REPORT OF THE PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

The Ninth Meeting of the Eleventh Parliament held in the Parliament Chamber on Thursday 18th February 2010, 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 12th October 2009 were taken as read, approved and signed by Mr Speaker.

DOCUMENTS LAID

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 ended 31st March 2009.

Ordered to lie.

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 2009.

Ordered to lie.

ORAL ANSWERS TO QUESTIONS

The House recessed at 12.22 p.m.

The House resumed at 12.30 p.m.

Oral Answers to Questions continued.

The House recessed at 12.45 p.m.

The House resumed at 2.30 p.m.

Oral Answers to Questions continued.

ADJOURNMENT

HON LT-COL E M BRITTO:

I have the honour to move that the House do now adjourn to Friday 19th February 2010 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 4.45 p.m. on Thursday 18th February 2010.

FRIDAY 19TH FEBRUARY 2010

The House resumed at 9.30 a.m.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

ABSENT:

The Hon P R Caruana QC – Chief Minister
The Hon D A Feetham – Minister for Justice

IN ATTENDANCE:

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

ORAL ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 1.05 p.m.

The House resumed at 2.30 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 Thursday 25th February 2010 at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 6.15 p.m. on Friday 19th February 2010.

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

The Hon S E Linares

ABSENT:

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

IN ATTENDANCE:

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

ORAL ANSWERS TO QUESTIONS (CONTINUED)

WRITTEN ANSWERS TO QUESTIONS

HON CHIEF MINISTER:

I have the honour to table the answers to Written Questions numbered W1/2010 to W87/2010.

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Government motion.

Question put. Agreed to.

GOVERNMENT MOTION

HON CHIEF MINISTER:

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

> "That this House approve, pursuant to section 3(3) of the Construction (Government Projects) Act 2009, the insertion of the following projects in Schedule 2 of that Act, namely:
>
> "3. Works relating to the construction of the new air terminal building and associated landside and airside facilities, including a separate airside customs, cargo and ground support vehicle building which would be affected by airport safety operational rules.
>
> 4. Works relating to the installation of an oil separator near the runway, and related works on the apron/taxiway.
>
> 5. Works relating to the section of the terminal building above the road leading to the Commercial Gate which would be affected by health and safety considerations." "

Mr Speaker, hon Members will recall that this House passed in July 2009 the Construction (Government Projects) Act to enable works on important Government projects to be undertaken during normally restricted hours when the Chief Minister considered this to be necessary or desirable in the public interest. Under section 3(2) of the Act, the Chief Minister may only issue a certificate in respect of construction works on projects listed in Schedule 2 of the Act. Under section 3(3) of that Act, the Chief Minister may place projects and or

construction works in Schedule 2 by notice published in the Gazette but shall not do so without the approval of Parliament by resolution of this House. Therefore, Mr Speaker, this motion is the motion seeking the approval of this House to insert these projects in schedule 2. This will enable me to issue a certificate to the contractor undertaking these works to be able to execute them during restricted hours as they require the use of high machinery cranes and special equipment for services which cannot be used while the airport is operational due to safety and logistical reasons. Mr Speaker, hon Members will recall from when we debated the Bill for the Act that there are provisions in the Bill to protect from noise, nuisance and things of that sort, et cetera, but in this case there are practically no residential areas nearby. This is north of the runway on the new air terminal site and therefore I regard the potential for anybody to be adversely affected by this to be extremely, extremely remote and I therefore commend the motion to the House.

Question proposed.

HON DR J J GARCIA:

Mr Speaker, simply to say that when the original Act was introduced in this House we voted against it and against the principles which the hon Member has been explaining. So we maintain the position and vote against the Bill.

Question put. The House voted.

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

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

Absent from the Chamber: The Hon J J Holliday

The motion was carried.

BILLS

FIRST AND SECOND READINGS

THE COUNTER-TERRORISM ACT 2009

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to provide for regulation of certain financial businesses through the imposition of counter-measures against certain countries, territories, governments, natural or corporate persons in connection with terrorist financing, money laundering and the proliferation of weapons of mass destruction; and to provide a framework for their enforcement, supervision and exemption, as appropriate, be read a first time.

Question put. Agreed to.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that this House do no adjourn to Monday 15th March 2010 at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 5.40 p.m. on Thursday 25th February 2010.

MONDAY 15TH MARCH 2010

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 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

ABSENT:

The Hon J J Holliday – Minister for Enterprise, Development, Technology and Transport and Deputy Chief Minister

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 Income Tax Rules on the Table.

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table the Income Tax (Deduction of Approved Expenditure on Premises in Tax Deductible Property Zone) Rules 2010.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE COUNTER - TERRORISM ACT 2009

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill sets out a piece of legislative intervention powers which is going to be replicated to the same effect in all of the overseas territories and the Crown dependencies of the United Kingdom. It is a Bill to further strengthen the arsenal of measures that Gibraltar is able to deploy against conduct which the international community has organised against, such as the financing of terrorism or the proliferation of nuclear, radiological, biological or chemical weapons. The principal tool for achieving the aims of the Bill is a direction that may be issued by the Minister with responsibility for Finance under clause 3 of the Bill. The hon Members will be aware that the whole thrust of the Bill is that where particular countries are thought to be engaged in terrorist financing or nuclear proliferation, nuclear, radiological, biological or chemical weapons proliferation, that the financial systems of other countries should not be used to facilitate that. Indeed, it is a form of sanction that everybody that adopts this regime will make sure that their financial systems are not used by those countries to facilitate the terrorist financing or the proliferation of the four types of weapons that I have mentioned. So, the principal mechanism that the Bill provides for is set out in clause 3 and it is the giving of these directions by the Minister for Finance basically to financial services providers, licensed and established in Gibraltar. The mechanism is conditional, activated upon the happening of one of three possible trigger events which are then set out in subsections (2), (3) and (4) of section 3. So, subsection (1), the Minister may give a direction under this Act if one or more of the following conditions is met in relation to a country. Subsections (2), (3) and (4) then set out the trigger events. The first trigger event is that the Financial Action Task Force has advised that measures should be taken in relation to the country in question because of the risk of terrorist financing or money laundering activities being carried on in the country, by the Government of the country, or by persons resident or incorporated in the country. The second possible trigger is that the Minister reasonably believes that there is a risk that terrorist financing or money laundering activities are being carried on in the country, by the Government of the country or by persons resident or incorporated in the country and that this poses a significant risk to the interests of Gibraltar. The third trigger event is that the Minister is advised by the Secretary of State for Foreign and Commonwealth Affairs that Her Majesty's Government in the United Kingdom reasonably believes that the development or production of nuclear radiological, biological or chemical weapons in the country or the doing in the country of anything that facilitates the development or production of any such weapons poses a significant risk to the interests of Gibraltar. There is a provision in subsection (5) to the effect that the direction is not exercisable in relation to an EEA state. Clause 4 sets out the class of persons who may be issued with a direction under the Act. Essentially, these are persons operating in the financial sector. The term "persons operating in the financial sector" is clarified in clause 5 whilst clauses 6 and 7 provide for further clarification as to the extent of the application of the Act by defining the meaning of credit and financial institutions in clause 6 and by providing for exceptions to clause 5 in respect of business on

occasional or very limited nature in clause 7. Clause 8 sets out the requirements that may be imposed by direction and these include particular customer due diligence requirements, enhanced ongoing monitoring, systematic reporting and limiting or ceasing business altogether each of which are set out in clauses 9 to 12 of the Bill. Under clause 9, the customer due diligence that may be imposed by a direction is of an enhanced nature and may for instance involve the identification of designated persons and information on the source of funds. Clause 9 further provides that such measures may be applied prior to or during a business transaction or relationship. Clause 10 provides for enhanced, ongoing monitoring of a business relationship. This may take the form of keeping certain documents and information up to date or the additional scrutiny and analysis of previous transactions. Clause 11 allows for a direction to require that a person systematically reports specific information on particular persons or periods or intervals which will be stated in the direction. Where information may be subject to legal professional privilege that information will not be subject to the provisions of this section. Clause 12 allows a direction to include a provision that specified transactions or business relationships cannot be entered into or where they already exist must cease. Where a direction is addressed to a particular person under clause 13, the Minister is obliged to have a copy of the direction sent to the addressee. Clause 13 makes provision for the duration of a direction which is one year from the day it is made. Directions are capable of amendment and variation. Extension beyond one year if required is achieved by the issue of a further direction. Publicity to the issue of a direction and any variation or revocation is to be effected by the publication of appropriate notices in the Gazette. Indeed Mr Speaker, in respect of this particular provision I have given notice to move an amendment so that variations or revocations are notified only to the affected person and not published in the Gazette. Where a direction requires the limitation of or cessation of business under clause 12, the prohibition may under clause 14 be relaxed to the issue of a licence. Licences that are issued, amended or revoked will be notified to the general public through the Gazette and also such other steps as are considered appropriate. Again, Mr Speaker, this is the provision for which there is an amendment. Clauses 15 to 24 fall under the heading of enforcement. Clause 15 provide for the appointment of persons who will be enforcing or giving effect to the provisions in clauses 16 to 20. Clauses 16 to 19 provide the basis for the obtention of information or documents. These will be in the form of written notifications issued by enforcement officers or under warrant issued by the Magistrates' Court. Clause 19 disapplies disclosure requirements to documents that attract legal professional privilege. Mr Speaker, at this point I would like to inform the House that in fact the intention is to appoint the Commissioner of Police and any Police Officer authorised by him in writing to be the enforcement officers. Clause 20 enables the imposition of a civil penalty on account of a breach of a direction or a condition of a licence issued under clause 14. Penalties are imposed by the Minister having regard to the circumstances and in amounts that are effective, proportionate and dissuasive. A right of appeal against the imposition of a civil penalty is set out in clause 22. Such an appeal is to the Supreme Court. Clause 24 allows for the recovery of any civil penalty to be pursued as a debt owed to the Government. Clause 25 creates the offence of failing to comply with the requirement imposed by a direction and clause 26 creates offences. Mr Speaker, clause 32 provides that to the extent that an activity is caught by both this Bill and the Crimes (Money Laundering and Proceeds) Act and there is a supervisory authority designated under that Act, it is the supervisory body that has a responsibility to monitor that its supervised entities are complying with any directions issued under this Bill. Guidance for the purposes of clause 25 may be issued by the Minister or a supervisory authority after having obtained the Minister's prior approval. Clause 36 states the extent to which the Crown is bound by the provisions of the Bill. Clause 37 provides a regulation making power in respect of which I have also given notice of moving an amendment. There are also under a letter that I have written to you today Mr Speaker several other amendments. One just making it clear that nothing in this Act or in any regulations made under this Act shall derogate from the responsibility of the Governor under the

Constitution for defence, internal security or under any other matter for which the Governor may have responsibility under the Constitution, and the hon Members will recognise that language from a similar clause that we introduced recently into the Civil Aviation Act. Therefore, Mr Speaker, in short and to summarise, the Act creates powers to issue directions when, as a result of one of three possible trigger events, it is desirable to curtail the ability of financial services operated in Gibraltar from doing business, financial services business with particular companies. The Minister issues directions. Those directions are monitored by the regulator if there is one. There are civil penalties for breach of those directions and the directions can go anywhere from extra due diligence when dealing, enhanced due diligence as it is called, with clients, through to obtaining greater detail of information, all the way through to an absolute prohibition from doing business against those with clients in those countries. Mr Speaker, 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 FIREARMS (AMENDMENT) ACT 2010

HON D A FEETHAM:

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

Question put. Agreed to.

SECOND READING:

HON D A FEETHAM:

I beg to move that the Bill for the Firearms (Amendment) Act 2010 be read a second time. Mr Speaker, this short Bill amends the Firearms Act by replacing references to the Governor and Deputy Governor with references to the Minister with responsibility for Justice. Indeed, all the references are to the Governor except for section 31 of the Act which requires permission in writing from the Deputy Governor before the importation or export of any firearms or ammunition to or from Gibraltar. Mr Speaker, quite apart from the fact that the office of Deputy Governor no longer exists, post the new Constitution, the real point about this Bill is that, post the Constitution, the Governor or his office should not have responsibility over these types of issues. Clause 2(2) of the Bill sets out the amendments to the Act replacing the references to the Governor. These are: (a) section 5(2) dealing with exemptions from certificate fees for certain clubs such as the rifle club and section 6(6) allowing members of such clubs certain exemptions from holding a certificate when engaged in activity as a member of such a club, for example, target practice. Hon Members will note that actual certificates continue to be granted by the Commissioner of Police; (b) section 14(6) which gives the Governor power to issue regulations, vary in schedule 2, setting out the particulars to be included in the register of transactions in firearms by firearms dealers; (c) section 8 subsections (1), (3), (5), (6) and 7(a) which deal with prohibited weapons and ammunition and

creates certain offences of manufacturing, selling, transferring, purchasing, acquiring or possessing the same without authority and also provides for exemptions to the same and the issuing and revocation of authority for the use of firearms in, for instance, theatrical performances; (d) section 19 subsections (1) and (5) which deal with the prohibition by order of the removal of firearms or ammunition from one place to another within Gibraltar or for export from Gibraltar; and (e) section 35 which is a regulating power currently in the name of the Governor. Clause 2(3) of the Bill makes changes to section 31 of the Act which deals with imports and exports of firearms and ammunition by changing the reference from Deputy Governor to the references to Minister with responsibility for justice. Clause 3 of the Bill makes transitional provisions allowing for authorities, permissions and approvals granted and regulations and orders made under the Act by the Governor and the Deputy Governor to be deemed to have been duly granted or made by the Minister with responsibility for justice. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

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

Question put. Agreed to.

THE INTERNATIONAL CHILD ABDUCTION ACT 2010

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to give effect in the law of Gibraltar to the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25th October 1980, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I beg to move that the International Child Abduction Bill 2010, be read a second time. Mr Speaker, this Bill gives effect in Gibraltar law to the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25th October 1980. The Hague Convention is concerned with children who are under sixteen and who have been abducted from or kept outside the country in which they are habitually resident. In fact, Mr Speaker, in this respect at Committee Stage I will be moving an amendment to change the references in section 12 of the Act from “resident” to “habitually resident” on the basis that it is the term that is used in the actual Convention. While this may occur in many different situations, the Convention is used particularly in relation to divorced or separated families where children who are taken from the country in which they live by one parent without permission of the parent who has custody of the child, so that those children can in fact be brought back to the jurisdiction in which they are habitually resident. It is also concerned with facilitating access to or contact with children in separated families where the parents live in different countries. Mr Speaker, this particular Bill, in many respects, builds upon other measures that we have introduced last year, for instance in relation to the Children Act. Hon Members may recall that under section 30 of the Children

Act, if one of the parents wishes to change, for instance, the surname of a child or indeed wishes to take the child out of the jurisdiction, he or she cannot do so unless that person has the written permission of the other parent, or anybody with parental responsibility, because it does not necessarily mean that it is only the parents, or alternatively, with leave of the Court. The exception to that is where a parent has a residence order in favour of that parent, or somebody with parental responsibility, they can take the child out without permission of the other parent, or without in fact leave of the Court, if it is for less than thirty days. The parent also with contact, not with residence, can also, in fact, take a child out of the jurisdiction during the period in which that person has a contact. So, if for instance, if a father has a contact order in his favour, he can take his child to Spain for the weekend because that is the period when the father has a contact order in his favour. Now this builds upon that in the sense that, of course, if the child is then taken out of the jurisdiction for longer though than those periods of time, effectively we are talking about an abduction situation, that is really what we are talking about. Then, of course, this Bill would allow for a mechanism in which those children are brought back within the jurisdiction. The Convention aims to secure the prompt return of children to the country in which they habitually live and to ensure that rights of custody and access under the law of one contracting state are respected in the other contracting states.

Now turning to the Bill, it provides as follows: Clause 3 provides for the Hague Convention to have the force of law in Gibraltar subject to the Act and Council Regulation EC 2201/2003. The Council Regulation sets out additional requirements as to how the Hague Convention is to be applied by European Member States. Clause 4 sets out who are the contracting parties to the Hague Convention and provides that proof of those parties may be given by means of information from the relevant website or indeed electronically. Clause 5 provides that the Principal Secretary of the Ministry for Family, Youth and Community Affairs shall be the central authority for the purposes of the Hague Convention and clause 6 provides the Supreme Court shall be the judicial authority in Gibraltar. Clause 7 provides for proof of documentation and evidence. Provision is made for the use of electronic communications to ensure that the Supreme Court and the central authority are able to respond quickly where a child has been abducted. Part II deals with applications for the return of children either from Gibraltar or to Gibraltar and the procedure for applications in relation to the facilitation of international access to children. Clause 8 deals with the applications for the return of a child who is in Gibraltar to another contracting state. It provides that applications may be made either to the Principal Secretary of the Ministry of Family, Youth and Community Affairs or directly to the Supreme Court. The clause also sets out the actions to be taken by the Principal Secretary where an application is made to him. Clause 9 deals with applications for the return of a child to Gibraltar. Applications for assistance may be made, again, to the Principal Secretary of the Ministry for Family, Youth and Community Affairs and the clause sets out the steps which may be taken. Clause 10 gives the Principal Secretary power to request information and clause 11 deals with facilitation of international child access. Part III concerns the powers of the Supreme Court. Clause 12, in relation to which I have already intimated that I will be moving amendments in due course, provides that the Court may order the return or non- return of a child and make such other orders and directions as necessary. It requires the Court to act in accordance with the Hague Convention and Article 11 of the Council Regulation and clarifies that a return or non-return order is not a determination on the merits of any custody application. Clause 13 allows the Court to make interim orders and allows for applications to be made without notice to any other party in cases of urgency. Clauses 14 and 15 deal with the situation where another Gibraltar Court is dealing with a matter regarding a child, for example, a custody application for residence or contact or a custody order has been made by a Gibraltar Court in relation to a child. I should intimate, in fact, to the House at this stage that very shortly, hopefully next week, we will be publishing four further Bills which will complete the Government's architecture in relation to reforms in the area of family law as far as primary legislation is concerned. There is

some work to do in relation to secondary legislation, in relation to Acts that we have already introduced but what the Government are going to be doing is vesting jurisdiction in relation to as wide range, in fact, virtually everything in relation to family law, in the family judge which is being appointed in the Supreme Court. So really some of this, in fact, will be academic post the introduction of those statutes. Clause 14 provides that other legal proceedings concerning the child are to be consolidated with the Hague Convention proceedings and prevents the making of, it says "a final order" in fact, I will be moving an amendment to delete the word "final" because, of course, one cannot make a final order in these types of cases when there is a Hague Convention case pending within the Courts. In fact, it is any other application for any order that would have to be essentially set to one side whilst an application under this particular Act is pending. Clause 15 provides that where a return order is made by the Supreme Court, any custody order made by a Court in Gibraltar ceases to have effect. Hon Members will note that the term "custody" is defined to include a residence order which is the term used in the Children Act. Custody order is, in fact, the term used in the actual Convention. That is why this particular Act continues to use that particular term. Clause 16 gives the Supreme Court power to require persons to give information about a child's whereabouts. That would, in fact, cover a situation where for instance the child has been taken out of the jurisdiction, assumed that the child has been taken by the mother, not necessarily so, but assumed that the child has been taken by the mother. The father is here in Gibraltar. He does not know where the child is but there may be relatives of the mother here in Gibraltar that may know where the child has been taken and the Supreme Court can make enquiries in relation to those people so that they tell the Court where the child has, in fact, been taken. Clause 17 deals with costs and clause 18 deals with the provision of documents by Gibraltar Courts. Part IV concerns the Royal Gibraltar Police. Clause 19 gives the police powers to detain children if they reasonably suspect that those children are being or are about to be removed from Gibraltar and sets out how such children are to be treated. Part V deals with the rules of Court, regulations, charges and legal aid and the schedule sets out the Hague Convention. The Bill, Mr Speaker, ensures that children and parents in Gibraltar will be able to benefit from the provisions of the Hague Convention and that in the unfortunate occurrence, thankfully very rare in Gibraltar, of a child being abducted from or indeed to Gibraltar, our law will enable a speedy and correct outcome. I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

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

Question put. Agreed to.

THE CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) ACT 2010

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to amend the Civil Jurisdiction and Judgments Act 1993 to make further provision in respect of EC Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends schedule 11 and only schedule 11 to the Civil Jurisdiction and Judgments Act 1993. That schedule makes provision in relation to Regulation EC No. 2201/2003 of the 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility repealing Regulation EC No. 1347/2000. Regulation 2201/2003 concerns the jurisdiction of national courts in relation to matrimonial matters and parental responsibility, the recognition and enforcement of judgments given in one EU Member State in another and also the Hague Convention on Child Abduction. In fact, hon Members may recall that we have already referred to this particular regulation in relation to the Children Act and also in relation to the Matrimonial Causes Act dealing in relation to the latter, for instance, to the grounds upon which couples can get divorced in other Member States and that we did last year. This Bill now makes further provision in relation to this particular Regulation by designating a central authority for Gibraltar as required by Article 53 of the Regulation. Under Article 53 of the Regulation, the central authority assists with the application of the Regulation in communications between EU Member States in relation to the Regulation are sent from and to central authorities. The central authority for these purposes shall be the Minister with responsibility for justice. In fact, it is the Minister with responsibility for justice because under section 7 of the Act the Minister is already responsible for transmitting applications under Article 31 for the recognition and enforcement in Gibraltar of a maintenance order to the appropriate court. So it seems sensible, in fact, to just simply have a continuation of that regime even though equally it could have been the Principal Secretary in my hon Friend's Ministry. Mr Speaker, the Bill also renumbers schedule 11 for ease of use and I commend the Bill to the House.

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

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

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

Question put. Agreed to.

THE FINANCIAL SERVICES (TEMPORARY ADMINISTRATION OF COMPANIES) ACT 2010

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to make provision for and in connection with the appointment of an Authorised Administrator to control the affairs of a company upon the happening of a Relevant Event; to provide for the functions and powers of the Authorised Administrator; 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, hon Members will, I am sure, have noticed that this Bill does very little more than replicate the terms of a set of regulations that were published in the immediate

aftermath of certain events that occurred or were discovered affecting the affairs of trusts and companies connected to a particular law firm in Gibraltar. In the immediate aftermath of that, it was discovered that there was no provision in the laws to cover the period between the suspension by the financial services regulator of the licence and the formal liquidation of the company. So, as of that moment, it was not lawful for anybody (a) to go in to just look after the clients' affairs, transfer their files to other firms if they wanted or even to do it lawfully because having suspended the licence under the Financial Services Act no one could go in and do financial services business or any business that required a licence. So there was a shortfall in both senses, that there was a lacuna, xxxxx so the Financial Services Commissioner has now suspended a licence. That entity cannot now therefore lawfully do the business that it was doing before, yet it still had clients that needed to be attended to and the directors et cetera were therefore no longer authorised to do that sort of business. Now eventually, the Financial Services Commissioner can move for the liquidation of the company and then a formal liquidator would go in. But for the interregnum there was nobody to hold the fort, so to speak. This required the Government to pass really emergency regulations as a stop gap measure. Although the Government believe that those regulations are entirely lawful, in the sense that sufficient vires exists under the sections that they were made under, the Government have taken the view, out of an excess of caution, to buttress those regulations in the same terms but with primary legislation backdated to the date so that no one can seek to challenge the lawfulness of what the authorised administrator, which the Financial Services Commissioner has put in, a local firm of accountants, has been doing to hold the fort from the time that the licence was regulated. So what has happened was that the licences of, I think, six or seven licence companies, which were all part of the same group, were suspended. The protection not just of the clients' interests but indeed of Gibraltar's reputation require that there should be somebody around to speak to clients, worried clients et cetera. So, regulations were put into place setting up a structure for that which basically was that the Financial Services Commissioner could put in a fit and proper person, in fact, he has put in a Chartered Accountant to go in there and to carry on dealing with the clients. Obviously, not doing new business but accepting clients' instructions, for example, to pass the business on to another firm, answering their questions, securing them the money, securing the assets, just holding the fort in the immediate aftermath. This set of regulations is the same but in primary legislation form. Now, there is already beginning to emerge a need for further measures like things to do with how we move from where we are today to a formal administration. Government are getting certain advice from the Financial Services Regulator and others about legislation. So, it may be that before very much longer we shall have to come to add provisions to this but that would be for another day and there will be provisions of a different nature in terms of further down the chronological timeline. However, Mr Speaker, I think it has to be said that of the many things that have to be learnt from the events of the last few months, lacuna in our legislation, I think is one of them. The Government are not willing to rush legislation except such as is necessary literally for fire fighting, in other words, for holding the fort. We are not in favour of bouncing into legislation in the heat of the moment. So, we will keep the legislation to a minimum to deal with the urgent aspects of this matter but I think it is inevitable that this House will, as part of the debriefing, washing up xxxxx, if I can call it that, from all of these events and in the aftermath of it so as not to be seen to be acting in haste. The Government will be bringing legislative proposals to plug some of the lacuna that have become apparent in our legislation affecting not just financial services activity but indeed elements of the regulation of the legal profession as well, which have also been found to be insufficient to respond to modern day pressures. Indeed, insufficient to properly respond to the close connection that there is in Gibraltar between the legal profession on the one hand and the financial services sector on the other which is perhaps a much stronger link than in countries which are not finance centres and all those issues need to be addressed. We will address them in slower order. At the moment, the Government respond simply to requests for urgent legislation to deal only with urgent

situations and always only if either the interests of clients or the interests of Gibraltar's immediate reputation are at stake. For the rest of it, the policy of the Government is to think about it carefully. Bring in to the House any additional legislation that may be required in a more considered fashion to give both Government and this House a proper opportunity to make sure that the legislation is what is required in the light of experience. Mr Speaker, I commend the Bill to the House. As I say, its principle purpose is simply to replicate in primary legislation what has been the case in subsidiary legislation for several weeks now. The effects of this Bill in clause 14 would be to repeal those Financial Services (Investment and Fiduciary Services) (Temporary Administration of Companies) Regulation 2010 that was promulgated a month or two ago. They will be replaced with this primary legislation to the same effect and hon Members will see that the language is the same. Mr Speaker, I therefore commend the Bill to the House.

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

HON F R PICARDO:

I am grateful to the hon Gentleman for the introduction he has given to this Bill. Of course, none of the comment that there is in this House should of course reflect on the extant case which has given rise factually to the need for this Bill. Mr Speaker, it is also right and we certainly agree that those facts may give rise to the need to make other legislative provisions and that that should be done with the benefit of reposed thought and not emergency action because we might legislate in haste and repent at leisure if we were to do that. So that certainly is something with which we agree. Mr Speaker, we also think it is right that, without doubting the legality, the propriety of having done this by way of regulation initially, it is absolutely proper that, where possible, primary legislation should deal with issues as sensitive as this and as important for the reputation of Gibraltar as a finance centre. Mr Speaker, as to the text, there is one comment on which I would be grateful if the hon Gentleman could give us an indication of the reasons why something has been done in a particular way. Section 8 deals with the liability of directors, officers and managers, and of course, directors, officers and managers are in a different position to employees in any company, in particular a financial services company. But sections 13 and 9 actually deal with directors, officers, managers and employees together. Now section 8 deals with liability for failure to follow instructions or in respect of omissions, in respect of the directions of the authorised administrator to directors, officers and managers. Employees are not included there. Our reading of this is because that section is designed to create personal liability, personal civil liability in the party failing to effect the lawful instruction of the authorised administrator. Therefore, it seems likely to us that the reason for keeping employees out of that section which creates civil liability but bringing them in to section 9 and section 13 and section 13 is the one that creates the criminal liability for failure to discharge the instructions in effect to act against the directions of the authorised administrator which does cover the employees. I would be grateful…… if that reading is correct or if there is another reason for employees having been left out of the ambit of section 8 which we may not have focussed on. Other than that, Mr Speaker, the Bill will enjoy the support of the Opposition.

HON CHIEF MINISTER:

Mr Speaker, the hon Member is entirely correct. That is indeed the reason. The Government felt that whilst it was appropriate that employees at any level of the organisation should be liable under criminal law for failure to do that which the law requires them to do, it would be wrong for employees who are not in a decision-making level of seniority to be made personally responsible for the financial consequences as a civil liability. In other words, you can say of a junior employee, the law requires you to do this and if you do not do it then you breach the criminal law and there are sanctions. All citizens are exposed to

the sanction of the criminal law. But if the law is going to say, and if you invoke, incur in this behaviour you are personally liable for the financial consequences suffered by others of your failure, the Government took the view that that very onerous consequence should not be imposed on employees at the bottom end of the organisation and should be reserved only for employees who are so senior directors, managers, officers, that they are in a decision-making xxxxx. They have the power to say, I am not doing that, I am not doing the other, I am not giving you this information. So, the hon Member's analysis of the reasons for the presence of employee in the criminal and not in the civil liability, are entirely correct and there is no other reason.

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 FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) (AMENDMENT) ACT 2010

HON CHIEF MINISTER:

I beg your pardon Mr Speaker, clearly the House has not been informed that this Bill and indeed the next two on the order paper are not being proceeded with because in fact their subject matter has already been disposed of by subsidiary legislation and I had assumed that the House had been informed of that. It is clear from the fact that the Clerk has gone to the trouble of calling the Bill that he has not. The Government are not proceeding with this Bill which is the third on the agenda nor items 4 and 5. So those Bills are withdrawn.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Counter-Terrorism Bill 2009;
2. The Financial Services (Temporary Administration of Companies) Bill 2010;
3. The Firearms (Amendment) Bill 2010;
4. The International Child Abduction Bill 2010;
5. The Civil Jurisdiction and Judgments Administration (Amendment) Bill 2010.

HON G H LICUDI:

Mr Speaker, before the House resolves into Committee, can I just ask for clarification in respect of the Bills 9 and 10 on the order paper. Are those being proceeded with or not?

HON CHIEF MINISTER:

Not today but they are xxxxx.

THE COUNTER-TERRORISM BILL 2009

Clause 1

HON CHIEF MINISTER:

Mr Chairman, just to alter the regime from one where the Bill commences automatically on the date of publication to the usual formula of words for the alternative process which is commencement on such day as the Minister appoints by notice in the Gazette. I therefore move that the words "and comes into operation on the day of publication" be deleted and be replaced with the words "and comes into operation on such day as the Minister may appoint by notice in the Gazette". Oh yes, and that the reference to "2009" in the Title should be changed to "2010".

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

Clauses 2 to 12 – were agreed to and stood part of the Bill.

Clause 13

HON CHIEF MINISTER:

Mr Chairman, on the third line of sub clause (1), the word "be" is missing before the word "sent". So it should read "must cause a copy of the direction to be sent to the addressee":

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

Clause 14

HON CHIEF MINISTER:

Mr Chairman, in clause 14(5) I am proposing an amendment to the effect that rather than have to publish the grant, variation or revocation of a licence in the Gazette that it shall only be necessary for the Minister to notify the applicant or licence holder as the case may be. So that the whole sub clause would read, "on the grant, variation or revocation of a licence, the Minister shall notify the applicant or licence holder as the case may be". Mr Chairman, the reason for this amendment is that some people believe that it is administratively too onerous to publish every detail of every licence, every revocation or every notification and that really it is unnecessary because the only person who needs to know is the holder of the licence.

Clause 14, as amended, was agreed to and stood part of the Bill.

Clause 15

HON CHIEF MINISTER:

Mr Chairman, in clause 15(1), the reference to "it" should be to "he" since we are talking of the Minister which is not a neuter.

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

Clauses 16 and 17 – were agreed to and stood part of the Bill.

Clause 18

HON CHIEF MINISTER:

Mr Chairman, in clause 18(4)(b), the reference to section 16 is an error, it should be a reference to section 17(1)(d). A reference to section 16 does not make sense.

Clause 18, as amended, was agreed to and stood part of the Bill.

Clauses 19 and 20 – were agreed to and stood part of the Bill.

Clause 21

HON CHIEF MINISTER:

Mr Chairman, in clause 21 a probably unnecessary amendment but just for clarity. In fact, there is only one offence created under this Bill and that is under section 25 but in clause 21(5) hon Members will remember that clause 21 relates to the power to impose civil penalties. But where it says, "a person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence in respect of the same failure", that should read "for an offence under section 25 in respect of the same failure". It does not alter the sense in any word because in fact section 25 is the only section that creates an offence but just so that it is clear that it relates to the offence under section 25 so that the sort of a double jeopardy rule is clearly established for the benefit of the person concerned.

Clause 21, as amended was agreed to and stood part of the Bill.

Heading of Clause 22

HON CHIEF MINISTER:

Mr Chairman, in clause 22 simply to delete "by enforcement authority" from the heading because in fact the enforcement authority is not the imposer of the civil penalty. The imposer of the civil penalty is the Minister and the Minister will not be the enforcement authority for policing purposes. I have already indicated to the House that the enforcement authority will in fact be the Commissioner of Police.

The heading of clause 22, as amended, was agreed to and stood part of the Bill.

Clauses 22 to 24 – were agreed to and stood part of the Bill.

Clause 25

HON CHIEF MINISTER:

Mr Chairman, in clause 25 just to use language which is more typical of our legislation, where it says in 25(4)(a), "on summary conviction to imprisonment for twelve months or the statutory maximum" the usual phrase is "a fine at level 5 on the standard scale". So, delete the words "the statutory maximum" and replace them with the words "a fine at level 5 on the standard scale" and indeed there is a comma which has appeared by way of printers gremlin after the word "to" which ought not to be there as anybody applying the rules of the English language will know.

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

Clauses 26 to 33 – were agreed to and stood part of the Bill.

Clause 34

HON CHIEF MINISTER:

Mr Chairman, in clause 34, there is a need to include in the things that the Minister or the supervisory authority with the Minister's prior consent may publish guidance, not just for the purposes of section 25, offences, as it presently says but also for the purpose of section 21 which relates to power to impose civil penalties. So the amendment is that after the word "of" in the second line, the following words should be added, namely, "section 21 (Power to impose civil penalties) and".

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

Clauses 35 and 36 – were agreed to and stood part of the Bill.

Clause 37

HON CHIEF MINISTER:

Mr Chairman, in clause 37 I have moved an amendment to delete the whole of clause 37(f) which is wider than it needs to be and is, in fact, unnecessary.

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

New Clause 38

HON CHIEF MINISTER:

Mr Chairman, here is a clause to make it crystal clear that nothing in this Act or in any regulations made under this Act shall derogate from the responsibility of the Governor under the Constitution for defence, internal security or any other matter for which the Governor may have responsibility under the Constitution.

The new clause 38 and its heading, was agreed to and stood part of the Bill.

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

THE FINANCIAL SERVICES (TEMPORARY ADMINISTRATION OF COMPANIES) BILL 2010

Clauses 1 to 9 – were agreed to and stood part of the Bill.

Clauses 10

HON F R PICARDO:

Mr Chairman, in clause 10, in sub clause 2, the language, "unless bad faith is definitively found to have existed" seems to have crept in. I think the use of the word "definitively" is redundant. Something is either found or not found. I do not know actually what it is intended to mean by the use of that word.

HON CHIEF MINISTER:

I think it is intended to signify the sense of inaccurable. In other words, until it has been found, the Commission shall unless bad faith is definitively found, in other words, it is not enough to incur their liability that it is found in the first instance, if xxxxx rights of appeal. In other words, when it is definitively found beyond further appeal. Then they become liable. That is the intention. It is not, in other words, that the immunity is not lost simply because bad faith is found at first instance when there may an appeal pending. That is all that the intention is. There is nothing. There is no sense beyond that.

HON F R PICARDO:

Then Mr Chairman, the other issue of concern is that clause 10 (1) really bestows the immunity on the administrator, his officers, staff and agents and then sub clause 3 says that the authorised administrator and all those people with him, officers, staff and agents are deemed to be officers, staff and agents of the Commission and there is already an immunity for members of the Commission, officers, staff et cetera. Why is it that given that, we felt it necessary to add an explicit immunity here and not simply rely on the immunity that exists in the principal Act?

HON CHIEF MINISTER:

Well Mr Chairman, of the two reasons I am going to give him, one no longer applies and that is that this is language taken from the regulations and there was doubt about whether the immunity could be extended by regulation given that the

immunity was itself given by primary legislation in the Act to which he is referring. So, for that reason it would not be necessary to do it here. But the authorised administrator here is really quite unchartered and unprecedented territory in Gibraltar and requires a fair degree of comfort for him and his staff. My personal view coincides with his own and that this is probably not necessary. But if those who are actually having to rely on the immunity feel that this puts beyond doubt that which they require to be absolutely certain before engaging in the work, I do not think that it does any harm to do it. At worst, it is repetition. At best, it gives them comfort and I do not think, unless he has a different view, it does any harm there. So that is the reason. But we had exactly the same issue when this section was being considered in our minds.

HON F R PICARDO:

I am grateful for that explanation.

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

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

Clause 12

HON F R PICARDO:

Mr Chairman, in clause 12(1) there is a reference to the Minister revoking appointments, or the Authority revoking appointments as alternatives and then, of course, the Supreme Court appointing a liquidator is the third alternative on which the appointment of an Authorised Administrator terminates. Sub clause 2 provides that the Authority shall not, in any way, revoke an appointment without the consent of the Minister. Therefore, my question is why bother having sub clause (1)(b). Should we not just have sub clause (1)(a) and sub clause (1)(c) and the Authority really becomes the agent for the Minister for Financial Services in these circumstances because it needs the consent of the Minister in order to invoke a revocation.

HON CHIEF MINISTER:

Well, if the hon Member reads clause 12 in connection with clause 4, there are two ways in which an Authorised Administrator could be appointed. One is of the Financial Services Commission's own motion but the Minister can also direct him to do one. In other words, these are things that deal ultimately with things which go straight to the reputational aspects of Gibraltar's reputation. There could be circumstances, I am happy to say it was not the case in this case, but there could be circumstances in which the Minister, who is responsible for the political aspects of reputation, thinks that an Authorised Administrator should be appointed and the Financial Services Commissioner does not. The Financial Services Commissioner remember has already revoked the licence and is really at the end of his role. Really, dealing with the aftermath is only just questionably part of the functions of the Financial Services …. Usually it moves on somewhere else. So, I felt that the Government ought not to be without the power when it thought it absolutely essential to put in an administrator. Now, if the administrator goes in under direction of the Minister, the Minister directs, it is still the Financial Services Commissioner that puts him in and chooses the person. In those circumstances he will see that clause 12 (2) says that, where the appointment was by the direction he cannot revoke it without the Minister's consent. So section 1 deals with something quite different. It does not deal … Section 2 deals only with the revocation in cases where the original appointment was by Ministerial direction. Sub clause 1 is in a sense the reverse of sub clause 2. In other words, where the Commissioner has himself appointed, by his own decision, and the Government believe that it is lasting too long. There is no longer justification for invoking this legislation and believes that the protection of this legislation should no longer be available and that the authorised administration, which creates an important intrusive regime…. I mean, it suspends

the powers of directors, directs xxxxx to who they must obey, that the Government should have the power to revoke that when it believes that the interests of Gibraltar require it. So, it is to deal with a different situation to the one where the Minister has directed the original appointment.

HON G H LICUDI:

Mr Chairman, just in relation to that. Does the first provision in clause 12(1)(a), does that not also deal with the situation where, following a direction by the Minister, the appointment has been made. In other words, there is a direction under clause 4 as we have seen by the Minister and upon that direction the authority "shall" appoint the Authorised Administrator. Then, where that happens, the Minister still retains the power to revoke under section 12(1)(a), to revoke that appointment.

HON CHIEF MINISTER:

Yes. The point is that I do not think it is superfluous, Mr Chairman, because the position should be that the Minister has the power to revoke the appointment by the Authority but that the Authority should not have the power to revoke an appointment made by the direction of a Minister. So if sub clause 2 were not there, whoever had made, whether the appointment had been made of the Commission's own decision or by the Commission on the direction of the Minister, either could revoke. So you are in a situation where the authority could revoke an appointment that had been made on the direction of the Minister and that is clearly inappropriate. So sub clause 2 simply says, oh and by the way, although Authority you have a general power on revocation, your power of revocation is subject to the Minister's consent, where the appointment in the first place was on the Minister's direction. It would be unusual for a Minister to direct something which an official could then revoke without reference back to the Minister.

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

Clause 1

HON F R PICARDO:

Mr Chairman, there is a very minor typographical error in clause 1 at the end "into operation on the day of publication". Sorry to go back.

HON CHIEF MINISTER:

Which clause is that?

HON F R PICARDO:

Back to clause 1 of the whole thing. Title and commencement.

HON CHIEF MINISTER:

Of clause 1.

MR CHAIRMAN:

Yes. Clause 1. On "the" day.

HON CHIEF MINISTER:

Comes into operation on "the" day of publication. Correct. Yes. I am grateful for that.

MR CHAIRMAN:

Go back to clause 1, as amended, stood part of the Bill.

Clauses 13 and 14 – were agreed to and stood part of the Bill.

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

THE FIREARMS (AMENDMENT) BILL 2010

Clauses 1 to 3 – were agreed to and stood part of the Bill.

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

THE INTERNATIONAL CHILD ABDUCTION BILL 2010

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

Clause 2

HON D A FEETHAM:

Mr Chairman, I have two amendments to this particular clause. The first is the definition of "joint custody". In fact that was referable to a clause in the substantive body of the Bill in a previous draft which was deleted and therefore is no longer necessary and then the second amendment which I have already spoken to, when I spoke on the merits of the Bill, is the insertion of the word "habitual" before the word "residence" in the definition of "non-return order" and "return order".

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

Clauses 3 to 11 – were agreed to and stood part of the Bill.

Clause 12

HON D A FEETHAM:

Yes, Mr Chairman, I move an amendment to clause 12(1)(a)(i) and (ii) to insert the word "habitual" before the word "residence" which again is consistent with the previous amendments that I moved in clause 2. I have already spoken to that, but just to repeat, in fact, this is consistent with the definition in the Convention which uses the term "habitual residence" not "residence".

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

Clause 13 – was agreed to and stood part of the Bill.

Clause 14

HON D A FEETHAM:

Mr Chairman, yes, I move an amendment to clause 14(2) by deleting the word "final" before "order". In fact, it is not limited to final orders as I said in my speech on the merits of the Bill. It is any order, cannot make any order if one has an application under this particular Act pending before the Court.

In clause 14(3) there is a typographical error, it says "non-removal" where it should say "non-return". Paragraph (a) in fact, 14(3)(a) it says "non-removal", it should say "non-return".

Clause 14, as amended, was agreed to and stood part of the Bill.

Clauses 15 to 21 – were agreed to and stood part of the Bill.

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

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

THE CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) BILL 2010

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 Counter-Terrorism Bill 2009;
2. The Financial Services (Temporary Administration of Companies) Bill 2010;
3. The Firearms (Amendment) Bill 2010;
4. The International Child Abduction Bill 2010;
5. The Civil Jurisdiction and Judgments (Amendment) Bill 2010,

have been considered in Committee and agreed to, some with, some without amendments, and I now move that they be read a third time and passed.

Question put.

The Counter-Terrorism Bill 2009;

The Financial Services (Temporary Administration of Companies) Bill 2010;

The Firearms (Amendment) Bill 2010;

The International Child Abduction Bill 2010;

The Civil Jurisdiction and Judgments Bill 2010,

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 Thursday 8th April 2010, at 10.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 4.00 p.m. on Monday 15th March 2010.

THURSDAY 8TH APRIL 2010

The House resumed at 10.30 a.m.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

ABSENT:

The Hon Lt-Col E M Britto OBE, ED – Minister for The Environment and Tourism

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON CHIEF MINISTER:

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

Question put. Agreed to.

DOCUMENTS LAID

HON CHIEF MINISTER:

I have the honour to lay on the Table:

1. The Annual Accounts of the Government of Gibraltar for the year ended 31st March 2009;
2. The Gibraltar Annual Policing Plan 2010/2011.

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 2009 has been submitted to Parliament, and I now rule that it has been laid on the Table.

SUSPENSION OF STANDING ORDERS

HON E J REYES:

I beg to move under Standing Order 7(3) to suspend Standing Order 7(1) in order to proceed with a Government motion.

Question put. Agreed to.

GOVERNMENT MOTION

HON E J REYES:

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

> "This House resolves that the Honorary Freedom of the City of Gibraltar be conferred upon Girlguiding Gibraltar in recognition of its dedication to the development of guiding in Gibraltar for almost a century and for instilling a sense of responsibility, duty and respect for others among the youth of Gibraltar over those years."

Mr Speaker, the first attempt to officially recognise Guiding in Gibraltar was made on the 31st August 1914 when a petition was made to His Excellency the Governor by Agnes Baker requesting him to be patron of our small body of well doers. The Governor of the day, Sir Herbert Miles, replied wishing them every success but declined the invitation to become their patron for reasons unknown. However, in 1925 Lady Munro, wife of the now Governor, became the first president of the movement. Since then, and by tradition, all subsequent Governors' wives are invited to become the president of Girlguiding Gibraltar. The first Commissioner for Girl Guides in Gibraltar was Mrs Brown-Smith who held office until the outbreak of the Second World War. During the war years, most of the local population were evacuated either to the United Kingdom, to Madeira or Jamaica and here due to its popularity, Guiding continued to flourish in the evacuation camps. As an example of service unto others, records show that a ranger unit worked during the evacuation years within the Jamaican community. They were very ably led by Mrs Griffin, a Gibraltarian evacuee and they helped out during the hurricane season and other similar emergencies. Guiding activities in Jamaica, we are told, included attending camps as well as celebrating Thinking Day and Empire Day which was later to become Commonwealth Day. Upon the return of the evacuees to Gibraltar as from 1945, Guiding was quickly re-established on the Rock and soon enjoyed the support of prominent local officials and businessmen and many of their wives also gave much needed support and patronage. Many of our elder citizens will remember that the uniform worn by the Guides at the time was a blue shirt dress with bandanas and a red, white and blue neckerchief. A social problem affecting recruitment in the immediate post-war years was the often difficult financial circumstances many families found themselves having to endure. It is here, that Guiding made an impact through its ethos, thereby granting accessibility to young ladies of all backgrounds. Guiding soon proved itself as a movement that was open to all social classes and with the real spirit of sisterhood established, it made a very positive impact on our community. Once the local community had returned to normal life after the evacuation, Guiding in Gibraltar simply went from strength to strength and the numbers and range of activities increased. International experiences by members of the Guiding movement started also to be enjoyed very shortly after the evacuation years. For example, in 1952 five Guides attended the coronation of Queen Elizabeth II, thereby joining their counterparts from all over the Commonwealth. Also in

1952, two local young ladies were chosen by the then Commissioner Lady Gaggero to attend an international camp in Beaconsfield in England. This was to be the first international camp to be organised by Guides since the end of the Second World War and Gibraltar was very proudly represented by two young ladies. They were, Lina Danino and Lilian Zammit. Here, I would like to add a personal note because it may interest this House. We now know that Lina Danino was later to become Mrs Searle, wife of the Editor of the Gibraltar Chronicle and the late Lilian Zammit was later on to marry Joseph Reyes and shortly thereafter even became my own mother. During the Queen's visit to Gibraltar in 1954, a young Guide named Raquel Gabay and here Mr Speaker, again for the interests of this House, sister to our recently departed Joshua Gabay, who later went on to become a member of the Gibraltar House of Assembly, was chosen to hand over a special spade to Her Majesty who in the presence of Guides and Brownies partook in a tree planting ceremony. In 1957, a party of Guides travelled to England to participate in another world camp. This time this was held at Windsor and over four thousand Guides from sixtyeight countries attended. By this time, Gibraltar had three very strong Guide companies, all of them holding regular camps at the Imossi's farm in nearby Spain as well as at Rota, the American military base in Spain. Other camps away from Gibraltar were also held frequently. For example, in 1959, two local leaders attended a camp in Burgos, Spain, where they joined some other seven hundred Guides. In 1960, the World Chief Guide, Lady Baden-Powell, visited Gibraltar to celebrate the golden jubilee of Guiding and attended a camp fire and special ceremony held at the Central Hall. This visit by such an important person within the world of Guiding greatly assisted in developing the movement locally and contributed greatly towards their recruitment campaign. Therefore, Guiding continued to flourish locally with the opening of more Brownie packs. Over the years, more and more local women got involved with Guiding and started to take direct responsibility for various roles within their association. Overseas camps have been more widely experienced in recent years with these concentrating in visits to the United Kingdom during the closed frontier period. Gibraltar Guides have attended camps in many European countries and local leaders have assisted at official camps in far away places such as Mexico and Kenya. Many will remember that when Spain closed the frontier in 1969, our local population became a very close community. As a direct result of this, the Guiding movement organised activities for young girls and the association grew greatly in numbers. Local camps were organised with several of these being held at The Mount and at the Upper Rock. This resulted in Guides having to learn how to pitch their tents on very hard and rocky ground. Practice hikes were held up and down the Upper Rock as well as hiking from North Front to the Lighthouse and back again. During these years, the Rangers section of the Guides teamed up with the local scouts and entertained the public through very successful gang shows. In 1978, a devastating fire at Guides headquarters situated at the time in Cornwall's Parade destroyed all of our local Guides Association's records. This unfortunate occurrence means that details such as when units were officially opened, registers and statistics of those involved have been lost. Great efforts have been made to record past events from the memory of those who served in Guiding prior to this unfortunate fire. Local Guiding faced another challenge when the frontier reopened in 1982. Whilst many families ventured into Spain at weekends, the increased possibilities in respect of collective leisure activities undertaken as an association was not actually taken up as hoped. Therefore, in order to motivate leaders and increase membership, the association organised training sessions for the leaders at Guiding centres throughout the United Kingdom. This presented opportunities for Gibraltar's leaders to work alongside colleagues from other countries, thereby, forging lifelong links and enriching the association with new energy and ideas. Other than the service provided for local young ladies, Gibraltar's leaders have always contributed to the Guiding international scene. Indeed, Mr Speaker, in the 1990's the Gibraltar Association was offered the opportunity to sit in the Association Junior Council where they offered opinions on the direction and future of Guiding worldwide. Our local Guiders have made an impact in Guiding at the world level. Local Commissioners have attended branch association and

Commonwealth conferences in Malaysia, British Colombia, United Kingdom, Singapore and more recently in South Africa. As a result of a successful recruitment campaign in 1991, the demand for membership grew and the Association hence opened three new Rainbow Units to cater for young ladies aged from four to seven years. These units are still extremely popular and membership is in high demand. Catering for a wide age range, nowadays Brownies venture into Spain on day trips to enjoy outdoor pursuits, such as hikes and nature trails by attending educational activity centres. The local Association now has its own outdoor centre in the Upper Rock Nature Reserve which is constantly used providing many youngsters with a first night away from home experience and thus helping them to develop into independent and confident women. As Guiding approached the 21st Century, the Association prepared itself for the new era by transforming their programme into an exciting opportunity for young women to grow in confidence and prepare for the wider world. The local Guides Association has gone from strength to strength establishing a steady flow of members at all levels. That is Rainbow, Brownies, Guides, senior section and adult helpers and leaders. They all work together to keep up the standards required to give girls and young women a sense of achievement. Although many changes have taken place over the past years, the principal goals and expectations of Guiding have remained true. Guiding has had to adapt to shifts in society and the changing needs of girls over the last century. However, the girl centric ethos of Guiding has always ensured that any changes are for the overall benefit of the members. Adaptation to changes are achieved by on-going training and contributing to the social skills of members. With all this taking shape around the one constant principle, still known the world over, that is the promise. All the achievements attained by Girlguiding Gibraltar have been possible thanks to the hard work undertaken by its leaders over the years, each contributing their own little grain of sand to the movement. We are indebted to the many ladies who have so generously contributed for the benefit of others over many years. At present, Girlguiding Gibraltar consists of a Commissioner and two deputies. Twentyfour warranted leaders all supported by twenty adult volunteers meeting on a regular basis. Group activities are managed by an Executive Committee and the Executive Council. Being a charitable organisation, the Association has always fund raised both for its own benefits and to support local charities for community projects. Despite the many changes that have taken place, the spirit of Girlguiding remains much as intended when it first started almost a century ago. Through their activities and ethos, Girlguiding continues to instil a sense of responsibility, duty and respect for others, among the youth of Gibraltar and therefore Mr Speaker, it is with considerable pleasure that I commend the motion to the House.

Question proposed.

HON S E LINARES:

Following the Minister's comprehensive and detailed exposition of the good work that the Girl Guides have done through the years, the Opposition welcomes this motion and we feel that it is also right and proper to give the Girl Guides this Freedom of the City after the Boy Scouts have been honoured with this Freedom of the City as well. So, just to say that the Opposition is delighted to support the motion.

Question put. The House voted.

The motion was carried unanimously.

BILLS

FIRST AND SECOND READINGS

THE IMMIGRATION, ASYLUM AND REFUGEE (AMENDMENT) ACT 2010

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Immigration, Asylum and Refugee Act, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill contains one amendment to the Immigration Asylum and Refugee Act namely the insertion of a new section 52A dealing with the designation of international instruments which require or recommend the non-admittance into this jurisdiction of certain persons. The Bill, the amendment gives the Minister with responsibility for personal status power to designate such instruments if a number of criteria are met. These are that the instrument is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it either requires that a person is not admitted to Gibraltar, however that requirement is expressed, or it recommends that a person should not be admitted to Gibraltar, however that recommendation is expressed. If an instrument is so designated, then subject to the provisions of subsections 3, 4 and 5, any person (a) named by or under or (b) of a description specified in a designated instrument is to be deemed to be a prohibited immigrant for the purposes of the Immigration, Asylum and Refugee Act. Subsection 3 provides for the inclusion of exceptions to the designating regulations obviously where the international instrument provides for such exceptions. Subsections 4 and 5 prohibit the Principal Immigration Officer from granting permits, that is to say, from issuing his normal permits of entry into Gibraltar under the Immigration Act to persons who are covered by these international measures without the consent in writing of the Minister and also requires the Principal Immigration Officer to inform the Minister if a person who is a prohibited immigrant as a result of this section has been detained. This is not a new area of legislation, and I think I should point out to the House that there have already been so called international travel ban orders made in Gibraltar under our existing legislation covering this area which is the Export Control Act 2005 under which specific exclusion orders have been made. There are two comments I would like to make. The difference between this and that is that this obviates the need to publish a very long list of names and now does it by reference to designating the international measure itself. So the international measure itself is itself made the list of prohibited persons and given direct effect to by this regime created whereas under the previous regime, and the hon Members will see it if they look at the existing, I think it is Zimbabwe order but I am not quite sure the country that originated it in 2006, there is a long list of names and these can be very long. They can run into the thousands of names and then rather than in our legislation having to publish all those names and then keep the list up to date, it is just easier to incorporate it in this way. The other purpose of this amendment, which simply replicates a statutory, well it does not replicate it exactly but simply re-provides for, is that lawyers have suggested that whilst the Export Act is a perfectly valid place in which to have put it originally and the Export Control Act deals not just with travel bans but other forms of international sanctions, restrictions and movements of money, freezing of assets, non-proliferation technology, things of this sort…. So the Export Control Act was a general enabling piece of legislation for the implementation in Gibraltar of international sanctions of various types of which international travel bans was just one type and indeed the powers under the Export Control

Act have been used already to make these export ban orders. Lawyers believe that it would be better if the power were more visibly transparent in the legislation that deals with the restriction of peoples rights of entry into Gibraltar which is the Immigration Control Act. Although the Government is entirely confident and indeed so are those who have advised this, that the vires under the Export Control Act is perfectly sufficient to base the travel ban orders, from an excess caution, they have suggested that the Government might wish to bring this additional piece of legislation just to make it abundantly clear. So I just want to point out to the House that the legislation may be superfluous. It may be unnecessary but just for the sake of clarity it is achieved. But there is a change and that is this business of now not having to publish the name on the list. I just want the House to be clear about that. I commend the Bill to the House.

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

HON J J BOSSANO:

There is just one point that has not been mentioned by the mover which I am not very clear about and perhaps he can explain it in his reply which is this provision that notwithstanding the fact that the person is prohibited, the regulations may provide for some kind of permit to be granted to that person and the Principal Immigration Officer has to obtain the consent of the Minister to grant a permit. Either he is prohibited or he is not. So what kind of permit can you grant a prohibited person who is not allowed to come anyway near Gibraltar? Unless it is if the person is sick and needs to come in for treatment or something like that. It says that the departure from the prohibition has to be spelt out in the regulation as exemptions but I cannot picture the kind of situation which appears to be, on the surface, a contradiction but no doubt the people who drafted it had something in mind.

HON CHIEF MINISTER:

Yes, the section is, in fact, prohibitory. In other words, it refers to section 53(1) of the Act which is the section that empowers the Principal Immigration Officer to grant entry permits to people and this says that he cannot do that. He cannot exercise his normal powers of giving entry permits in respect of a prohibited person without the consent of the Minister. This does not create a discretion on the part of the Minister. Any admission of persons, … decision has to be the Principal Immigration Officer's under his section 53(1) powers. But there may well be, and indeed there often are, international measures which are not absolutist and prohibitionist in nature. They create a regime, for example, as we speak the Government are grappling with an exemption request under another area of sanctions order under the Export Control Act in relation to the freezing of the movement of monies to and from Zimbabwe where there is a regime actually created in the EU Regulation, in the Directive. In the Regulation that we implemented by passing the orders which provides for circumstances in which notwithstanding that the person is on the prohibited list, in certain circumstances there is a discretion to permit what would otherwise be prohibited. Unless there is a power to do this, it is just that the Government thought that because of the political implications of exercising that, the Principal Immigration Officer should not be at liberty to make that judgment by himself and should refer back to the political power. But it is a prohibitionist measure not a permissive measure, but it does create an enabling provision to allow …, when the international measure itself permits or creates a regime of admittance notwithstanding that the person is listed, that our laws should be able to accommodate it and there should be circumstances in which the Principal Immigration Officer can say, well look this man is on this list but the international measure or a sanctions order of the United Nations says that in these, these and these circumstances… I do not know what it could be. It could be reasons of health or reasons of… I do not know. It should be allowed and that therefore that is exactly what this is intended to facilitate.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE ROAD TRAFFIC (WINDSCREEN TRANSPARENCY) (AMENDMENT) ACT 2010

HON J J HOLLIDAY:

I have the honour to move that a Bill for an Act to amend the Road Traffic (Windscreen Transparency) Act 1998, be read a first time.

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as the House will know the original Act provides, essentially, for all windows on vehicles to have a minimum level of transparency so that the internal occupants can be seen from outside. Subsection (4) of section 3 provides exemptions to this rule for various classes of vehicles such as ambulances, security vehicles and buses. As originally drafted, the Bill was deficient in that it grouped together all public service vehicles without having regard to their size and layout. The size and layout of a taxi was obviously different to an omnibus yet they are both public service vehicles. The exemptions contained in subsection (4)(c) of section 3 will only be applied to the layout of the windows of an omnibus and not to a taxi. A taxi, to all intents and purposes, has the same layout as a private car. This led to severe difficulties in the application of the provisions of the Act. This Bill now seeks to rectify this anomaly by deleting the phrase "public service vehicles" and treating taxis for the purpose of this Act as if they were private motor vehicles. Mr Speaker, the Gibraltar Taxi Association has been consulted and is content with the proposed amendments. I commend the Bill to the House.

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

HON G H LICUDI:

I am grateful for that explanation. As the hon Member will know, what subsection (4) of section 3 of the main Act does is to disapply the main provisions of section 3(1) which is that the level of visual transmission for light shall be not less than a certain percentage and that section stated not to apply to certain windows. In particular, windows in an omnibus and a public service vehicle, other than windows which are also set out in subsection (4)(c)(1)(2) and (3). In particular, windows that face the rear of the vehicle and windows which are wholly or partly in front on either side of the driver's seat. The removal of the reference to public service vehicle is not just, or the effect is not just that it treats taxis as other vehicles. It removes all types of public service vehicles from this exception except in the defined cases set out in (c). So the implications it seems to us are wider than that which the hon Member has spoken about. We also note that there must have been a reason why it was drafted in this particular way in the first place and other than in respect of the position of taxis which the hon Member has said. What this amendment does is remove the blanket exception which applies to public service vehicles generally. So, what has changed, unless this is only designed to cater for taxis, but it has been

done by removing the exception for all public service vehicles, perhaps the hon Member can say what, in fact, has changed since the Act was enacted in the first place, with this exception, which applies to all public service vehicles. Is it simply a realisation that there is a deficiency in respect of a particular category of vehicles as the hon Member has mentioned taxis, or is there a wider implication that the hon Member has considered and we should know about?

HON J J HOLLIDAY:

The anomaly comes as a result of the fact that a certain class of taxi vehicles … have tried to register vehicles with an element of windscreen transparency which does not comply with the law. In actual fact, if you analyse the layout of a bus, for example, which has an entry door on a particular side of the vehicle and the number of windows behind the xxxxx of the vehicle et cetera, it does not comply with the strict adherence of the law. Therefore, in order to enable a certain class of taxi to be registered without, and conforming to the law, taxis are felt to be classified as a normal saloon type of private vehicle rather than a public service vehicle which I think xxxxx. The hon Member mentions the fact that the word public service vehicle must have a wider implication. I cannot think of any instance where that is the case but I am happy for the hon Member to throw some light on that if that is the case. We have felt that the only party affected by this anomaly is this particular category of taxi drivers that have not been able to register their vehicle as a result of the fact that they have not been complying with the law.

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 today, if all hon Members agree.

Question put. Agreed to.

THE TRANSPORT (AMENDMENT) ACT 2010

HON J J HOLLIDAY:

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

Question put. Agreed to.

SECOND READING

HON J J HOLLIDAY:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill has two aims. First is to regularise the position of chauffeur driven hire car operators within the Transport Act and secondly to make some changes to the system for named drivers of taxis. I will deal with them in turn. All the clauses of the Bill except clause 4 deal with chauffeur driven car hire operators. The Transport Act 1998, as it stands, does not satisfactorily set up the provisions for the operation of chauffeur driven hire cars and the Bill amends the definition in clause 2 and the conditions for a licence in clauses 6 and 7 amending sections 51 and 52 of the Act. It also provides for documentation to be shown to a police officer. The other amendments are consequential. Clause 4 deals with named drivers of taxis. It provides in new section 17 subsection (8) that for the coming into operation of this Bill, no person may act as a named driver unless he has no regular employment other than driving a taxi. New subsections (10) to (12) provide that second

named drivers in a taxi licence may not work as taxi drivers during January, February and March unless they have no regular employment or if the owner is ill or absent from Gibraltar. These changes are the result of exhaustive discussions with the Taxi Association and are designed to ensure that during the quiet months, taxi drivers can continue to offer a service for a reasonable reward. I commend the Bill to the House.

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

HON G H LICUDI:

There are, as the hon Member has indicated, two distinct elements to this Bill. One has to do with the chauffeur driven hire cars and the other, specifically, to do with the naming of certain drivers for taxis. Dealing first with the chauffeur driven hire cars. The explanatory memorandum of the Bill says the purpose of the amendments are to make provisions for chauffeur driven hire cars and as the hon Member has alluded in his introduction of this Bill, there is already provision for chauffeur driven hire cars and the licensing of those cars, the licensing, of course, in the Transport Act. We would ask the hon Member to clarify whether in the light of that and given as we understand it and perhaps the hon Member can confirm it, no licences, as we understand it, have actually been issued under the current provisions of the Transport Act for the licensing of chauffeur driven hire cars, does this Bill signal a change of policy, generally, in relation to this part of the legislation, this licensing aspect? Is it the case that because a decision has been taken that the existing provisions were not satisfactory, for that reason there have been no licences issued but putting the matter in what the hon Member will no doubt consider, a better footing from the statutory point of view, will now mean that that policy has changed and that there will be licences issued and to what extent does that policy change, if there has been a policy change, go? Is there a decision as to the number of licences that can be granted? Has there been, generally, a full consideration of the impact of this and the effect on the trade, generally and those who provide services, not necessarily chauffeur driven services but public service vehicles, generally, which may be affected by the provisions of this Bill? We would certainly welcome clarification from the Government as to whether this signals, in particular, a policy decision by the Government and how that policy decision will be implemented. When will we see the practical effect of those changes, if in fact there have been changes to that policy decision and what limits, if any, are there on that policy decision. The second issue relates to the licensing of second drivers in relation to taxis. The only point I have is one of clarification and in particular in relation to clause 4 of the Bill which seeks to amend subsection 11 of the Transport Act. That provides that subsection 10 shall not apply to the use of a taxi by a second named driver who is named in the appropriate road service licence on the coming into force of subsection 10 and has no regular employment other than that of driving a taxi. In other words, as I understand it, this is a grandfathering provision. So, whoever is already named, this only applies in respect of the months of January, February and March. So, whoever is named as a second driver on the coming into force of this change and has no regular employment is already able to keep that benefit. He is not removed from the ability which he currently has. But what if he obtains regular employment after the coming into force of this provision? In other words, he is named as a second driver on the coming into force and has no regular employment at that time. Is it intended that that benefit will be lost on the obtaining of that regular employment given that it is a two-fold test, the naming as a second driver and the regular employment? My reading of this is that clearly the intention is that once somebody gets regular employment, notwithstanding that he was named as a second driver when this came into force, he will lose that benefit. But perhaps the Minister can confirm that that is also the Government's understanding and the intention of this particular provision. Finally, in relation to the amendments to, or the introduction of, subsection 11 of the Transport Act, that provides that subsection 11(a) does not apply where the second named driver is offered reasonable employment in connection with the

provision of services under road service licences in respect of taxis for January, February and March. Does the Government have anything in particular in mind as to what the provision of services means? It seems to be a very wide provision and it is not readily apparent what it is intended to cover and also the suggestion that an offer of reasonable employment, reasonable in whose mind? If somebody declines on the basis that he does not consider it reasonable, is that sufficient for him to be able to keep the benefit that he had? Is it the person offering the employment that is supposed to decide? There does not seem to be a provision where somebody determines whether the declining of that offer was reasonable or was not reasonable. Is it left to the parties and if the parties disagree, what is the position? Does that person lose the benefit of being named or not and what is the provision of services intended to cover generally? Mr Speaker, other than a couple of minor issues for Committee Stage, mainly typographical issues that the hon Member may well have picked up already, those are our comments on the general principles of the Bill.

HON J J HOLLIDAY:

The two issues that are dealt with under this Bill, one is the chauffeur driven hire car provisions. As the hon Member clearly and correctly states, these are covered in the original Transport Act 1998. Basically, nobody had really analysed that the word deficiency in that aspect of the Act until we had interest expressed by certain entities, individuals who applied to the Transport Commission in respect of the ability for them to apply for a chauffeur driven hire car licence. When this was analysed by members of the Transport Commission, it was clearly seen that the word deficiency in aspects such as the licensing of power, the licensing of the driver and the licensing of the operator and therefore there needed to be a change to be able to ensure that we have a system in place which is workable and in compliance with the Transport Commission's policy. There has not been any change of policy as far as the granting of chauffeur driven hire cars. The thing is that there had never been an application submitted to the Commission. Now that there are applications before the Commission, the Commission is obviously willing to consider these applications on their merits but against the background of proper legislation which creates a code of conduct and the practices that need to be complied with as part of any licence that is granted. The Commission has not decided on a maximum number of licences that will be granted. We have had extensive discussions with the Taxi Association in respect of that aspect of it. I think the Taxi Association as does the Transport Commission agree that there is a limit to how many of these licences can be granted because we believe that there is a limited amount of potential market available for this particular type of operation. In fact, the Taxi Association have actually intimated the fact that they may want to apply as an Association for a licence themselves because they do recognise that sometimes they do get interest expressed to them for the sort of service which they cannot really supply under the normal taxi licence. So therefore, they may become an actual one operator amongst others in respect of this. So, I would say that a handful of licences may be available but at the moment there is no real figure that has been determined in terms of the number of licences that are going to be made available. In respect of the impact on the trade, I think, as I have intimated already, the Taxi Association initially were a bit nervous about whether this was a taxi licence through the back door but I think once … this regime that is going to be brought in to regulate this sort of operation, they have realised that there is a limited market for it and they, as I have said, are probably going to be interested in being one particular applicant for this type of licence in order to provide the sort of service, as I have said, that is required of them in some cases. As far as the second aspect of the Bill which is the second driver, this has been an issue which has been on the discussion table with the Taxi Association now for a number of years. The starting point that the Taxi Association have over this particular issue was the fact that they wanted no second drivers to be available during the month of January, February and March because they felt that there was insufficient business around to be able to allow second drivers to be available to all and sundry. The

Government's position and definitely that of the Transport Commission was that it was not willing to go that far, as far as restricting that, because there are drivers who are second drivers that actually become second drivers as a result of their employment situation. In the same way as they wanted to protect their own income and their own market share, we felt that those that are unemployed should have the opportunity in the same way as they do to be second drivers. So we have managed to reach a compromise in that respect and that is what led to the regime which the Bill before us today actually implements. The issue of the fact that a driver may originally obtain a second driver licence during the months of January, February and March and then subsequently obtain employment, in my view, I think that the benefit is lost immediately that driver obtains employment because the whole idea of it is to safeguard the income of those that are unemployed and not necessarily somebody who, like in most cases and historically, had been in second jobs. In other words, people working in full-time employment, having a second job as a second driver at the expense of full-time taxi drivers that go through the months of January, February and March when business is at its lowest. So therefore, I think that the benefit would be lost in respect of the fact that as soon as a person obtains employment that benefit would be lost.

HON G H LICUDI:

The final point that I mentioned, I am not sure that he has addressed. That is in relation to subsection 12 of the issue of reasonable employment and possible difficulties that that might give rise to. Has any thought been given as to…

HON J J HOLLIDAY:

Sorry. Could you repeat that again?

HON G H LICUDI:

Yes. There is a new subsection 12 which says subsection 11(a) does not apply where the second named driver is offered reasonable employment in respect of or in connection with the provision of services and that there may be dispute as to what is reasonable and what is not reasonable. Somebody may offer something that they consider reasonable. Somebody declines the offer on the basis that they do not consider subjectively to be reasonable. Have the Government given any thought as to how that issue is going to be addressed?

HON J J HOLLIDAY:

Well, that is a very difficult one to police because obviously the circumstances of every individual …. But should the Transport Commission find itself with information by which it determines that a reasonable employment, that is, a normal reasonable job has been offered to an individual but has turned it down on the pretext of the fact that xxxxx have a second driver licence during January, February and March, obviously, the Commission would intervene and would not allow that person to remain as a second driver.

Question put. Agreed to.

The Bill was read a second time.

HON J J HOLLIDAY:

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

Question put. Agreed to.

THE POLICE (AMENDMENT) ACT 2010

HON D A FEETHAM:

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

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I beg to move that the Bill for the Police (Amendment) Act 2010, be read a second time. Mr Speaker, this Bill amends the Police Act 2006 in a number of ways. The main amendments are brought about by sub clauses 2 and 3 of clause 2 which amend the principal Act in order to increase the membership of the Gibraltar Police Authority from seven members to ten members. Contrary to some comments, it has to be said, ill informed comments in some sections of the press, the need for additional members does not reflect adversely on the excellent work that members of the Authority have undertaken for no remuneration, it has to be said, since it was formed and for which the Government and I believe the wider community are immensely grateful. Indeed, these amendments were introduced at the request of the Authority itself and are designed to allow a greater flexibility by, for instance, just by way of example, ensuring that where meetings need to be called at short notice, there is a large enough pool of members to draw upon. Sub clause 4 amends section 4(6) of the principal Act in order to clarify that the person empowered to make an appointment under that subsection is the same person empowered to make the original appointment under subsection (1). Members of the House may recall that under the Police Act 2006 there are three ways in which members of the Police Authority can be appointed. Firstly, the Chairman is appointed by the Governor acting on advice of the Specified Appointments Commission from among persons proposed by the Governor and the Chief Minister. One member is appointed by each of the Governor and Chief Minister and thirdly, four members are appointed by the Governor acting on advice of the Public Service Commission from a list of persons that is approved by both the Governor and the Chief Minister. So this amendment, what it does is, if a member of the Police Authority retires or vacates his office and he has, for instance, been originally chosen, was one of the four appointed by the Governor acting on advice of the Public Service Commission, then the appointment of the successor would be undertaken in exactly the same way. Sub clauses (5) and (6) make amendments to the principal Act so as to increase the quorum at meetings of the Authority from five members to six members and sub clause 7 makes amendments to section 9(1) of the Act to clarify when the Annual Policing Plan comes into effect. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, when this Bill first came into Parliament in its original form for a Police Ordinance as it then was in 2006, the Opposition abstained on the Bill for a number of reasons. One of the reasons for abstention related to the manner of appointment of members. This Bill will change the number of members appointed to the Commission but will not deal with the issues that the Opposition raised at the time during the course of the debate. For that reason Mr Speaker, although we will not stand in the way of this Bill, we will not be supporting the change. We will be abstaining on the vote. I would highlight in relation to section 9(1) and the proposed amendment to that, that although I think that this Bill does introduce language which seeks to clarify when it is that the policing plan shall come into effect, I am afraid to say that I do not think that the manner in which it is proposed to do so, will actually clarify the position much further. The section as it presently reads says this, “the

Chairman shall send the annual policing plan drawn up in accordance with section 8 to the Governor, the Chief Minister and the Commissioner within seven days of its approval by the Authority" and now we are going to add the words "whereupon it shall come into effect". Mr Speaker, as the lawyers in this room will know, that will beg the question whether the policing plan shall come into effect when the Chairman sends the annual policing plan drawn up in accordance with section 8. In other words, when the sending occurs or when at the seven days of its approval by the Authority which is the final phrase in that paragraph and to which we are now tagging the words "whereupon it shall come into effect". So, I dare say that that language may require a little bit more thought or explanation. Mr Speaker, despite the fact that we will not be supporting the Bill and that we will be abstaining, we will not object to the Third Reading being taken today.

HON D A FEETHAM:

Mr Speaker, in relation to the first part of the hon Gentleman's comments, there is nothing that I can add in relation to that. That was part of the debate in relation to the original Act. As far as we are concerned, the Government are very comfortable with the way that the members of the Commission are appointed. It has worked very, very well over the last three years that the Authority has been in existence and there is nothing that I wish to add in relation to that. In relation to the final point that the hon Gentleman makes, in my view, it is perfectly clear, it shall take effect within seven days of its approval by the Authority and then it takes effect thereafter, whereupon it shall come into effect. So the wording, in my view, is perfectly clear. Nothing needs to be clarified.

Question put. The House voted.

For the Ayes: The Hon C G Beltran
The Hon P R Caruana
The Hon Mrs Y Del Agua
The Hon D A Feetham
The Hon J J Holliday
The Hon 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 D A FEETHAM:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Immigration, Asylum and Refugee (Amendment) Bill 2010;
2. The Road Traffic (Windscreen Transparency) (Amendment) Bill 2010;
3. The Transport (Amendment) Bill 2010;

4. The Police (Amendment) Bill 2010.

THE IMMIGRATION, ASYLUM AND REFUGEE (AMENDMENT) BILL 2010

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 ROAD TRAFFIC (WINDSCREEN TRANSPARENCY) (AMENDMENT) BILL 2010

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 TRANSPORT (AMENDMENT) BILL 2010

Clauses 1 to 3 - were agreed to and stood part of the Bill.

Clause 4

HON G H LICUDI:

Mr Chairman, in relation to clause 4, where it says, in sub clause (4), introduces new subsection 12 to the main Act and (a) says "is offered reasonable employment in connection with the provision of services under road service licences in respect of taxis for all", seems to me that an "or" is missing there. It should be "for all or part of the months of January, February and March".

Clause 4, as amended, was agreed to and stood part of the Bill.

Clauses 5 and 6 – were agreed to and stood part of the Bill.

Clause 7

HON G H LICUDI:

Mr Chairman, sub clause (3) in the new subsection (4A) then there is a little (b), it says "a chauffer-driven hire car operator's licence under which the Authority the vehicle is being used as a public service" the word "vehicle" seems to be missing at the very end.

HON J J HOLLIDAY:

That is correct.

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

Clauses 8 to 11 – were agreed to and stood part of the Bill.

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

THE POLICE (AMENDMENT) BILL 2010

Clause 1 – stood part of the Bill.

Clause 2

HON F R PICARDO:

Mr Chairman, I note what the hon Gentleman has said. I certainly do not think that section 9(1) will be clear with the proposed amendment. Nor is it perhaps entirely satisfactory that the annual policing plan should come into effect upon either somebody sending it or within seven days of approval by an Authority which are the two potential moments when this plan could come into effect based on the new wording. I would have thought, although this is not a law that does not have to be public before it is effective, not to offend any of the rules of

natural law, it would have been much more satisfactory for the plan to come into effect either upon the laying of it into Parliament, which would mean that the amendment would be made to section 9(2) or upon its publication. Mr Chairman, I raise those points in the spirit of, despite abstaining on the Bill, wanting to bring as much legal certainty to the issue of when the policing plan shall come into effect as possible and to make it as user friendly as possible for all members of the Community, not just the members of the Authority, the Governor or the Chief Minister or Commissioner who may have it upon it being sent to them by the Chairman of the Authority knowing what is actually in the plan when it does come into effect.

HON D A FEETHAM:

Mr Chairman, I still maintain that, in fact, section 9(1) is clear. It is actually from the sending. That is when it actually bites because if one looks at section 9(1) as a matter of construction it all refers back to the actual sending. So it is the sending that triggers. It is not the actual approval by the Authority. It cannot be. The approval by the Authority and then the Authority does not actually make it in any way public or sending it to the Chief Minister or the Governor, it cannot really take effect from the approval. It is the actual sending itself. As to the other point the hon Member made, which is as I understand it and correct me if I am wrong, which is why do we not make it effective from the laying before Parliament or the… In some way where the Governor or the Chief Minister receives or has some form of input. The reality of the situation is that this is a document that is produced by the Authority after consultation with members of the public and other stake holders. It is their policing plan. It is not the Government's policing plan and therefore it would be entirely inappropriate, in our view, to try and introduce that type of gloss into this particular section. For those reasons, Mr Chairman, we cannot accept the proposed amendment that the hon Gentleman makes.

HON F R PICARDO:

Mr Chairman, I am grateful for that explanation of what the Government's view which, of course, for the reasons I have already outlined we do not share. I think that the sending which the hon Gentleman tells us is the moment when, in his view, the amendment will make the policing plan effective, is not something which is certain. It is not something which in law is easily determinable and we are here changing the law of Gibraltar. I do realise that we are not changing the law of Gibraltar in order to create an offence. So we are not talking about something that needs to be published before it is effective and it bites. But we are changing the law of Gibraltar and when we change the law of Gibraltar we must want to change it in a way that renders the law of Gibraltar certain and easy to interpret. Now, Mr Chairman, given what the hon Gentleman has said, which I accept as the Government's position of course, when does the sending occur? It is not clear to us what the moment upon which the policing plan becomes effective, the relevance and importance of which, as the hon Gentleman has said, is really a matter exclusively for the Authority to feel itself bound by the coming into effect of its plan. When does that happen? The moment of sending is not a moment that is certain in law and, therefore, that is why we would maintain that it is better to rethink this small amendment in order to ensure that it produces a change in the law which provides certainty, certainty which is objectively determinable. For example, the moment of laying the annual policing plan before Parliament is an objectively determinable moment. We think that would simply tidy up the position and make a better and clearer law.

HON D A FEETHAM:

Mr Chairman, I hear what the hon Gentleman has to say. But the reality is that it is not a matter of law. It is a matter of fact. The act of sending is not a matter of law. It is a matter of fact. It is objectively determinable because one knows when one sends a document. One has use of these types of language in relation

to other parts of the laws in Gibraltar. In fact, my hon Friend has done litigation, my hon Friend Mr Licudi also. These are problems that are easy determinable as a matter in the context of a factual matrix. Sending is a matter of fact. It is not a matter of law. Mr Chairman, as to the point about that it would be much more certain if we take a date when the policing plan is actually laid before Parliament, the reality of the situation is that the moment in which it is laid before Parliament, may well be a moment in the future after it is approved by the actual Authority. So there may be a hiatus between that period between the actual approval and the coming to Parliament. The reality is that the way that this legislation is being structured is that the policing plan takes effect shortly after the actual approval. It is on the sending of the document to the Governor and to the Chief Minister.

HON CHIEF MINISTER:

Yes Mr Chairman, could I just add to that. I would accept the hon Member's contention that where an Act of Parliament creates legal rights or obligations that it would be desirable for there to be no possibility of ambiguity in a commencement or when those rights and obligations are deemed to arise. We do not concede that it is not clear but the hon Member appears to believe it is unclear. We do not think it is unclear but just debating the point around the hon Member's belief rather than ours. Of course, the need for such certainty which I would concede, or the desirability for such certainty, which I would concede when legal rights and obligations are being created by statute, hardly arises when we are talking about a document coming into effect which does not create anybody, rights or obligations. So, whilst I would agree with the principle of what he is saying, I would not extend that principle to the nature of the document in question here.

HON F R PICARDO:

Mr Chairman, I am grateful for the Chief Minister's views on that. I started from the premise that this document did not create legal rights and obligations. It certainly did not create offences, even though we are talking about the policing plan. We are not talking about the creation of new offences, simply about the Authority's plan. We have a different view about how we would change this law and I of course accept that the hon Gentlemen opposite have the majority in respect of this, so I think just leave it at that.

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

The Long Title – stood part of the Bill.

HON CHIEF MINISTER:

Yes Mr Chairman, if I can just comment in respect of the hon Member's last… Of course, the fact that we have a Parliamentary majority does not necessarily mean that we are wrong. We can have both the Parliamentary majority and be right on the question of… They are not mutually exclusive possibilities.

HON F R PICARDO:

Nor do they, Mr Chairman, usually move in tandem, in our view, as the hon Member will appreciate.

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Immigration, Asylum and Refugee (Amendment) Bill 2010;
2. The Road Traffic (Windscreen Transparency) (Amendment) Bill 2010;
3. The Transport (Amendment) Bill 2010;
4. The Police (Amendment) Bill 2010,

have been considered in Committee and agreed to, some with, some without amendments, and I now move that they be read a third time and passed.

Question put.

The Immigration, Asylum and Refugee (Amendment) Bill 2010;

The Road Traffic (Windscreen Transparency) (Amendment) Bill 2010;

The Transport (Amendment) Bill 2010,

were agreed to and read a third time and passed.

The Police (Amendment) Bill 2010.

The House voted.

For the Ayes:	The Hon C G Beltran
	The Hon P R Caruana
	The Hon Mrs Y Del Agua
	The Hon D A Feetham
	The Hon J J Holliday
	The Hon 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 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 C A Bruzon

The Bill was read a third time and passed.

CONDOLENCES

HON CHIEF MINISTER:

Mr Speaker, I think there is a tradition in this House which we should not overlook in this case to acknowledge as a parliamentary body the life and death of any Member of us, past or present, that passes away between meetings of Parliament. Everybody in Gibraltar will have noted the recent passing of Joshua Gabay, a Member that sat in the House with the GSLP. We had our many policy differences as is to be expected between politicians on different sides of the House in a parliamentary democracy. But Joshua Gabay was never but courteous and comradely in his conduct of his political activities and parliamentary activities. For that reason alone, in addition to his many other personal achievements in life, I think it is right that as a group of parliamentarians, regardless of our party differences, we should note his passing. We should extend our collective condolences to his family and that we should record in this House our gratitude for his past service to it and to the political needs of this community over a number of years and in moving that motion and before I do so I will give the hon the

Leader of the Opposition an opportunity to add or subtract if he wants to and then I propose that we should rise and observe a moments silence to mark the occasion.

HON J J BOSSANO:

Yes Mr Speaker. I am grateful to the Leader of the House for moving it on the basis that he is speaking for all of us. It is indeed the case that independent of which side of the House or which party any Member of this House has been representing in his parliamentary contributions, all of us, in every occasion in the past have recorded in the House our condolences to the family and indeed our sense of loss that one Member of this privileged group of Gibraltarians which has the honour to be selected by the rest of our fellow citizens to speak on their behalf. They may agree with some of the things we say and not with others, but at the end of the day the importance that we attach to Parliament has to extend to valuing the contributions that people honestly and sincerely make in what they believe to be in the best interests of our community and certainly Joshua fits in that category, without a doubt, as a man of great integrity and commitment to his beliefs and it is right that we should remember it and honour him.

HON CHIEF MINISTER:

Mr Speaker with your leave, I propose that we just rise for a moment.

MR SPEAKER:

Thank you.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Thursday 29th April 2010, at 11.00 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 11.55 a.m. on Thursday 8th April 2010.

THURSDAY 29TH APRIL 2010

The House resumed at 11.00 a.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development, Technology and Transport and Deputy Chief Minister
The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment and Tourism
The Hon F J Vinet – Minister for Housing
The Hon J J Netto – Minister for Family, Youth and Community Affairs
The Hon Mrs Y Del Agua – Minister for Health and Civil Protection
The Hon D A Feetham – Minister for Justice

The Hon L Montiel – Minister for Employment, Labour and Industrial Relations
The Hon C G Beltran – Minister for Education and Training
The Hon E J Reyes – Minister for Culture, Heritage, Sport and Leisure

OPPOSITION:

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

IN ATTENDANCE:

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

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 2010/2011;
2. The Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2006;
3. The Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2007;
4. The Report and Audited Accounts of the Gibraltar Broadcasting Corporation for the year ended 31st March 2008.

Ordered to lie.

HON J J HOLLIDAY:

I have the honour to lay on the Table the Air Traffic Survey Report 2009.

Ordered to lie.

HON LT-COL E M BRITTO:

I have the honour to lay on the Table:

1. The Tourist Survey Report 2009;
2. The Hotel Occupancy Survey Report 2009.

Ordered to lie.

HON MRS Y DEL AGUA:

I have the honour to lay on the Table:

1. The Report and Audited Accounts of the Gibraltar Health Authority for the year ended 31st March 2008;
2. The Report and Audited Accounts for the Gibraltar Health Authority for the year ended 31st March 2009.

Ordered to lie.

HON D A FEETHAM:

I have the honour to lay on the Table the draft Code of judicial conduct and ethics. Mr Speaker, if I may explain that the Code of judicial conduct and ethics is the judiciaries document under the Judicial Service Act and in particular section 32(4), it is the obligation of the Minister upon receipt of the Code within thirty days or the next sitting of Parliament after the expiration of the thirty day period, to lay the Code before Parliament. Thereafter, to bring a motion to debate the code. So the laying is time sensitive. The motion is not time sensitive. It is my intention to bring a motion to Parliament at the next sitting of Parliament.

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 2009 has been submitted to Parliament and I now rule that it has been laid on the Table.

BILLS

FIRST AND SECOND READINGS

THE SUPREME COURT (AMENDMENT) ACT 2010

HON D A FEETHAM:

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

Question put. Agreed to.

HON D A FEETHAM:

I beg to move that a Bill for the Supreme Court (Amendment) Act 2010, be read a second time. Mr Speaker, the Bill amends the Supreme Court Act by inserting a new section for designating a Puisne Judge to be a Family Judge. The establishment of the Family Judge has been subject to extensive consultation with both the legal profession and indeed the judiciary. I have also outlined the policy and its reasons before this House on a number of occasions including Budget time. I am glad to say that the Family Judge is now in post and I hope hon Members will join me in congratulating Mr Justice Butler and wishing him well in his new position. This Bill therefore places on a statutory footing what is already the position on the ground. It is a reflection of the Government's commitment to ensuring family proceedings, which include proceedings under the Children Act, the Maintenance Act, the Matrimonial Causes Act and, amongst others, the Adoption Act, are dealt with expeditiously and effectively by a dedicated judge. It is a major part, indeed, it is a cornerstone of the Government's architecture in this area and, of course, involves an increase in the number of judges of the Supreme Court from two to three. Together with the expenditure on our new courts and, for example, the employment of a new Chief Executive and a

qualified legal clerk at the Magistrates' Court on top of the existing complement of staff, it underscores our commitment to the judicial system and the public which it ultimately serves. Section 12A(1) thus provides that there shall be a Puisne Judge of the Supreme Court to whom shall be designated all family proceedings. Subsection (2) provides that that judge shall be known as the Family Judge and this House will note that all our Bills today refer to the Family Judge. As agreed with the judiciary, notwithstanding the other provisions of the section, the Family Judge can be allocated any other court business other than family proceedings if he has spare capacity or during vacation, illness or absence of another judge of the Supreme Court. In a small jurisdiction like Gibraltar, it is important of course that we ensure that there is flexibility where that is necessary. But hon Members will know that a Family Judge has a duty to prioritise the work of family proceedings. Subsection (6) deals with a situation where, for instance, the Family Judge is absent and another judge has to deal with family cases as well as again the reverse. Subsection (7) provides that where a judge other than the Family Judge deals with family proceedings, where, for instance, the Family Judge is away on holiday, references to the Family Judge in any legislation shall be a reference to the judge dealing with those proceedings. In summary, the proposed amendment seeks to make a permanent arrangement in the Supreme Court for a dedicated Family Judge. Under the proposed arrangement, family proceedings will be disposed exclusively by the Family Judge and eventually that will ensure consistent and speedier justice in relation to such matters. I commend the Bill to the House.

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

HON G H LICUDI:

Mr Speaker, we certainly wish Mr Justice Butler well in the exercise of his judicial duties in Gibraltar. There is only one small matter that I wish to raise in relation to this Bill and that is simply for clarification of clause 2, which inserts a new section 12A. It would be the new section 12A(4) which says the family judge shall have a duty to prioritise the work of family proceedings. That of course creates a statutory duty on the judge himself. Clearly an onerous obligation on the judge himself. Can I ask the hon Member simply to explain what is intended to be meant by prioritising the work of family proceedings? Does it mean give priority to the work of family proceedings over and above any other work that he may have? In other words, if he is allocated work because he has got spare capacity or because another judge is ill or during his absence, he has got to give priority to the work of the family proceedings. Or is it in the context purely of the family proceedings that he has a duty to prioritise that particular work, the family proceedings themselves. Does it mean simply give priority to family work and how does that sit if it is a statutory duty to give priority to certain work? What happens, for example, if somebody goes with an urgent injunction, which has nothing to do with family proceedings, and, in fact, he has the statutory duty to give priority to the other work which is non urgent. How does the judge deal with that conundrum given the statutory duty?

HON D A FEETHAM:

Yes Mr Speaker. It is the former of the hon Member's postulated explanations. One cannot legislate for every single eventuality. It is clearly impossible. In a situation where I suppose there is a very urgent injunction that comes before the court, a Mareva injunction or a freezing injunction as it is now known and that cannot wait, of course he would have to deal with that. That is a common sense position. But where you have a situation where, for instance, it turns out and we do not know because we have got to see how these things pan out during the next year or so. But if we have a situation where say, for instance, the workload of this particular judge, taking into account all the family proceedings in the Supreme Court, all care proceedings plus all the other proceedings that were

formerly dealt with in the Magistrates' Court that are now going to, as a consequence of all the other amendments, to be dealt with by the Family Judge. Say, for instance, that accounts for 60% of his workload so that he has 40% spare capacity, then of course, what he does is he has a duty to prioritise that 60% because at the end of the day what we are doing is we are creating the position of the Family Judge. What we do not want is a situation whereby we leave the… what is an important part of the Government's architecture for speeding up family cases. At the end of the day, there is a human story in family cases. There are children involved. There are peoples' personal lives which is very traumatic. That is speeded up and what we do not want is a situation where we allow that situation to suffer because of the xxxxx of the listing process. He has got to prioritise that 60%. Having said that of course, one would expect there to be common sense and I have every confidence that we have three judges, and in particular Mr Justice Butler, has common sense in abundance Mr Speaker.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

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

Question put. Agreed to.

THE MAINTENANCE (AMENDMENT) ACT 2010

HON D A FEETHAM:

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

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I beg to move that a Bill for the Maintenance (Amendment) Act 2010 be read a second time. Mr Speaker, in summary the Bill amends the Maintenance Act for the purposes of firstly, making consequential amendments in the Act in view of the new arrangements for a dedicated Family Judge in the Supreme Court. Secondly, modernising the provisions in relation to the making of matrimonial orders under Part 1 of the principal Act. For this purpose, Part 1 is replaced in its entirety with a new Part 1A. Thirdly, modernising, in so far as is possible, the provisions relating to affiliation proceedings under Part II of the principal Act and updating the provisions of maintenance for children, cohabitees and parents who by reason of infirmity cannot look after themselves under Part III. I say in as far as possible, because the Government are not convinced that Part II, in particular, of the principal Act, adds anything to the reforms we have already introduced in the Children Act and the new and important amendments that we are introducing today in this Bill under Part 1A in respect of matrimonial orders and I will develop the point in due course when I come to this. The view however of the Law Reform Committee advising the Government on family reform was that Part II of the principal Act should be retained and that we should review the matter in the light of the way that the entire regime, not only this Act but also other parts of the family reforms, will work in practice. The Government have accepted that advice and that is the reason why Part II of the principal Act is being retained with the amendments that we are bringing about by this Bill. Finally, this Bill will also limit the jurisdiction of the Magistrates' Court for dealing with any case under the Act on complaint and transfers most of the jurisdiction under this Act to the new Family Judge. Out of interest, in the United Kingdom, for instance, the jurisdiction of the Magistrates' Court in relation to family proceedings has been steadily

expanding since the introduction of the Childrens Act in 1999 with the creation of family proceedings courts. These are staffed by Magistrates drawn from a family panel of trained Magistrates for the purpose of hearing family disputes and have sole jurisdiction to hear family proceedings at this level. Our Magistrates are, of course, not trained in this way and we have gone down a different route by creating the position of Family Judge at the Supreme Court composed of a specialist Family Judge in order to deal with all family proceedings in this jurisdiction. Therefore, it makes little sense to continue to overburden the Magistrates' Court with what is an expanding family law case load. The Magistrates' Court will essentially retain jurisdiction for enforcement of money payment orders. Those cases that have began in the Magistrates' Court pre these reforms and the enforcement of maintenance orders under EU law by virtue of other statutory provisions.

I now turn to outline in detail the amendments that are brought about by this particular Bill. There are various amendments that I will be moving at Committee Stage in relation to the Bill and I shall speak on the merits of some of those amendments, the important amendments of course, during the course of my speech. The interpretation section. The amendments to section 2 of the principal Act are straightforward. They introduce the definition of Care Agency to make it consistent with the Care Agency Act 2009. It introduces the definition of Court as meaning the Supreme Court or the Magistrates' Court, as the case may be, resulting from the transfer of jurisdiction introduced by the Bill and there is also a definition of the Family Judge to make it consistent with the amendments that we have introduced to the Supreme Court Act together with other various minor and consequential amendments to the definitions of various terms used in the Act. As hon Members will have noted, these definitions are definitions applicable to the entire Act rather than simply Part 1, as was the case with the principal Act pre this Bill. The Government are not however proceeding with the amendment to the definition of child which on reflection is, in the context of this Act, unnecessary. The Bill also inserts new Sections 2A and 2B. Section 2A, as I will be amending at Committee Stage, provides that where parties have entered into an agreement under Part VIA of the Matrimonial Causes Act, the Court shall apply the provisions of that Act and nothing in this Act shall derogate from those provisions. In other words, those are the provisions dealing with pre and post nuptial agreements where the parties have entered into agreements that are governed by Part VIA of the Matrimonial Causes Act. Essentially, the position will be that where a pre or post nuptial agreement under Part VIA of the Matrimonial Causes Act has been entered into by the parties, and the provisions of that part have been complied with, the Court whilst applying the provisions of the principal Act, as amended, must always bear in mind that it cannot go behind pre or post nuptial agreements. We will see that one of the amendments that are being introduced as Part 1A of the Act involves an application to effectively make a Court order where the parties have reached an agreement in relation to maintenance. In certain circumstances, and I will come to this in a moment, the Court can actually go behind the agreement where it considers it in the interest of justice will be so served. Now, where there is a pre and post nuptial agreement, the Court cannot do that. It has to give effect to the pre and post nuptial agreement. The amendments that I will be moving at Committee Stage make that position absolutely clear. Section 2B, as amended by the amendments that I will be moving at Committee Stage, provides that if an application can be made under either Part 1A, that is matrimonial orders, or under Part III, maintenance orders, that application must be made under Part 1A. This will prevent unnecessary duplication of applications and, in our view, where an application can be made under both parts, Part III of the principal Act adds very little, if anything, to that person's application to the Court. This will nearly always be the case where the parties are married. Where the parties are married, the application really should be made under Part 1A not Part III and, in fact, where there are children involved, the application should be made, depending on whether they are married or not married, either under Part 1A or under the Matrimonial Causes Act, if there are divorce proceedings or, in fact, the Children Act. The main amendments brought about by this Bill are the

replacements of sections 3 to 16 by new Part 1A that makes provision for matrimonial orders. The new Part 1A makes significant and important amendment to the provisions dealing with all aspects of matrimonial orders between parties to a marriage and children of a family where there are no divorce proceedings and indeed the parties may not wish to get divorced or are simply separated by agreement as opposed to judicial separation. These provisions are therefore separate and not covered by recent amendments to the Matrimonial Causes Act which apply where the Court is asked to make financial provision as a consequence of divorce or formal juridical separation. Applications for a matrimonial order may be made in one of three circumstances which I will develop in due course. First, there is what might be termed, the normal application when the applicant must establish one of the grounds set out in section 3 of the Bill. Secondly, if the spouses have agreed what financial provision should be made, either may apply to have the agreement embodied in a court order. Thirdly, the Court may make an order if the spouses are living apart by agreement and the respondent is being making periodical payments to the applicant.

Applications under section 3. Either party to a marriage may apply to the Family Judge for an order on the grounds that the respondent's spouse has failed to provide reasonable maintenance for the applicant or has failed to provide or make proper contributions towards reasonable maintenance for any child of the family or has behaved in such a way that the applicant cannot be reasonably expected to live with the respondent or has deserted the applicant. The grounds must exist when the application is made and also at the time of adjudication. If the grounds are made out, the Court can make a number of orders including periodical payments for the benefit of the applicant or a child of the family, a lump sum payment for the applicant or the child of the family or an order for the applicant to be no longer bound to cohabit with the respondent. Orders for periodical payments may run from the date of the application but not earlier and may be made for a limited period of time. This may be useful, for example, where a wife is likely to need money for a comparatively short period of time while she adjusts to living alone because the husband would not have to go back to Court at a later date to seek a variation or discharge. Similarly, the Court may use this device as a means of encouraging the wife to obtain paid employment if they considered this to be a proper course, but before doing so, the Court would, no doubt, consider whether the wife is likely to obtain reasonable employment. The Court may also order that payments should begin from a future date, not necessarily from the application date, and it may wish to use this power, if for example, the husband is unemployed but is to start work in a short period of time. The order will however terminate on remarriage or death of the recipient or death of the person liable to make payments. Hon Members will see from the proposed section 5 that in making an order under section 4, the Court will have regard to a wide range of circumstances including the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future. The financial needs, obligations and responsibilities which each of the parties to the marriage has, or is likely to have, in the foreseeable future. The standard of living enjoyed by the parties of the marriage before the occurrence of the conduct which is alleged as the ground of the application. The age of the parties. Any mental or physical disabilities of the parties. The contributions which each of the parties have made or is likely to make in the foreseeable future to the welfare of the family and the conduct of each of the parties if that conduct is such that would, in the opinion of the Court, be inequitable to disregard it. Similarly, when the Court is considering whether to make a periodical payment or a lump sum payment in respect of a child of the family, the Court has to have regard to the financial needs of the child. The income, earning capacity, property and other financial resources of the child. Any physical or mental disability of the child. The standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application. The manner in which the child was being, and in which the parties of the marriage expected him to be education or trained and some of the other factors which the Court had also taken into account in relation to an

application by a party to a marriage in respect of provision for him or her. When a child is a child of the family but not a child of the respondent, the Court must also have regard to whether the respondent assumed any responsibility for the child's maintenance and if he did, the extent to which and the basis on which he assumed that responsibility and to the length of time during which he discharged that responsibility. In addition, the Court should consider whether in assuming and discharging the responsibility, the respondent did so knowing that the child was not his own child but that of somebody else and to the liability, of course, of any other person, that is the child's real father, to maintain the child.

Orders for payments which have been agreed by the parties. The Court is also able under proposed section 8 to make a consent order without the applicant having to establish any of the grounds in the proposed section 3 of the Act. Under section 8, upon either parties application and provided it is fully satisfied, that either the applicant or the respondent has agreed to make the financial provision specified in the application, it may make an order giving effect to the agreement. The Court may not make an order proposed if it considers that it would be contrary to the interests of justice to do so. But with the caveat that if the agreement is one that is governed by Part VIA of the Matrimonial Causes Act relating to pre and post nuptial agreements, the Court has to apply that agreement and the provisions of that part.

The powers of the Court where the parties are living apart by agreement. In cases where the parties have separated and when one party is actually providing the other with reasonable maintenance, the recipient may be concerned that without the security of an order he may choose to stop payments at any time. To secure her position, she may apply to the Court under new section 9. The parties must be living apart without either being in desertion for a continuous period exceeding three months and one must have been making periodical payments for the benefit of the other or a child of the family. If these conditions are satisfied, the Court may make an order for periodical payments for the benefit of the applicant for such term as may be specified. The purpose of section 9 is to enable legal effect to be given to a *de facto* situation on the ground. Consequently, no lump sum order may be made and the Court may not require the respondents to make payments which exceed the aggregate during any period of three months, the amount actually paid by him for the benefit of the applicant during the three months immediately preceding the making of the application. If this is greater than the sum which the Court would have ordered on an application under section 3, in other words, a failure to provide reasonable maintenance, the respondent is protected by the further provision that the order must be for more than the smaller amount. Conversely, if the Court considers that the sums paid fail to provide reasonable maintenance for the applicant, the grounds under section 3 must by necessity have been made out. The Court may therefore treat the application as though made under section 3 and will then have full powers to make such orders for periodical payments or lump sum payments as it thinks fit. Hon Members who read the amendments to the Matrimonial Causes Act will have noted that a comparison with the matters which the Court must take into account in making an order for financial relief after divorce, shows that, with minor exceptions, the guidelines relating to the factors that the Court has to take into account when making these types of orders are very similar, not identical. The Government are therefore introducing consistency between the types of factors taken into account in relation to financial provision as a consequence of divorce to the factor that one takes into account in making these orders where the parties either do not wish to get divorced or alternatively have not yet commenced any divorce proceedings. The main differences, there are other differences, but the main differences are as follows. Firstly, there is an absence in this regime of the power given to the Court to adjust property rights. This is because the making of property adjustment orders is inconsistent with the principle that the Court should regulate the parties financial provision during a period of marital breakdown which is not necessarily permanent or irretrievable. Secondly, the Courts under these provisions have no powers to make, for

instance, clean break orders settling all financial liability in a once and for all order. Again, that would be inconsistent with the possibility of reconciliation between the parties. It is important to note that, as with our reforms in relation to the Matrimonial Causes Act and of course in relation to the Children Act, the first consideration to be given by the Court is to the welfare of a child under the age of 18. That is the position here in relation to the Children Act. The Children Act goes further. It is the paramount consideration under the Children Act and applications under that Act. Finally, the part also makes provision for interim orders, variation, revocation, revival of periodical payments order, reconciliation and appeals to the Court of Appeal. In relation to reconciliation, when hearing application under section 4 the Court is required to consider whether there is any possibility of reconciliation between the parties and, if either then or later it appears that there is a reasonable possibility, it may adjourn the proceedings and if it sees fit will request an officer of the Care Agency or other person to attempt to effect one. In this regard, the House will be interested to note that I know that my hon Friend Mr Netto is working very hard with his staff in order to make sure that members of his staff that deal with these sort of cases are trained in the latest techniques that are used by CAFCAS in the United Kingdom.

Affiliation proceedings. I turn now to the amendments to Part II of the principal Act in relation to affiliation proceedings. This part of the principal Act, regardless of the amendments brought about by this Bill, the principle Act itself, is derived from the UK Affiliation Proceedings Act 1957. It provides a right to unmarried mothers to claim payments for maintenance and education of the child in limited circumstances. I say limited because, for example, applications can only be made by single mothers. They must be brought within a year of the child's birth and a mother's evidence has to be corroborated. In the light of Part VIII of the Children Act, relating to financial provisions for children and, in particular, section 48 of that Act which has a far, far wider scope than anything in Part II, it is difficult to see what this part of the principal Act, I am not talking about the Bill, the principal Act, adds to the general regime we have already introduced. Nonetheless, as I have explained, the Government have agreed not to repeal this part altogether and this Bill modernises some of the provisions in this part by, for instance, making it possible for a Court to order periodical payments or lump sum payments which is consistent with some of the other provisions introduced by this Bill in relation to other parts. As I said during my introduction, the Government are content on this occasion to accept the advice of lawyers who have been involved in the reform process but will keep the matter under review in the near future, in particular, in the light of any feedback that is forthcoming from lawyers and the new Family Judge as to the operation of the entire regime, not only this Act, but the Children Act and all the rest of reforms that we have introduced. In any event, hon Members will note that the proposed section 26 of the Bill, in dealing with a case under this part, the Family Judge shall have a duty to consider the relevant provisions of the Children Act 2009 in order to provide appropriate relief under that Act which, as outlined, contains provisions that are far wider and more generous to a single mother with a child than the provisions in affiliation proceedings.

Maintenance Orders. The Bill also amends Part III of the principal Act in order to make provision for a person to provide reasonable maintenance for his spouse, cohabitee, children and parents. Where the parties are married, this part, in our view, adds very little to Part 1A of the principal Act, as amended, and other reforms introduced in this area. Again, we have agreed to retain some of the provisions subject to modification, rationalising them but with the caveat that this is another part that we will be keeping under review and, no doubt, it will form the subject matter of discussion with practitioners and the Family Judge in the future. Where provisions of this part differ from Part 1A and the Matrimonial Causes Act as well, is in relation to cohabitees and their children and in relation to a father and mother of the respondent, if by reason of old age or mental or physical disability they are unable to maintain themselves. Hon Members will recall that it was this party that extended the rights of common-law wives under this Part in

1998. This Bill repeals section 32 and section 33 of the principal Act dealing with the duty of married women and unmarried women to maintain dependants and consolidates those provisions into section 31 which dealt with the duty of a man to maintain his dependants. We have then amended section 31 so as to replace "man" with the term "person" in order to make the section gender neutral and the term "wife" to "spouse". The addition of the words "if that person is for any reason unable to maintain himself or herself" in paragraph (e) of section 31(1) of the Bill, was to make it consistent with the provisions in sections 32 and 33, that is the duties of married or unmarried women to maintain dependants, which have now been repealed and which contained a similar proviso. That proviso did not exist in relation to a man's duty to his cohabitee. His obligation to provide maintenance could only bite if there was a concurrent obligation in the section to his children. In other words, a woman's duty to a man was limited to a situation where a man by reason of infirmity could not maintain himself and a man's duty to a woman, whilst not limited in this way, only existed where his children lived with them and he had an obligation to maintain those children. On reflection, my amendments limit the duty of a man and a woman to each other even more by conflating, by combining, both restrictions. At Committee Stage, I shall be moving an amendment to the Bill to leave section 31(1)(e) as it is. In other words, just simply the word "cohabitee" but add a new section 31(1)(d) which creates a duty of cohabitees to maintain their cohabitees if, by reason of old age or mental or physical disability, they are unable to maintain themselves. In other words, the duty that exists in relation to women. Instead of combining, we are splitting them up. Thereafter, all the Government have done in this section is to make it gender neutral and upped the age of children in relation to which there is now an obligation from 16 to 18 years. Although the Bill sought to widen the definition of child to include child of the family, in other words, a child that is not your own but has been treated as such in the course of the relationship, we are not proceeding with that amendment because it has never been the intention of this part to give rise to a liability in respect of someone else's children and the liability of a cohabitee has always been underpinned by the existence of children of that relationship, his own children. Again, limitations in this part can be compared to much wider provisions that exist in the Children Act where these limitations do not apply. The Bill also amends Part III in various places to replace the complaints procedure in the Magistrates' Court by an application procedure to the Family Judge in the Supreme Court and makes provisions for appeals to the Court of Appeal against an order of the Family Judge. The new section 46 of the Act makes provision for enforcement orders under Part III to be enforced by the Magistrates' Court. Hon Members will have noted that, in fact, all these orders can be enforced in the Magistrates' Court and the reason for that is that it was felt that an efficient procedure existed in the Magistrates' Court for the enforcement of these orders, generally, and that that should be retained.

Other Amendments. Lastly, the Bill makes other amendments throughout the Act in order to replace complaints procedure by application procedures in the Supreme Court. Section 73 provides that where on hearing an application on the Maintenance Act the Magistrates' Court is of the opinion that any of the matters in question between the parties will be conveniently dealt with by the Family Judge, he may refuse to make an order on the application. That really is only going to be relevant in future in terms of enforcement provisions. But one can envisage there could be some complicated applications in relation to enforcement, particularly I suppose, in relation to enforcement of foreign orders that we are enforcing here in Gibraltar. Section 74 provides for the making of regulations and section 75 for saving and transitional provisions. This Bill seeks to overhaul and modernise our laws and financial provisions for spouses and children not in a divorce context and makes some minor amendments to the law relating to the payment of maintenance for cohabitees and children of cohabitees even though, in our view, the Children Act adequately deals with most of these areas. I commend the Bill to the House.

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

HON G H LICUDI:

Mr Speaker, as the hon Member has said this is part of the legislation that is being brought to this House in connection with the overhaul of family proceedings generally and provisions relating to divorce and children, in particular. We recognise that there is always a need to update and modernise legislation. Not necessarily because there is a need in itself to update something that works properly, but certainly in the area of family law the legislation has been stagnant for far too long in Gibraltar. There was a need to bring in more modern provisions which are in line with the reality of what we expect and what we deal with today, in terms of matrimonial proceedings, in terms of proceedings concerning children, divorce and maintenance proceedings. We hope and expect that these amendments together with the other bits of legislation which have been introduced and the introduction of the Family Judge will result in a more streamlined approach, in a more dedicated approach by the Court and we have seen in the previous Bill the issue of the priority which is to be given to family proceedings and that will inevitably be good, particularly when there are children involved. As the hon Member knows, everybody should also know, it is unfortunate that sometimes children are caught up in the middle of a wrangle. Where you have protracted proceedings without, perhaps, the dedicated resources to deal with those proceedings which leads to delay, it simply aggravates the situation as between the parents and children get caught up in that dispute and suffer unnecessarily. Therefore, any process that is intended to improve that situation will inevitably be good for the system and be good for the children themselves. It is important, we consider and we agree with what the hon Member has said, that matters have to be kept under review. These sort of wholesale changes in the legislation do not necessarily automatically work simply because they have been introduced elsewhere. We have to learn from how it works in Gibraltar in the particular situation that we find ourselves in Gibraltar. One issue which I would ask the hon Member just to clarify. He has spoken about clean break orders and that there are no powers to make such orders. As I understood the hon Member, he said that this would be inconsistent with the general principle that parties should try reconciliation. Certainly, it is true that if reconciliation is possible, if there is any ounce of possibility of reconciliation, that should be attempted and there should be nothing which interferes with that process of reconciliation. But there might be cases and hopefully the hon Member will recognise this, where reconciliation is simply not possible. Even a statutory process which essentially keeps the parties hanging on to each other's tails for as long as possible in the hope or expectation of some miraculous reconciliation which might not happen, is not necessarily a good thing. So that is certainly a matter that needs to be kept under review and I would urge the hon Member to keep that at the back of his mind in reviewing these matters on a periodical basis. But I would welcome some comments on the fact and I think everybody does recognise that it is a fact that there are some cases which simply are irreconcilable. The Courts recognise that. The lawyers recognise that. Sometimes, as I have said before, when children are caught up in the middle, extending that process without the possibility of a clean break between the parties unnecessarily prolongs the anguish that the people think. Therefore, I commend that comment to the hon Member which is hopefully to be received constructively and in the process of any review that this matter can bring to light in the future will be kept abreast.

HON D A FEETHAM:

Yes Mr Speaker, may I first of all thank and indeed congratulate the hon Member for his constructive approach in relation to the comments that he has made in relation to this Bill. Certainly, it is very welcome on our side of the House where constructive comments and contributions are made to what are important pieces of legislation, socially for Gibraltar and Gibraltarians. May I also inform the hon Member that, in fact, I am very conscious of this point of having to keep all this legislation under review because, of course, this is a massive, massive xxxxx change of the way that things are done in Gibraltar by lawyers,

by the Courts, in relation to family proceedings. It has taken me an enormous amount of my time in the last two, nearly three years now, … has been dedicated to this area of the law and, of course, I am conscious that perhaps we could have done, in some areas, things better than we have done them or that, in fact, we may have made some mistakes in some areas or that we could have gone down a different route. One of the things that I have done and I do not know whether it has reached the hon Member yet, I have written to all the Heads of Chambers in Gibraltar asking them to, basically, ask their litigators to, obviously, keep an eye out for all these provisions that we have been introducing to see how they work in practice so that we receive some feedback as well as the Government as to whether something needs to be changed in future. I have already received some feedback in relation to a couple of provisions in relation to the Children Act and a couple of provisions in relation to the Matrimonial Causes Act and the Government, of course, welcomes that because we are not beyond making mistakes. It is a complicated area where we want to get it right and it is right that we keep it under review during the next year or so. As far as the question of clean breaks are concerned, the Government, of course, make no apology for the fact that we believe that marriage must be given every possible opportunity and parties to a marriage must be given every possible opportunity to reconcile their differences to see if the marriage works. The reality of the situation is that we are dealing with two separate pieces of legislation here. This and the Matrimonial Causes Act. If the marriage irretrievably breaks down because it has reached a point where the parties cannot work out their differences and there has to be divorce, then the issue of clean break would be dealt with under the Matrimonial Causes Act. What this Act does, is it regulates the position of the parties at the point at which the parties are married, may in fact not wish to get divorced, maybe separated by agreement. They may say well look, let us separate for a period of a year. Let us cool down. See how things go and it allows, obviously, the Courts to ensure that whoever, for instance, is the homemaker has reasonable maintenance. If there are agreements that have been reached between the parties that those agreements are enshrined in Court orders. That is what we are doing. In the context of that, it would be entirely wrong to have a clean break agreement because the relationship is not at an end. When the relationship is at an end, then the position would be dealt with under the Matrimonial Causes Act because that deals specifically with divorce. That is the point I am making. But we make no apologies for the fact that marriage has to be given a chance to work. That sometimes, in fact, you may recall that during the debate in relation to the Children Act …. We have introduced in the Children Act provisions and indeed in the Matrimonial Causes Act, relating to the duty of lawyers to advise their clients about the possibility of reconciliation. The possibility of mediation. We intend, during the course of this year, hopefully, to introduce a code of conduct in relation to family practitioners and people will be expected to follow that code of conduct not just simply pay lip service to these sections. One of which exists in the Matrimonial Causes Act already about the need… Lawyers, before they advise their clients to get divorced, have got to pursue other alternatives, not to pay lip service because if lawyers start paying lip service to the law and to these sections in relation to reconciliation, the Government are not going to fund them at public expense through legal assistance. I have made that absolutely clear in the past. Therefore the Government make no apologies for its policy in relation to this area.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

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

Question put. Agreed to.

THE CRIMINAL PROCEDURE (AMENDMENT) ACT 2010

HON D A FEETHAM:

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

SECOND READING

HON D A FEETHAM:

I beg to move that a Bill for the Criminal Procedure (Amendment) Act 2010 be read a second time. Mr Speaker, the Bill amends the Criminal Procedure Act in order to make the relevant provisions consistent with the Children Act 2009. It also makes consequential amendments to the Criminal Procedure Act in view of the proposed amendment to the Supreme Court Act for assigning family proceedings to a Family Judge. In particular, the Bill seeks to substitute a new section for section 275 of the Criminal Procedure Act and amends section 278 which effectively transfers the jurisdiction to hear applications for care proceedings from the Magistrates' Court to the Family Judge in the Supreme Court. Thus, if a Juvenile Court is satisfied that any person under the age of 18 brought before the Court is in need of care or supervision, it has to refer the matter to the Family Judge for consideration and the Family Judge can exercise any order that he deems appropriate under the Children Act. Hon Members will recall that under the Children Act care proceedings have been completely overhauled. I am moving an amendment to clause 1 of the Bill, this Bill, in order to ensure it only comes into operation on a day appointed by the Minister for Family Affairs in the Gazette. The reason for that is that regulations for the purposes of preparing care plans under section 65 of the Children Act are in the process of being produced and the repeal of the provisions in the principal Act will be timed to coincide with those regulations. The Bill also repeals section 279, 280, 281, 282, 283 and 284 which related to care proceedings and which should be modernised and overhauled by the Children Act. I commend the Bill to the House.

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

HON G H LICUDI:

There was only one point in relation to this which the hon Member has touched on and may have answered the question. That was the issue of the regulations which are required. A care plan under the Children Act for care orders has to be produced in a prescribed form and that has to be prescribed by regulations. I note that this is not now going to come into operation until it is published and it will be published when the regulations are in place. Can the hon Member enlighten us as to where we are because we do have already the provisions of the Children Act in place? That is not subject to publication or Gazetting. So those powers already exist. But there is this lacuna that regard must be had to certain plans which are produced by regulations which currently do not exist. Therefore, hand in hand with the introduction of this provision must be the introduction of regulations and I am told that those are urgently needed in order to complete the process for care orders to be made. Can the hon Member enlighten us as to where we are on that?

HON D A FEETHAM:

They should be on my desk, xxxxx, next week, actually. I have got to read them again and we expect to be in a position to introduce the regulations very shortly. We were faced with a choice after we introduced the Children Act. We could either have introduced short regulations, just dealing with the issue of care proceedings and the care plan or introduced the regulation that deal with entirety of the Act because there are various other sections that deal with the need to introduce regulations. We

decided to just take the plunge and introduce one set of regulations which we thought would be more user-friendly, in fact, for lawyers and the judges to have everything contained in one set of regulations. But, of course, it has proved to be a considerable task because the regulations are a very large set of regulations. In fact, in relation to other pieces of legislation, the Matrimonial Causes Act, for instance, the rules in relation to the Matrimonial Causes Act which provide all the court forms and other matters that have got to be dealt with, those were finished early on this year. They are with the Chief Justice and in fact, it is the Chief Justice that will introduce those pursuant to his rule making powers even though they have been drafted, essentially, by me and my team. But these things take time. They are important regulations. They are substantial regulations. But I hope to be in a position to make them effective or the Government hope to be in a position to make them effective before this side of the summer. Other than that, I cannot be more precise.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

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

Question put. Agreed to.

THE MAGISTRATES' COURT (AMENDMENT) ACT 2010

HON D A FEETHAM:

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

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I beg to move that a Bill for the Magistrates' Court (Amendment) Act 2010, be read a second time. Mr Speaker, the Bill amends the Magistrates' Court Act in a total of nine sections for the purpose of bringing the provisions of the Act in line with the proposed amendments to the Maintenance Act and the introduction of the Children Act. Section 2 of the Bill substitutes the term "domestic proceedings" for "family proceedings" which is a term used by both the Maintenance Act and the Children Act. The definition of children is made commensurate with the Children Act but more importantly, the term "maintenance order" is defined as any order for the payment of monies made by a court under the Maintenance Act. That means that when any of the money payment orders we have just looked at in relation to the Maintenance Act are made and any default occurs they can be enforced under section 57 of the Magistrates' Court Act which relates to the powers of the Magistrates to issue warrants of arrest for non-payment. This was felt to be an important point and indeed it is mirrored in section 57 of the Children Act where orders for the payment of money under that Act can also be enforced under section 57 of the Magistrates' Court Act. Section 45 is also amended so as to delete the reference to section 6 of the Social Security (Family Allowance) Act which no longer exists and to widen the scope of family proceedings to enforcement. In fact, the jurisdiction in paragraph (e) is one of enforcement in any event. If we had not done that, in fact, all the other sections that follow in relation to what happens to family proceedings in the Magistrates' Court would have been rendered totally and utterly otiose because the jurisdiction of the Magistrates' Court now as a consequence of all these amendments, are just simply going to be enforcement. There are two mistakes in the headings in section 10 and 11 of the Bill. But they do not form part of it. The reference to section 48

should, of course, be 50 and section 79 should be 70. I do not propose to introduce a formal amendment as these, technically, do not form part of the Bill. The Bill also adds a new section that provides for savings and transitional provisions. I commend the Bill to the House.

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

HON G H LICUDI:

Again, just one minor point because these are really just consequential amendments which are being made to amend definitions. In the amendments to section 2 of the Act, you have the definition of ""maintenance order"" and I am not sure whether this is a drafting point or if there is a point of principle and that is why I raise it at this point but it may be a matter for Committee. It says "maintenance" order means, subject to the provisions of the Maintenance (Amendment) Act 2010, any order for the payment of monies made by a court under the Maintenance Act." Now, clearly once the Maintenance (Amendment) Act is passed, those provisions are incorporated into the Maintenance Act itself. So why do we need in that definition a provision that says subject to the definitions of that Amendment Act when the Maintenance Act itself will contain those provisions once the Amendment Act comes into place. If there is a point of principle then I would welcome knowing what it is. But it may be just a drafting matter.

HON D A FEETHAM:

I apologise if I had not made myself clear during the course of my speech but, in fact, I thought that I had explained that. The reason for it is because by defining maintenance orders including all the money payments in the Maintenance Act, they can then be enforced under section 57 of the Magistrates' Court Act, not of the Maintenance Act, under section 57 of the Magistrates' Court Act which allows the power of arrest to be imposed in relation to any maintenance order because section 57 of the Magistrates' Court Act is not part of the Bill. You do not have it. Section 57 of the Magistrates' Court Act applies to maintenance orders and that allows a Magistrate on default of a maintenance order to, basically, issue a warrant of arrest. This point that the hon Member is making, the point that the Maintenance Amendment Act has no free standing life of its own, so it should be the amendment, the Maintenance Act.

HON G H LICUDI:

Mr Speaker, if the hon Member will give way.

HON D A FEETHAM:

Yes.

HON G H LICUDI:

That is why I said I was not sure whether this was a drafting point or there was another substantive point of principle there. But it seemed to me only a drafting matter that once that Amendment Act comes into place, it is all subsumed within the Maintenance Act itself and there is no need to refer to the Amendment Act.

HON D A FEETHAM:

I will think about it but I think you are probably right, in fact. There is the need to delete the word "Amendment" from it. I thought you were making a far wider point that I was not explaining.

Question put. Agreed to.

The Bill was read a second time.

HON D A FEETHAM:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Supreme Court (Amendment) Bill 2010;
2. The Maintenance (Amendment) Bill 2010;
3. The Criminal Procedure (Amendment) Bill 2010;
4. The Magistrates' Court (Amendment) Bill 2010.

THE SUPREME COURT (AMENDMENT) BILL 2010

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

Clause 2

HON G H LICUDI:

Mr Chairman, in relation to clause 2, we discussed during the Second Reading the issue of the prioritising of the work and it is just something to commend alternative wording to the hon Member. Would it be more accurate, in fact, to say "shall have a duty to give priority to the work of the family proceedings" rather than "prioritise" and I say that for one simple reason. Prioritise simply implies to me, prioritising that particular work. In other words, putting that work in a certain order of priority. Prioritising the work itself rather than giving priority to that over and above other work that he may have. Therefore it seems to me more accurate to say, give priority, if that is, in fact, the intention which is what the hon Member confirmed.

HON D A FEETHAM:

Mr Chairman, I just do not see the validity of the point. If I had, I would readily agree to the hon Gentleman's amendment as I have in relation to the other Bill. But I really cannot see it. So, on our side we are going to be sticking to the wording.

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

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

THE MAINTENANCE (AMENDMENT) BILL 2010

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

Clause 3

HON D A FEETHAM:

Yes, Mr Chairman, delete clause 3(c) and then re-number the following clauses, 3(d) to 3(i) as clauses 3(c) to 3(h). This is the removal of any amendment to the word "child", the definition of "child". You may recall that I spoke on this during the course of my speech.

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

Clause 4

HON D A FEETHAM:

Mr Chairman, in clause 4, for the paragraph commencing with 2A, substitute the paragraph that I drafted and that is in the letter dated 26th April 2010 to Mr Speaker and also for the paragraph commencing 2B substitute the paragraph in the same letter.

Delete paragraph "2A. Where the parties have entered into an agreement under Part VIA of the Matrimonial Causes Act, the court shall apply the provisions of this Act but subject to the provisions in Part VIA of the Matrimonial Causes Act." and replace with the following paragraph "2A. Where the parties have entered into an agreement under Part VIA of the Matrimonial Causes Act the court shall apply the provisions of the Act subject to the provisions of Part VIA of the Matrimonial Causes Act and nothing in this Act shall derogate from the provisions of that Part.".

Delete paragraph "2B. Where an application can be made either under Part IA or Part II, that application must be made under that Part only." and replace with the following paragraph "2B. Where an application can be made under either Part 1A or Part III that application must be made under Part 1A only.".

Clause 4, as amended, was agreed to and stood part of the Bill.

Clause 5

HON D A FEETHAM:

Mr Chairman, in clause 5, I have five amendments. In the text to be inserted as a new section 11(1) delete "shall". There is a "shall" and a "may". We are deleting "shall".

In the text to be inserted as the new section 12(6), delete the words. "An order made by virtue of this section which varies an order for the making of periodical payments may, if the payments as so varied shall be made from such date as the court may specify, except that, subject to subsection (7), the date shall not be earlier than the date of the making of the application under this section." and replace with the words "An order made by virtue of this section which varies an order for the making of periodical payments may provide that the payments so varied shall be made from such a date as the court may specify, except that, subject to subsection (7), the date shall not be earlier than the date of the making of the application under this section.".

In the text to be inserted as the new section 12(7) for "assessment or calculation", just substitute "order" because it is the court's order.

In the text to be inserted as the new section 15(2), for "section 4 or 8 which requires periodical payments to be made to a child of the family", substitute, "section 4 or 8".

Finally, in the text to be inserted as a new section 16B(1), for "Part VI" substitute for "Part V". That is a typographical error. It should be Part V.

HON G H LICUDI:

Mr Chairman, in relation to clause 5, the new section 11(1). Am I right in thinking that is the one headed "Interim orders"?

HON D A FEETHAM:

Yes.

HON G H LICUDI:

That is fine.

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

Clauses 6 to 14 – were agreed to and stood part of the Bill.

Clause 15

HON D A FEETHAM:

Although I have not given notice of this amendment because it slipped out of my letter in actual fact. I should have. It is 15(2) where it says "where an order under section 4 or 8 which requires periodical payments to be made to a child of the family or an interim order under section 11, otherwise than on application under section 9 which requires periodical payments to be made to a child of the family". What I propose is delete the first "which requires periodical payments to be made to a child of the family". In other words, so it should read "where an order under section 4 or 8 or an interim order under section 11 which requires periodical payments" there is one "which requires periodical payments to be made to a child of the family" too many.

MR CHAIRMAN:

I am sorry. I have lost you. What page are we on?

CLERK:

Page 115.

HON D A FEETHAM:

Oh yes. Mr Chairman, sorry, I beg your pardon it is here. I have done it in fact. I have done it in clause 5. It is just that I have been confused by the way that the sequence of the sections were dealt with.

MR CHAIRMAN:

As I find myself so. So we are now at clause 16, right.

HON D A FEETHAM:

We are now at clause 16, yes. It is not 16 under clause 5. It is section 16 of the Bill.

HON G H LICUDI:

Section 16 which says amendment under section 28.

HON D A FEETHAM:

Yes.

MR CHAIRMAN:

It is page 124.

HON G H LICUDI:

Yes that is clause 16.

MR CHAIRMAN:

But I have not got a 16. I have an A, yes. It does not make sense to me.

HON G H LICUDI:

We have a notice of an amendment.

MR CHAIRMAN:

There is a notice, is there?

HON G H LICUDI:

Yes. But it does not make a lot of sense. Perhaps the hon Member can explain.

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

Clause 16

HON D A FEETHAM:

Yes. For clause 16(a) substitute "(a) in line 1, for "section 22(3) to have the custody" substitute "section 22(2) or (3) to have the residence or guardianship"; and". Basically, that is because this particular section in the actual principal Act should refer to both custody which is now residence and also guardianship. In fact, in the main body of the Bill it does so but it does not refer back to the actual provision in section 22(2) and (3).

MR CHAIRMAN:

Yes, but the words the hon Member wishes to substitute do not appear in the Bill that I have.

HON G H LICUDI:

Yes. Clause 16 does not refer to section 22. It refers to section 28, is amended "(a) in line 1", by substituting residence or guardianship or custody. There is no reference in the one I have got to section 22.

HON D A FEETHAM:

Yes. May be it is a typographical error on my part. Yes, the reference should be to section 28 not section 22. So the letter… No.

MR CHAIRMAN:

It does not make sense.

HON D A FEETHAM:

Mr Chairman. It is correct because it is an amendment to section 28.

MR CHAIRMAN:

Okay. Yes.

HON D A FEETHAM:

Section 28 says "a person appointed under section 22(3) to have the" and then the amendments I have made which should read "residence or guardianship of an illegitimate child". Now, of course, section 22(3) does not refer to guardianship. It only refers to residence. So it should be section 22(2) and (3). So it is correct.

HON G H LICUDI:

So is it intended then that section 28 of the principal Act should say “in line 1, for section 22(3) to have the custody” substitute “section 22(2)”.

HON D A FEETHAM:

No.

HON G H LICUDI:

That seems to be the effect of the amendment.

HON D A FEETHAM:

No the effect of the amendment is this. Section 28 “a person appointed under section 22(2) or (3) to have the residence or guardianship” that is what it should say, and… The only mistake in fact is the inverted commas before the “and”. That is all because it then says “and …

HON G H LICUDI:

Which inverted commas, before the “(a)”? In the notice that has been given substitutes the whole of (a) because it is in inverted commas. So that the principal Act would say, “in line 1” which does not appear to make sense.

HON D A FEETHAM:

Yes, it is the inverted commas in the “and” that is basically an add on that should not be there. In section 28. It is an amendment to section 28 which basically should read …

HON G H LICUDI:

What is the hon Member going to read now? What section 28 should read or what xxxxx?

HON D A FEETHAM:

What section 28 should read with the amendment. With the amendment. Section 28 “a person appointed under section 22(2) or (3) to have the residence or guardianship of an illegitimate child”. That is who and then it is (a) and (b). That is how it should read. So what is effectively an add on that should not be there is the semi-colon and the word “and”. That should be deleted. That is basically the position.

HON G H LICUDI:

At the end of the proposed amendment?

HON D A FEETHAM:

Yes.

MR CHAIRMAN:

Let me read that correctly. The words of the Bill in clause 16A should just simply read in “line 1, for “section 22(3)”” should read as it reads there now. Instead of what is there.

HON D A FEETHAM:

Yes. In other words, speech mark “section 22(2) or (3) to have residence or guardianship” speech marks again. Get rid of the semi colon and the and.

MR CHAIRMAN:

There are also the words “to have the custody” substitute.

HON D A FEETHAM:

Yes. To have residence or guardianship. Not custody. To have residence or guardianship.

MR CHAIRMAN:

So we delete the words “to have custody”.

HON D A FEETHAM:

Yes, because it is residence or guardianship.

MR CHAIRMAN:

The Clerk has suggested, and I think as we all appreciate here, yes the word “and” has to go, definitely. The speech marks at the end should remain. Should they not?

HON D A FEETHAM:

They should remain, yes.

MR CHAIRMAN:

We should add another set of quotation marks because we begin with a set of quotation marks. So there should be two sets of quotation marks at the end there.

HON D A FEETHAM:

Yes. Technically yes.

MR CHAIRMAN:

I think he has cracked it. Thank you. Is that correct.

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

Clause 17 – was agreed to and stood part of the Bill.

Clause 18

HON D A FEETHAM:

Yes. I have an amendment here. Delete clause 18(a). In other words, this is the point about the child of the family widening the definition of child for the purpose of that part. Delete my proposed amendment and just simply re-number the rest of the clauses from (a) to (b) et cetera.

Clause 18, as amended, was agreed to and stood part of the Bill.

Clause 19

HON D A FEETHAM:

Yes Mr Chairman. In clause 19(b), (a) delete the first sub paragraph “(iv)” and (b) for the second sub paragraph (iv) substitute with “(iv) for the full-stop after paragraph (e) substitute – “; and (f) his cohabitee if that person is unable by reason of old age or mental or physical disability to maintain himself or herself.”” This is the point that I made during the course of my speech that my initial amendments had combined, had conflated the “cohabitee” which was the duty of the cohabitee, of the man,

with a duty to dependants who are infirm of the woman and rather than combine them which would have restricted the scope of the section, what we are doing here is having them as two separate limbs.

HON G H LICUDI:

So the reference to (f) there is part of (iv). Is that correct?

HON D A FEETHAM:

The reference to (f) is part. So effectively it will be "a cohabitee has a duty to". The last paragraph will be "(f) his cohabitee if that person is unable by reason of old age or mental or physical disability to maintain himself or herself ". It was the duty of unmarried women with respect to their cohabitees. It is not a duty that existed for men. It was a duty that existed for women.

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

Clause 20 – was agreed to and stood part of the Bill.

Clause 21

HON D A FEETHAM:

Mr Chairman, for paragraph "(a)" substitute "(a) for "33(1)(d)" substitute "31(1)(f)" and after paragraph "(a)" insert new paragraph "(ab) delete "without prejudice to the right of any such person to apply for a matrimonial order under Part I;"" We are effectively deleting the reference in that section to Part 1 which of course has gone anyway. Part 1 is being replaced in its entirety by Part 1A.

Clause 21, as amended, was agreed to and stood part of the Bill.

Clause 22

HON D A FEETHAM:

In clause 22(b)(ii), there is an "in". The word "in" is wrongly inserted and should be deleted. So instead of "in exercising his" substitute "exercising his".

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

Clauses 23 to 27 – were agreed to and stood part of the Bill.

Clause 28

HON D A FEETHAM:

Yes Mr Chairman. This amendment is a straightforward one. A mistake has been made in the reference to Part 1. It should be a reference to Part 1A. Part 1 no longer exists. In other words, after paragraph "b", insert new paragraph "(ba) in paragraphs (a) and (c) for "Part I" substitute "Part 1A";".

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

Clauses 29 to 32 – were agreed to and stood part of the Bill.

Clause 33

HON D A FEETHAM:

Mr Chairman, there is a mistake here in that we have to substitute for "Part VI", "Part V", in new section 46(1).

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

Clauses 34 to 41 – were agreed to and stood part of the Bill.

Clause 42

HON D A FEETHAM:

There is a minor amendment Mr Chairman in the terms of my letter. After paragraph "(g)" insert new paragraph "(ga) in subsection (8)(a) for "; or" substitute "."".

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

Clauses 43 to 46 – were agreed to and stood part of the Bill.

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

THE CRIMINAL PROCEDURE (AMENDMENT) BILL 2010

Clause 1

HON D A FEETHAM:

Yes Mr Chairman. I have given notice which I have explained the reasons why in a letter to Mr Speaker. Essentially, allowing for the operation of the Act to be delayed until a date published in the Gazette by the Minister. Delete the words "on the day of publication" and replace with the words "on the day appointed by the Minister for Justice by notice in the Gazette".

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

Clauses 2 to 6 – were agreed to and stood part of the Bill.

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

THE MAGISTRATES' COURT (AMENDMENT) BILL 2010

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

Clause 2

HON G H LICUDI:

Mr Chairman, in the definition of "maintenance order", I would propose removing after "means" the comma and the words "subject to the provisions of the Maintenance (Amendment) Act 2010,". So it would read simply "maintenance order" means any order for the payment of moneys made by a court under the Maintenance Act".

HON D A FEETHAM:

Mr Chairman, yes.

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

Clauses 3 to 11

MR CHAIRMAN:

Subject to the amendment of the headings for clauses 10 and 11 of which the hon Minister has indicated should be amended to read 50 and 70 respectively, yes.

HON D A FEETHAM:

Yes Mr Chairman. I was not sure that, in fact, it was necessary because these headings do not strictly form part of the …

MR CHAIRMAN:

They are worth mentioning them. For the record.

HON D A FEETHAM:

If they do for the record, absolutely Mr Chairman.

Clauses 3 to 11 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 Supreme Court (Amendment) Bill 2010;
2. The Maintenance (Amendment) Bill 2010;
3. The Criminal Procedure (Amendment) Bill 2010;
4. The Magistrates' Court (Amendment) Bill 2010,

have been considered in Committee and agreed to, some with, others without amendments and I now move that they be read a third time and passed.

Question put.

The Supreme Court (Amendment) Bill 2010;

The Maintenance (Amendment) Bill 2010;

The Criminal Procedure (Amendment) Bill 2010;

The Magistrates' Court (Amendment) Bill 2010,

were agreed to and read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

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

Question put. Agreed to.

The adjournment of the house was taken at 12.35 a.m. on Thursday 29th April 2010.