BOSSANO:

Although the Chief Minister has said he is speaking on behalf of the Government, when he is being nationalist he does not have to fear that he is speaking on behalf of the Opposition. It is true that the achievement of Kaiane is unique since the commencement of the Miss World contest because in fact it

must be in the history of the event the smallest country that has presented a candidate for the Miss World title and won it, and no doubt something that will not be repeated in the sense that anybody smaller than us will win it in future. So that particular Guinness Record will always belong to Gibraltar and she has won it for us. In Gibraltar we produce many beautiful women. I think that, just like everything else that we do, we are better at doing anything that we do than anybody else in the world. It is just that it has taken the rest of the planet a little bit of time to recognise what we have always known. Of course, it is inevitable that those in Spain who insist in believing that Gibraltar is no different now than from what it was in 1704, that is, that it is a small unimportant town in one corner of Andalucia, should insist that there is something wrong with us being treated as if we were something different. Well, the reality of it is that our 305 year history has made us into a nation in our own right and that the sense of pride that we all feel about her achievement, as we do about every achievement academically, politically, sporting or in any event, because we identify as if it was our flesh and blood that has been successful. We identify it because the essence of our culture, of being Gibraltarian, is that we are interconnected as a family and like families we can have bitter disputes amongst ourselves but we take collective pride when one of us, when one of our people, when one of our family shines in the world and shows the genetic pool from which we all come, has got included in it, the ability to produce people talented in many spheres as the hon Member has said. Therefore, it is absolutely right that we should feel that sense of pride collectively and that the Parliament of Gibraltar, that represents the whole of Gibraltar, should express it in no uncertain manner. At the same time, because what we are here to do is to protect the interests of our people collectively, as politicians we should highlight the political importance that it has. In fact it shows, as I once remarked, that the reason why they do not let us play football is because they are afraid we will won the World Cup and they do not let us have dog shows because we will come out first in the dog shows. Therefore, this theory has been proved right by Kaiane's performance and we are delighted that has happened and delighted to join with the Government in wishing her the very best and in telling her how proud we are of her.

SUSPENSION OF STANDING ORDERS

THE HON J J HOLLIDAY:

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

Question put. Agreed to.

DOCUMENTS LAID

THE HON J J HOLLIDAY:

I have the honour to lay on the table the Civil Aviation Annual Report 2008/2009.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE INTERNATIONAL CO-OPERATION (TAX INFORMATION) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to provide for exchange of information that is foreseeably relevant to the administration and enforcement of certain taxes between Gibraltar and other countries with which Gibraltar has entered into an agreement to that effect; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. This is the Bill for an Act to provide the legislative structure for the administration and implementation by the Government of the commitments that it is undertaking in the tax information exchange agreements that we have signed and that we will continue to sign in the future. Indeed, as some hon Members may have heard yesterday Gibraltar signed another four TIEAs with Belgium, Sweden, Norway and Iceland bringing the total now signed to 17. The structure of the Bill is relatively straightforward and not different in shape, although obviously so in content, to many other enforcement Acts. In Part I, it establishes a series of definitions and there are some important definitions for the administration of the Act. Important amongst those definitions are the definition of information because that defines the range of material that other countries with which we sign these agreements are entitled to seek from Gibraltar. Also important is the definition of items subject to legal privilege because those are exempt from the provisions of the legislation and therefore constitute an important carve out for the protection of people, mainly that have given advice to clients in the context of litigation and for clients to be aware of their legal rights. In terms of the definitions, obviously they are all important to the operation of the Act of the Bill but I am just pointing out the ones that are most important conceptually in the sense of the scope of this legislative measure. The third, I think, important definition is the definition of taxation matters which is defined as including matters relevant to the administration and enforcement of tax laws including the determination, calculation, collection or assessment of a tax referred to in a scheduled Agreement or matters incidental thereto or to the investigation or prosecution of criminal tax matters or any other matters provided for in a scheduled Agreement. There is a provision in this Bill that the content of any scheduled Agreement, any tax information exchange agreement signed by the Government prevail and this Bill gives the Government and the authorities appointed under in this Bill, power to discharge whatever commitments are contained in any of these scheduled agreements because they are not all exactly the same. There is a standard OECD model but then in the bilateral negotiations there are amendments and changes made to it. Clause 3 of the Bill covers the application and scope of the agreement and sets out in detail who it applies to and what the Bill applies to. So clause 3(1) provides that the Act shall apply for the purposes of enabling the Authority to give effect to the terms of a scheduled agreement for the provision of assistance in tax matters and then it goes on to say what I have just explained about provisions for commencement and other provisions prevailing when they are set out in a particular scheduled Agreement. The Bill then goes on in Part II. In the end of Part I, there are provisions giving the importance of the content of the Agreements because they are different and the Government cannot just publish one model in the Act. The Act then imposes obligations at the end of Part I as to commencement and the information that has to be set out. So in clause 3(5), (6), (7) and (8) of the Bill there is the regime whereby, first of all, the Minister shall by notice in the Gazette publish the text of a scheduled Agreement. So before a scheduled Agreement can come into operation, these things must have happened. Firstly, the Minister must have published the text of the scheduled Agreement in full in the Gazette. All of these texts will eventually also appear on the Government's website once they come into operation and other countries have completed their own constitutional processes for doing so, but they have to be published in full, in the Gazette. In the schedule of this Bill, a schedule which can be amended and added to from time to time by notice in the Gazette as agreements come on stream and are signed and come on stream, we have got to publish, as the hon Members can see in Schedule 1 on page 780 of the Bill, the name of the country with which we have signed a tax information exchange agreement, the date of the agreement, the date on which the agreement become operative and also the date and number of the Legal

Notice in which the whole text of the agreement was published in full, in the Gazette. Moving now to Part II, clause 4 establishes the competent authority for the administration of this Act. The Authority is defined as the Minister for Finance or such person as the Minister for Finance may from time to time designate to be the Authority instead of him in the Gazette. Clauses 5 and 6 set out the duties and functions of the Authority. The duties are clear to carry out the duties established for the Authority by this Act and to discharge and carry out the obligations undertaken by the Government in connection with tax information exchange agreements. The functions which are set out in clause 6 are all the functions that the House would expect from an Authority focussed on the administration of a piece of legislation of this sort. Taking testimony, obtaining and providing information and articles of evidence, serving documents and executing searches and seizures. Enabling and ensuring compliance by the Government on scheduled Agreements, liaising as necessary with the requesting party. Making costs determination. Entering into agreements with other countries for the operation of the scheduled Agreements and also acting as the competent authority for Gibraltar in a case where Gibraltar is the requesting party and makes a request of another country because of course all of these tax information exchange agreements are symmetrically reciprocal. In other words, we have the same rights to ask of other countries the same information and on the same terms as they have to request from us. Now, in terms of the tools available for the implementation of these obligations that we undertake in the agreements, the agreements are intergovernmental but of course the Government then needs, and the Government enters into commitments, intergovernmentally, for example the first one we did was with the Government of the United States. But of course the Government then needs a legislative framework to give itself the power and the authority to do, within the law, what it is committed itself to do politically. That is what this Bill does. In other words, this Bill does not constitute the agreement. The agreement with the country is signed and comes into operation when each country confirms to each other that they have completed their constitutional requirements. Countries have got to ratify and things of this sort through their own peculiar processes and having placed the laws that we are putting in place today, to enable reciprocity of implementation. So, what are the, sort of, administrative and judicial mechanisms which this Bill gives to the competent authority in order to make good on those commitments that we have entered into the tax information exchange agreements. Well they are set out in Part III starting on page 762 of the Bill. The first provision of which in clause 7 provides that the competent authority, the Authority, when there is an incoming request, first and foremost has got to make a decision about whether the request should be attended to. In other words, not every request that comes in is automatically attended to. There has got to be an internal Government process to decide whether the Government at least feels or the Authority at least feels, that this is in compliance with and within the scope of the particular country bilateral agreement are pursuant to which this request is made. Obviously, if the authorities conclude that it is not in compliance or within the scope, then that is the end of the matter and will proceed no further. If the Authority comes to the conclusion that it is within the scope and terms of the particular TIEA under which it is made then he has to then follow one or more of the procedures set out in this Act. Firstly, he has to issue a notice to the person from whom the evidence or information is required of, in a very detailed way, of the nature of the information that he is required to produce, the person to whom it relates, the date by which he must provide it, the manner in which he must provide it and the place in which he must provide it, and it is very important that there is clarity for the person who receives a notice of this sort. This is not an area where either the Government believes it appropriate or the law would permit, sort of wishy washy, do not quite know what is required of me, sort of information. So the hon Members will see that in Schedule 2 at page 782 of the Bill, there is a detailed list of 13 items which these notices to provide information have got to set out explicitly and unambiguously when addressing a notice to provide information. So there is the notice to provide information but that itself is not the requirement. That itself does not trigger an

obligation to comply because then clause 8(3) gives the person upon whom such a notice is served, an opportunity to try and persuade the Authority who issued the notice that there are factors that he should take into account in order not to require him to provide the information. For example, at a time that information is requested from the United States or from France or whoever, the Authority has no way of knowing whether it is an item that enjoys legal privilege. This is something that the recipient of the notice must have an opportunity to bring to the notice of the Authority, that or any other view. For example, he might wish to make a case for the further consideration of the Authority that this is actually not within the scope of the Treaty. So, the Authority makes an initial view of its own of whether the request is within the scope of the Treaty. If he thinks it is, he issues the notice. The person who receives that notice then has the opportunity before the notice becomes live, so to speak, to come back to the Authority and bring to the attention of the Authority factors which the person receiving the Authority believes the Authority should take into account and may not have done so. The Authority is required to take these factors into consideration and then to decide whether he affirms his notice, withdraws his notice or varies his notice. So that is one administrative procedure and these agreements require us to have administrative and judicial procedures available to us. This one, the power to compel the production of information, is an administrative procedure. Because it is an administrative procedure and not subject to judicial oversight, there is a right of appeal from the decision of the Authority to issue the notice. There is a right of appeal that we will come to in a moment to the Courts. The other tool available to Government to make good on its commitments is the power to compel witnesses for the production of evidence under oath. So the first one was simply an administrative notice, we have received a request from the United States of America, they want you to produce the Chief Minister's bank account statements, you know et cetera. That is administrative, which in addition to the safeguards that I have mentioned earlier, is subject to a right of appeal to the courts because it is administrative. The second one is this power to compel witnesses for the production of evidence under oath. This is, in effect, a replication or close enough to a replication of the procedure that presently exists in respect of incoming requests from abroad under the Evidence Act for evidence. In other words, the special examiner process. When witnesses are being compelled to produce evidence under oath it is not a matter of administrative intervention, the competent authority appoints, as they do under the Evidence Act at the moment, a special examiner. Who can be appointed as special examiner? Well, either the Stipendiary Magistrate or a Barrister or Solicitor of at least five years standing or a public officer of at least Higher Executive Officer grade and then the procedure is more or less the same. The testimony is taken by the special examiner. A record of it is provided and it is produced and it is provided. Now, the provisions of clause 9(8) are interesting. The following persons shall be permitted to ask questions of a witness before a special examiner. Obviously, the special examiner himself, the Authority can do so too and then there are these xxxxx, a lawyer representing the witness or the employer of the witness but then there are these two other provisions (c) any person authorised to do so by the Authority or (e) any other person prescribed by regulations made under the Act. The purpose for that is that these tax information exchange agreements contain provisions enabling the attendance of officials from the requesting party to also ask questions in these procedures. So, a person authorised to do so by the Authority, it requires the permission of the Authority… In the Treaty of the TIEA, which is the Tax Information Exchange Agreement, there is no right for this to be the case, but there has to be provision to permit it which is why it is put there in this form because that is what the tax information exchange agreements require. The third tool is search and seizure. Search and seizure, if the hon Members are familiar with what that means, it is that these provisions are taken, are similar to provisions in other legislatures and that is exclusively under judicial oversight. In other words, that requires a warrant from a Court. So, in other words, there is no administrative possibility for the issue or the authorisation of search and seizure. So, at an administrative level and subject to a right of appeal to the Courts, we can issue a notice to provide information but always subject to appeal to

the Courts. Then there is this half-way house, quasi judicial, producing of evidence on oath through the special examiner procedure and thirdly, and entirely within the judicial domain, there is this search and seizure mechanism which requires a warrant et cetera. Then there are the usual sorts of provisions that you would expect to find there. There are some special provisions dealing with the seizure of information contained electronically, on computers, because by the nature of this sort of information that is likely to be requested, it is nowadays more than probable that it will be contained on some sort of electronic storage device. The fourth and final tool, in terms of compulsory mechanisms available to the Government, is this power to obtain production orders which is in section 11. Obviously, there is a legal compulsion to produce information, subject to the right of appeal to the Courts, in response to the administrative notice to produce information notice but in case these notices were not complied with, despite the fact that the Act requires them to be complied with, there is always the ability to go and get the same order to produce from the Courts before. In other words, it is a means of escalating the seriousness of the enforcement mechanisms for those who appear intent on not complying with the initial administrative elements of the regime created by the law. There is then in clause 12 important provisions which carve out the privileges. In other words, what you are not obligeable to provide under this Act. Firstly, it is an item subject to legal privilege, hence the importance of the definition of an item subject to legal privilege earlier, and then no person shall be obliged under this Act to provide testimony or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in sub clauses (a), (b) and (c) of the definition of the term information in section 2 shall not by reason of that fact alone be treated as a secret or trade profession. In other words, you cannot allege that it is a secret or a trade profession simply by virtue of the fact that it is a statement, fact, document or record held by the bank. In other words, it has got to be the actual content of the information that gives it the characteristic of a trade secret or trade information and then clause 12(3) is important because it overrides, subject to items of legal privilege and subject to this exception of trade business, industrial or commercial, beyond those two things sub clause 3 overrides any statutory, contractual or professional duty of confidentiality that the person being required to give the information may have to the owner or object of the information. So it says, "save as aforesaid, the obligation of persons to provide testimony and information under this Act shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information contained in any enactment of the common law or in any other relationship", and this is vitally important in its impact to many institutions and professions around the world. It is a very important part of this regime that is being set up now around most of the world and then the rest of the provisions in clause 13 deals with testimony and information and how it is dealt with once it has been obtained by any of these proceedings. Clause 14 is important, it sets up the right of appeal. As I said earlier, clause 14(1)(a) gives a right of appeal to the Courts to anyone upon whom a notice under section 8 to produce information, that is the administrative notice to produce information, is served on. There is also a right of appeal to anyone who is the subject of the subpoena to give evidence or produce information under section 9. The appeal may be on one of the grounds set out in subsection 2 and they are: (a) that the notice issued is not in conformity with section 8; (b) the information to which the notice of subpoena relates is not in the possession or control or accessible to a person who is in Gibraltar; (c) the notice of subpoena includes or relates to items subject to legal privilege provided that, and to the extent that, this ground is relied upon, the appeal may relate only to such items and the notice of subpoena remains extant, valid and binding on that person in every other respect. In other words, if information is requested and some of it is subject to legal privilege but the other is not, you cannot appeal against the whole notice of the subpoena. You have got to comply with the bits that are not covered by privilege and appeal only in respect of the bits that are subject to that privilege. Then in conclusion, Part IV deals with general logistical issues about how notices are served. How official documents are authenticated. How notifications are given. Clause 18 importantly provides

protection of persons disclosing confidential information. In other words, if you are a lawyer or a banker or anybody else who has a contract or a professional relationship that imposes confidentiality obligations, this section protects you from suit from your counterpart to make sure that compliance with this law does not expose you to a legal claim of any sort by the person who is aggrieved by you giving that information. Clause 20 which is also a requirement of the standard model of TIEAs but is not included in the compulsory tools available to the Government because it is entirely voluntary. In other words, if there is a person in Gibraltar who consents to being interviewed, in other words, wishes to be interviewed voluntarily and consents for that voluntary evidence to be given in the presence of and with the participation of officials from the requesting party, then the Government has the power to authorise such a proceeding to take place in Gibraltar. But it is outside the Courts. It is by consent and it cannot be done unless the person giving the evidence, specifically and in writing, consents to it. So really, it is just a voluntary consensual mechanism to avoid having to have recourse where the person wanting to give………, to avoid in having to have recourse to all the legal architecture that the Bill otherwise creates. I do give notice now, orally, that I shall be moving a couple of amendments to sub clauses 10 and 11 of clause 20. In sub clause 10 which presently reads "a statement made to an official of a requesting party under this section shall not in any proceedings be used in evidence against the specified person making the statement", there I will be amending to add after the words "in any proceedings" the words "in Gibraltar". The law of Gibraltar is simply not efficacious to decide what may be used in evidence under the laws of another country and under sub clause 11 which says "In this section "specified person" means", remember that these are both subsections relating to this voluntary procedure. "In this section, "specified person" means a person who is subject to a notice to provide information or to a subpoena to provide information or testimony under this Act". I will be moving an amendment to that so that after the words "specified person" it reads as follows "In this section "specified person" means any person whether or not they are subject to". In other words, this voluntary procedure should not need to be preceded by an invocation of the legal procedure. If there is somebody……… If the Government receives a request from the United States of America saying, "we would like to question so and so about so and so" and the authority gets in contact with that person and that person says "Yes, I consent, and I am happy to do it and I am happy for the American officials to be present". It is not logical that in order for that to be possible we should have to go through…We should have to invoke against that person the legalistic procedure of issuing a notice et cetera. As it presently reads, it would require that. So in the amendments that I am proposing, it will be available both for persons who have and have not been the object of such a mechanism.

Mr Speaker, the Bill also creates some offences, obviously, and also gives the Minister the power to make regulations for the purpose of carrying out the purposes and provisions of this Act and without prejudice to the generality of that, there are five specific areas where provision is made and then there is immunity to the Minister and to the Authority for liability and damages for anything done or omitted in the discharge of their functions under this Act unless it is shown that the act or omission was done in bad faith. In other words, there is no immunity for things done in bad faith. This is a piece of legislation which the Government believes carefully balances the obligations, the mechanisms necessary for the Government to be able to comply with the obligations contained in these tax information exchange agreements on the one hand but with the right of citizens to test these processes in the Courts and therefore enjoy judicial protection from any abuse or misapplication of this procedures. A lot of care and attention has gone into creating the greatest possible degree of balance and protection. But there is no getting away from the fact that this regime reflects the regime now unfolding as the requirement, the consensus for, so called, civilised behaviour in this area of activity in the world that it does create by reference to all historical circumstances, by all historical practices, an extremely intrusive regime in terms of the ability of countries

gaining access to tax information that may be available in other countries. I commend the Bill to the House in the sense that I think it is everybody's judgement, I have not heard anybody publicly or privately demure from this view, that entering into tax information exchange agreements and therefore having to pass legislation of this sort to implement them, is in the interests of Gibraltar and its future as a prosperous, reputable and therefore viable financial services centre and in that context, I commend the Bill to the House.

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

HON F R PICARDO:

I think that the Opposition takes its cue from the last phrase that the Chief Minister has referred to the House, namely that there has been no objection, certainly from this side of the House and indeed from others, to the fact that the reality of today means that the signing of bilateral agreements on tax information exchange is, unfortunately, the only way forward. I say, unfortunately, simply because it appears that, as the hon Gentleman has said, this seems to be the consensus of the only civilised way forward. It may be that it is fortunate that we are going down that route, but I think that we are doing so without much choice but that may not be a bad thing in the long run. Therefore, having entered into those agreements, the Opposition of course supports that the legislation necessary to give effect to them should come to this House and we join with the Government side in hoping that the practical consequences of this Bill when it becomes an Act and of those agreements will be for the benefit of the community as a whole, not just for the finance centre, but that it will render our finance centre prosperous and continue to render it reputable. So, therefore, we shall be supporting the Bill I have no doubt, together with the hon Members Opposite and others in the wider community, monitoring how it is that this Bill, or this Act, develops and how its enforcement by the Authority and the reliance upon it by those authorities outside of Gibraltar that are our bilateral partners in those agreements, is pursued. In terms of the specific parts of the Bill which we have some question and concerns on, I have not heard the hon Gentleman tell us what the Authority should be. It maybe that I simply missed that part of his intervention, but I would be grateful if perhaps in his reply he could give us an indication… I think that we would all agree that there is a matter of practical enforcement. It would not make sense for the Hon Minister for Finance to be involved in dealing with these requests as they come. There is to be an Authority. I would be grateful if the hon Gentleman would tell us who it is that he is thinking of appointing. Clause 20(2) has language which I confess I have not seen before in legislation. The final phrase of that subsection says that "the decision on whether to permit officials of the requesting party to enter Gibraltar for the purpose stated in subsection 1, and if so on what terms, lies exclusively in the hands of the Minister". That is not language that I have seen in legislation before. I can understand that there is a desire to keep that away from the Authority and that that is not a matter that will be delegated but the language that I think that we would be used to seeing in legislation will be something in order of "shall be entirely in the discretion of the Minister". I wonder whether the hon Gentleman can tell us whether there is a specific legislative device that he is seeking to invoke by using that language rather than a much more common language to which I have referred. I do not expect that Standing Orders will allow me to stand up again so this is probably my last intervention this year. I take this opportunity to wish the hon Members Opposite and the wider community, a peaceful Christmas and a prosperous and healthy 2010. Of course, I wish the hon Members Opposite less political prosperity than I wish those on this side of the House but my good wishes as to health and peace are not limited in such a partisan fashion.

MR SPEAKER:

Does that mean the hon Member will not participate in the other Bills?

HON F R PICARDO:

I do not think so.

HON CHIEF MINISTER:

Well I think Mr Speaker, in the spirit of the extraordinarily affable greetings that have flown across the floor of the House from the lips of the hon Member, I think it would be discourteous for me not to reply to him the queries that he has raised on the Bill. I am grateful to the hon Member for his Christmas greetings and good wishes although obviously not for wishing us less political prosperity than him. I am also grateful to them for their support for the Bill in the same context as I said that I was commending the Bill and that was that at the end of the day this is a natural requirement, an inevitable requirement of the need to sign agreements and that that is itself, not that……… but I think the hon Member has said something which is probably true. I remember, you know the world has been organising itself to curtail previous practices for some years now and it started with money laundering and then it went on to regulatory standards and regulation of banking, insurance and things of this sort and now it has moved to exchange of information on tax. Each step, everybody has thought that the anti money laundering rules were going to put us out of business. That the regulatory regimes were going to put us out of business and no doubt they think the same of this now. Actually, the previous steps served to enhance our reputation to make us more attractive to reputable financial services providers and to make Gibraltar's presence within the world of international financial services more rather than less secure and I think we should all hope and expect that given that this is a global initiative…….. Obviously, if only Gibraltar were doing this it would be much more damaging but given that this is a global initiative, I think this will serve us in the same good stead as have previous initiatives that I have just outlined. Mr Speaker, yes, the hon Member does have a tendency to chat to the members next to him when I am giving him my best possible crack at explaining the Bill to him so it must have been one of those moments when I was explaining. I did mention it before, and I am very happy to repeat it. The provisions in respect of the competent authority. The competent authority is the Minister unless he appoints somebody else and I hear what the hon Member says about it not being practical for the Minister to do it. I actually disagree initially. This piece of legislation is so macro economically sensitive, at least until it beds down and until the rest of the world starts to do it as well, that I think that there is a very good case to be made for the Minister to retain an unusual degree of oversight over the way this works. The last thing we want is for this to be administered in the lower levels of the public administration in a way which is unnecessarily damaging to the interests of an industry that itself needs time to get to terms with these provisions, to understand how they are going to work in practice, to train their staff into responding to them, which is why I have instructed the inclusion of this formula that the Authority shall be the Minister until he appoints somebody else. It would be my hope and my wish to be able to say, "I can now move on, because as the hon Member………" I have no wish to be involved in this but I think there is a macro economic interest in ensuring that there is ministerial oversight over this process at least for a while. Now, who it would be thereafter has not yet been decided. It would be either the Financial Secretary or the Commissioner of Income Tax or any other official that the Government might create as a central gateway. One of the things that the Government……… There you are he is going to extract from me some information sooner than I would have otherwise given it to him. The hon Members will have noticed that there is a plethora now of legislation on our books that create gateways for international cooperation. Everything from the financial services legislation to the criminal legislation, now to the tax legislation, there are European Union Directives that require exchange of information.

Now, at the moment, departments are, in effect, swamped by the administrative burden of having to administer all these gateways. One of the things that the Government is thinking about, I have not yet decided to do it or not and if so how to do it, is the creation of a central gateway to act as the gateway for all inwards and outwards international requests for information so that we can create some specialist knowledge and specialist technicians in that and therefore every department does not have to have an expert in how to deal with these matters. If we do that, it may well be that that will be the Authority under this Act. So it will be one of the three that I have mentioned to him. I think that the words, "in the hands of………" is just the draftsman's choice. There is nothing in the……… Let me just check whether there is anything in the agreements that have used that phrase. I am sure it does not, but it maybe that this is just a draftsman's choice of language. The draftsman of that section choice of language in respect of dealing with……… I am wondering whether I will be able to find this……… I do not think I have here……… No. That phrase is not used. It simply uses the phrase "may permit". The agreements use the phrase "may permit" making it clear that it is not obligatory. That it is discretionary, and I would have no difficulty whatsoever……… If the Members of the House believe that the phrase "in the hands of………" is not a judicially definable phrase, I would have no difficulty with substituting it in Committee Stage for the phrase "on what term", "the decision whether to permit officials for the requesting party to enter……… and if so on what terms………"

HON F R PICARDO:

"………exclusively in the discretion of the Minister."

HON CHIEF MINISTER:

Yes…….. "shall be exclusively in the discretion of the Minister". I am obliged to the hon Member for that suggestion.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if hon Members agree.

Question put. Agreed to.

THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Public Finance (Control and Audit) Act in order to transpose into the law of Gibraltar Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, and matters connected thereto, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as the House now knows from the reading of the Long Title, this is a Bill for an Act to transpose into our laws a Commission Directive of November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain

undertakings. This Directive was designed to ensure that the financial relations between public authorities and public undertakings are transparent to make sure that there is a fair and effective application of EU state aid rules. The Bill fulfils this objective by requiring the maintenance of records and separate accounts and the provision of information to the authorities. The significance of this legislation will, most recently, have been seen in an international context in the support afforded by Member States to banks, car manufacturers and other ailing companies as a result of the global financial crisis. Clause 76 deals with interpretation and is lifted from Article 2 of the Directive. Under clause 77 the Financial Secretary must take steps to ensure that financial relations between public authorities and public undertakings are transparent and that the financial and organisational structure of any undertaking required under any statutory provision to maintain separate accounts is correctly reflected in those separate accounts. Clause 78 clarifies that the transparency referred to in clause 77(1) applies in particular to the following aspects of financial relations between public authorities and public undertakings. The setting-off of operating losses. The provision of capital. Non-refundable grants or loans on privileged terms, that is, the making of them. The granting of financial advantages by forgoing profits for the recovery of sums due. The forgoing of a normal return on public funds used and compensation for financial burdens imposed by the public authority. In other words, this Directive and therefore this Bill is designed to ensure that there is … It does not impose any new state aid obligation, but it is designed to ensure that Governments around Europe cannot hide or obfuscate state aid by the secret passing of public funds to Government companies, statutory agencies and other undertakings that the Government controls and dominates either by ownership or by statutory powers. This is really a transparency mechanism in order to facilitate the Commission's enforcement of state aid rules rather than creating a new prohibition of state aid. Clause 79 clarifies clause 77 further. It provides that to ensure the transparency referred to in clause 77, the Financial Secretary must ensure that, for any undertaking required to maintain separate accounts, the internal accounts corresponding to different activities must be separate. All costs and revenues must be correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles and the cost accounting principles according to which separate accounts are maintained must be clearly established. Clause 80 sets out exemptions. These include financial relations between the public authorities and (a) public undertakings as regards services the supply of which is not liable to affect trade between Gibraltar and Member States to an appreciable extent. The state aid rules only apply to cross border trade. So, aid given which does not impact on cross border trade is not unlawful state aid and is not therefore covered by these transparency rules. The Gibraltar Savings Bank is also exempt as are public undertakings whose total annual net turnover over the period of two financial years preceding that in which the funds referred to in Article 1(1) of the Directive are made or used, has been less than Euros 40 million, or in respect of the Gibraltar Savings Bank, the corresponding threshold shall be a balance sheet total of Euros 800 million. Clause 81 provides that information concerning the financial relations referred to in clause 77 are to be kept by the Financial Secretary at the disposal of the European Commission for five years from the end of the financial year in which the public funds were made available to the public undertaking concern, or where the same funds are used during a later financial year, the five year time limit shall run from the end of that financial year. Information concerning the financial and organisational structure of undertakings referred to in clause 77(2) are to be kept by the Financial Secretary at the disposal of the European Commission for five years from the end of the financial year to which the information refers. Clause 82 makes specific provision for the manufacturing sector. This includes the duty of public undertakings operating in the manufacturing sector to supply defined financial information to the European Commission on an annual basis within the timetable contained in the clause. Provision is also made in this clause for the Financial Secretary to ensure that the European Commission is supplied with a list of companies covered by this clause and their turnover. The list is to be updated by 31st March of each

year. In addition, the Financial Secretary must ensure the Commission is furnished with any additional information that it deems necessary in order to complete a thorough appraisal of the data submitted. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later today, if all hon Members agree.

Question put. Agreed to.

THE MOTOR FUEL (COMPOSITION AND CONTENT) (AMENDMENT) ACT 2009

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Act to amend the Motor Fuel (Composition and Content) Act 2001 in order to transpose into the law of Gibraltar's Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels, be read a first time.

Question put. Agreed to.

SECOND READING:

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the purpose of this Bill is to transpose Directive 2005/33/EC which in itself amends an earlier Directive, namely Directive 1999/32/EC relating to a reduction in the sulphur contents of certain liquid fuels. The earlier Directive was transposed into the laws of Gibraltar by the Motor Fuel (Composition and Content) Act 2001 and this Bill therefore amends that Act. The reason for adopting this Directive is due to the fact that the emissions from shipping due to the combustion of marine fuel with high sulphur content contributes to air pollution in the form of sulphur dioxide and particulate matter, harming human health, damaging the environment public and private property and culture heritage in contributing to acidification. Human beings and the natural environment in coastal areas and in the vicinity of ports are particularly affected by pollution from ships with higher sulphur fuels. Specific measures are therefore required in this regard. Mr Speaker, reducing the sulphur content of fuels has certain advantages for ships, in terms of operating efficiency and maintenance costs, and facilitates the effective use of certain emission abatement technologies such as selective catalytic reduction. This Directive should be seen as a first step on an on-going process to reduce marine emissions offering prospects for further emission reductions through lower fuel sulphur limits and abatement technologies. Therefore, the amending Directive seeks to segregate the provisions that govern the sulphur content of fuels used in land based activities by providing a new regime for marine based activities. Mr Speaker, now going through the Bill in itself. Clauses 1 and 2 of the Bill are introductory. Clause 3 of the Bill amends section 2 of the Act so as to provide definitions which are in consonance with the Directives and the amended Act. Clause 4 of the Bill substitutes existing sections 9, 10 and 11. New sections 10 and 11 provide limits on the sulphur content of heavy fuel oil and gas oil which are used in a land based context. This contrasts with the

provisions of clause 6 which inserts a new Part III A dedicated to the sulphur content in marine fuels. Sections 12C and 12D restrict the placing on the market, that is, offering for sale, marine diesel oil and marine gas oil where the sulphur content exceeds the prescribed limits. New sections 12E to 12H provide a system for the maintenance of records and samples relating to the supply of marine fuel so that the use of appropriate fuels can be monitored. In the first instance, all supplies of marine fuel in Gibraltar must be entered into a register that is to be created for this purpose. Upon the supply of marine fuel to a vessel, both the supplier and the master of the vessel must maintain records of the sulphur content of the fuel supplied in addition to retaining sealed samples of the fuel supplied. In the event of a breach of the relevant obligations, recourse can be had to the samples. Whilst a ship is in Gibraltar's territorial waters, the master has a duty to record the type of marine fuel used in the ship's log book. Failure to do so may result in the refusal of entry into the port of Gibraltar under section 12G. The Bill further provides for the recognition of a more restricted pollution control regime that applies to the Sulphur Oxide Emission Control Areas. These areas are designated by the International Maritime Organisation, the IMO, pursuant to Annex VI of MARPOL Convention due to the particular characteristics and susceptibility of these regions to the effects of sulphur pollution. Gibraltar registered vessels will have to abide by the sulphur content requirements for such areas, presently, the Baltic Sea and North Sea have such areas designated, or risk being persecuted in Gibraltar for breaches occurring in designated areas. Passenger ships which operate a regular service between the port of Gibraltar and another EU port are required to comply with the maximum sulphur content in marine fuel provided for under section 12J. With respect to ships at berth, a new section 12K requires compliance with maximum sulphur content requirements save that subsection (2) sets out the circumstances where the obligation does not arise. For example, where the ship operates a regular service and it is due to be berthed for under two hours. The new section 12L seeks to promote new technological advancements and a dispensation can be given subject to certain limitations where emission abatement technologies are being trailed. Under section 12M, the owner of a ship may be allowed to use emission abatement technologies that meet the required standards of pollution control. The new section 12N provides for the appointment by the Government of an enforcement authority to oversee the various provisions of the Act. New section 12O provides for the use of compliance notices where there are irregularities which the enforcement authority seek to have rectified. Section 12P will make provision for penalties in respect of breaches of various provisions of the Act, including the failure to adhere to a compliance notice. Clause 7 introduces a new section 12N which in turn provides relief from the rigours of the Act where there is a sudden change in the crude oil and petroleum markets rendering it difficult to comply with the maximum sulphur content standards being applied. Where such an eventuality materialises, the Minister will liaise with the European Commission and may vary the limits imposed by Part III and Part III A through the issue of regulations. Mr Speaker, overall, the Bill will affect bunkering services in Gibraltar because suppliers of fuel oil will have to comply with the new standards in common with all other fuel suppliers in the EU. Nevertheless, the industry is aware of the new standards and is ready to comply with them. There are three small amendments to the Bill, Mr Speaker, to which I have given notice and I will move at Committee Stage. I commend the Bill to the House.

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

Question put. Agreed put.

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 today, if all hon Members agree.

Question put. Agreed to.

THE PUBLIC HEALTH (HUMAN TISSUES AND CELLS) ACT 2009

HON MRS Y DEL AGUA:

I have the honour to move that a Bill for an Act to transpose into the law of Gibraltar Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells; Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells; Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON MRS Y DEL AGUA:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill transposes into the law of Gibraltar Directive 2004/23/EC of the European Parliament and of the Council of the 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells. Along with this, the Bill also transposes into the law of Gibraltar, Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells; and Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for coding and processing. The Bill, by way of transposing these three Directives, seeks to introduce a harmonised regulatory framework to ensure the safety and quality of human tissues and cells intended for transplantation for human application. The Directives set a benchmark for the standards that must be met when carrying out any activity involving tissues and cells for human application. That is patient treatment. The Directives also require that systems are put in place to ensure that all tissues and cells used in human application are traceable from donor to recipient. They do not cover organs, blood or blood products or animal tissues and cells. This Bill has 29 clauses and 11 Schedules. Clauses 1 to 4 deal with preliminary matters. Article 4 of Directive 2004/23/EC which is transposed by clause 3, provides for a competent authority responsible for implementing the requirements of the Directives. The Minister with responsibility for Health is designated the competent authority but the Minister as a competent authority may enter into a contractual arrangement with any person for the purposes of assisting the competent authority to perform his functions under this Act. Clauses 5 to 7 deal with authorisation for tissue establishments to carry out prescribed activities specified in clause 4. Those activities are the donation, procurement, testing, processing, preservation, storage or distribution of tissues or cells for human application and for use in manufactured products where these products are not covered by other EC Directives. Clauses 8 to 10, 13, 14, 16, 18, 19 and 20 provide for the duties and responsibilities for the tissue establishments including designating a person who would be responsible for carrying out the authorised functions of the tissue establishment. Clauses

11, 12, 17, 21, 22, 24, 25 and 28 provide for the duties and functions of the competent authority. One of the important functions of the competent authority is to conduct regular inspection of tissue establishments of which the interval between the two inspections must not exceed two years. The proposed Act would require tissue establishments to be accredited, designated, authorised or licensed on statutory basis for testing, processing, preservation, storage or distribution of human tissues and cells. The competent authority would introduce a system accreditation, designation, authorisation or licensing of tissue establishments. Clauses 26 and 27 provide for offences and penalties and having said all that may I add that the GHA does not perform tissue transplantation and is therefore not considered to be a tissue establishment. This Bill deals with the preparation and transplantation of tissues from one person to another such as bone marrow, skin grafts, bone grafts and cornea transplantation procedures that are not carried out in Gibraltar. I commend the Bill to the House.

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

HON N F COSTA:

Yes Mr Speaker, simply to say that the Opposition will be voting in favour of the Bill.

Question put. Agreed to.

The Bill was read a second time.

HON MRS Y DEL AGUA:

I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

THE CONSTITUTION (DECLARATION OF COMPATIBILITY) ACT 2009

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to make provision for the making of a declaration by the Supreme Court regarding the compatibility of any Act or subsidiary legislation or any Bill for an Act or any provision thereof with the Constitution; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I beg to move that the Bill for the Constitution (Declaration of Compatibility) Act 2009 be read a second time. Mr Speaker, this short but important Bill enables the Supreme Court to make a declaration as to whether any act or subsidiary legislation or proposed piece of legislation is compatible or incompatible with the Constitution. Whilst we would certainly expect courts, generally, to make decisions of incompatibility when they find an Act to be incompatible with the Constitution, as will all declaratory relief, the Court will have a discretion to be exercised in accordance with all the circumstances of the case. Applications can be made on behalf of the Government by either the Chief Minister or any Minister authorised by the Chief Minister to do so. The Supreme Court will have original jurisdiction to hear and determine applications and such applications can be made even where there are no respondents to the application or defendants to the proceedings. Indeed, for reasons that I shall develop during the course of this speech, it is likely that most applications of this nature will involve situations where there will be no respondents or defendants but that does not prevent the Court from ordering service of any proceedings on interested parties. Although we take the view

that it is possible for such an application under existing provisions of the Civil Procedure Rules to be made and, in particular, a combination of rules 40.20, which is the rule in relation to declarations, and 8.2A, which is the rule pursuant to Part 8, the issue of proceedings without a defendant or respondent, this Bill seeks to simplify and formalise the process and the route by which the Government may seek declarations from the Court on the compatibility of legislation with the terms of the Constitution, particularly, in circumstances where there are no other parties to the proceedings. I say no other party to the proceedings because, of course, section 16 of the Constitution already provides that if a person alleges that any provision on the chapter on individual rights and freedoms, and I quote, "has been or is being or is likely to be contravened in relation to him" and I emphasise the words "in relation to him", "then without prejudice to any other action, with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress". I emphasised the words, "in relation to him" because it is clear to us that the section is intended to allow individuals whose constitutional rights are contravened or likely to be contravened by administrative action, indeed legislation, to apply to the Supreme Court for redress. The redress available may well take the form of a declaration of those rights being contravened or are likely to be contravened but the Government itself cannot rely on section 16 to make such an application because of the words "contravened in relation to him". In other words, the section can only be used by an aggrieved person or in European Court of Human Rights language, "a victim". This places the Government at a severe disadvantage in cases where it would wish to see an evaluative view from the Courts on the constitutionality of a particular statutory provision. It is certainly true that Governments generally act on advice and it is usually for aggrieved individuals with a genuine interest in the decision to challenge Government by way of a judicial review. That is certainly so in a vast majority of cases. Indeed, it is a well established principle that Strasbourg in constitutional jurisprudence is case specific and generally requires a person aggrieved to bring and have sufficient interest in the action. The European Court, as indeed other Courts considering constitutional issues, will ordinarily refuse to consider issues in the abstract unless there are genuine private rights at stake. That is indeed an additional reason, quite apart from the section 16 point, why it is difficult for the Government to obtain a declaration on the constitutionality of a particular statutory provision. The Courts are generally concerned with adjudicating on real rights affecting individuals rather than the abstract even if the subject matter is one of great public interest and importance. There may well be cases of public importance where the advice the Government receives is not clear cut or differing views are expressed by those whose duty it is to advise the Government and the issue while abstract in the sense that no one has challenged the decision, either in response to a prosecution or in a judicial review, it is nevertheless desirable for the Government to seek a declaration one way or the other from the Courts. In those circumstances, it is entirely right and proper in our view that the Government should have a clear mechanism allowing it to apply to the Court for a declaration as to whether the legislation in question is compatible with the Constitution, even though there is no individual who has challenged the Government on the issue or the legislation does not contravene that individual's rights in a way that would engage section 16 of the Constitution. Indeed, in some cases it might even be wrong to expect a private individual to spend considerable sums seeking to establish that a piece of legislation is unconstitutional because it contravenes or is likely to contravene his or her rights, when the Government has a readily available route to do so and its own advice on the issue is not clear cut. I should also add that, in fact, the provisions in this Bill are broadly based on section 4 of the UK Human Rights Act and that under the UK Human Rights Act, that particular section, it is open to the UK Government itself to make an application to the Court. In short, this Bill does not detract from any rights that any individual may have to issue proceedings seeking a declaration that a statutory provision is unconstitutional, which continues under section 16 of the Constitution, but it gives the Government itself clear procedural route to seek such a declaration where it feels the need to do so and in circumstances where it cannot make an application under

section 16. Subsection 3 of section 3 provides that a declaration under this section does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given and I would like to say a few words about this subsection. This is taken from section 4(6) of the UK Human Rights Act. Section 4, on which the Bill is broadly modelled although not identical and this particular subsection, was described by the Lord Chancellor Lord Irvine during the Second Reading of the Bill, that is the UK Human Rights Act in the House of Lords, as a careful compromise between parliamentary sovereignty and supremacy and the need to give proper effect to the European Convention. It gives the Court an evaluative role in respect of the legislation in question but if the legislation is held to be incompatible on Convention grounds, then it is for Parliament, which is sovereign and supreme, to remedy that defect. In other words, in UK they took the view that it would not be appropriate for a judge to apply the blue pencil test and, effectively, rewrite the terms of the statute but it was for Parliament to effectively remedy any constitutional defect. Indeed, in the UK such declarations are not even binding on the parties to the proceedings and it is for the UK Government to then move amendments to the legislation in question. If the UK Parliament does not respond, then any affected party would then have to take a complaint to Strasbourg. Mr Speaker, that of course is not the position with section 16 of the Constitution where once the Court declares a provision to be unconstitutional that provision would be unlawful and in fact there have been cases in Gibraltar, under the old Constitution, where the Court has struck down provisions of local legislation because it infringed the old Constitution. I am thinking in particular, Mr Speaker, of the Rojas case and the women jury case. That will continue, of course, to be the position when the applicant is an aggrieved individual under section 16, and therefore, aggrieved individuals in Gibraltar are in a better position than their UK counterparts. However, whether Government itself is seeking what is in the nature of an evaluative opinion under this Act, then it is for the Government itself to come back to Parliament to remedy the unconstitutionality of the statute or if it is a Bill to go back to the drawing board. Of course, the Government will seek to come back to Parliament with amendments to unconstitutional legislation in a timely manner. Finally, section 1 of the Bill provides for a commencement date of the 1 November 2009. As we have announced publicly, the Government has already filed an application in the Supreme Court for a declaration on the rules 40.20 and 8.2A of the Civil Procedure Rules on the age of consent issue. It is our intention to amend the details of claim on the age of consent issue to seek a declaratory view under this statute as an alternative but without abandoning the claim under rule 40.20. It is trite that any amendment would not take effect on the date it is made. It would relate back under ordinary principle and be deemed to have been made on the date the proceedings are issued and hence we have gone for a commencement date which predates the date the application was filed. In fact, this is probably entirely academic for this reason. The lawyers amongst us may know that under rule 8.2A of CPR, that is the issue of proceedings without defendant, requires the leave of the Court. To date, the application for leave has not been listed by the Court and so the point may be academic because proceedings are only deemed to have been issued when leave is granted and then the claim form is issued, otherwise there is no claim. The Government, however, prefers to keep its powder dry on the issue and that is why there is a commencement date of the 1 November. I commend this Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we will be voting against the Bill. For us the point of principle here is the fact that it is something that is available only to the Government. It is all very well to say that at the moment under section 16 anybody that is aggrieved can personally take the matter to court. That is, when the Parliament approves legislation which is in breach of the Constitution. Indeed, I had the unfortunate experience in this

House of voting with the Government, as the only member of the Opposition that did, on a piece of legislation that then turned out to be contrary to the Constitution and which was thrown out. I thought the purposes that they were trying to achieve merited my support and, although the rest of the Opposition voted against, it was when I had the only seat for the socialist party, I supported a Bill brought to the House by Adolfo Canepa and this was challenged by the Chamber of Commerce and it was thrown out. There was no attempt to bring back the legislation to achieve the purpose in a way that was compatible. The law was simply struck out and that was the end of the matter. So, certainly, in terms of the supremacy of Parliament on that particular occasion there was no doubt who was supreme. As regards the arguments that have been put for the necessity of this, I must say that it all seems to stem from where the Government is getting advice that is not clear cut. Let me say that when we had a previous debate in relation to the age of consent, the impression I got from the Chief Minister was that the advice that he had was clear cut for some people but not clear cut enough to persuade him, and that therefore there were different views, but I got the impression he would not tell me what the advice was. But the impression that he gave me was that the advice tended to side with the argument that there was a constitutional obligation and a human rights obligation to equalise. I have to say that, it seems to me, that it is not a bad idea that there should be a right for entities other than aggrieved individuals to be able to go to court to get a view from the court as to the constitutionality of a law. But I do not see why that should be limited to the people who are bringing the law where there must be a majority who think it is constitutional because if there is within the Government a majority that thinks it is not, they should not bring it. If there is a majority within the Government that think that it is but a minority that does not, then they can bring it with the consent of the Chief Minister who presumably belongs to the majority and not to the minority. Therefore, I cannot see that there is a need for this other than to say, what we were intending to do, we cannot do. The hon Member in moving the Bill has told us that as far as they are concerned they believe they can already do it even without this legislation and that they are just trying to simplify and formalise the process. I am not sufficiently familiar with the proceedings of the court that he has quoted, to know whether the procedure that has been used by the Government is available to anybody else with the leave of the court. But if it is, then this is doing more than simply formalising what is already there. This is creating a privileged position for the Government. Indeed, not even for the Government but for the individual who happens to be the Chief Minister of the day, because nobody else in the Government, even if there was a situation where nine members of the Government thought they should go to court and one member does not, this cannot happen because the consent will not be forthcoming. It also seems very odd that even when a Bill is brought to the House, before the Bill has been approved by Parliament and been made law, the Government is unable to make its mind up as to whether to proceed with the Bill or not, without, presumably, publishing the Bill and then going to court to be told by the court whether they should proceed to defend the Bill that they have published in Parliament or not do it. Whether they do it in the United Kingdom or not, again, I am not familiar with whatever section 4 of the UK Human Rights Act says, but as has been pointed out already, our Constitution, of course the United Kingdom does not have a Constitution, already gives a clear right to the individual aggrieved by a decision of the Parliament in implementing a law so that the effect of the law is stopped by a decision of the Supreme Court that it is not constitutional. I think that is how it should be. If something is not constitutional, then surely all of us who believe that our Constitution has to be respected would not want to give effect to a legislation……… Therefore, the fact the person that brings or the entity that brings the matter to the court is not the aggrieved person, if the court then decides that it is unconstitutional, and under the provisions of section 3(3) the enforcement and the continued operation still is possible, then it is possible for the Supreme Court to say, this law is in breach of the Constitution, and then after that for the Government to choose, or the people, or the officials in the law that are required to do so, to enforce it to the prejudice of somebody who presumably then would have to use section 16 to have to go

back and get the law stopped. That does not seem to me a way of simplifying or clarifying or making the process any better. So, I would have thought that the fact the law is not immediately declared invalid is one issue, but whether it continues to be enforced against people in the knowledge that it should not be there, does not seem to be the kind of thing any Government would want to do and I do not know why it should be there. In terms of the arguments that have been used as to when it is going to be made use of, this new power that is being created is not being created on the basis that it is triggered by advice not being clear cut or by there being great public interest. There are no caveats, conditions or requirements other than that the Chief Minister wants it done, period, and that it can apply to any law. So, our view is that the idea of providing something in addition to what is already there in the Constitution for entities other than directly affected aggrieved parties is something that we would welcome, and we think it is a good idea that somebody has thought of bringing this forward, and if it may be possible now, but it is important to make it clear that it is possible by having primary legislation saying it, then that is fine. But we cannot support this as long as it is limited to either the Chief Minister or somebody that the Chief Minister gives permission to, to do it. We do not think that we should have that kind of concentration of power in a law on something where, ultimately, it is to go to court to get a clear cut ruling on whether the whole population is protected by the Constitution, or not protected by the Constitution, or in fact being told that something is illegal when it ought not to be illegal because the Constitution permits it. I would have thought, at the very least, this requires much more thought on the part of the Government before it proceeds.

HON CHIEF MINISTER:

Mr Speaker, if the hon Member's decision to vote against the Bill is based on the last thing that he has said, then he is making the wrong decision for the wrong reasons. Yes, the hon Member tries to make a vice out of what is a virtue. It is a virtue and not a vice that the Government should want to test the constitutionality of what it has done. Not in order to oppress the innocent citizenry but in order to ensure that the innocent citizenry is not oppressed by what the Government has already done or may propose to be doing, which may be unconstitutional. I have never heard anybody more elegantly, or rather more inelegantly but more articulately, argue to convert a virtue into a vice and he does so because he thinks that the Government is doing this to wriggle off a hook and he is damned if the Government is going to wriggle off a hook because he has said so. He thinks that the Government is doing this because otherwise our action, which he thinks is a device which he tried to defeat in the Parliament on the age of consent, will not work. He is turning his back on an important piece of architecture to ensure that Gibraltar's law complies with the European Convention on Human Rights and with the Constitution, on the simple ground, as always, that he thinks that there is some hidden gain for the Government here that he is damned if he is not going to try and deny the Government. Well he is wrong. The Government does not need this Bill or this Act in order for the litigation that we have found xxxxx and I suppose that there are lawyers on his benches that can advise him.

HON J J BOSSANO:

In the litigation?

HON CHIEF MINISTER:

In the litigation…yes, Mr Speaker. He has said to the hon Member that he thinks that the purpose for doing this is that we cannot do what we are intending to do in the litigation, the court claim that has been started.

HON J J BOSSANO:

I have not said that.

HON CHIEF MINISTER:

Mr Speaker, you have said that what we are intending to do, we cannot do, in reference to this retrospective correction of the court action and giving the Government the right. That is what he has said.

HON J J BOSSANO:

No.

HON CHIEF MINISTER:

You are doing this because what you are intending to do, you cannot do.

HON J J BOSSANO:

I have got a Point of Order. The Point of Order is that the hon Member is incorrectly quoting me because he is saying the opposite of what I have said. I have said, "in introducing the Bill we have been told that they can already do this and that some rules that were quoted with which I am not familiar, and that it is just for the purpose of simplifying and formalising and clarifying what they can already do." That is what I have said.

HON CHIEF MINISTER:

No. I do not withdraw my words and we shall have to leave to Hansard to decide. The hon Member is wrong in describing what he has said. He has said that as well, but he also said that he believes, or words to the effect, that he believes that the purpose of this Bill is that because we cannot do what we are intending to do, and I stand by this assertion and when Hansard is available, we can have a debate about whether his Point of Order is justified, which I hereby express the view it is not, and whether what I have said is correct, which I maintain. I do not withdraw the words that I have uttered. I make myself fully responsible for them. Mr Speaker, the fact of the matter is that this has got………

MR SPEAKER:

Point of Order! What was the Point of Order?

HON J J BOSSANO:

Mr Speaker, my Point of Order is, if the hon Member says that I have said something five minutes ago when in fact he is misquoting me because the entire argument is that he is saying I have said something and I have said the opposite of that, then I think that is a Point of Order that I am entitled to make. The hon Member is attributing to me a statement which is false because he is misquoting me to the extent of putting in my mouth the opposite of the words that I used and we do not have to wait until next year. We can play back the last ten minutes of the tape.

MR SPEAKER:

My recollection of the debate is, the words that the hon Chief Minister has quoted are the words that I heard but his attribution of those words to the litigation which has been embarked upon was not what I understood the hon Member to say. Attribute to that particular litigation is not what I understood him to say. But the words quoted by the Chief Minister are the words that I heard about doing and intending to do.

HON CHIEF MINISTER:

Well, when Hansard is available, what Mr Speaker understood is of course a matter for him, but the words were uttered and I maintain that that is what they meant and the only thing that they could have meant. But when Hansard is available we will know. This piece of legislation is not to do with the case. This is a much wider…….. For a start it applies to Bills and the case relates to an Act that is already law. The point of the matter is that the Government and this Parliament should be the most interested and, speaking for ourselves, we are the most interested in knowing whether legislation that we have previously put on the statute book or legislation in the form of Bills that we intend to put on the statute book, we wish to have a mechanism to be sure that what we are doing is lawful because I do not think, well certainly the Government has, I do not think that anybody in this Parliament should have any interest in this Parliament legislating that which is unlawful and waiting for somebody to decide to challenge it in x year's time if they bother to decide whether it is unlawful or not, and if nobody decides to challenge it, then we are stuck with unlawful laws for ever.

HON XXXXX:

XXXXX

HON CHIEF MINISTER:

Well Mr Speaker, I am sorry. I am entitled not to be shouted down by the hon Member from the other side of the………

HON XXXXX:

XXXXX

MR SPEAKER:

Order. Order.

HON CHIEF MINISTER:

The fact of the matter is that here is a Bill that enables the Government…….. The Government may publish a Bill of proposed legislation and people may express the view that they think that the Bill is unconstitutional. The Government may not be convinced, at all or entirely, that the Bill is unconstitutional but if it is an area of the law which is very significant or creates considerable disruption or has significant impact on the lives of people, the Government may want to say, well alright, I do not think it is unconstitutional, but given that there is a body of opinion out there that thinks it may be, the Government just wants to make sure before it converts it into law which binds everybody, the Government wants the opportunity and wants the mechanism to be able to go the court and say, court look, obviously, I do not think this is unconstitutional because if I thought it was unconstitutional I would not have published the Bill in the first place. But there are people out there who appear to believe that it may be. We the Government do not wish to legislate in a way that might be unconstitutional, will you please express a view. If you think it is unconstitutional, obviously, we will not proceed with the Bill. For the hon Member to seek to convert that mechanism into some sort of scenario whereby the Government is capable of abusing this. How can it be abusive by the Government to delay promulgating the law that it has already decided to promulgate and to impose on citizens, and that they have the majority in the House to do it, how can it be abusive of citizens for the Government to say, "hang on, before doing that, I am going to go and check with the court to see if what I am doing would be constitutional, or to see if what I am intending to do and have the power to do, would be a breach of the European Convention on Human Rights?" How can the hon Member………? The hon Member can approve or disapprove of the Bill, as he pleases. But for the hon Member to try and

pretend that, somehow, this is a dangerous mechanism to be placed in the hands of one person, when it is only capable of being used for the protection of citizens, and is incapable of being used……… No, I am sorry, the hon Member is wrong. It can either be used for a Bill which is not yet law, and no one can challenge that. There is no citizen that has the right to challenge something before it has become law. So the Government that presumably wants to pass the law, otherwise it would not have published the Bill, and if somebody else publishes, if there is a Private Members' Bill, the Government has the means to stop it. So here is a situation where something is not yet law but the Government intends to make it law and has the power through its majority in Parliament to make it law and the Government says, "hang on, I am going to check with the court that this is okay for the Government to do this." That is one of the two circumstances it can be……… How can that be abusive? The other circumstance in which it can be used………

HON S E LINARES:

XXXXX

HON CHIEF MINISTER:

I know the hon Mr Linares is a recent lawyer but he does not have to …

MR SPEAKER:

Order. Order.

HON CHIEF MINISTER:

The other circumstance in which it can be used is that something is already law, already binds people, already obliges citizens to comply with it. There is a view expressed that it may be unconstitutional and the Government says, for the benefit of citizens who are already affected by it, caught, is this unconstitutional or not? Because if it is, the Government would wish to remove it or change it and not leave ordinary citizens with the cost, uncertainty and trouble of doing it and these are the only two scenarios in which this alleged, oppressive power can be used. The problem is that the hon Member takes his cue from other NGO's who rush into judgement on a non-existent understanding or knowledge of what the Government intends to do and indeed on any reasonable interpretation of what the law says. We therefore regret that the hon Members seek to deny the Government the simple mechanism which everybody else already has. I mean, citizens that are already affected by laws have the power, yet the Government that is in a position to do something about it apparently should not have the power to test the constitutionality of its own proposed legislation. I just do not understand it. This is intended as a bow in the Government's armoury to improve the quality of Government. To make sure that the Government can take initiative in ensuring, without having to be taken to court by citizens, to ask the court to adjudicate on whether the laws of which the Government is the custodian are or are not constitutional. If they are constitutional, the court will say so. If they are unconstitutional, the court will say so. In any event, the outcome is not decided by the Chief Minister or the Minister that he approves or the Government. The outcome is decided by the court in accordance with the law. I would have thought that this is something that everybody would welcome. But of course there are people in Gibraltar who, without understanding even what they are talking about, rush, not to local comment, but to international comment, on a completely fictitious, false, indefensible basis and regardless of the damage that it causes. Yes, the hon Member knows who I am talking about and the Government does not believe, as no other constitution and no other Governments in the world appear to believe, that NGO's should have rights that citizens do not have and that NGO's should have the right to challenge the legality of a proposed piece of legislation that this House has not yet passed. The Government is entitled to go to the court and

say, "I, the Government, propose to move in Parliament that this Bill should become law. Before I do so, given that I am responsible for moving it in Parliament, is it constitutional?" But to give citizens or even NGO's the right to challenge the validity of Bills even before they have been adopted into law which exists in no other country, is simply to undermine the sovereignty and the role of this Parliament. There is a distinction between the citizen doing that and the Government doing that because it is the Government's Bill and it is for the Government to say, "this is my Bill, I propose to move it, before I move it, I would like the court to tell me whether I am proposing to do something which is lawful or whether I am proposing to do something which is unlawful". Therefore, we reject the Opposition's criticism of this important, valuable and helpful piece of legislation which will significantly contribute to the quality of the laws of Gibraltar, which will significantly contribute to the protection of citizens from unconstitutional laws. Let the record show that it is the hon Members opposite from the Opposition benches who appear want none of that to be the case.

HON F R PICARDO:

To be limited to you!

MR SPEAKER:

Order. Order.

HON G H LICUDI:

Mr Speaker, let me just deal with one of the last points that the Hon the Chief Minister has made. Where he has said that NGO's, not in Gibraltar, nowhere in the world, have the right to apply to have issues or to have constitutional rights determined.

HON CHIEF MINISTER:

Bills.

HON G H LICUDI:

Bills! Oh right. The hon Member was not referring to existing rights but bills.

MR SPEAKER:

The reference was to Bills undermining the supremacy of Parliament.

Question put.	The House voted.
For the Ayes:	The Hon C G Beltran The Hon P R Caruana The Hon Mrs Y Del Agua The Hon D A Feetham The Hon J J Holliday The Hon J J Netto The Hon E J Reyes The Hon F J Vinet
For the Noes:	The Hon J J Bossano The Hon C A Bruzon The Hon N F Costa The Hon Dr J J Garcia The Hon G H Licudi The Hon F R Picardo The Hon S E Linares

The Bill was read a second time.

HON D A FEETHAM:

I beg to give notice that Committee Stage and Third Reading of the Bill be taken today, if all hon Members agree.

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The International Co-operation (Tax Information) Bill 2009;

2. The Public Finance (Control and Audit) (Amendment) Bill 2009;

3. The Motor Fuel (Composition and Content) (Amendment) Bill 2009;

4. The Public Health (Human Tissues and Cells) Bill 2009;

5. The Constitution (Declaration of Compatibility) Bill 2009.

THE INTERNATIONAL CO-OPERATION (TAX INFORMATION) BILL 2009

Clauses 1 to 19 – were agreed to and stood part of the Bill.

Clause 20

HON F R PICARDO:

Yes. I am moving an amendment so that the final phrase would become, "and if so, on what terms shall be exclusively in the discretion of the Minister" and I think that is what the hon Gentleman said he would agree to.

HON CHIEF MINISTER:

I am not sure the word "exclusively"………

HON F R PICARDO:

I agree, Mr Chairman.

HON CHIEF MINISTER:

Exclusively, cannot mean exclusive of the court's power to judicially review, for example, so it is not ………

HON F R PICARDO:

I agree.

HON CHIEF MINISTER:

We could delete the word "exclusively" as well.

HON F R PICARDO:

"So shall be in the discretion of the Minister". I think that is the more usual wording.

MR SPEAKER:

The Chief Minister also gave notice of amendments to sub clauses 10 and 11.

HON CHIEF MINISTER:

Oh yes, Mr Chairman. In sub clause 10, after the word "proceedings" add the words "in Gibraltar", and in sub clause 11, sorry that was sub clause 10, and in sub clause 11, after the word "means" the word "a" becomes "any". So that it reads "means any person", and the words "who is" are deleted and becomes the word……… delete the words "who is" and substitute the words "whether or not they are". So that it all reads "means any person, whether or not they are subject to, et cetera."

Clause 20, as amended in sub clauses 2, 10 and 11, were agreed to and stood part of the Bill.

Clauses 21 to 24 – were agreed to and stood part of the Bill.

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

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

THE PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) BILL 2009

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

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

THE MOTOR FUEL (COMPOSITION AND CONTENT) (AMENDMENT) BILL 2009

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

Clause 6

HON J J HOLLIDAY:

Mr Chairman, I had given notice that under the new section 12I, subsection (3)(a), substituting the figure "2007" by "2009" and then under the same Section 12I, subsection (3)(b)(i), there is a typo error in that we should substitute the word "month" by "months" in order to reflect the plural. Then in subsection 12M(2)(b), I wish to put a full stop after the word "appropriate" and delete the words "to the trial in question".

MR CHAIRMAN:

You mean a semi colon, not a full stop.

HON J J HOLLIDAY:

Semi colon, correct.

Clause 6, as amended, stood part of the Bill.

Clause 7 to 10 – were agreed to and stood part of the Bill.

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

THE PUBLIC HEALTH (HUMAN TISSUES AND CELLS) BILL 2009

Clauses 1 to 29 – were agreed to and stood part of the Bill.

Schedules 1 to 11 – were agreed to and stood part of the Bill.

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

THE CONSTITUTION (DECLARATION OF COMPATIBILITY) BILL 2009

Clauses 1 to 4 – stood part of the Bill.

The Long Title – stood part of the Bill.

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The International Co-operation (Tax Information) Bill 2009;

2. The Public Finance (Control and Audit) (Amendment) Bill 2009;

3. The Motor Fuel (Composition and Content) (Amendment) Bill 2009;

4. The Public Health (Human Tissues and Cells) Bill 2009;

5. The Constitution (Declaration of Compatibility) Bill 2009

have been considered in Committee and agreed to, some with, some without amendments and I now move that they be read a third time and passed.

Question put.

The International Co-operation (Tax Information) Bill 2009;

The Public Finance (Control and Audit) (Amendment) Bill 2009;

The Motor Fuel (Composition and Content) (Amendment) Bill 2009;

The Public Health (Human Tissues and Cells) Bill 2009,

were agreed to and read a third time and passed.

The Constitution (Declaration of Compatibility) Bill 2009.

The House voted.

For the Ayes: The Hon C G Beltran
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon J J Holliday
The Hon J J Netto
The Hon E J Reyes
The Hon F J Vinet

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

Absent from
the Chamber: The Hon L Montiel

The Bill was read a third time and passed.

PRIVATE MEMBERS' MOTION

HON J J BOSSANO:

I have the honour to move the Motion standing in my name which reads as follows:

> "This Parliament is fully committed to the principle of implementation of legislation which does not discriminate on the grounds of sexual orientation;
>
> AND
>
> The Parliament considers that proceeding with legislation to produce such equalisation in respect of the age of consent should be deferred to enable wider consultation to take place with the community on what such age of consent should be."

Mr Speaker, I brought this Motion a very long time ago and a number of things have happened since, not least the Bill that we have just passed with Government votes and with us voting against. I still think that this is an issue which is relevant and on where I do not see why there should be a division in Parliament on the basis of where we stand. I would have thought that, certainly it may not be the position of the Government, the position of the Government may be that if the discrimination is not in breach of the Constitution, or in breach of the Human Rights Act, then it is alright. I think there has to be a reason for discrimination, even if it is not illegal. There is unlawful discrimination and there is discrimination which is not unlawful, simply because there is no law prohibiting it. But discrimination must have some logic to it and therefore our position is that nobody has made a case. These things happen simply because they have been there for a very long time and when the law was brought to the Parliament, which was carried unanimously, allowing consensual sex between consenting adults of the same sex at the age of 18, it was because that was in fact a position that I think even at that time may have been ahead of the United Kingdom, and we decided to go for 18. In the UK I think it might have been 21 at that time but these situations change with the passage of time and with changing attitudes in society. Today, I think we should be moving in the direction of treating people the same, independent of their sexual orientation. Treating them the same requires, in this particular area, that we recognise the right in private of people to conduct their sexual lives as they choose on the basis that it is not for us in Parliament or indeed for people of a different view to try and impose views on others where there is no effect on anybody else as would be the case with things being done in public. On that basis, we would support the need to have the same age. When the Bill to reduce the age was brought to Parliament, we were not convinced that the support for the same age translated into necessarily that the age should be 16 or 17 or 18. Therefore, the debate was not as to whether the age should be the same for both, and therefore equal treatment, but whether that should be brought about by reducing the age for homosexual sex to 16 as it is for heterosexual sex. Although it was said in that debate that there were enormous difficulties in doing this, other than saying it, there was no detailed explanation given or argument put, but I think that it is something that we need to consider. We need to consider whether, in fact, what most people would support, given that I think most people would support……… It is not……… I cannot imagine anybody objecting to harmonisation at the age of 18 since it has been there at the age of 18 for donkeys years and that is now part of what is accepted as normal in Gibraltar, and has been since we introduced that. In fact, when we introduced it, it was carried unanimously and, to my recollection, there was no great public outcry about it. So, the move to 18 is something that those who have got misgivings about the age of consent in homosexual partnerships or situations would not be affected by that decision. The 16 seems

to worry a lot of people, and therefore I think we should listen to them. The 17 would be the half-way house to try and keep the concerns of those who are against the reduction, at least, attenuated, and all that the Motion is doing is trying to establish that we accept that we need to move in the direction of having the same age for both but that, before we take a decision like this, we ought to have wider consultation. That is what our view is and, therefore, we are seeking the support of the Government so that we have got a common view. I commend the Motion to the House.

Question proposed. Debate ensued.

HON CHIEF MINISTER:

Mr Speaker, the hon Members on this side of the House are not going to vote in favour of the hon Member's Motion and intend to amend it. I think the boot is now on the other foot. The hon Members are constantly saying to us that we do things, usually wrongly they say, as political devices, to do this and that. Well, this is what we think this Motion is. The hon members have for many years, in and out of their Manifestos I think I am right in saying, expressed support for the views in Gibraltar that believe broadly in support of the Gay Rights Movement, that gay people should be treated in the same way as non-gay people, and then the law already says something about ages for non-gay people. So, when in the past you have expressed the view that gay people should not be discriminated against and that they should be put in the same position as non-gay people, what you have been saying for all these years, and promising the gay community in Gibraltar for all these years, is that you think that the law should be the same for them as it has always been for others. On the first occasion that you get the opportunity to do precisely that, by voting in this House for a piece of legislation that would have done precisely that, you abandon your so-called principles and political doctrines because you think you can score a cheap political point against the Government. Now to window dress your behaviour, you go on about this 16 and 17 and 18, and how there are people concerned by all years. Well, how do you reconcile that with the fact that you have had Manifesto commitments in the past to put gay people in the same position as non-gay people which is what the Bill offered the hon Members of the Opposition to do, and they declined. There is nobody in Gibraltar, including the gay community, that does not believe that the hon Members have sacrificed their alleged principles, if indeed it is a principle at all, but whatever it is, principle or not, they have sacrificed it at the alter of denying what they thought was a face-saving, political device for the Government to get off a hook, because they think the Government is divided on this question. Always, as always putting short-term political tactic ahead of adherence to their alleged principles. This is the reality of it, and it is inescapable, and there is nobody in Gibraltar that has thought of these issues. Yes, because when the hon Members opposite put in their Manifesto about equality of rights for gays, they did not say, "hang on, equality of rights for gays, which may take the form of changing the law for everybody else to bring them up to the gays and not the gay xxxxx". That is not what they have been saying for 15 years. What they have been saying for 15, or five or three or four, however the number of years, is that they do not think gays should be discriminated against. Gays should be the same as non-gay. Well, that is what we tried to do, or the Private Members' Bill tried to do, which the Government agreed that he could bring, and I voted against, but I do not have the position that he has been advocating politically. I did not go to the last election seeking the support of gay people on the basis of their sexual orientation, but he did, and on the first occasion that he gets the opportunity to make good on his electoral promise to them, he lets them down by voting to what he thinks is to cause political difficulty for the Government. Well, he can extricate himself from that political predicament, all by himself, and without the support of the Government, for a Motion designed exclusively to provide him with political cover for the shameful betrayal of his principles and the shameful betrayal of his commitment to the gay community that he issued before the election. So the Government will not vote in favour of the Motion, and indeed, we are proposing an amendment to the

Motion, to delete all the words after the word “principle” in the first line, so that it will read “This Parliament is fully committed to the principle that all the laws of Gibraltar should be in full compliance with all human rights as established in the Constitution and the European Convention of Human Rights”, and I commend my amended Motion to the House.

MR SPEAKER:

If I may attempt to repeat what I understood is the proposed amendment. The proposed amendment is the deletion of all the words after the word “principle” in the first line of the Motion and the replacement of those deleted words by the words “that………

HON CHIEF MINISTER:

Yes. I will read it.

MR SPEAKER:

Perhaps it would be helpful.

HON CHIEF MINISTER:

Well I do not think the Clerk has got it.

MR SPEAKER:

I think I have, but anyway.

HON CHIEF MINISTER:

You think you have. “that all the laws of Gibraltar should be in full compliance with all human rights as established in the Constitution and the European Convention of Human Rights”.

MR SPEAKER:

And the second part of the Motion?

HON CHIEF MINISTER:

It is all deleted.

MR SPEAKER:

It is all deleted. Everything after……… I was not quite sure of that. Okay.

Question proposed in terms of the amendment moved by the Hon the Chief Minister.

Debate ensued.

HON F R PICARDO:

Mr Speaker, yes, I think that the hon Gentleman has either, for dramatic effect or for some other reason, wanted to raise the level of debate and the volume of debate, quite unnecessarily. Clearly, nobody on this side of the House is going to object to a Motion that reads as the hon Gentleman has suggested but we are also not going to agree to amend our Motion. So I think what we are going to do on this side of the House is abstain on the proposed amendment but we will of course be voting in favour of a Motion, if one is then before the House, with

Government majority, in the terms that the hon Gentleman has suggested. But really, Mr Speaker, it is quite a pity that it is not possible in this House, on the eve of 2010, at the end of the first decade of the second millennium, to agree a Motion that says that the Parliament is fully committed to the principle of the implementation of legislation that does not discriminate on the grounds of sexual orientation. Now, the hon Gentleman may have wanted to impute motive to this side of the House, of course, in flagrant breach and disregard of the rules of this House, as to debate, where it is not proper to impute motive, but so be it. If the hon Gentleman wishes to do that, it is clearly up to him to wish to do so. He wants to impute motive. He wants to suggest that we had an opportunity to vote for something and then we did not, for whatever reason, and he wants to talk about political principles sacrificed at the alter of short-term political gain. Well, Mr Speaker, there could be nothing clearer than what the hon Gentleman is doing, is trying to reflect onto the Opposition, actually, exactly what he has done. We have seen in this House how the hon Gentleman has voted against a Bill brought by one of his Ministers. Although he allowed the Bill to enter the Parliament, and has sought to refer to the court, and with xxxxx at some length now with our debate on the Bill and the Private Members' Bill as well, sought to refer to the court the issue of whether it is proper to discriminate on grounds of equalisation of age of consent. Well, Mr Speaker, why has he done that? Well, he has done that as a short-term political tactic, for short-term political gain. Now, he has the political honesty, at least, to get up in this House and to say that he does not believe in the principle of equality. He, of course, cannot say that he does not believe that it should be legal for homosexual men to be able to engage in consensual acts of sex after the age of 18 because he voted in favour of it when he was on the Opposition benches when the GSLP in Government moved to change the law and decriminalise such acts. So really Mr Speaker, the hon Gentleman is caught in a bit of a vice and his attempted changes to this Motion today are no more than a device to get out of that vice, because what he will not support, and it is becoming abundantly clear, is a straight forward Motion on the clear and unequivocal principle that the implementation of legislation that does not discriminate on the grounds of sexual orientation, is something that this House should clearly be in favour of. Now, how could it be that this House might want, at the end of the first decade of the second millennium, to do the opposite? Is it that the hon Gentleman is reserving the position that this House should be able to enact legislation that does discriminate on the grounds of sexual orientation? If that is the position, then there is a very clear dividing line between the two parties. The hon Gentleman should at least then recognise that on this side of the House our principle is that this House should never legislate to create a discrimination on grounds of sexual orientation going forward. For us to now find that this straight forward Motion is going to be amended with the language that we have been referred to is frankly, in our view, a retrograde step, but of course nobody can be against language that says that all the laws of Gibraltar should be in full compliance with all human rights as established in the Constitution and the European Convention of Human Rights. Perhaps, we can go a step further. Is it not clearly the case that in being in full compliance with our Constitution and with the European Convention of Human Rights, this House must be bound, not just in principle, but in international legal obligation and in law, not to legislate on grounds that do not discriminate on the grounds of sexual orientation, other than in respect of the specific carve out which have been recognised in respect thereof, on grounds of tradition et cetera. Is it not also the case, that clearly the other side are politically divided on the issue amongst themselves? I will always remember that at the beginning of his speech on the Equalisation Private Members' Bill, the Hon Mr Montiel, who is not here today so I will not say much in his absence, said that he agreed with the Hon the Minister for Justice with his interpretation of the law. A few moments later, the Hon Chief Minister got up and told the House that he disagreed with the Hon Minister for Justice's interpretation of the law. That is the position on the other side as to these very fundamental issues of principle. So, the short-term political gain is the plaster that the hon Gentleman is seeking to apply to the cracks that are appearing amongst the hon Members opposite and for that reason we will be abstaining

on this proposed amendment. But, Mr Speaker, if the amendment does survive, and I am sure it will prosper with Government majority, then this side of the House cannot disassociate itself from a Motion such as will stand before us.

HON G H LICUDI:

Mr Speaker, in introducing………

HON CHIEF MINISTER:

Mr Speaker, can we just make clear now, historically we used to have discussions about these things, whether we are now speaking to the amendment, not to the original Motion.

MR SPEAKER:

To the amendment, yes! It is all speaking to the amendment right now. We have got to take a vote on the amendment before we can go anywhere else.

HON G H LICUDI:

Yes, Mr Speaker, I am proposing to speak on the amendment but I am assuming that all the comments that the Chief Minister made to which I will respond, were………

HON CHIEF MINISTER:

My response was not entitled to prevent you from saying whatever you want. It is just that it is procedurally………

HON G H LICUDI:

I understand that. I understand we have an amendment which is proposed and we have to speak to that amendment but in introducing the amendment, and I am taking the assumption that the Chief Minister, the words that he pronounced in answer to the original Motion were also in proposing the amendment that he was making. The issue that the Chief Minister has mentioned, which is not the first time that he has mentioned it, but he mentioned it on the debate on the age of consent issue, e has also mentioned it in public pronouncements in comments in interviews. Is this what he calls betrayal, or shameful betrayal of principle? The Chief Minister seems to believe that the more he repeats an allegation, the more truthful it becomes, even though it is a false allegation. It is a false accusation and it is clearly a false accusation because it is true that for many years this side of the House has supported principles of equalisation. Have supported principles which go towards treating everyone, regardless of sexual orientation, in the same way. That has been a principle from which we have not detracted once. We have not detracted from that principle once. Not in election campaigns. Not in public pronouncements. Not in any part of the debate which we had in this House in response to the Private Members' Bill which was introduced by the Hon Mr Feetham. Not once did we detract and therefore I resent, Mr Speaker, and I reject what is quite clearly a false accusation which is made for pure political machination and for political purposes. It is made, quite simply, to detract from their own infighting and disagreements, because we have a situation where the Hon the Minister for Justice gets up in this House and clearly gives us the impression that he believes we have a law which is discriminatory. The words, before he gets up and corrects me as he did the last time, he used were "this probably offends the Constitution". When somebody, a politician or a lawyer says, "this probably offends the Constitution", it means that he believes that it offends the Constitution. So the Minister for Justice, taking off this official hat and trying to don a private capacity hat, if that is possible, but sitting in his safe chair as Minister for Justice, tells us in a private capacity that he believes

we have a discriminatory law. We have disagreements, because we have Mr Montiel and I seem to recall we have Mr Netto. I cannot remember whether there was anyone else. So forgive me. But certainly at least two members of the Government agreed with the Hon the Minister for Justice. Not the Chief Minister, of course. The Chief Minister gets up and makes this bold accusation that we are betraying our principles and we are voting against our principles. I have described that as a false allegation, and it is quite simple to demonstrate that it is a false allegation. There are two issues here at stake. One is the issue which the Government has now chosen to put before the court, and in case there was any defect in the proceedings they have started, we have now this Bill which has now become law today, which allows this other avenue of the declaratory relief as explained by the Hon Minister for Justice earlier. So we have a matter which has been brought before the court for a declaration of incompatibility. That principle has absolutely nothing to do and we believe that it is right, that the court should declare that the law we have, as it stands, is incompatible with our Constitution because we said so and we have pronounced ourselves publicly on that. The Hon the Minister for Justice has also pronounced himself publicly for that. It is somewhat ironic, as an aside, that we have the Minister for Justice today proposing a Bill which facilitates that process. So facilitates the process of the Chief Minister taking something to court with which the Hon the Minister for Justice disagrees. So it facilitates the Chief Minister going to court asking for a declaration of incompatibility or compatibility when the Minister for Justice believes that this law is incompatible with our Constitution. That is ironic and I would have thought might well cause the hon Member a little bit of embarrassment. But the point at stake in those proceedings is quite different as the hon Member well knows. Is quite different to the point that we debated when the Private Members' Bill came before the House, and the hon Members are well aware of this. The issue for determination now and the point of principle at stake is whether there should be equalisation. Whether it is at 16, 17, 18 or 25, the principle is the same. That is the point that is being taken to the court. That is the point that the original Motion addresses, and that is the point with which we agree as a matter of principle and we will defend and continue to defend inside this House and outside this House. The only thing that the Private Member's Bill did was to seek to equalise the age at 16. It did not do anything else. The hon Member did not present a Motion setting out a point of principle on equalisation generally. The Bill was specific, to change the law, to amend the law to equalise at 16. That is all it did, and I challenge the Chief Minister who has said, on more than one occasion, that we have betrayed our principles. I challenge the Chief Minister to find one occasion when members of this House or I have said publicly, 16 is the right age. Where have we said that? Where have I ever said that? How can the hon Member dare publicly accuse me because in tainting this side of this House with this brush he is accusing me personally of betraying my principles, and the hon Member confirms that that is correct. So, can the hon Member point anywhere where I have said that 16 is the right age, and therefore conclude from that, that in voting against the Private Members' Bill, which only had the effect of making 16 the equalised age, that I was voting against my principles. It is a false accusation and the hon Members know it. They do it for political purposes. For political machination, and only to deflect attention. To deflect the smoke away from their own internal disagreements and tangles that they find themselves in. Now we have a Motion, so I would hope that the hon Member is sufficiently politically honest to recognise that there is that distinction between the principle involved, which he accuses us of betraying, and which we have never betrayed, and the specific issue on which we have said, what is needed is public consultation, because I do not know whether 16 is the right age. I would like to know what the community thinks. Might be 16, might be 17, might be 18. What this amendment does and as the hon Colleague Mr Picardo has said, although we will abstain, we certainly do not disassociate ourselves with the sentiment behind this amendment that all laws in Gibraltar should be in full compliance of all human rights established in the Constitution and the European Convention of Human Rights. It is ironic that the Government is proposing this Motion which refers to laws when the Government itself engages in

discriminatory practices. When the Government still has policies in place which are discriminatory in nature, and only this week have the Government been told… The Government have been told loud and clear by the highest Court of the land, they may engage in discriminatory practices on the grounds of sexual orientation. That is what the Privy Council has found in a judgement issued this week. How much has it cost the tax payer? Tens, hundreds of thousands of pounds for this matter to come before the Privy Council. For the Privy Council to have to tell this Government that the policy of the Housing Allocation Committee, in denying joint tenancies to people who have a stable long-term interdependent relationship should have equal rights. Why does this Government pursue these matters? Why is this Government now involved in spending other tens, possibly hundreds of thousands of pounds in taking the matter to Court, to be told what is obvious? To be told what we believe the Chief Minister has already been told because we know he has been given advice. He has refused to share that advice with anyone. Is he going to withhold this advice from the Court? Is that not a relevant document? Is he going to claim privilege? What is the public interest in claiming privilege when there is a document, an advice from a senior lawyer, which assists the Court? There is no public interest in that. There is only the partisan political interest of this Chief Minister who is only doing this for political purposes to appease his lobbyists that he does not want to give the impression that he agrees that there should be equalisation. So he wants to be dragged to this Parliament, kicking and screaming, saying "I am being dragged against my will". "I do not agree with what is being done". "I disagree fundamentally with the Minister for Justice, but I am now being told by the Supreme Court that I have to do it". He knows he has to do it. Let him have the political bottle to do it now. What we are experiencing with this, without the Government's support for this Motion, is a sign of extreme political weakness. What Gibraltar needs is leadership. What Gibraltar needs is a Government, a Chief Minister that grabs the bull by the horns and does not pass the buck to the Supreme Court or anybody else. When we have people in Government who have said, before this House and publicly, that we have a law that discriminates and ought to be changed, what is wrong with supporting a Motion which says precisely that? Why do they not have the courage of their principles to support a Motion that says, "Laws must provide, we have to provide legislation with equalisation in respect of the age of consent". Are they not betraying, shamefully, their own principles? As regards consultation, is this not a matter that the Chief Minister himself has recognised may be necessary? Why do we have this charade of having to go to court for the Chief Minister to be told, what he has already been told on advice, and what he has already been told by his own Minister for Justice, who should know about these matters? Then for the Chief Minister to tell us, "once we have that determination from the Courts, we have to consider the age, and that may be a matter for consultation. That may be a matter for a Referendum". Well, that is precisely what we have been telling the hon Members from day one, in this House, in response to the Private Members' Bill. That the principle is agreed but the age has to be determined and we need consultation. Who is betraying their principles? What this House needs is political maturity, political honesty and political responsibility. That is only achieved by the hon Members opposite recognising that what we have done throughout in this whole process has been honest, mature and responsible and in accordance to principle. Whereas they, in particular those who believe that we have a discriminatory law, are now abandoning their principles and taking refuge behind these court proceedings and a statement with which we agree, that all laws should be in compliance with human rights, but which does not take the matter far enough, because it is not a statement of principle that we need equalisation on the age of consent. We stand by that.

MR SPEAKER:

Does any other hon Member wish to speak to the amendment?

HON D A FEETHAM:

The hon Gentleman speaks about weakness, weakness in the Government's position. I have to say that I have never heard such a weak analysis of quite serious matters of principle emerging from the Opposition benches as I have heard on the debate on this particular Motion today. What the hon Gentleman is really saying is this, he says, "you need to distinguish between the principle involved", when he is talking about the Private Members' Bill which is relevant to the Motion, "you need to distinguish between the principle involved and the specifics". "We all agree with the principle of equalisation, but then again we did not agree with the specifics". What he is really saying is and this is really underpinning the entire policy of the Opposition on this particular issue, "we are quite prepared to pay lip service to the principle of equalisation but when we get the first opportunity in this House to place homosexual men on the same footing as lesbians and heterosexuals have been for the last 120 years, we fluff and we duck the issue". That is what they have done. Let us not lose sight of the fact of what the Private Members' Bill did. The Private Members' Bill, what it attempted to do was to place homosexual men on the same footing to where heterosexuals and lesbians had been for 120 years. That is why we chose on this side of the House, those who supported the Private Members' Bill, 16 as the appropriate age. Now, the hon Member, the Leader of the Opposition, supporting or justifying having voted against the Private Members' Bill, he then says, well you see, and I quote "16 seems to worry a lot people". Well, Mr Speaker, 16 has not worried anybody for as long as we were talking at 16 for heterosexuals and lesbians. So therefore, what he is really saying is that he is concerned about 16 for homosexuals. [*Interruption*].

HON CHIEF MINISTER:

You voted with us.

HON D A FEETHAM:

When the Leader of the Opposition………

MR SPEAKER:

Order. Order.

HON D A FEETHAM:

Well at least we are all having fun Mr Speaker. When the Leader of the Opposition talks about consultation, let us consult. What he really is talking about is, let us consult on whether homosexuals should be reduced from 18 to 16. It is inevitable because there has never been in Gibraltar a popular movement for increasing the age of consent from 16 to 18. He is betraying the very same people that he professes to be representing and advancing the rights of … because it is inevitable that when you look at a consultation process on this particular issue, for as long as homosexuals are not on the same par as heterosexuals, that you are going to be focussing on whether we should be reducing homosexuals from 18 to 16. It would have been different, for instance, if the hon Gentleman would have said, which would have been, in my view, far more logical, "we are going to support the Private Members' Bill reducing it to 16 but our view is that now we should consult on whether the age of 16 for everybody is too low". But that is not what they are saying. The sole motivating factor for consultation on the age of consent must be because they do not want to reduce from 18 to 16 for homosexuals or because in Gibraltar there is an element of public opinion that do not want to reduce homosexual age of consent from 18 to 16. That must be inevitable. In my view, that is a betrayal of homosexual men in Gibraltar.

HON CHIEF MINISTER:

We must have debates of this sort more often Mr Speaker. It brings some sparkle into the proceedings of the House. Well, a valiant but wholly unpersuasive effort by the hon Members Opposite to once again disguise and escape from their extraordinary act of political hypocrisy and betrayal of people whose vote they seduced on the basis of the expression of one view which they then declined to consummate at the very earliest opportunity that they had to do so. There is no escaping that. Even though the Hon Mr Picardo wants to escape it by keeping the volume low because he was worried that I had raised the volume of the debate. Even though his colleague Mr Licudi wants to try and escape it by shouting from the roof tops and raising the volume even higher than I have done so. So there is clearly… I know what the divisions are on this side of the House about this issue of conscience. What I do not know, and I do not even know if they know what the differences of policy there are on that side of the House about the appropriate volume in which Parliamentary debate should take place. Now, it does not surprise me that the Hon Mr Picardo thinks that the Government's position is a device, because I do not think the Hon Mr Picardo would recognise a principled position if it hit him like a 15 ton juggernaut. I do not think the Hon Mr Picardo knows the difference between a position based on principle and a position based on political expediency, because I do not think he cares about the difference. The Government's position as almost the entire population of Gibraltar by now knows, except apparently him, could not be camped on a more principled position and it is no point the hon Members trying to score political points by saying, there must be divisions, there are divisions. It is obvious there are personal divisions on this side of the House. We have said so ourselves. I have said so. Of course, there are personal differences of opinion on this side of the House on this issue of conscience. Why they keep on saying that as if this was a very damaging political thing. I suppose it must mean that on that side of the House the Hon the Leader of the Opposition tells them all how they have got to think and they all go away and think it and they are not used to be allowed to think anything other than what the Hon the Leader of the Opposition thinks. That is the only explanation that I can think of for their apparent consternation at the fact that there are on this side of the House different opinions on matters of conscience. Now, the Government's position could not be more principled and it is this. There are members on this side of the House who personally believe that the age of consent should be equalised at the age of 16 which is what it has been for all other sexual categories for as long as we have had laws. There are people on this side of the House who are opposed to the lowering of the age of homosexual consent to 16, and they are their personal views, to which they are entitled, all to be distinguished from the Government's policy which is that it has not reached a policy that the homosexual age of consent should be reduced to 16 but believes that the laws of Gibraltar should comply with the European Convention of Human Rights and the Constitution. My personal position which I have also explained in this House and he tries to embarrass me, well I do not find it at all embarrassing, is very simple. I am opposed to the lowering of the age of consent to 16 and will only do so by compulsion of law. It cannot be a more principled position because we politicians are not entitled to have our personal views prevail over the law, and therefore if anybody wants me …

HON G H LICUDI:

If the hon Member will give way!

HON CHIEF MINISTER:

No. I will not give way, and therefore, if anybody wants me to vote for a law that says that the homosexual age of consent should be reduced from where it is today, I will not do it unless I am compelled by a ruling of a court of competent jurisdiction to do so. It is as simple as that. That is my personal position but there are other members of this House who regret that their votes to achieve that very same thing when the House had the

opportunity to do so were frustrated by the refusal of the hon Members opposite to vote with them because by now this could already be the law, despite the omnipotent, the allegedly omnipotent Chief Minister's desire to control everything and to impose his will on everything. So, on the one occasion, according to them, unique, unprecedented and rare, where the Chief Minister allows his view not to prevail, they gang up against their own consciences and their own principles to defeat it from happening and that is the inescapable reality of what has happened here. Therefore, for the hon Members to insinuate that the Government does not have a principle, that this is a device, it is not a device. Of course the Government is seeking ways forward which allows it to do what the law requires it to do if the law requires it to be done, despite the fact that there are members of this House who have problems of conscience with doing it. It is as if the hon Members are seeking to oblige those members on this side who have a problem of conscience to nevertheless breach their conscience as a requirement for complying with the law. That is what their position looks like. That is the device. Instead of supporting delivering this result to the homosexual community that they have been promising it to for years, they would rather wait to see if they can force the Chief Minister and other members of this House to have to act voluntarily against their conscience and it is frankly a shameful tactic. It will not work but do not describe our position as a device and unprincipled. Our position is entirely clear and entirely principled, unlike theirs who, and I repeat it, and I will take the Hon Mr Licudi's challenge again, to explain to him what he challenged me to explain. The hon Members, I repeat it, the hon Members who for years and decades, because they think it is part of their left wing doctrine, have been of the view that homosexuals should be in the same position as non-homosexuals chose, as a matter of cold blooded, conscious, political calculation, to prevent that from happening because they thought that they were causing internal, divisive, political problems for the party of Government. There is nobody in Gibraltar who does not think it and it is to the shame of the Gay Rights Movement that they applied more value, and indeed they have lost a lot of credibility, both locally and internationally, that they chose to apply greater premium value to their cuddly political relationship with the GSLP but to the principles of their supposed to be representatives. Certainly, as far as the Government is concerned, the Gay Rights Movement in Gibraltar has lost, as a result, a huge amount of interlocutory credibility with the Government for that politically motivated abrogation of their principles. So, this new Motion, amended Motion, is not a retrograde step because it is wider than theirs. If they are right, whatever the law requires on this question is encapsulated in this Motion together with everything else that the law may require in terms of human rights. The hon Member said that the House was bound not to legislate in breach of the Constitution and in breach of human rights. Well, entirely correct, and then I ask myself, so why did they vote just an hour and a half ago against the Bill that was allowed to allow the Government to make sure that the House would never have to be in a position to legislate in breach of the Constitution. It makes them so unprincipled, so ad hoc, so word of mouth, is their political position adopting, that it takes no more than two hours to expose the devices which motivate their voting decisions. Never based on principle! Always based on what they think at that precise moment of that precise day, is the most politically, tactically, expedient vote to cast. Never based on principle! If the hon Member really believes what he said about the House being bound not to legislate against, he should have voted in favour of the previous Bill which gave the Government the power to test the Bills, would test the Bills before the House votes, thereby making sure that the House would not have to pass laws that were in breach. The problem with the hon members is that… I do not see why we should all suffer the consequences of the continuous power struggle that rages within the GSLP to decide who is going to succeed the leader. Well, the reality of it is that what Gibraltar needs is not leadership which it does not have, Gibraltar already has strong leadership. What Gibraltar needs is for the GSLP to decide once and for all on its leadership so that we do not have this constant tweedle dee and tweedle dum act between the two contenders. Mr Speaker, but given that the hon Members insist on making this House preside over this unseemly power

struggle between the two colleagues, I would rate the Hon Mr Licudi's political performance this morning, seven out of ten, and the Hon Mr Picardo's, Mr Speaker………

HON XXXXX:

Point of Order, Mr Speaker.

MR SPEAKER:

Order. Order.

HON CHIEF MINISTER:

………The Hon Mr Picardo's, three out of ten.

HON C A BRUZON:

What is the relevance of all this to the amendments to the Motion.

HON CHIEF MINISTER:

Well, relevance has nothing to do with whether they like what I am saying or not. Now, the hon Member said that what Gibraltar needs was leadership. This is the Hon Mr Licudi, another example of how it takes not more than 15 minutes to demonstrate the simple emptiness, the simple unprincipled position, that they adopt at the moment that it suits them. What Gibraltar needs is leadership, not to pass the buck to the Supreme Court or anyone else. This was not five minutes after he had said that they did not know whether it should be 15, 16, 17 or 18 and they wanted to ask the people to know what position they should adopt. Well, if I cannot pass the buck to the Supreme Court, and that is lack of leadership, well is it not the same degree of lack of leadership that he, despite offering himself as Government to the people, has no apparent view on whether it should be 16, 17, 18, 19 or 30, and will find out when he sticks his head out of the window and ask the people… What is he going to do when half of them say one age and the other half say the other, is only that sort of schizophrenic problem……… will be some of the problems that he will have to resolve. But, in the meantime, that is not lack of leadership and that is not passing the buck. A complete absence, apparently, of view on his part as to what the position should be. It is not us that lack leadership, it is them. It is not us that lack a clear position, it is them. It is not us that lack a principled position, it is them. Of course, the problem with this leadership struggle is that the reality is that the present leader thinks neither of them is suitable, because he reckons he has got to hang around to make sure that neither of them does anything crazy if they get elected leader. So this is a real problem, and they have the gall to call for leadership from the Government when they cannot even lead an Opposition party. Well, I think that that is a bridge too far, and from that stance to call for political honesty and for political maturity when there is not a shred of honesty in their position. First of all, they choose to sacrifice an objective which they claim to hold dear. Vote against it in order to cause the Government difficulty, and then when the Government moves this agenda forward by some other means, they oppose that as well, and when the Government says, "I am going to ask the court to tell me what and to what extent the existing law is unlawful", they say that we lack leadership and are passing the buck. When we ask them what is their view, they say, "we do not know, we are going to ask the people". Well, they have got a fat chance of getting 30,000 people in Gibraltar to express one view for them. So there is no changing the fact that they are going to have to……… Yes, but that is my position, not theirs. It is true that repetition does not enhance the truth of things but it is also true that repetition does not reduce the truth of things. The hon Member may not like repetition because they do not want to be constantly reminded of their lack of principle and of the betrayal that they have inflicted on the gay community of

Gibraltar. But I can repeat it as often as I like, because it is true. It is absolutely true, and the Hon Mr Licudi's attempt at political gymnasia to try and extricate are completely unpersuasive. Completely unpersuasive! What we are saying is not a false accusation. What they have done and what we have accused them of doing is to constantly promise, and not promise for political expedience, promise because they said it was their conviction, their ideological conviction that homosexuals should not be discriminated against. Well look, we have had certain laws for many years and if somebody says, "look if everybody in Gibraltar is paying five pence for a loaf of bread, and there is a category of citizen who are being charged ten, and the Opposition comes out for 15 years saying, we think it is wrong, there should not be discrimination", clearly what they are saying is that the people who are being made to pay ten should be allowed to pay whatever everybody else is paying. It does not mean that the people who paying five should have to pay ten as well. I do not think that there is a single gay in Gibraltar or a single lesbian in Gibraltar or a single heterosexual in Gibraltar, who has ever believed that when the hon Members were professing support for the Gay Rights Movement, what they were actually saying is that everybody else's age of consent should be raised and not theirs. Do they really think that anybody in Gibraltar interpreted their subscription to those principles as meaning that? Not even they could believe that. It is just politically expedient for them because what they are trying to do, back to the device, is to extricate themselves from this debate without offending gays, which they have already done, without offending lesbians and without offending heterosexuals either. So we do not want to lower one because it offends the other. We do not raise the other because it offends the one and then there are lesbians in the middle and they will be affected whichever way it goes. Well, I am sorry. This is a real catch twenty-two predicament that the hon Members have put themselves in. I do not claim left-wing credentials but certainly other organisations in Gibraltar that are based on left-wing credentials have come and made the same analysis as I am now making of the hon Members refusal to vote in favour of the Hon Mr Feetham's Private Members' Bill. So, the hon Member challenged me, "when have I betrayed the principle at 16?" Look, the hon Member has never expressed the principle that it might be achieved by lowering it down. This is the whole essence of the point. That by any objective, honest analysis of their political position over the years to which he has subscribed as a member of a party, and with which he went to an election with certain remarks in the Manifesto, that puts out political statements and has bilateral meetings with the Gay Rights Movement and tells them things. He has therefore also personally subscribed to the view that everybody else understood that equalisation should be downwards and not upwards or in the middle. So, of course he has betrayed the principles. Unless he honestly can put his hand on his heart and say to himself that when he has coupled his personal political wagon to the GSLP train policy on this issue, he can honestly say to himself that it was a reasonable interpretation of the unspecified, the xxxxx policy of the party was not that homosexual age would be lowered to be the same as everybody else's but that everybody else's would be raised to meet the homosexual age. Does the hon Member really, can he really honestly say to himself, yes, that is what the GSLP has meant over the years when it has spoken of the need to eliminate the discrimination of homosexual men and to bring them into line with the rest, so that people are not discriminated against. It is incredible, and I do not believe that the hon Member can honestly answer that question to himself in the way that he would need to be able to answer it to himself in order to make good his accusation of me that I have made a false accusation against him. So, policies that rely on public consultation are never policies based on principle, ideology or view. I have a very strong view on these matters, personally, but on matters on which I have a very strong view that I want the Government to do, I did not go out and ask the people, I say to the people you voted me in office. If I exercise judgements, adopt policies and pass laws that the community as a whole does not like, I stand to be removed from office at the next election. But Government political leaders, political leadership of the sort that he calls for, does not consult every member… that would go the Swiss route. Yes, I am willing to consult if I am obliged to do something here.

I am willing to consult because I do not have an ideologically based view of the need to equalise, but the hon Members have been articulating an ideologically based view for years which is tantamount to the view that the age should be equalised downwards.

HON G H LICUDI:

Would the hon Member give way?

HON CHIEF MINISTER:

Yes, I will.

HON G H LICUDI:

This issue which he has mentioned now and he mentioned before about compulsion of law. He obviously recognises that the court will not assist him on that. The court will not tell him it has to be equalised at 16. So, by analogy with his own argument, is he saying that if the court tells him the law is discriminatory, it has to be equalised, he is now going to consult and he is going to contemplate the possibility of increasing what he is accusing precisely us of not being clear about. Let us be clear as to the Government's position. Is he going to ask the people……… Is he expecting everybody to believe that he is going to be bound by a process whereby he is contemplating the possibility of increasing the age of equalisation to 17 or 18? Is that what he is asking us to believe that that possibility exists as a result of this consultation process?

HON D A FEETHAM:

Mr Speaker, may I?

MR SPEAKER:

I think the hon member………

HON CHIEF MINSITER:

I will give way to him, yes.

HON D A FEETHAM:

May I say this, that, in fact, I could be wrong on this, but I do not necessarily agree with the hon Gentleman's analysis that if the matter that comes before the court, that the court necessarily has to say, "you need to equalise, you need to equalise 16, 17 or 18". In fact, there is an argument that if the court comes to the conclusion this is not constitutional it is precisely because heterosexuals and lesbians at 16 and it could conceivably say, "you need to reduce from 18 to 16". So I do not necessarily agree with the hon Gentleman's analysis.

HON CHIEF MINISTER:

I do not mind answering the hon Member's question hypothetically. It is hypothetical because his whole question was predicated on the premise that the court is bound to find grounds straight down the middle. But that is not what I have……… What I have told him is not what he was deducing from my remark. What I have told him is that I personally would not vote for the reduction of the age of homosexual consent unless I was under a legal compulsion to do so. That is what I have said and that is my position and it will remain my position and that is all that I have said so far. Now, I have just one more point to make in response to the hon Member. Of course, it is another example of the way he hops around contradictory positions when the moment suits him. "You see, the Government", which he was at that moment in time trying to

portray as a serial breaker of human rights, particularly human rights based on sexual orientation because obviously he thinks that we sit in our offices all day machinating ways to oppress people on the basis of their sexual orientation. "You see, only recently the Privy Council has xxxxx the Government," in referring to the lesbian housing case, "clear on the grounds of discrimination. These are policies that the Government has……… and the Privy Council has told how much money, it must have been obvious to the hon members." Well look, Mr Speaker, it was not obvious to the High Court Judge. It was not obvious to three Court of Appeal Judges and it was not obvious to the GSLP who wrote the Housing Allocation Rules with that distinction in it. It is no good the hon member telling me how … I am not the author of this rule. They are. The GSLP did these rules. I did not do these rules. The rule, since he wants to know, that the Housing Allocation Committee does not give joint tenancies to unmarried people. That is not of our creation. What the Privy Council has just put down as being a breach is nothing that is either obvious to me but we xxxxx and it was not obvious to them when they were in Government because they wrote it I am told. Well, that is the position. In all democracies around the world, Governments are adjudicated against sometimes and in favour sometimes. It was only two hours ago that the hon Member was saying that the right way for this to be established is precisely for Governments to be taken to court. So before it was right for Governments to be taken to court and not to give the Government the chance to test constitutionality of its own Motion and now, an hour and a half later, when it suits him, how terrible it is for the Government to allow itself to be taken to court and waste tax payers money. Well, it seems to me that what the hon Member simply wants to take is whatever opposite view is the Government's position at that time. That is all. That is all they want to do. They do not want to help us establish of our own Motion and when we cannot establish of our own Motion… Does the hon Member believe that the Government should simply change the laws of Gibraltar on the basis of the first NGO pressure group that alleges that they are unconstitutional and unlawful. This is not a possible way of running the affairs of Gibraltar. What is clear is that the hon Members opposite will align themselves to whoever and whatever cause at that moment of time is aligned against the interests of the Government. That is all. That is the only common thread and the only common denominator that lies at the core of the hon Members political tactic. They offer no policies. They offer no alternative vision for the governance of Gibraltar. They offer no constructive criticism of the Government's policies. Everything is simply, whatever the Government is building, whatever the Government is doing, whatever is being argued against the Government, take and support the opposite position to that that the Government is taking. That is all they know how to do. That is all they do and that is all they offer Gibraltar which is why when they come out on their party political broadcasts saying that it is time for change, the people of Gibraltar know that it is never time for the wrong change.

Question put in terms of the amendment proposed by the Chief Minister.

The House voted.

For the Ayes:	The Hon C G Beltran
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon D A Feetham
	The Hon J J Holliday
	The Hon J J Netto
	The Hon E J Reyes
	The Hon F J Vinet
Abstained:	The Hon J J Bossano
	The Hon C A Bruzon
	The Hon N F Costa
	The Hon Dr J J Garcia
	The Hon G H Licudi
	The Hon F R Picardo
	The Hon S E Linares

Absent from
the Chamber: The Hon L Montiel

The Motion was carried.

MR SPEAKER:

Does any hon Member wish to speak to the original Motion as it now stands amended?

HON C A BRUZON:

Mr Speaker, may I ask you, I did stand on a Point of Order and I would like to be told whether it was valid or not valid. Do the Standing Orders only allow the question of relevance to apply to questions and answers implying that of course that, in other words my Point of Order was not really a Point of Order?

MR SPEAKER:

Well Standing Orders……… Well a Point of Order……… Standing Orders, my understanding is that all matters before this House must be addressed on matters of relevance really. But again in a debate of this nature, where does one begin to draw the line and say, that particular statement is relevant, that statement is not relevant. There was talk in the course of the debate about leadership or lack of leadership and then remarks were addressed as to leadership on another score. It is not entirely irrelevant and therefore I allowed it.

HON J J BOSSANO:

What must be obvious to anybody that bothers to listen to what is happening in their Parliament is that in this Parliament, I think particularly since the arrival of the member opposite in Opposition in 1991, whether you are on this side or that side, if you have the misfortune to be facing him and sometimes I imagine if you have the misfortune of looking sideways to him, you open up yourself to a huge attack on your integrity, on your honesty, on your principles.

HON CHIEF MINISTER:

You made those attacks. Not us.

HON J J BOSSANO:

No, Mr Speaker, I brought a Motion to the House which simply says that we in this House do not believe in having discrimination on grounds of sexual orientation and that there is a difference in my judgement, he may have a different view from me, but in my judgement there is a difference between discriminating on grounds of sexual orientation and having to cure that discrimination only and exclusively by reducing the age from 18 to 16. I do not think they are the same thing and therefore, if the hon Member can go on television and say, as he did on the last occasion that we debated this, that one of the things that he was considering was having a Referendum. He can consider a Referendum. We cannot even mention the word "consultation" because that shows we have got no leadership, no principles, no integrity and no nothing and that everything that we are doing here shows that we are betraying the Gay Movement. The Gay Movement that according to him is in cahoots with us, in order to make us betray them, presumably.

HON CHIEF MINISTER:

Correct!

HON J J BOSSANO:

Correct. Of course it must be correct. How else, what else could it be? It is possible that it could not be correct. That is impossible. In the world in which the hon Member lives, he is almost endowed with revealed truth which may appear to him and not to the rest of us. But he does not even conceive of the possibility that there could be honest, dissenting views from his. Betrayal! He is going to make an issue of betrayal! Certainly, if I wanted to go down that road, which I do not think is necessary or relevant, into the issue that we have got before us, I could take advantage to answer all the accusations of betrayal by asking him, what does he think of the views of the people that sit beside him there, and the views they held of him in the past. Have they betrayed all those views, when people went to the electorate asking them not to put him back in power because Gibraltar needed to be rid of him? People can change their mind. Or is it that they can only change their mind on his side. Or is it that we are here to debate one issue and that we should concentrate………

HON CHIEF MINISTER:

If you changed your mind say so!

HON J J BOSSANO:

Well no, Mr Speaker. We do not need to say, but I have changed my mind about this. What I can tell him is that if he says, we put in a Manifesto we will bring down the age to 16 or we will equalise the age of 16, he is lying, or he has not read the Manifesto. Because what it says in the Manifesto, going back to 2003, is that we will give people equal property rights, and equal property rights is what they have just been told by the Privy Council they should be given. So we put in our Manifesto we would give them equal property rights and he claims that we changed the housing rules in 1988, which in fact were there before 1988. If we say we agree that you should give equal property rights to same sex couples, we said it in 2003 and that is what we put in our Manifesto. We said people should not get, the state should not treat people differently because of their sexual orientation. That is the basic principle.

HON CHIEF MINISTER:

Correct!

HON J J BOSSANO:

But an issue that goes to court, which he wants to take to court is not whether the age of consent for a married heterosexual couple and for a same sex couple should be 16 but whether it is constitutional for there to be different ages. That is to say, I remember perfectly the arguments he put when we were discussing this before. He explained to me, which I was not aware of, that in fact the ruling that was being referred to was not a ruling that had necessarily universal application because it was dealing with the specific situation in Austria, I think he said, and that that was something that he was not convinced necessarily meant that we had a duty to equalise the age. So there are two different issues here. Our position is that we think the age should be equalised but that we acknowledge that in taking that step we need to consult more widely, and that is all we have asked him to do. He came out saying he was willing to consider having a Referendum and when we suggested here that he should consult more widely then he converts that into a censor motion against me into discussing the internal workings of our party. Well look, I am not interested in what competition he has or does not have. I can tell him I am only interested in one thing and that thing is liberating Gibraltar from his pernicious influence on our society. Every time he stands up and speaks, I am afraid all he does is, in fact, lower my opinion of him all the time. He seems to be totally incapable of rising to an occasion and actually assuming, for one moment, that it is possible for

people to think differently from him and not be traitors or dishonest. In his book that is not possible because he thinks he is always right and he is perfect. So when he says, "I want to go to court", this is not something, and I bring this in Mr Speaker because he has brought it in himself, he was saying that shows how dictatorial I am. Well, yes it does, because it is not just that you want to go to court to be told by the court whether the Bill that you bring to the House is incompatible with the Constitution, because you may be unsure, because you had conflicting advice, no. It is that you are saying that if we, the rest of the Parliament, feel unsure, we do not have the right to do what you have the right to do. Why? Why should we in the Opposition agree to give you a power that you want to limit to yourself and deny to everybody else in this Parliament? Are the laws of Gibraltar not the product of the Parliament and not just of the executive? If there is a Private Members' Bill you can stop it without having to go to court, but you cannot stop it on the grounds that the court thinks it is unconstitutional, because that is not an option open to the mover of the Private Members' Bill. Therefore all that I asked, Mr Speaker, all that I asked, before I brought down on myself that avalanche of insults was, "perhaps the Government ought to think a little bit about giving themselves more time and thinking a little bit more".

HON CHIEF MINISTER:

How reasonable you are!

HON J J BOSSANO:

The hon Member cannot escape the fact that those are the very words I ended my contribution with and what followed was the equivalent of a speech on a censor motion on me, and that is all I had said to him. Heaven help me if I had said anything more demanding than that. That he might think it worthwhile to have second thoughts.

HON CHIEF MINISTER:

Well, for a start, I have not said anything about what he has said. I have not said anything about what he has said. I have answered what his colleagues have said.

HON J J BOSSANO:

No, no. I am referring to the way that he has reacted to the contributions on the Motion which are the exact parallel of the way that he reacted to my contribution on the Bill on going to court and he has drawn parallels and contradictions between one thing and the other. I am saying to him, well look, here in the Motion I said perhaps you should consult more widely and you have already said on television that a Referendum on the age is something you were willing to consider. It cannot be so outrageous that I should suggest that. You say that there is a contradiction between the position that we have taken in the Motion and the fact that we voted against the Bill which gives the Government the right and the power to go to court to get an opinion of the court as to whether an Act passed by the Parliament is unconstitutional. Well look, I said very clearly that it was a good idea, that we welcomed the idea but that we would not vote for it if it was limited to the Chief Minister or a Minister approved by the Chief Minister. That was the only objection I raised and that makes me a traitor, unprincipled. All I can say is that, although I am sorry that he could not support my Motion, I am glad that the record of this Parliament will show that what we are voting now by unanimity is still my Motion. I commend it to the House.

Question put in terms of the original motion as amended.

The House voted.

The motion, as amended, was carried unanimously.

Absent from the Chamber: the Hon L Montiel.

ADJOURNMENT

HON CHIEF MINISTER:

Assuming that the Hon Mr Picardo continues to subscribe to the warm sentiment of festive spirit with which he finished his first intervention, they are warmly, warmly reciprocated in favour of himself and all his colleagues on the other side despite their view of my debating techniques and my view of theirs. So, Mr Speaker, I now wish the House and Mr Speaker, Mr Clerk and all the members of staff of the Parliament, a happy Christmas and a prosperous new year and I move that the House do now adjourn sine die.

Question put. Agreed to.

The adjournment of the House was taken at 1.15 p.m. on Thursday 17th December 2009.