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
The Hon D A Feetham – Minister for Justice
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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 11.45 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 indisuputable 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.