REPORT OF THE PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

The Eleventh Meeting of the Eleventh Parliament held in the Parliament Chamber on Wednesday 29th September 2010, at 2.30 p.m.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

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

ABSENT:

The Hon F R Picardo
The Hon G H Licudi

IN ATTENDANCE:

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

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the meeting held on 17th June 2010 were taken as read, approved and signed by Mr Speaker.

ORAL ANSWERS TO QUESTIONS

The House recessed at 5.30 p.m.

The House resumed at 5.50 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 Friday 1st October 2010 at 9.30 a.m.

Question put. Agreed to.

The adjournment of the House was taken at 7.45 p.m. on Wednesday 29th September 2010.

FRIDAY 1ST OCTOBER 2010

The House resumed at 9.30 a.m.

PRESENT:

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

GOVERNMENT:

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

OPPOSITION:

The Hon 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

CONDOLENCES

HON CHIEF MINISTER:

I wonder whether with your leave I might make a short statement. The House and the Members of it will already be aware, but I think it is right that we should record it in our proceedings and in our Hansard, the House will be aware that His Lordship the Bishop Emeritus Charles Caruana passed away during the early hours of this morning. I think for those of us who are members of the Roman Catholic Church, we have lost a great spiritual leader and a great pastoral shepherd. For those in Gibraltar who are of other religious denominations, they

have lost a sensitive friend who understood the importance of the various different religious faiths, getting on together and understanding each other, and worked hard in that objective. And for the whole community of Gibraltar, we have lost a great Gibraltarian. A Gibraltarian that had all the interests of Gibraltar, not just spiritual, but also historical, cultural, political interests of Gibraltar etched deeply and firmly in his heart. There are few Gibraltarians who cared more, and acted accordingly, for all aspects of Gibraltar's aspirations than Bishop Caruana. He will be sorely, sorely missed. Our condolences, of course, go to his family whose loss is the greatest. But I think the loss of Gibraltar at large is not a long way behind to that of his family. I think that, I am sure that the House will wish to … will be of one mind on this question in lamenting with great sadness the passing of this great Gibraltarian and in extending our condolences to his family and to all his friends and indeed to the clergy in Gibraltar to whom he has given great consolation in his Episcopal work.

HON C A BRUZON:

Mr Speaker, if I may thank the Chief Minister for his words concerning Bishop Emeritus Caruana who passed away in the early hours. I would like to add a note of special personal condolences to his family, to his sister, his brother and his nephews and nieces and to also say, as the Chief Minister has also stated, that Bishop Caruana was indeed a good priest, a good clergyman and an excellent Gibraltarian, loyal to Gibraltar and even defending Gibraltar in his own way, taking into account the limitations of his clerical state. I would like to say, Mr Speaker, that I knew him very, very well as a personal friend in the early years of my own priesthood. He was three years ahead of me in his studies and we worked together in the Cathedral for a number of years and also in other parishes in Gibraltar. Since then, of course, I have helped him in different ways but the important thing that I would like to stress today, Mr Speaker, is that he was a loyal priest and a loyal Gibraltarian. Thank you very much.

HON J J BOSSANO:

The Chief Minister is absolutely right in saying, as he has said, with total confidence, that he knows that he is speaking for the whole House on this matter and, of course, all of us here I think knew Charlie Caruana in different aspects of his life. Charles has known him as a colleague in the Catholic Church and I have known him as a parish priest a long time ago when I used to be an alter boy, before I saw the light. He was above all a man, which I think is one of the things that is good for the Church. A man that never lost his, sort of, simplicity and personal approach and the fact that he became a Bishop did not change him in any way as a human being. He was able, I think, to relate to fellow Gibraltarians across religious differences and in all walks of life. Consequently, his contribution to our community and to our people is something that we will all value and we will all remember with gratitude. We share the loss that his family and that this Parliament has, in that he is no longer with us, and I agree entirely with the sentiments expressed by the Leader of the House.

ORAL ANSWERS TO QUESTIONS (CONTINUED)

The House recessed at 12.10 p.m.

The House resumed at 1.50 p.m.

Oral Answers to Questions continued.

WRITTEN ANSWERS TO QUESTIONS

HON CHIEF MINISTER:

I have the honour to table the answers to Written Questions submitted by the Hon F R Picardo, the Hon N F Costa, the Hon S E Linares. Question Nos. W160 of 2010 to W229 of 2010.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC HEALTH (AMENDMENT) ACT 2010

HON CHIEF MINISTER:

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

Question put. Agreed to.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Friday 15th October 2010, on which date the hon Members opposite can wish me a Happy Birthday if they wish, at 2.00 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 4.02 p.m. on Friday 1st October 2010.

FRIDAY 15TH OCTOBER 2010

The House resumed at 2.00 p.m.

PRESENT:

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

GOVERNMENT:

The Hon P R Caruana QC – Chief Minister
The Hon J J Holliday – Minister for Enterprise, Development, 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 Loan Agreement between the Government of Gibraltar and Barclays Bank Plc dated 29th June 2010;

2. The Interest Swap Agreement between Barclays Bank Plc for £50,000,000 dated 29th June 2010;

3. The Interest Swap Agreement with Barclays Bank Plc for £100,000,000 dated 29th June 2010;

4. The Consolidated Fund Pay Settlements – Statement No. 1 of 2009/2010;

5. The Consolidated Fund Supplementary Funding – Statement No. 2 of 2009/2010;

6. The Consolidated Fund Reallocations – Statement No. 3 of 2009/2010;

7. The Improvement and Development Fund Reallocations – Statement No.1 of 2009/2010;

8. The Statement of Supplementary Estimates No. 1 of 2009/2010.

Mr Speaker, with your leave and the permission of the House, I would like to lay on the Table in Parliament a copy of the Ministerial Statement which I delivered yesterday appertaining to the territorial waters of Gibraltar.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE PUBLIC HEALTH (AMENDMENT) ACT 2010

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, this Bill amends the Public Health Act in a number of ways to bring into effect the announcements in my Budget Speech in June with regard to the increase in commercial rates and the reduction of the early payment discount with respect to commercial premises. Clause 2 paragraph (a) amends section 277A of the Public Health Act by replacing the current paragraphs (a) and (b) with three new

paragraphs, (a), (b) and (c). Clause 2 paragraph (b) makes amendments to Schedule 3 of the Act. Section 277A of the Public Health Act deals with the discount on rates of any hereditaments and Schedule 3 makes provision for the general rate. The current discounts set out in section 277A come into effect where any quarterly instalment of rate in respect of any hereditaments is paid in full within three months of the date on which it is due. The current discount is 10 per cent on the quarterly instalment of rates due in respect of that quarter or where the hereditaments is used for a qualifying activity, as defined in Schedule 3 paragraph 3, a discount of 10 per cent. The Bill amends these discounts. The discount for a domestic hereditament shall be 10 per cent, as shall be the discount for a hereditament used for a qualifying activity. The discount for a non-domestic property that is not used for a qualifying activity will be 5 per cent. Schedule 3 is amended in paragraph 2 with respect to hereditaments to which a special poundage applies. These will now include non-domestic hereditaments, which are not used for a qualifying activity. The amounts of the special poundage are amended in the definition in paragraph 3 of that Schedule. With respect to hereditaments engaged in a retail or wholesale of goods activity, the special poundage increases from 46 pence in the pound to 47 pence in the pound. With respect to most hereditaments engaged in construction, manufacturing and repair or transport and distribution trades, the amount of the rate increases from 55 pence in the pound to 62 pence in the pound. In respect of other non-domestic hereditaments, the amount will be 67 pence in the pound. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we are not supporting these increases which were announced in the Budget. It is not very clear how much this will raise or how important this is in the context of Government revenue. But to the extent that the Government feel a requirement to do this as a result of a view that they have taken that the effect on Government revenues is going to be such following the introduction of the 10 per cent rate in January and that this is one of the compensating measures to substitute for that loss, since that is an analysis that we do not share, we have heard nothing to persuade us to support the measure.

Question put. The House voted.

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

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

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE STAMP DUTIES (AMENDMENT) ACT 2010

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Stamp Duties Act 2005, 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. The Bill amends Schedule 1 of the Stamp Duties Act 2005 to reflect changes announced in my Budget Speech this year by varying the rate of stamp duty payable on the conveyance or transfer of properties subject to such duty. Mr Speaker, as announced in my Budget Speech, the policy of the Government is to exclude affordable homes from liability to stamp duty while raising a little more stamp duty from more expensive and luxury properties. We first introduced this policy by exempting properties costing up to £160,000. This figure is now increased to £200,000. Accordingly, there is no stamp duty payable on property sales with a consideration of less than or up to £200,000. For transactions with a consideration between £200,000 and £350,000, the rate will be 2 per cent on the first £250,000 and 5.5 per cent on the next £100,000, giving an effective rate of between 2 and 3 per cent. For transactions with a consideration above £350,000, the rate will be 3 per cent on the first £350,000 and 3.5 per cent in respect of the excess above £350,000. I commend the Bill to the House.

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

HON J J BOSSANO:

Mr Speaker, we agree with the philosophy that the lower value homes should in fact not pay the stamp duty in order to make it easier for local people to buy homes and if there is a loss of revenue at that end, then it seems reasonable that the Government should seek to compensate for it by raising the rate on the more expensive properties. So, the philosophy of making the more expensive homes, which tend to be bought by people from outside that can well afford to pay those sums, seems to us to be the correct approach. I am not very sure whether in fact this is just compensating for the property that is being exempted or raising more money, but we are going to be voting in favour.

HON CHIEF MINISTER:

The hon Member appears to have taken a sudden aversion to raising more money. As if raising more money is something that only Governments do and Oppositions always oppose. Of course it raises more money. I do not want to dissuade him from supporting the Bill of course, but this is part not just of a further dose of what he is supporting which is excluding from stamp duty affordable homes. I think it would be wrong for him to support the Bill on the basis that the amounts produced at the top end simply replace the amount lost, particularly just by the increase from £160,000 [*inaudible*]. There is an element of what I referred to in my Budget Speech as rebalancing Government revenues. We have got to accept, I think it is fair however this, because … well I think it is all fair but I think this is probably indisputably fair because … People that make investments in property in Gibraltar, make very considerable amounts of profit to which they are not subject, as they are in many other countries, to capital gains tax and paying a little bit more by way of stamp duty is pretty small fry to pay for, in being able to invest in a regime where your profit is entirely your own and the state and therefore the tax payer takes no share of it through capital gains.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

THE INCOME TAX ACT

HON CHIEF MINISTER:

I would only like to have the First Reading of this Bill today and then we could move on to the Second Reading. We will take the Second and … indeed as this is potentially a complicated piece of legislation and I do not know into how much detail the hon Members will wish to go either at Second Reading or indeed at Committee Stage, it is not the intention of the Government to push this legislation through the House in one or perhaps even two sittings. So, just so that the hon Members can prepare themselves for whatever it is that they want to contribute to this debate, my intention is to take the First Reading today, the Second Reading, that is the debate on the principles, on Wednesday of next week and depending on how that goes, the Committee Stage and Third Reading on a third day, further on in October. So, I have the honour to move that a Bill for an Act to Impose Taxation on Income and to regulate the collection thereof, be read a first time.

Question put. Agreed to.

THE SOLVENT EMISSIONS (AMENDMENT) ACT 2010

HON LT-COL E M BRITTO:

I have the honour to move that a Bill for an Act to partly transpose into the law of Gibraltar Directive 2008/112/EC of the European Parliament and of the Council of 16 December 2008 amending Council Directives 76/768/EEC, 88/378/EEC, 1999/13/EC and Directives 2000/53/EC, 2002/96/EC and 2004/42/EC of the European Parliament and of the Council in order to adapt them to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures, be read a first time.

Question put. Agreed to.

SECOND READING

HON LT-COL E M BRITTO:

I have the honour to move that Bill be now read a second time. Mr Speaker, at the United Nations level, agreement has been reached on the establishment of a globally harmonised system of classification and labelling of chemicals. The European Union, in accepting this classification system, is obliged to bring its laws into line with this system and has done so through the Directive 2008/112/EC which amends a number of Directives. This Bill only concerns the amendments to Directive 1999/13/EC which was transposed by the Solvent Emissions Act 2002. The Directive provides for the transition to the new system to be made on a staged basis. Amendments to the legislation are to have effect on 1st June 2010, 1st December 2010 and 1st June 2015. The amendments that were required to be made by 1st June 2010 were transposed by the Solvent Emissions Act 2002 (Amendment) Regulations 2010. This Bill therefore only relates to the amendments that are due in December 2010 and June 2015. Clause 2 of the Bill provides for the commencement of the Act and, in respect of clause 3 (1) only, an expiry date. The

effect of this is that the amendments made in clause 3 (1) are transitional up to 2015. Mr Speaker, as the House will see, the nature of the amendments are not considerable and only affect two paragraphs within one of the Schedules. It is not envisaged that these amendments will themselves have much impact in Gibraltar. 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 LT-COL E M BRITTO:

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 PROCEDURES (JURIES) ACT 2010

HON D A FEETHAM:

I have the honour to move that a Bill for an Act to amend the Criminal Procedure Act and the Supreme Court Act so as to make provision for the reform of the jury system, be read a first time.

Question put. Agreed to.

SECOND READING

HON D A FEETHAM:

I have the honour to move that a Bill for the Criminal Procedure (Juries) Act 2010 be read a second time. This Bill amends the Criminal Procedure Act and the Supreme Court Act so as to reform the jury system in Gibraltar by creating a fairer and more effective system for dealing with our more serious criminal offences. Before I speak on the effect of the provisions in the Bill, I would like to say a few words on the current system, its flaws and how the Government reached this stage.

Under the current system, juries are used in criminal trials in the Supreme Court. They are also used in some civil cases and in Coroner's inquests. In criminal trials nine persons serve on a jury except for murder trials where there must be twelve jurors. In theory, all persons between the age of 18 and 65 with competent knowledge of English can be required to perform jury service unless they are disqualified by reason of their length of residence, physical or mental infirmity or previous criminal conduct. Possible jurors are selected from a list held by the Supreme Court by a computer programme that is supposed to produce random results. The Supreme Court Act, however, excludes many people from being able to perform jury service and the system is therefore, in our view, not truly representative of the community. These exclusions include doctors, dentists, nurses, barristers, solicitors, barristers clerks and any person engaged in the administration of justice, school teachers, Members of Parliament, Ministers of Religion, members of Her Majesty's Army, Navy, Air Force, members of the City Fire Brigade, officers of the Revenue Department, editors of newspapers, persons employed in pilotage services, persons duly registered under the Medical and Health Act and carrying on the business of retailing, dispensing or compounding medicines or drugs, the Chairman of GBC, the General Manager or the managing agents of that Corporation and the Manager of Radio Gibraltar, members of the Public Service Commission and the Chief Executive of the GHA. The Government believe that

some of the above exclusions are not justified in a modern justice system and places an unfair burden on those included within the compulsory list. Just by way of example, in the United Kingdom virtually everyone is included, including judges and barristers but individuals can provide compelling reasons as to why they should not serve in a particular case. For example, death or illness of a close relative, health reasons, booked holidays and religious festivals et cetera. One of the few exceptions is full-time serving members of the Armed Forces where the Commanding Officer certifies that the person's absence would have a detrimental effect on the Armed Forces. Hon Members will also have noted that "persons disabled by mental or bodily infirmity" are excluded from jury service. Whilst physical or mental disability may in some cases be a valid reason why someone should be excluded from jury service, that clearly should not apply to every disability, as is the case now. This is discriminatory of disabled people, many of whom could provide valuable jury service. The issue of jury reform has been one which has been subject to considerable debate on a number of occasions in the past. Central to concerns with the present system is the fact that Gibraltar is a small closely knit community and it is inevitable that that will create its own problems when it comes to the selection of juries. Whether the jury system works in a small jurisdiction like Gibraltar has also been questioned by some well respected political and legal observers, including by former Attorney Generals of this jurisdiction. Mr Speaker, in 2007 after taking up office, my Ministry set up the working group on reform of the criminal justice system composed of representatives of the Bar Council, leading members of the legal profession as well as representatives of the RGP, Her Majesty's Prison Service, the Judiciary and the Attorney General's Chambers to advise on a wide range of issues affecting the current justice system with a view to its reform. Very early concerns within that group were raised about the effectiveness and fairness of the current jury system as presently constituted and what some members saw as a disparity between conviction rates for locals tried by juries as opposed to non-locals. Also raised, were concerns above the ability of jurors to deal with complex financial cases and the fact that the wide exemptions for jury service did not make the system truly representative of our community. The Government at the time made it clear that the jury system was one of the fundamental pillars of the justice system and it would not contemplate substantial reform in the area in the absence of both clear evidence that reform was necessary and also support by the community.

The Attorney General's Study. The first step the Government took was to ask the Attorney General to conduct a detailed study into jury conviction rates from 1983 to the end of 2007. The study was conducted from information taken from the Court Minute Books in the Supreme Court Registry and also individual case files. The Attorney General only recorded cases where juries were called upon to make their own decisions. Directions to acquit by a judge and no case to answer orders were not recorded. A proportion of cases studied ended in mixed verdicts. These are verdicts in which juries have found defendants guilty on some counts and not guilty on others. The statistics provided a breakdown in respect of these mixed verdicts. Most of these mixed verdicts are cases where a jury has acquitted on the higher charge, for example, not guilty for possession with intent to supply but guilty on the lesser charge of possession. Even though there is an argument that an acquittal on the higher charge where a defendant could be sent to prison but a conviction on the lesser charge which only carries a fine is an effective win for the defendant, these were also categorised as guilty verdicts. In a small number of cases, juries could not agree on a verdict. These cases were categorised as hung juries. There were no such cases involving non-locals but there were ten such cases where local people were tried. For the purpose of the analysis, the results of any retrial undertaken were used instead of the verdict of hung juries. The analysis, which we made public in 2008, showed a marked disparity between the acquittal and conviction rates between locals and non-locals. The study showed that locals were found guilty inclusive of mixed verdicts. In other words, guilty of the lesser charge but not guilty of the higher charge in 35.1 per cent of cases and acquitted in 64.9 per cent of cases.

Non-locals were found guilty in 73.2 per cent of cases and acquitted in 26.8 per cent.

Public Consultation. Following that study in April of 2008, the Government decided to conduct an extensive consultation exercise on reform of the jury system. A detailed consultation paper, Jury Reform: A Fairer And More Effective System, was widely circulated. I personally sent a copy of the paper to the Leader of the Opposition at his Party's offices. In that paper we also asked people to consider a number of possible reforms of the system. These included: (a) abolition of juries in favour of trial by judge alone or judge with lay assessors either across the board or in relation to specific areas such as complex financial crime; (b) turning juries into a voluntary as opposed to compulsory civic duty drawn from a pool of volunteers; and (c) retaining the current system by reforming it in terms of the way juries are selected to increase the randomness of the selection, the organisation of the process, the abolition of current exceptions and introducing safeguards against jury intimidation. We also made it clear that our preferred option was a voluntary jury service where rather than have a system based on random selection of jurors, as at present, we would ensure that the voluntary jury pool would be representative of the community by targeting individuals from all walks of life. The Government would like to take this opportunity to thank the public and organisations and associations who participated in the consultation exercise. The results were again made public in 2009. Of interest was the fact that 74 per cent of participants wanted juries to be abolished for some cases but only 19 per cent wanted it abolished for all cases. Just under half supported the idea of a voluntary jury system at 46 per cent and 92 per cent felt that there was intimidation of juries in Gibraltar. We never consulted or proposed to include in juries persons involved in the actual administration of justice such as judges, police officers, prison officers and justices of the peace for obvious reasons because of the small nature of our jurisdiction. The vast majority of those who participated wanted most of the current exemptions to be abolished. For example, 91 per cent wanted the City Fire Brigade to be included and 76 per cent wanted teachers to be included within the jury list. There were only three categories out of all of them that we consulted upon, the current exemptions, where less than 50 per cent of those participating felt should not be included in jury service. These were practising barristers/solicitors, Ministers of Religion and Members of Parliament. One point that came out very clearly from the comments made was that people did not feel that we should have juries in complex financial cases. Many also criticised the method of initial call up. A frequent comment was that it placed an unfair burden on particular households who may have more than one member called up at the same time. My Ministry also received a number of representations from people who have had two or three members of their household called for possible jury service at one time. In one instance, seven members of the same family, with the same surname, some in the same household, were called for possible jury service. It was clear, Mr Speaker, from this consultation exercise that we needed to: (1) deal with the way that juries are selected in order to make it fairer and more effective; (2) increase the jury pool by abolishing many of the exemptions to make the system both fairer and more representative of the community. In this regard, the Government take the view that in a small jurisdiction like Gibraltar where the absence on jury service of some members of essential services or those involved in education, can seriously disrupt those services, we need to balance broadening the list with minimising that disruption. Honourable Members will, in due course, see how we have tried to deal with that situation. In some areas, due to lack of adequate cover, we simply could not afford to include some groups within jury service, for example, doctors. Thirdly, we needed to deal with potential jury intimidation and fourthly, to deal with complex cases of a financial nature which juries may find difficult to understand or because they will take so long that it would be too much of a burden on jurors. Mr Speaker, in the light of the fact that just under half of those who contributed supported the voluntary jury system, which the Government favoured, the Government decided not to proceed with the idea.

The Bill itself. Clause 2 of the Bill amends the Criminal Procedure Act by replacing section 135 with a new section and deleting sections 135 to 163 of the Act. The new section 135 makes it clear that every criminal case brought before the Supreme Court must be tried by jury as provided by Part III of the Supreme Court Act, which is amended by section 3 of this Bill, unless it is a trial on indictment which includes a financial offence where the complexity of the offence or the probable length of trial or both is likely to make the trial so burdensome on members of a jury that the interests of justice require that a trial be conducted without a jury. In such a case, the trial may be conducted by a judge and two lay assessors or by a judge alone in accordance and in the manner provided by the new Part IIIA of the Supreme Court Act which is inserted by means of clause 4 of this Bill. Sections 145 to 163 of the Criminal Procedure Act are provided for in Parts III and IIIA of the Supreme Court Act as amended.

Clause 3 amends the Supreme Court Act by substituting the current Part III, which deals with trials by jury, with a new Part III in its entirety. The new section 19A sets out the qualification for jury service. Subsection (1) sets out the general provision that a person aged between 18 and 65 who is eligible as an elector of our Parliament and or has been ordinarily resident in Gibraltar for five years is eligible. That therefore, will include non-British citizens with no right to vote. In fact that is the position at the moment except that it is broader than at the moment because at the moment any alien who has resided in Gibraltar for less than ten years is excluded from jury service. So now what we are saying is anybody who has been resident in Gibraltar for more than five years. So it broadens the pool of people available for jury service. But in a way, where the person who of course has been living in Gibraltar for more than five years has an attachment of course to this community. Subsection (2) makes certain exceptions. These include certain mental disabilities. Not having an adequate knowledge of English and disqualifications due to the person either being on bail or having certain criminal convictions or due to their profession. Subsection (3) makes it additional provision for persons aged 66 to 71 to volunteer for service as jurors at their choice. Section 19B makes provision for the creation of a new jury list, the revision of the same before the Magistrates' Court and the publication of the list after the revision has been completed. The list once compiled remains in force for two years. Section 19C makes provision for the service of a summons for a person to serve as a juror. The summons must include certain information as to the effect of the legislation and also as to the number of days the person is expected to be required to attend court and that he has the right to make representations to the Registrar with a view to the summons being withdrawn. Subsection (2) sets out that a person may only be summoned to serve on a jury once per year unless all other persons in the list have been summoned that year. Mr Speaker, I have given notice to amend this section in order to ensure that no one is called for more than once in every two years. In other words, during the currency of the list. Section 19D empowers the Registrar to withdraw or alter summonses where he is of the opinion that the person's attendance on a certain date is unnecessary. Section 19E sets out that persons summoned must attend the Supreme Court on the date specified. However, exceptions are provided in respect to multiple persons from the same household, registered nurses and teachers in certain circumstances and I have also given notice for that to be extended as well to serving offices of the City Fire Brigade. In relation to nurses, teachers and also fire officers, only three of those categories can be summoned for jury service but only one of each category can actually serve on a jury at the same time. In relation to teachers, no more than one from the same school. Again, the policy behind that is obviously to minimise the potential impact that the call up of too many teachers may have on education services. Section 19F includes a number of circumstances where a person may be excused from jury service. Subsection (1) is where a person has served or duly attended to serve in the two years ending with the service of the summons or has been excused by the court from serving for a particular period of time. Section 19G allows persons who appear in the list at Part II of Schedule 3, Ministers of Religion, Members of Parliament, practising barristers, solicitors and notaries, former judges and certain

members of the armed forces, to request that they be excused. If they make such a request, they must be excused. Now, the scheme of that particular schedule is this. You have people who effectively are excused, who cannot be on a list and those are, for instance, anybody involved in the administration of justice, judges, stipendiary magistrates, justices of the peace. Then you have a second category of people and those are persons who can be excused at their election. Now, this is reflective of the consultation process. You may recall that earlier on I outlined that, in fact, there were only three categories of the current exemptions were people where less than 50 per cent of those that contributed to the consultation exercise believed that they should be excluded from jury service. Now, what we have done is we have allowed those individuals to elect to be excluded. Litigation lawyers, there may be a very good reason why litigation lawyers would wish to be excluded because of conflict reasons. But there may be other lawyers who, in fact, do not go anywhere near a court and those may wish to serve and I know that there are a number of lawyers who made representations to me who, in fact, wanted lawyers to be included within the jury service. Ministers of Religion. There may be Ministers of Religion and again there were representations that were made to me, who felt uncomfortable with the idea of serving on a jury when they may have to Minister to some of the defendants appearing in the court. There were others who, in fact, felt, well actually this is my civic duty and I do not see that there is such a problem. Again, Members of Parliament. Members of Parliament may take the view that serving on a jury is contrary to their duties to constituents. There may be others who say, well no it is my civic duty to serve on a jury. Sections 19H and 19I allow for excusal or deference for good reason. This gives the Registrar and the court a broad discretion to deal with requests that do not fall under one of the previous sections on a case-by-case basis. For example, because somebody has a relative that is ill or there is a pre booked holiday or that person is going to be out of the jurisdiction. Inevitably, it will not mean that they will be excused for the whole of the two years but only for that session. In other words, they will probably be summoned to appear the next time that there is a trial by jury. Section 19J allows for the court or Registrar to discharge a summons if it appears that the person, despite being on the jury list, has insufficient understanding of the English language to serve effectively as a juror. Section 20A sets the number of jurors for use in trials. It remains nine for most criminal trials except for murder where the requirement is twelve. Section 20B provides for the choosing of a jury. Subsection (1) provides for the use of a ballot. Subsection (5) limits the number of teachers and registered nurses and, again, fire officers, to one for each jury. Section 20C allows for the summoning of additional persons in exceptional circumstances in order to ensure that there is a full jury selected. Section 20D allows for the challenging of jurors for cause. Section 20E allows for situations where a jury may be required to try more than one issue. Section 21C deals with the situation where, during the course of a trial of an issue, a juror dies or is discharged, provided that the number of jurors are not reduced below seven. In the case of the normal criminal trial where the jurors are nine or ten for murder, the trial can continue but there is also provision for the appointment of additional jurors in appropriate cases. Sections 21D and 21E at important sections and deal with the discharge of a jury by a judge and makes special provisions for cases where the discharge is due to jury tampering. After informing the parties that he is minded to discharge the jury and the grounds for doing so and after giving the parties an opportunity to make representations, the judge can continue the case without a jury if he feels that jury tampering has taken place and to continue without a jury would be fair to the defendant. Mr Speaker, the Government believe that where a judge is satisfied that there has been jury tampering, rather than call for a retrial, the judge should have the right to continue hearing the case if he feels that a fair trial is still possible. The Government are determined that jury tampering should not play into the hands of criminals by having discharge of jurors so that tactically it is a good outcome for somebody facing a serious criminal trial and for a serious criminal offence. Section 21F sets out the form in which verdicts must be delivered. Section 21G makes provision for majority verdicts in cases other than those for murder and Section 21H sets out the procedure to be followed if a jury is

unable to reach a verdict. Section 21I limits the circumstances where a judgement after verdict in any trial by jury may be stayed or reversed on the basis of irregularities in the empanelling of a jury and section 22A allows the Chief Justice to make rules of the court should he wish in relation to the viewing of sites by jurors. Section 22F creates offences relating to non-attendance to serve on a jury, with a penalty on conviction of a fine of up to level 3 on the standard scale and further offences relating to the making of false statements or serving on a jury when knowing that he is not entitled to serve which are punishable on conviction by a fine at up to level 5 on the standard scale. Sections 22G to 22I extend the provisions of this part to civil actions where juries are required to sit, with certain amendments.

Clause 4 inserts a new Part IIIA into the Supreme Court Act. This new Part deals with trials using lay assessors in certain circumstances. Section 27A sets out the circumstances in which such a procedure could be commenced. These are that: (a) one or more of the defendants are to be tried on an indictment which would include one or more of the financial offences listed in Schedule 4, so the offences have to be one of the Schedule 4 offences; (b) in the opinion of the Attorney General the evidence of the offence charged would be sufficient for the person charged to be committed for trial and that evidence reveals a case of a Schedule 4 offence of such complexity that it is appropriate that the management of the case should, without delay, be taken over by the Supreme Court; (c) he certifies that opinion by notice; and (d) he informs the Magistrates' Court that he intends to make an application under the next section 27B to the Supreme Court for the case to be tried by judge and lay assessors and that there are at least ten persons who are wiling to be lay assessors. Where all these circumstances are satisfied, the Magistrates' Court must immediately proceed to commit the case for trial. Sections 27B and 27C then deal with applications by the Attorney General for a trial to be heard by judge and lay assessors. The Supreme Court would need to be satisfied that the offence is a Schedule 4 offence. That the relevant notices have been provided to the Magistrates' Court under section 27A and subsection (3) then sets out the test that the Attorney General needs to satisfy before the Supreme Court, for the court to allow the use of lay assessors. And the court needs to be convinced that the complexity of the offence or the probable length of the trial, or both, is likely to make the trial so burdensome to members of the jury hearing the case that in the interests of justice it requires that the trial should be conducted by lay assessors instead. Section 27D sets out the effect of the orders relating to applications under section 27B. If refused, the trial would then be heard by a jury under Part III. If the application succeeds, the trial would be heard with lay assessors or by the judge alone if there are insufficient lay assessors to undertake it. Section 27E deals with the lay assessors list. Persons volunteer to be included in the list and to qualify they must be aged between 18 and 70, be qualified to act as jurors and be approved by the Judicial Services Commission as a person with relevant experience, qualifications and background to serve as such and be able to devote adequate time to be able to do so. The procedure for approval by the Commission is set out in section 27F and the effect of inclusion on the list is set out in section 27G. Section 27H deals with the service of summonses to persons on the lay assessors list. Section 27L extends certain provisions of Part III to lay assessors with regards to their attendance. Section 27J sets the usual number of lay assessors required for trail at two. Section 27K deals with the selection of lay assessors which is by ballot subject to challenge under section 27L much in the same way as jury members. Sections 27M and 27N provide for circumstances where lay assessors may be discharged and the commencing or continuation of a trial without lay assessors. Section 27O sets out the role that lay assessors play in a trial. They, together with the judge, are arbiters of fact and arrive at the verdict. They do not need to retire when points of law are discussed but play no part in decisions made on such points. They may ask questions of witnesses and take notes. They may attend viewings and may retire with any document they wish. The judge must direct them in open court with regards to the evidence and the applicable law which is the position now as regards juries. They retire with

the judge to decide on the verdict, which must be reached and delivered in accordance with section 27P. The verdict has to be delivered orally in open court by the judge. In every case, each member of the Court must announce the verdict that has been reached without stating his reasons for it. The judge may accept a verdict upon which at least two of the members of the court agree, that is a majority verdict, and that majority verdict is as valid as a unanimous verdict. When announcing the verdict of the court, the judge will state the facts and matters of law, which were relied upon in reaching the verdict. In other words, the reasons and if the verdict was by majority, he must also indicate the nature of the difference in opinion. Section 27Q makes provision for cases where the judge sits alone. Sections 27R, 27S, 27T and 27U makes similar provisions to the equivalent sections in Part III whereas section 27V empowers the Minister to amend the list of financial offences set out in Schedule 4 after consultation with the Chief Justice. Clause 5 is a consequential amendment due to the insertion of the new Schedules. Clause 6 inserts the new Schedules mentioned previously and clause 7 includes transitional and miscellaneous provisions as to the jury list and also Schedule 4. I commend the Bill to the House.

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

HON F R PICARDO:

The Opposition will not be supporting this Bill. My learned and honourable Friend Mr Licudi will be dealing with the issues that arise in respect of the changes being made as to the eligibility to be selected for jury service. I think one issue in particular that is causing him concern and is causing the Opposition concern. The hon Gentleman has taken us through a number of different aspects of what this Bill does. One of them is the change that is made to the mechanism for selection of jurors and for increasing the jury pool. In principle, we are not opposed to that, subject to the matters that my learned and honourable Friend will deal with when he speaks on the Bill also, but although we share some of the concerns that the Government have identified as to the problems that jury trials can sometimes create, in particular in a community like Gibraltar which is not like many of the other common law countries that have jury trial, we do not believe that these are the best solutions to deal with those problems and therefore we will not be supporting in this Bill what I think is the biggest issue of principle that is before the House today which is to grant the right exclusively to the prosecution to select or to seek rather, trial without a jury in complex financial fraud. A lot of the changes that are being made or proposed to our legislation today are almost identical or very nearly identical to those which were made recently in the United Kingdom in the Criminal Justice Act 2003 and later legislation. Indeed, Mr Speaker, you may have seen yourself from recent press reports, as recently as May of this year, that there was great controversy in the United Kingdom when the first trials without a jury were being held in 350 years since that principle or the right as a principle of trial by jury, had been established. Mr Speaker, in the United Kingdom, that first trial without a jury, after two or three attempts to have a trial without a jury by the prosecution, really related not to a case of complex financial fraud but to a robbery, an armed robbery where there was a trial by judge alone. Not because of fears of complexity in the explanation of facts or length of trial to the jury but because of what were found by the judge to be legitimate fears of jury tampering and Mr Speaker, of course, that is something that we share the Government's views and need to be tackled. We cannot have, if we have a system of trial by jury, any concept of anybody being able to get away with jury tampering. But Mr Speaker, giving the right to the prosecution exclusively to seek trial not by jury in complex financial fraud cases is not going to resolve those issues. The time that in the United Kingdom, earlier this year, these issues were being ventilated, there was of course a huge outcry. Critics of the moves referred to the change of the exclusive right of the defendant to select trial by jury, in certain cases, as an attack on a basic democratic right. The Criminal Bar Association which represents Criminal Bar members was quoted widely, saying that the move was chipping away at one of the basic pillars of democracy and perhaps most

unexpectedly the Crown Prosecution Service has said that it is itself strongly in favour of jury trials unless there are exceptional circumstances but those are not just that there should be complexity in the facts of a case to be heard by a jury. I think that my greatest concern is that the changes being made by this Bill do not actually seem to us to deal with the sort of case that has, I think in the general public perception, been a problem in our courts because I think that the chances of there being jury intimidation is more likely to arise in cases where there are offences of violence before the court than there are where there are dry issues of complex financial fraud. Yet it is in those cases that we are purporting to give, exclusively by this Bill, the power to the Attorney General to seek trial without a jury. Mr Speaker, again referring to the position in the United Kingdom, apart from the case which I have just referred you to, I believe there is presently on foot an application or a hearing of one murder trial where the prosecution has alleged that there are public policy and public security grounds why the jury should not hear evidence and why the matter may be heard or is being heard by a judge alone. Again, not a case of complex financial fraud. It is fair to say that in the United Kingdom the whole of the Criminal Bar, those, in other words, most directly involved in these matters, have been against the process. In fact, the consultation carried out by the Attorney General in the United Kingdom has been referred to as laughable in one editorial in The Barrister, a publication in the United Kingdom which caters for the interests of barristers, and apparently, Mr Speaker, the Attorney General consulted widely in respect of this subject by holding a hearing on the 24th January 2005, namely on one day between 10.00 a.m. and 12.30 p.m., and that is being derided in the United Kingdom as not being a wide consultation. Therefore, in so far as we are taking from the United Kingdom's changes a lead to amend our legislation, it may be that we are not dealing there with the most widely consulted piece of legislation. There is a piece, Mr Speaker, also in The Barrister by the very highly regarded Mr Peter Thornton QC, who is now the Head of Chambers at Doughty Street, which I think it is worth looking at because I think it summarises all of the issues which are in most of the rest of the criticisms of this type of change, most succinctly. He starts in that article by saying that fifty years ago in one of the first editions of the Criminal Law Review, which as you will know and lawyers on the other side of the House as well as on this side will know is almost the Bible for the ongoing process of the common law in criminal matters, a senior judge wrote, "I cannot bring myself to believe that there are any persons other than the inmates of a lunatic asylum who would vote in favour of the abolition of trial by jury in serious cases." Mr Speaker, Gibraltar is not the United Kingdom and fifty or sixty years have passed and, of course, there are issues about jury tampering and jury intimidation that we must deal with, but allowing the prosecution exclusively to have the right to seek to have trial other than by jury in one particular type of case which is, in my view, and I am sure that this view is not shared across the floor of the House, not likely to be the type of case that is going to give rise to jury intimidation and not to have a specific provision in that respect in cases of serious violence, is not necessarily going to deal with that. Mr Speaker, quoting the article from Mr Thornton that I recommend to all Members of the House from The Barrister, from the 27th issue of that, and I am quite happy to provide copies if the Members on the other side require, Mr Thornton says this, "The vast majority of judges who try serious fraud are against change". Mr Speaker, what has been identified as affecting jurors in such types of cases and even judges, counsel and defendants, is and I quote again from Mr Thornton "The real problem here is long trials. The answer is not to scrap jury trial but to de-burden long cases. If the trial is too burdensome for jurors, it is probably too burdensome for everyone else. The jurors who spoke out after the collapse of the Jubilee Line case", which as Mr Speaker will know was a notoriously lengthy case involving complex fraud, "said that they were quite able to understand the issues in the case. Their problem was the length of the trial. Unduly long cases never make good justice." Mr Thornton then goes on to take the reader through a ten point plan which had been put forward by the Criminal Bar Association which will deal with the length of complex fraud cases and try and compress them in some way and he then goes on to deal with some fairly weighty authority for his view, shared by most of the Criminal Bar

Association, that there should not be widescale changes to the right to trial by jury, by quoting Sir Matthew Hale, in 1713, where he said that a trial by a jury of twelve men seems to be the best trial in the world. Well, in Gibraltar, Mr Speaker, we are that much smaller than the United Kingdom, but we still at least stick to nine. Mr Thornton said that Blackstone, that very highly regarded jurist, said the same in his commentaries and so did Devlin about 250 or 300 years later in his [*inaudible*] lectures in the 1950's and then I continue to quote him, Mr Speaker, "Only shortly before the distinguished Royal Commission on Capital Punishment had given trial by jury a resounding vote of confidence. Nearly all their recommendations were founded upon complete trust in juries. We have been struck by the almost unanimous tributes paid by the judges and other experienced witnesses to the reliability and common sense of British juries and the qualities they have always displayed in dealing with the issue of guilt and innocence." Mr Speaker, Gibraltar is not the United Kingdom and if there are issues which affect a community like ours, which do not affect the United Kingdom jury pool, and there are issues of intimidation and there are issues of jury tampering, then we have to deal with them. But it seems to me that getting rid of the automatic right of trial by jury on indictment only in relation to the type of application that the Attorney General can bring, does not seem to me to deal with those issues. I want, Mr Speaker, just to quote the final two paragraphs of what Mr Thornton has written because I think it summarises the position very usefully for the House. "Trial by judge alone is wrong in principle and unnecessary. The other option of trial by jury with lay assessors, a mini jury, is equally wrong in principle and unnecessary. The Fraud Trials Committee Report, the Roskill Committee as it was known in 1986, recommended something rather different, trial by judge sitting with expert assessors. But it has never been implemented because as with trial by judge sitting with lay assessors, it is fraught with problems of selection, procedure and decision making. It also lacks support notably from the 1993 Royal Commission on Criminal Justice. A mixed tribunal of a judge sitting with lay assessors would have a down graded appearance looking like a tribunal trying appeals from the Magistrates' Court. There would be little point in removing juries and replacing them with a smaller number of lay members for the sake of appearance. Trial by jury should be retained for the trail of all serious criminal offences. It is a mode of trial which is popular, familiar, tried and tested. It has also been shown to be flexible and capable of adapting to change. Now is the time to bring new reforms to modernise it and to reshape it particularly with the view of shortening long cases including serious and complex fraud cases. It is not the time to remove trial by jury." Those are the views of Peter Thornton, QC and I think that they carry the weight of representing the views of most of the Criminal Bar in the United Kingdom. I am conscious, of course, of the fact that the hon Member has referred the House to what is in effect a poll that has been carried out to understand what the views of much of our community may be. We cannot disregard the views of most of the Criminal Bar in the United Kingdom from which we all learn so much whilst at the same time trying to grapple and deal with the issue of jury intimidation and jury tampering which we must of course get to the bottom of and which we must deal with but not necessarily in this way. So, Mr Speaker, I think it is fair to say that the position of the Opposition will be that we are in favour of the reforms that will make the jury more representative. We are in favour of the measures to protect jury members and we are in favour of ensuring that one household should not be burdened in any particular way by having all its members in the jury pool at any one time. But, Mr Speaker, cases of intimidation are likely not to be cases of complex financial fraud. Certainly, if we were to be in favour of the right of the Attorney General to seek trial by lay assessors or other than by jury in respect of a defendants cause in a particular case, we would believe that that right should cut both ways. Now, it is not usual that you can imagine a situation where a defendant himself might want to be tried other than by jury, but it might be possible that in complex financial fraud a defendant might wish to be tried by people who might be more likely to understand the complexities of the case than a lay jury. So, if that bites in one direction, although I do not share that view, if that bites in one direction, and we are given the right to the prosecution, why is that we do not think also of giving the

right to the defence should such a case arise, and we cannot imagine all the circumstances of every case that may arise, so that it is a right that cuts both ways even though it is very likely to be used in any situation. Mr Speaker, this Bill, despite our views, is likely to pass by the Government majority. Nonetheless, even when passed, I am sure that our courts and even our prosecuting authorities would be careful to ensure that such rights, as these new laws will bestow on prosecutors to seek trials other than by jury, will be used sparingly. Just on a simple technicality, I am grateful for the hon Member having taken us through in detail what it is that each section does. But I note that the version of the Bill that I have does not have an Explanatory Memorandum and I wonder if there is a reason for that that the hon Gentleman may wish to address in his reply. I am grateful Mr Speaker.

HON G H LICUDI:

Mr Speaker, as my learned and honourable Colleague has indicated, trial by ones peers is fundamental to the system that we have enjoyed for many, many years and of course the jury must be representative, as representative as possible, of the community. But the Government, of course, recognise and the law has also always recognised, that there are certain categories that are recognised as worthy of special provision being made in the legislation. The Hon Minister for Justice has gone through the lengthy list that is currently in the legislation and the need to reform that list and, in principle, we agree with that aspect of the Bill. But there is one category that I want to specifically address shortly and mention and that is the category of school teachers. School teachers are provided for in the legislation. As the hon Member has indicated, in order to minimise the potential impact of a call-up of too many teachers on the education service and therefore there is provision as to the number of teachers that can be called up and the number of teachers that can serve, and the same provision has been made or is proposed to be made in respect of nurses and members of the fire service. But there is one difference, if you have a nurse or a fire officer being called up, presumably that person will be covered either by a supply worker or overtime being given by somebody, for example, from another shift that could cover for that particular officer. In each of those cases, the person doing the cover will be as qualified and will do the same job as the person who is absent. In the case of school teachers the position is slightly different because you may have circumstances, certainly all school teachers will have their classes which they will have taken through the whole of the year and there will be circumstances when at a crucial stage of a child's educational year there may be revision for exam classes. There may be classes doing A Levels, AS's, GCSE's and so forth and in April of a particular year, in December or in January of a particular year, the fact that that particular school teacher, who has done that course and who needs to do the revision and go through the final stages of the course with a particular class, is absolutely fundamental to that class or that child's education. Therefore, there is a difference and what we consider is that there is a danger of severe prejudice, not necessarily to the service itself, but to the child being educated if a particular teacher is absent at crucial stages. What we would suggest to the Government is that they should consider including school teachers in Part II of Schedule 3 and I have heard that there has been a consultation process and that consultation included school teachers and there has been a majority view expressed in that regard. But there can be a happy medium whereby all school teachers who want to serve can serve. All school teachers can be included in the jury list subject, of course, to adequate cover being in place whenever somebody is called up. But there is a list in Schedule 3 of persons who may be excused and there may be very good circumstances why people should be excused and it is not enough and the answer cannot be, well if somebody is in a critical stage of education, they can simply write to the Registrar or when they appear, they can say, please let me be excused because then there will be a discretion on the judge whether or not to excuse that particular person. The alternative is to include those persons in the list of persons who may be excused subject to this proviso, perhaps, and this we offer by way of suggestion for the Government to consider. One

of the categories listed in Part II of Schedule 3 are members of Her Majesty's naval, military or air forces and they are not automatically excused. They are only excused where their Commanding Officer certifies that it would be significantly prejudicial to the service if they were absent from duty. We could therefore have the same system whereby school teachers could be in the list of persons who may be excused subject to, for example, the Director of Education. The Director of Education may be required to certify that the absence of a particular teacher, at a particular time, would significantly prejudice the service and therefore that would be a compromise which would allow all teachers to be included in the pool, would allow all teachers to do their civic duties, but makes a provision which absolutely ensures on the certification of the Director of Education, or perhaps even the school headmaster, that a particular teacher when needed will be there and will be able to provide the necessary education. It is not just a question of somebody performing civic duties. We are talking of the education of our children. We are talking of the chances that those children will have in particular exams. We are talking of the future of those particular children and that must not be prejudiced and every effort must be made to ensure that that is not prejudiced in any way.

HON D A FEETHAM:

May I start by congratulating hon Members opposite. After three years of this particular Parliament, I think it is about fifteen Bills, serious Bills introduced from my Department here in Parliament, it is the first time, the very first time that there is some serious debate on some of these huge reforms, thank you very much, that we are introducing in this area. Mr Speaker, the Hon Member Mr Picardo started by saying, well we do not believe that this is the best solution. That is the way that he put it. But then again, I note that he offers absolutely no alternative by way of solution in terms of what they feel we should be doing in this particular area because I hope the members will agree that, in actual fact, the jury system needs to be reformed and there are flaws in the jury system, but again, yet again, no constructive alternative is offered from the Opposition benches. In fact, it comes on the back of the fact that the detailed consultation paper setting out what the problems were, what we were proposing, was actually sent to the Leader of the Opposition by me, inviting the Leader of the Opposition to actually provide his own ideas or his parties own ideas. He has got three lawyers or four lawyers sitting with him in the Opposition benches and yet nothing from the Opposition Members until today when Mr Picardo stands up and says, well it is not the best solution for jury reform. Well, we are still to hear what solution they believe is the best solution. Mr Speaker, Mr Picardo conflates, he mixes up the position as regards intimidation of juries with the position as regards cases of a complex financial nature. The position as regards intimidation is not that the prosecution can actually apply for those types of cases to be dealt with by a judge alone. It is the judge himself, having considered the evidence of jury intimidation, he is the man that decides of his own motion or indeed, because of course if there is evidence, somebody presents him with evidence that there is jury intimidation. But it is not an application that in fact is made by the … or is something that is initiated necessarily by prosecutors in a particular case. It is actually a judge and I hope that he is not suggesting, Mr Speaker, that where a judge has clear evidence, clear evidence that there is jury intimidation, that he is supposed to continue with what is the [*inaudible*] position at present where a jury has to be discharged and there has to be a retrial, because that is the worst of both worlds, Mr Speaker, and that offers absolutely no alternative at all.

HON F R PICARDO:

Will the hon Gentleman give way, Mr Speaker? I am grateful. Given that this is the first time that he says that we engage in serious debate, I am delighted that he has given way. I am not for one moment suggesting that we should not make those reforms which will assist in dealing with issues relating to jury tampering and the rest of it. Unfortunately, as I am sure he will

accept, we cannot sever from the Bill the parts that we like and the parts that we do not like. When one of them deals with an issue as essential as not being able to choose the right to trial by jury in complex fraud which is to undo 350 years of civil liberties, as has been said in the United Kingdom. I am afraid we therefore cannot support the Bill. I said on a number of occasions during the course of my speech, in which he has unfortunately conflated in his answer, I am not against giving the judge a power to deal with issues of jury tampering or jury intimidation and he need not bother the House any further by going down that road, if he feels that it would enable him to deal with his reply more shortly.

HON D A FEETHAM:

I do not know about the shortness of my reply but certainly it does not deal with the point that I was making. Mr Speaker, it is quite clear when one analyses the speech that my learned and honourable Friend gave, that he was actually citing the example of the fact that there had been a controversy recently in relation to a trial by judge alone and the controversy surrounding that, as evidence of the fact that there was widespread opposition to these types of ideas in the Untied Kingdom. Actually, the trial without a jury that took place, I think it was this year in the United Kingdom, was because of jury intimidation. It was not because of the complex financial cases, because although the UK Government introduced in 2003, and I shall come back to this in a few moments, section 43 of the Criminal Justice Act, that section has not been made effective. So the only trial in the United Kingdom that could take place without a jury in England and Wales is because of jury intimidation and it is precisely pursuant to the provisions that we have included within this Bill today. So of course it is conflating the position, Mr Speaker. Now, the hon Member says that, I think that a large part of his speech was premised on the basis that these types of reforms were opposed by the Bar Association in England and Wales. Now, it is certainly true that the Bar Association, the Criminal Bar Association in the United Kingdom certainly views trial by jury as a sacred cow. The fact of the matter is that the Government do not see it as a sacred cow. There are sacred cows in other areas and, in fact, as the Hon the Chief Minister demonstrated yesterday in his excellent ministerial speech on other issues. But certainly, Mr Speaker, not on this issue.

HON CHIEF MINISTER:

What, the hon Members do not agree with the Chief Minister's speech?

MR SPEAKER:

I think we are deviating from the subject matter now.

HON D A FEETHAM:

Mr Speaker, the Government have to consider not sacred cows in particular areas but the effectiveness and efficiency of the justice system as a whole. Whilst the Government are obviously conscious of the need to provide defendants with a fair trial, that also needs to be balanced with fairness to jurors and with the efficiency and effectiveness of the system. Now, the hon Gentleman quotes passages from various people that have opposed the introduction of lay assessors or judge alone in serious fraud cases. But, Mr Speaker, he omits the fact that, for instance, the Frauds Trial Committee Report in 1986 led by the renowned House of Lords Judge, Lord Roskill, recommended judge and expert assessors. The Auld Report in 1996, which again considered this particular issue, came up with three options, one of which was judge and lay assessors. The United Kingdom Government conducted an extensive consultation exercise in 1999 and, as a consequence of that consultation exercise, introduced in 2003 provisions that are very similar to this particular provision. We ourselves have conducted what the hon Gentleman describes as a poll, although they did not have,

Mr Speaker, the political decency to respond to our detailed consultation paper, but which was very well responded to by members of this community and it was obvious that there was deep concern in the community about these types of cases because the reality of the situation is that we are dealing with very complicated financial cases. Cases often said, for instance, … the background of financial markets dealing with complicated financial instruments such as derivatives, futures trading, which is outside the scope of relevant experience of the vast majority of people that are involved in jury cases. You cannot expect people to understand those types of complicated financial transactions. You cannot expect them to then apply the evidence to the facts of the case properly and come up with an appropriate verdict, Mr Speaker. Of course, it is not only the complexity, we are also dealing with a situation where of course trials in this particular area can take months, often you have trails of a year or so in the most difficult cases. Now in that kind of case what you …

HON G H LICUDI:

Will the hon Member give way? The hon Member is giving examples of extreme situations which may arise. We are living in Gibraltar. We are dealing with situations in Gibraltar. When was the last time we had a trial for a year in Gibraltar? When was the last time we had a trial which would today be categorised under this legislation as a complex financial offence whereby this legislation would come in handy and useful? Has any of that happened in the last five years? Perhaps the hon Member can elucidate us.

HON D A FEETHAM:

Well, but that is precisely … He answers the question that he poses himself because the reality is that this provision is meant to deal with the most extreme cases. That is what it is meant to deal with. It is meant to deal with the most complex of financial cases. Those cases that, because of the either the complexity or the length of the trial, are going to impose an over burden on ordinary members of this community, Mr Speaker. Of course, they are going to be rare. That is precisely it, Mr Speaker. The test itself is meant to ensure that you sieve the vast majority of cases and that only the most extreme of cases are going to be caught by this particular net. That is precisely the whole purpose of the test, but if you have, coming back to my response, a case that is going to take months, what it does is it actually imposes a burden on an ordinary member where an ordinary member of this community has to put his whole life on hold, not for one or two weeks as the ordinary case in the Supreme Court currently lasts, but for months. That is simply not fair, Mr Speaker. It also does not contribute to the quality of the actual justice because hon Members who are lawyers, as well as myself, all know that it is very difficult to actually keep tabs on evidence in very long cases. Just imagine for members of a jury keeping tabs, remembering and then applying evidence that has been heard over a period of months. It is just an over burden, Mr Speaker. In the Maxwell case, for instance, there were 700 jurors that were summoned.

HON G H LICUDI:

Was that in the Supreme Court?

HON D A FEETHAM:

No no. It was in England and Wales. The hon Gentlemen, they like to quote from England and Wales. Well, in the Maxwell case there were 700 jurors that were actually summoned. Five hundred and fifty of those were actually excused because of the potential effects that the case would have either on their lives or their profession or their business. What tends to happen, as a consequence of that, is that then we have a situation where your middle classes, in other words, your people in professions, your people with businesses, they are then excluded and you get

your working class individuals who have to serve for months and months on these types of cases or people who are retired. Well, I do not think, Mr Speaker, and the Government do not think that that is fair on ordinary working class people. Mr Speaker, a situation where members of the public are unable or unwilling to serve, does absolutely no credit to the justice system at all. My learned and honourable Friend Mr Picardo also said that Mr Thornton QC, I think it is, had proposed a ten-point plan. In fact, none of his ten points have actually been adopted or included by the Criminal Review Committee and included within the criminal rules that are currently in operation in England and Wales and which we are going to be adopting in Gibraltar through the introduction of the Criminal Evidence and Procedure Bill. So, whether Mr Thornton QC has proposed ten points or he has not proposed ten points is irrelevant. In fact, it is noteworthy that after the Roskill Report in 1986 there were those that then suggested that there could be some reform of the criminal system in general in order to ensure that jury trials are speeded up and to deal with some of the points that form the basis of the Roskill Report. Well, twelve years later or ten years later Lord Justice Auld in the Auld Report was still commenting that in fact there was an over burden on members of the jury. That these trials were still very complex. That these trials were still lengthy. So, whether Mr Thornton has put across ten points or has not put ten points across is irrelevant, in our view. Lastly, as far as Mr Licudi's points about school teachers. Well, I think it is a sensible … I have to say that Mr Licudi's points I accept are points that are put forward in the spirit of constructiveness and that there is an argument in relation to what he has said. The reality is in fact that we considered precisely the point …

HON XXXX:

We want [*inaudible*].

HON D A FEETHAM:

We considered precisely the point. Yes, the kiss of death. We considered precisely the point …

[*Laughter*]

HON XXXX:

Thank you.

HON D A FEETHAM:

… that the hon Member makes about the certification and we actually rejected it after discussion. We rejected it because we thought that, in fact, if you have a situation where a school teacher is involved at a crucial period in time, in terms of exams or the lead up in a period towards exams, that is good enough reason for an application to be made before the judge and for the judge to exclude that school teacher from jury service. We took the view that we had full trust in the discretion, in the common sense of judges in this jurisdiction to apply the law in a common sense way. Mr Speaker, that is my reply.

HON F R PICARDO:

Mr Speaker, before the hon Gentleman sits down, if he will give way. Can I ask him whether he intends to deal with the …

MR SPEAKER:

Order, order, order. Has the hon Member concluded his reply or is he willing to add another word after the Hon Mr Picardo has had his say?

HON F R PICARDO:

I am so grateful to the hon Gentleman in this our first serious debate. Can he just deal briefly, Mr Speaker, with the point of why the Bill does not have an Explanatory Memorandum?

MR SPEAKER:

The absence of the Explanatory Memorandum and the explanation therefore.

HON D A FEETHAM:

Mr Speaker, it is in fact an oversight. I approve the Bill. I do not necessarily … I try to read obviously the Explanatory Memoranda. I have approved the Bill in this particular case and the Explanatory Memorandum has not been published. If it causes the hon Member any difficulty, I apologise.

Question put. The House voted.

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

For the Noes:
The Hon J J Bossano
The Hon C A Bruzon
The Hon C A 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 this House should now resolve itself into Committee to consider the following Bills clause by clause:

1. The Public Health (Amendment) Bill 2010;
2. The Stamp Duties (Amendment) Bill 2010;
3. The Solvent Emissions (Amendment) Bill 2010;
4. The Criminal Procedure (Juries) Bill 2010.

THE PUBLIC HEALTH (AMENDMENT) BILL 2010

Clauses 1 and 2 – stood part of the Bill.

The Long Title – stood part of the Bill.

THE STAMP DUTIES (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 SOLVENT EMISSIONS (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 CRIMINAL PROCEDURE (JURIES) BILL 2010

Clauses 1 and 2 – stood part of the Bill.

Clause 3

HON D A FEETHAM:

Yes, Mr Chairman, in clause 3 section 19C.(2), for "one year" substitute "period of two years" and also for section 19E.(2) after paragraph "(c)" insert "(d) 3 members of the City Fire Brigade;" and in the text to be inserted as the new section 20B.(5), after "one teacher" insert the words ", one member of the City Fire Brigade".

Clause 3, amended as to the proposed new sections 19(C), 19(E) and 20(B), stand part of the Bill.

Clauses 4 and 5 – stood part of the Bill.

Clause 6

HON D A FEETHAM:

Mr Chairman, I have not given notice of this amendment but, in fact, I have spotted, well, in fact, it was not me it was my hon Friend Mr Reyes who spotted a typo. It is in Schedule 2 paragraph 1(c) where it says "in the opinion of the judge is not capable of performing functions a juror", it should be "of a juror".

MR CHAIRMAN:

Do you want to add "the" in front of "functions"? The Hon Mr Gilbert Licudi had …

Clause 6, as amended, stood part of the Bill.

Clause 7 – stood part of the Bill.

The Long Title – stood part of the Bill.

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Public Health (Amendment) Bill 2010;
2. The Stamp Duties (Amendment) Bill 2010;
3. The Solvent Emissions (Amendment) Bill 2010;
4. The Criminal Procedure (Juries) Bill 2010,

have been considered in Committee and agreed to, in the case of the last mentioned Bill with amendments, and I now move that they be read a third time and passed.

Question put.

The Stamp Duties (Amendment) Bill 2010;

The Solvent Emissions (Amendment) Bill 2010,

were agreed to and read a third time and passed.

The Public Health (Amendment) Bill 2010;

The Criminal Procedure (Juries) Bill 2010.

The House voted.

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

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

The Bills were read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Wednesday 20th October 2010 at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 3.50 p.m. on Friday 15th October 2010.

WEDNESDAY 20TH OCTOBER 2010

The House resumed at 2.40 p.m.

PRESENT:

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

GOVERNMENT:

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

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

OPPOSITION:

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

IN ATTENDANCE:

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

BILLS

FIRST AND SECOND READINGS

THE INCOME TAX ACT

SECOND READING

HON CHIEF MINISTER:

Mr Speaker, before moving the Second Reading of the Bill I would just like to seek a steer from you in the context of what might be the precedent here. I would like, with the leave of the House, to have behind me the Income Tax officials for which there is, obviously, a significant precedent being a civil servant but also two lawyers from the private sector that have been instrumental in assisting the Government in drafting this legislation. They are not civil servants but they have been engaged for the Crown in this exercise. I do not imagine the hon Members opposite have any great objection but as I could not find any precedent for having non-civil servants sitting in this House, I thought I would just seek the Chair's approval for it.

MR SPEAKER:

Seeing the particular circumstances of the subject matter today, I personally will have no objection allowing it unless the members of the Opposition feel I ought not to. In that case yes, leave granted.

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, as this House has been aware, the Government have for many years now, in circumstances which are known, including the engagements on the subject with the European Commission involving litigation in the European Courts, with repositioning Gibraltar's tax legislation, particularly, its legislation in relation to companies and other non-natural person tax payers in a way which both fits in better with the general reposition of Gibraltar's Financial Services Centre but also in a way which responds to the need created by the challenge made by the European Union to our still existing, albeit on a grandfather right basis only, exempt status regime. The House is also aware that the Government have been advised throughout by a widely based group of experts and representatives from the Financial Services Centre, culminating with the issue in June of this year of a consultation paper which was called a pre-legislative briefing paper to which was attached a full intended text or the text of an intended draft Bill for a new Income Tax Act. I was delighted, as I have said in the Government's response to that document, by the nature and

extent of responses received to that paper which has undoubtedly resulted in the legislation now before this House in the form of the Bill which we are debating today in its Second Reading to be much improved.

As I say, this Bill if passed by the House, hopefully when passed by the House, will bring our tax system closer into the mainstream of conventional tax systems and make Gibraltar's corporate tax regime less exceptional than it has been in the past. More acceptable to the international community, less of the sort required by more brass plate tax haven type finance centre jurisdiction and more in keeping with the more mainstream onshore type European financial services jurisdiction that Gibraltar has carefully tried to reposition itself towards in the last dozen years or so.

Government have sought to make this legislation as compliant as possible with known multilateral emerging international consensuses such as OECD and EU Code of Conduct, even though of course the EU Code of Conduct does not create legal obligations. It is not as the hon Members will have seen a wholly new Act. It is basically the previous normal Gibraltar company tax legislation amended in very significant measure in order to introduce the element of change, the element of reform, the element of new regime. And it would have been perfectly possible for us to have done that by simply bringing significant and substantial amendments to the existing Income Tax Act. I hope the House will agree that that would not have been as helpful either to the House or indeed to future users of the tax legislation as is the model that we have chosen which is, instead of amending the existing Act, to repeal the existing Act and in effect re-legislate what would be a new Act but carrying forward the very large parts of the old Act that have not suffered any change, including obviously the bits that do change. So the result is a new Income Tax Act even though the principles and the structure and the underlying concept of taxation and the principles of that have not varied.

Mr Speaker, the Bill also contains provisions for an amnesty. It is provisions for but not the details of an amnesty. The Government have not yet taken a view of the detail of what that amnesty should be and the idea is that tax payers will be able to make a clean start on the payment of, in other words, on the basis of placing those that may have a current irregular status, placing it in order on terms as to payments in respect of the past that have not yet been decided and that would eventually come to this House if the Government decided to do it. It would be done by regulation and the Government would bring it to this House, in the usual form that such regulations have to be done under the Income Tax Act, for confirmation.

Mr Speaker, before I sort of embark on the principles of the Bill itself, last week I circulated to the hon Members a lengthy letter of amendments. They will have seen that most of them relate to housekeeping tidying up things. There are only three or four amendments that have any substantive effect and there are some others of a purely … of an even more typographical nature that I think can be corrected at the printing stage. You know, things like layout questions where the text does not appear in the right place on the page, in terms of centred to the left or to the right, gaps that are left inexplicably in between words or even letters. These are just purely typographical things which the conventions of this House habit can just be changed and do not form part of the legislative process. The more important ones of a slightly different nature but still housekeeping and tidying up are set out in this letter and at Committee Stage I will point out to the hon Members the two or three amendments that are of a more substantive, not hugely important to the underlying principles of the Bill, but which are not just housekeeping.

So, Mr Speaker, as I have said, under this Bill all historical concepts distinguishing offshore and onshore relevance to corporate taxation are eliminated thus definitively ending the last vestiges of what we regard as Gibraltar's tax haven status and concluding this Government's fourteen year programme to reposition Gibraltar's finance centre in a more, as I said earlier, mainstream position. The hon Members know that the actual

rates of taxation in Gibraltar are not established by the Act itself. The actual rates of taxation are established by regulations where the rates are varied from year to year as Government may decide in its budget. So although this Bill is to usher in and in the context of the reduction in the corporate of tax rate to 10 per cent, it does not actually itself specify the tax rate of 10 per cent because the tax rate is specified, as it has always been, well as it has been done for many years now, in regulations.

The Bill recognises and makes provision for the fact that the sustainability of an economic model, particularly, a fiscal model, public financing model based on a 10 per cent rate of taxation across the board requires a more strict approach to both enforcement and compliance. This is what I have called in the past creating a climate of compliance and the climate of compliance is not just a question of protecting revenue in a context of lower rates, it is also, and therefore expecting people who get the benefit of lower rates to at least be more compliant, but also it attends to the Government's desire to continue with its policy of continuing to lower taxes for individuals [*inaudible*]. I think there are few people who would disagree with the proposition that it is not fair on those who pay their taxes, whether they be corporate tax payers or individual tax payers, it is not fair on those who pay their taxes and who comply with their obligations in respect of taxation to be deprived of further reductions because there are some people who feel that they can get away with impunity with not paying their tax liabilities at all. So, we see also the tightening up of the enforcement regime and culture and climate represented in this Bill as doing fairness by people who pay because by making people who do not pay, pay what they should, it increases Government revenue which the Government can then apply to reducing the tax bill for everybody else as well.

So, as I said earlier, Mr Speaker, the principles of the old legislation, the taxation principles, are retained with amendments to make it more fit for the modern age. The hon Members will be aware that, with the exception of the odd amending provision here and there, this legislation has not really seen any great change since it was first adopted many, many decades ago and it has not kept up with the increasing levels of sophistication now seen in the professional industries that have sprung up to assist people in avoiding, worst still evading, their liabilities to tax. The legislation also seeks therefore to create a more level playing field between pairs of PAYE and self-employed persons and companies. Whereas before an employed individual, an individual on PAYE is taxed on his current year's income, in other words, he pays tax as he earns, the self-employed and companies were taxed on a previous year's income. So, one had the opportunity to defer tax on current earnings whereas the other did not and in future under this Act all will now be taxed on a current year basis and, what is more, self-employed individuals and companies will also need to make payments on account. So, it is not just a question of deferring the basis period which is now not going to be possible but companies and self-employed people will also need to make payments on account of their current year's liability rather than wait until they have done the accounts of the basis period in question which allows them to defer still further the payment of the tax due in respect of their income relating to that particular period.

The Act also introduces the principle of self-assessment which is a mechanism that has existed in the United Kingdom for some time. In other words, rather than the previous system where the Commissioner sends out blank return forms and then you fill them in and send them back, the onus is now on the tax payer to actually submit his own return calculating his own assessment to tax and accompanying the payment with it. This is a system that exists in the UK and in many other countries in Europe as well. The Bill introduces clarity into the methods of computing profits and allowances for businesses so that questionable liabilities can be resolved more quickly. Significant and comprehensive anti-avoidance measures are introduced to prevent the escape by legal means. One of the problems that we have with a system in which the rate of corporate tax is reduced to 10 per cent but the rate of personal tax, albeit falling, remains at significantly higher levels than 10 per cent, is that it

creates a sort of fertile ground, arbitrage if you want, where people can try and incorporate activities that they are presently doing personally in their personal names by means of, in order to basically get the benefit of lower corporate tax than personal tax rate. So, that and other things that this system needs to be protected from are provided for in this chapter in the Bill referred to as anti-avoidance provisions to ensure that the system is as resilient as possible to being planned around and also to ensure that if anybody comes up with a clever idea for getting around the system that the Government and Parliament can get to hear of it as quickly as possible and decide whether it wants to close the loopholes. So, that is in addition to the introduction of more deterrent surcharges and penalties with tougher effective information powers to ensure the Commissioner can, not only catch those who abuse the system, but also that there is a considerable fiscal impact. In other words, that when you are caught defrauding the tax system, your penalty, your financial penalty is not just a fixed amount of money which maybe make it worth your while having tried to get away with but rather that the penalty should be a proportion of the amount of tax that you have sought to defraud and, indeed, that the penalty should be directly linked to the degree of, for want of a better word as I stand, misbehaviour on the part of the tax payer. When I come to explain some of these broader concepts in more detail, the hon Members will see how we have tried to bring that about.

So, Mr Speaker, to the climate of compliance that I have already indicated. First of all, one of the, I think, good improvements brought about, as [*inaudible*] all improvements are good, but one of the more worthwhile improvements brought about to the Bill as a result of the consultation process, is that the Government was persuaded to recognise that this was a complex piece of legislation that changes significant aspects of the administration of taxation and that the climate, of what I call in short the climate of compliance, is capable of having significant consequences to tax payers and that it was fair to allow them a period of time and their advisors indeed, as well as the tax payers, a period of time to become familiar with the new provisions of the regime before they became exposed to penalties and liabilities which were of a higher and more serious order than they had been under the existing Act. So therefore, the Bill includes a moratorium until the 30th June 2012 before these fines and penalties are invoked. Obviously, the moratorium does not extend to interest payable on unpaid tax. Also, out of that consultation process came the improved provision in the Bill which allows the Commissioner of Income Tax a discretion, which was not initially going to be given to him, to waive, reduce or discharge the stricter penalties when he is satisfied, in other words, for innocent error, when the Commissioner is satisfied that the tax payer did not by that default intend to avoid, evade, delay or defer tax. It is possible for tax payers to become liable to significant penalties in circumstances where most right minded people would objectively think are undeserving of that because there was no intention to defraud and the Bill now recognises that by giving the Commissioner of Income Tax a significant degree of discretion to accommodate such circumstances.

So, Mr Speaker, some of these measures provided for in the Bill are targeted at empowering the Commissioner to obtain information both in advance of and after the submission of a return and to penalise in a clear and simple way those who pay tax late or attempt to cheat the tax system. Firstly, to information powers then. The key to the effective investigation of the returns of the tax paying population is the ability to obtain the information necessary to enable the Commissioner to target his investigative resources effectively and then to arm those resources with the ability to obtain answers to their enquiries. Sections 6 and 8 are aimed at allowing the Commissioner to issue notices to obtain documents from a taxpayer himself or from a third party who may have particulars or evidence in documentary form relevant to a taxpayer. The Commissioner may force production of documents or particulars which he believes have information in them relevant to the liability or quantum of liability of a tax payer. He may also seek documents or particulars to satisfy any international exchange of information obligations. The power extends to the obtaining of information in relation to a taxpayer or class of taxpayer whose individual identity may not be known but the Commissioner believes may

be evading tax. The definition of documents and particulars is deliberately wide but does not include items covered by legal privilege and that is a defined term. Other than legal privilege, the only ground for appeal against a notice issued by the Commissioner is that replying to a notice would be onerous or too onerous for the recipient. There is an appeal to the tribunal or rather the appeal would be to the tribunal. There will be occasions, Mr Speaker, in which the Commissioner becomes aware that serious tax fraud has been or will be committed and that the penalties for destruction of documents will not deter a tax payer from removing evidence. To cater for this possibility, the Act introduces a power under section 9 to enable the Commissioner to approach the Supreme Court to obtain a warrant to enter and search premises. The Commissioner, in investigating returns of tax, has power to investigate a return, which has been made, and he has those powers under sections 31 and 32. When a return is delivered to the Commissioner he will have the chance to either accept it or within a period of a year from the latter or rather within a period … there is a novelty in this provision and that is that the concept of the Commissioner having a time limit in which he should have to do his work, within a period of a year from the latter of the delivery of the return or the date it should have been delivered, to challenge it. That is to say within a year of it. If the return is challenged, the Commissioner has the power to demand whatever document or particulars he regards as necessary to complete his examination of the return. There is a right of appeal against such a demand by the Commissioner but the grounds for such an appeal are limited to the reasonableness of the request for the document or particulars. The falsification, concealment, destruction or disposal of a document, which is the subject of a notice under either of the provisions described above, is regarded as an extremely serious matter in the Bill and indeed constitutes a criminal offence. In addition to a custodial sentence, any person guilty of the offence or causing the offence is liable to a fine based on the tax lost by their offence.

Clearly, in any effective and fair system of taxation, compliance should be the norm and those who do not wish to comply should be subject to cost which will not only negate any advantage which they would obtain by late or non-payment but also actively dissuade them from the temptation to delay or refuse payment. Therefore, there are a number of provisions in the Bill which relate to the consequences of late payment or non payment. So to achieve these things, changes have been made in six areas.

Firstly, the date the tax is due and payable. At present, those who are under the PAYE system are obliged to pay their weekly tax during the year in which they earn their taxable income and, as I have said earlier, the self-employed and companies pay their tax eight months after the end of the year in which they earn their profit or income. The mechanism to switch from a past year to a current year basis is explained, is set out with some explanation in the Bill itself. The date on which the payment of tax is due for the self-employed is advanced to the 30th November after the end of the tax year and for a company to six months after the end of the accounting period of the company.

Secondly, payments on account which I have already mentioned. In addition, both the self-employed and companies will be obliged to make payments on account of their liabilities in the year in which the profits are earned as, in effect, employed people do under the PAYE system. The self-employed will be expected to make payments on account on the 31st December and the 30th June each year of an amount equivalent to 50 per cent of the tax paid in the previous year. Companies will be obliged to make similar payments on account on 28th February and 30th August, again being 50 per cent of the tax paid in the previous accounting year. The Bill contains a discretion in favour of the Commissioner of Income Tax to reduce or waive these on account payments in cases where he is satisfied that the liability to the tax being paid for on account is unlikely to arise at all or in part.

The third area in which new provision is made is a surcharge on late payment. If any of the payments or payments on account specified in the Act are not made on time, an immediate

surcharge of 10 per cent of the amount unpaid will result. So, the first is 10 per cent surcharge on the date that the payment first becomes overdue. If the amount or part thereof remains unpaid 90 days later, a further surcharge of 20 per cent of the amount of the tax and surcharge unpaid is levied and a further surcharge at the rate of 10 per cent per annum, compounded on a daily basis, will then begin to accrue. The surcharge imposed will be treated as part of the tax itself and recoverable in the same manner as the tax.

The fourth area in which there is tightening is the penalties for false returns. As I have said already in my very preliminary introductory remarks, the basis of the new penalties regime is one which is more closely linked to the amount of tax defrauded. In other words, the same amount of fine will not deter two people each of whom have a different amount of tax liability at risk. The penalty regime is applied by section 66 and is supplemented by Schedule 8 which the hon Members will find at page 415 of the Act and, as I have said, it is based on a combination of variables which result in a variable penalty and the variable elements depend, as I have also indicated, on the amount of tax sought to be evaded and also on the gravity of the tax payers behaviour and thirdly, on the co-operation and the degree of co-operation that the tax payer eventually contributes to the resolution of any situation that the Commissioner may find in one of his investigations. So, hon Members will find in Schedule 8 something headed a Penalties Table and it is divided into three sections each describing a different variable and the Commissioner has the discretion to pick which of these applies. So, for example, the first variable is the amount of tax lost or delayed by failure and the hon Members will see up to £100, 5 per cent; between £101 and £2,000, 10 per cent; £2,000 to £20,000, 15 per cent; £20,000 to £50,000, 20 per cent; and so on and so forth up to more than £200,000 of tax sought to be evaded in which case that element of the penalty can be up to 50 per cent. In other words, for trying to get away with £200,000 of tax, you could end up with a Bill of, in that third of the element because there are two other elements that could raise it up to 150 per cent, but that element, the amount of the tax is worth a possible 50 per cent of the tax bill saved. The second table in that Schedule and the second of the three variables therefore is gravity. In other words, if it was an honest mistake or an innocent error, the hon Members will see that there is a nil penalty factor there. Nil per cent, but if there was negligence or failure to take due care, that is 10 per cent. If there has been recklessness, that is 25 per cent and if there has been deliberate commission or omission, 50 per cent. So, put at its worst, if somebody through deliberate commission or omission seeks to evade more than £200,000 of tax, he suffers 50 per cent under the more than £200,000 and another 50 per cent because it was by deliberate commission. So he is already at 100 per cent of his £200,000 … If on the other hand, somebody tries to save £15,000 of tax through negligence, then it is 15 per cent under the first variable, 10 per cent under the second variable, it is a total fine of 25 per cent. There is a third variable which is the co-operation invested by the Commissioner, invested by the taxpayer in resolving the matter and making the payment. If there has been full co-operation, then there is no more to be added to what is produced by the first two variables. If there is only partial co-operation, then there is a possible 25 per cent increase. If there is no co-operation or reluctant co-operation with quantification or payment of all amounts due delayed beyond the six months of the approach to or from the Commissioner, he could be liable to another 50 per cent. So, again put at its worst, if somebody seeks to avoid, evade more than £200,000 of tax through deliberate commission or ownership and then refuses to co-operate and delays payments of the amounts then found to be due, he could be liable to a maximum penalty of 150 per cent of the tax sought to be evaded.

The fifth element in the tightening up, in the sort of climate of compliance regime, is the concept of criminal prosecution. Government believe that there are some types of behaviour which go beyond the position where you should simply be able to buy your way out of the consequences and therefore a criminal prosecution in addition to recovery of tax, surcharge and penalty will be available under section 67 in respect of an

offence where a person is knowingly concerned in the fraudulent evasion of income tax by himself or another and in those cases where a director or shadow director is involved in the failure to pay over to the Commissioner any tax withheld or collected under PAYE system or the various other withholding provisions of the Act. In other words, there are some areas, there are some types of behaviour which transcend simple non-compliance with tax obligations and become fraud and in those circumstances there are fraud criminal offences created under this Act.

The sixth element of novelty in terms of climate of compliance is the so called Name and Shame regime for a failure to pay over not your own taxes ... The Name and Shame regime does not apply in respect of an individual who simply defaults on his own tax liabilities. The Name and Shame provisions apply only to those people who have contributions or withholdings that they have made from other people and who then keep that money for themselves. There is simply no mitigating argument in favour of somebody that withholds part of an employee's salary on account of that employee's tax, deducts it from the employee's take home weekly pay and instead of passing it on to the Commissioner of Income Tax, keeps it for himself, uses it and then never pays it or pays [*inaudible*]. So, these are the people in respect of both PAYE and social security contributions who after numerous procedures including a final, final, final caution that the Commissioner intends to name, I suppose whether he would also shame will depend on the scruples of the individual concerned, but anyway certainly name, I suppose shaming is a more subjective concept, including such a final warning, and this is something, the idea for which originated from business representative bodies that thought that it was not right that people should be allowed to build up liabilities to the Government, that to boot were then preferential debts in a liquidation. They were unaware that somebody was generally non-compliant, giving them credit perhaps and then the balloon went up, so to speak, and they had known nothing about it. Indeed, the Government have come in for some criticism in the last 12 months or so for precisely such a scenario in relation to one or two large examples in relation to one or two construction companies. So, the Government believe that because of the particular nature of this misbehaviour and because of the consequences that it could have on people other than the public purse, that it is right that we should have recourse to this mechanism to discourage people from what is ultimately an example of theft of other peoples' money. So, that is in outline the principles contained in the Bill in relation to the tightening up or climate of compliance or the stricter enforcement of mechanisms.

Moving on to the definition of residence in which there has also been some change of principle. The definition of ordinarily residence of a company has not changed and remains consistent with the present Act. The position as regards an individual has changed to update it from the rather archaic definition that exists in the current legislation which makes reference to the Campo district and Her Majesty's Vice Consulates at La Linea and Algeciras. The definition according to this Bill now makes an individual ordinarily resident in Gibraltar if they are present in Gibraltar during any year of assessment for at least 183 days. Now, the question of presence in does not involve sleeping in or having a house in, it means you can be present in Gibraltar, if you come in to work and then go off to sleep elsewhere. So 183 days or in any year of assessment when considering three consecutive years of assessment an individual has been present in Gibraltar for more than 300 days. So it is a dual test, either 183 days a year or more than a certain number of days, 300 days, over a three consecutive year period. For the purposes of this definition of ordinarily resident, any presence in Gibraltar in any 24 hour period commencing at midnight shall be counted as a day irrespective of whether accommodation in Gibraltar is used or not. For an individual the effect of residence is important when it comes to the charge to tax as, under the charging section, individuals who are ordinarily resident in Gibraltar are taxable on their worldwide income in accordance with section 11(2) of the Bill.

So, Mr Speaker, to the charge to tax. As previously stated, the philosophy of the Bill is to retain the principles of the tax system that we have excluding, of course, the exempt company provisions whilst retaining and extending the process of the freeing up of passive income from taxation. Similarly, the Bill retains the territorial basis of taxation but for greater clarity and certainty this is now enshrined in the Act rather than rely on common law principles and precedence, as was the case before. The confirmation of the retention of the territorial basis of taxation is underscored by the deletion of the words, "received in", from the charging section which in the context of the common law precedence that were being applied added nothing to the interpretation of the current legislation. This basis, that is to say the territorial basis, is now further underscored by the inclusion in the Bill of a definition of the term accrued in and derived from, based on the principles in the Hang Seng case which is the common law principles precedence that I have been referring to. That is to say, by reference to the location of the activities which gave rise to the profits. The Bill will also include a provision to the effect that in determining location for these purposes, where an entity is licensed and regulated under Gibraltar law, for example, a bank or an insurance company, the preponderance of activities which give rise to the profits of a business shall be deemed to take place in Gibraltar and accordingly be taxable in Gibraltar. So, the statutory definition of accrued in and derived from, which is now to be found in the Bill, brings in the concept, the definition of territoriality, from the Hang Seng case. That establishes the principle of taxation by whether the income accrues in or derives from your location, in our case Gibraltar. If that is in doubt, there is a test called the preponderance test. In the case of licensed and regulated activities in Gibraltar, for example, financial services and gambling, are just two licensed activities, those are deemed to be on the application of the preponderance of activities test located in Gibraltar, accrued in or derived from Gibraltar and therefore taxable in Gibraltar. So, these provisions will subject to tax in Gibraltar the profits of a Gibraltar branch of an overseas entity established in Gibraltar through the use of EU passporting whose activity will thus be deemed to be located in Gibraltar. In other words, French bank has a branch established in Gibraltar that will be caught by the preponderance of activities test. On the other hand, provisions will not apply, will not catch, will not subject to tax in Gibraltar the profits of an overseas branch of a Gibraltar licensed entity whose activities will be deemed to be located in the country where the overseas branch is established and located. Mr Speaker, the method achieved to adopt the charge or rather to bring about the charge to tax, is very much as under the current legislation and that is that there is a schedule which divides income into three classes at Tables A, B and C. The sources of the income in the tables are taxed in accordance with section 11. The application of section 11, which is the main charging section, preserves the principles that all income accrued in or derived from Gibraltar is taxable. This principle is, however, softened for infrequent visitors to Gibraltar whose presence is only incidental. So section 19 negates the charge to tax of a visitor if the activities undertaken are ancillary to an employment or self-employment elsewhere and total less than 30 days in the year. The Tables preserve the taxation of the profits or gains of a company from any trade, business, profession or vocation and the taxation of rents but only the profit gains or rents are accrued and derived in Gibraltar. In the case of ordinarily resident taxpayers other than companies, the profits or gains from any employment worldwide are taxed. The activities of an ordinary resident individual in self-employment are taxed on a worldwide basis where the activities taking place outside Gibraltar are related to the activities in Gibraltar. Table C imposes a worldwide charge on unquoted dividends paid to a Gibraltar ordinary resident company, funds, income from schemes not marketed to the general public and shares or securities not issued by open ended investment companies and to pensions, charges and annuity income in so far as they are not relieved by other provisions of the Bill or indeed rules. Table C also sweeps up the worldwide liability caught by the anti-avoidance provision which is not taxed elsewhere. Mr Speaker, the opportunity has been taken to remove from tax further classes of passive income. That is, for example, interest other than trading interest mentioned elsewhere in this address, income from debentures,

debenture stocks, loan stocks, et cetera, whether from quoted companies or not and also royalties. Much investment and other passive income was already not subject to tax and the Bill extends that principle to other streams of passive income.

So, Mr Speaker, moving on to the principles relating to the basis of taxation. In order that companies that cease to enjoy tax-exempt status on 31st December 2010 are incorporated into the normal taxation system, including the new administrative self-assessment provisions, the basis of assessment has been revised. This is all dealt with under sections 15 and 16 of the Bill. The section needs to be considered in conjunction with the sections on transitional provisions and those on filing of accounts and self-assessment. So, firstly, the basis of assessment for persons other than companies. So, for tax payers that are not companies. Assessment for persons other than a company is now dealt with on an actual basis. So, this requires sole traders and partnerships, for example, to prepare accounts to a 30th June year end coinciding with the tax year. The taxation for any year of assessment is now based on the profits earned in the year of assessment as is currently the case for ordinary employees. Thus for example, in the year of assessment 2011/2012, that is to say the tax year 1st July 2011 to 30th June 2012, the profits for an established and continuing sole trader or a partnership will be assessed on the twelve month period ending 30th June 2012. There are, of course, provisions bringing in the necessary flexibility to cater for commencement and cessation indeed and other transition easing administrative mechanism. So, to the basis of assessment for companies which is dealt with in section 16. Companies will no longer be taxed by reference to a year of assessment but rather on the basis of the companies' own accounting period. This system avoids complexities on commencement and cessation as well as those that arise on change of accounting period as there is one continuous uninterrupted series of accounting periods from the commencement of business to its ultimate cessation. Depending on the circumstances, an accounting period begins when the company first becomes resident or starts to acquire income or from the loss of tax-exempt status on the 31st December or from the commencement of the Act. Similarly, an accounting period ends on the earlier of the expiration of twelve months from the beginning of an accounting period, on an accounting date of a company where there is a change of accounting period or upon the company ceasing to be charged to tax.

So, Mr Speaker, the principles relating to the rules for ascertaining profits or gains which the hon Members will find in Schedule 3. The Act now incorporates rules for ascertaining the profit or gains of any person. Again, this represents a tidying up of the existing Allowance, Deduction and Exemption Rules and existing practices. This Schedule, Schedule 3, addresses the measure of profits or gains, the deductions that are generally allowed as well as those specifically not allowed, capital allowances and the treatment of interest as part of trading income. So, the measure of profit or gains. Starting point for taxation is that profit or gains for any year or period shall be determined in accordance with international accounting standards. There are provisions for modifying these to take account of any Gibraltar relevant or desirable circumstance. The Act reiterates the status quo that capital gains and losses shall be excluded in arriving at profits or gains. So, deductions allowed and those not allowed. In recognition of the existing practice, expenses or disbursements shall be allowed where these have been wholly and exclusively expended for the production of the income of the trade, business, profession or vocation. The Commissioner of Income Tax will issue guidance in relation to the classes of expenditure which will be allowed as deductions. There then follows in the Schedule a specific list of items that are not allowed as deductible and these to a large extent replicate the provisions of the Allowance, Deductions and Exemption Rules at present. There is a provision to allow the Minister, that is, the Minister for Public Finance, to amend this list in whatever manner he considers necessary. In relation to capital allowances and in order to make capital allowances easier to compute for the taxpayer and indeed for the tax administration, the concept of pooling has been introduced. In

other words, in a so-called pooling system. Under this concept, the value of assets that attract capital allowances are pooled after deducting any initial allowance granted and a writing down allowance is calculated by applying the appropriate rate to this amount which is set at 15 per cent from those companies and 10 per cent for utilities or persons other than companies. So, moving on to interest as a trading receipt. Mr Speaker, as I have said, over recent years most passive forms of income have not been subject to tax and the Act extends this principle now to interest income. However, where interest income is not passive, that is to say, where it is an integral part of the revenue stream of a company's business, in other words, when it is in the nature of the income of the type of business that company is in, as opposed to an ancillary purpose, which can be said to be passive, a passive by product of a company's trade, then, if it is not passive, if it is an integral part of the company's income, it is taxable. If it is passive, that is to say not integral but rather ancillary, it is passive and not taxed. So, an example of non-passive interest that is an integral part of a company's trading revenue and therefore will be taxable is interest earned by a bank or a finance company. The Act also clarifies the concept of trading receipts under section 6(8) of the existing Act whereby it shall apply to a company and the distinction that I have just described in general terms is achieved more specifically in the Act which, for example, deals with circumstances in which a company carries out the activity of money lending to members of the general public or advertises or announces itself to hold … or holds itself out in any way as carrying on that business or actually carries on that business whether solely or jointly with any other business trade or vocation or which is in receipt of interest on funds derived from deposit taking activities other than with related counterparts or the proceeds of investment of that interest which has been placed on deposit with, invested with or loaned to any other person. So, these provisions more carefully capture the definition and therefore the circumstances of when a company's interest income is passive and not taxed or not passive and therefore taxed.

So, to the new principle of self-assessment. The Act has introduced the concept of self-assessment such that both individuals and companies are now required to make returns of their taxable income and calculate their own tax liability for any year. The return to be submitted to the Income Tax Office together with the estimated liability must be accompanied by a payment. These provisions are covered in sections 28 to 30 of the Bill. Section 28 deals with the obligation of taxpayers other than companies to make returns. It requires those taxpayers, that is, individuals, partnerships, sole traders, to submit the return by the 30th November of each year. This follows on from the change of the basis of assessment in section 4 that now requires accounts of taxpayers other than companies to be drawn up to the 30th June of each year. Section 29 deals with the obligation of companies to make returns. Since there is no longer a reference to the year of assessment but rather to the accounting period, the requirement for companies is to submit accounts within six months from the month in which the company's accounting period ends. Once again, as with individuals, companies are required to complete the return of their income and, where there is a taxable income, of their liability to tax. The legislation envisages return forms to be made available by the Commissioner to facilitate self-assessment. Given that taxpayers will now be submitting a return with a computation of their own liability, they are also expected to accompany the return with a payment of the tax due. Although the Commissioner may and indeed probably will continue to issue returns to those persons he believes are subject to a liability, the obligation is now on the taxpayer to complete a return as I have specified. The fact that the Commissioner does not send a blank return form to a taxpayer does not diminish that tax payers obligations.

So, to the payment of tax and payments on account that I have already alluded to. Section 39 reinforces the obligation to submit payments with the returns on the 30th November for persons other than companies or within six months of the end of the accounting period for companies. Section 39 also deals with the concept of payments on account. Persons other than

companies are required to make two payments on account, as I have said, on the 31st December and 30th June in each year of assessment based on their previous year's assessment. Companies are required to make payments on account for their future liabilities on the 28th February and 31st August in each calendar year. These payments on account should equate to two equal instalments of 50 per cent of the tax as payable for the previous year of assessment or accounting period as appropriate. Payments on account can obviously be set-off against the tax due when the return is filed and paid for, for persons other than companies, and in the case of companies, payments made in an accounting period against the liability for that accounting period with any excess being repayable back to the tax payer and, as I said earlier, the Bill gives the Commissioner discretion to waive or reduce this where he is satisfied that the liability will not actually materialise and the position for persons other than companies is similar except that the payments are on the 31st December and 30th June.

Mr Speaker, moving on now to the liability of Trusts to tax under the new Bill. Trusts will not be liable to tax unless they have a resident beneficiary or even if they do not have the resident beneficiary, to the extent that it has otherwise taxable income that arises from or accrues in Gibraltar, in other words, in telegraphic language, Gibraltar income. Companies will not be required to file tax returns or accounts unless they have assessable income, that is to say, income accruing in or derived from Gibraltar. Similarly, companies will only be required to submit dividend returns when they have a shareholder ordinarily resident in Gibraltar and then only details in respect of dividends paid to such a person or to a Gibraltar company need be provided. Since dividends paid by companies listed on a recognised stock exchange are not taxable, those companies will not be required to make a return of dividends paid to ordinarily resident persons. Another novelty is that companies with a turnover of less than half a million pounds will not be required to submit audited accounts. They will however be required to submit unaudited accounts with a certificate from an independent accountant to the effect that the accounts are drawn up in accordance with the Act. The Commissioner will retain a power to require production to him of audited accounts if he feels that it is appropriate in the course of an investigation into the liability to tax of a company. Now, Mr Speaker, this business of exempting small companies from having to file audited accounts is something that the business representative bodies as well as the accountancy profession have been asking for, for some time. The cost of a full audit in accordance with current international standards has become disproportionately expensive to the cost base of a small company. The cost is disproportionate to the revenue and profits of such a company. So the difference here is between a full audit and a simple certificate by the accountants that the unaudited accounts have been drawn up in accordance with the Act and that is something the accountancy profession can do much more cheaply than a full audit which imposes on them by law and indeed by their own … Now, Mr Speaker, once the Government accept that it is safe, from its own tax collecting interests, that it can do without audit, the Government have no particular view of the level at which that £500,000 figure should be pitched. So, at that point, there are conflicting interests and agendas out on the street, so to speak. So, the accountancy profession wants the figures kept as low as possible to preserve business and jobs in the accountancy profession. They are happy with it at £500,000. Their level of happiness begins to degrade as it goes above half a million pounds. Obviously, other sectors even within the financial centre and business representative organisations would like to see the figure higher than half a million. The Government have no particular view but has pitched the figure at half a million which is the level at which we are assured there will be no job losses in the accountancy profession but remain open to being persuaded in the future that the figure can be higher without macro economic adverse implication. In respect of Trusts, Mr Speaker, only resident Trusts and non-resident Trusts within income accruing in or derived from Gibraltar, in other words, only Trusts with a potential tax liability, will be required to submit accounts or file tax returns. So, if you are a non-resident Trust with no income arising in Gibraltar you will not be required even to submit accounts.

Mr Speaker, moving on now to the so-called higher rate of tax. There are various enterprises in the field, for example, of utilities which by their nature have a monopoly or near monopoly position in Gibraltar and whose profitability benefits from that position or who operate in the energy field. The former are enterprises which are dominant in their particular market and take advantage of that position to increase their profitability at consumers' expense. The view of the Government is that such entities should put back into the community part of the additional profitability generated by that position, by way of taxation and therefore taxations imposed on them at a higher rate, that is, at 20 per cent. Schedule 6 in its first part identifies specific types of company or activities which will pay tax at the higher rate. They are telecommunications, electricity, water, sewage and petroleum companies, in other words, what people would normally understand by utility activities. Part II of the Schedule introduces the proposition that a company with a dominant market position, that could be in any sector, which the Commissioner sees as abusing that position, will pay tax at the higher rate. The concept used to define dominance in this Bill and abuse are those used in European Union competition law and as such the Commissioner will be able to rely on judgements of the European Court of Justice in making his decision and arguing his cases.

Mr Speaker, the PAYE base is further secured by the strengthening of the benefits in kind provisions in our legislation. Employers sometimes attempt to reduce the tax charge on their employees by remunerating them in many forms other than the straightforward payment of money. The sole tool available to the Commissioner against this practice in the previous Act or the still current Act, is the inclusion of the words, benefits in kind, in the definition of emoluments for the purposes of taxing employment. The Commissioner has as a result had difficulty in imposing a charge in appropriate cases in the past. As part of the creation of the climate of compliance, it is therefore necessary to ensure just and fair treatment as between PAYE taxpayers and others. It has been necessary, therefore, to clarify the meaning of those three words, namely, benefits in kind, by Schedule 8 of the new Act such that the benefit provided can be easily quantified and taxed accordingly. The hon Members will see that there are specific provisions in Schedule 8 relating to expense payments, vouchers and tokens, living accommodation, cars, vans and related expenditure, loans, whether they be loans to employees or loans made to directors or shareholders or other connected persons and they are treated very differently in the legislation. Then, Mr Speaker, there is a sweeping up or residual charge under paragraph 7 which allows for the taxation of the value of any facility or benefit made available to an employees which is not otherwise covered in the detailed provisions to which I have just referred.

Mr Speaker, there is a novel provision in the legislation which deals with benefits in kind and which adds to the new regime of benefits in kind and they are three principal changes. The first is that there is now a tax-free allowance. In other words, where benefits in kind to an individual employee have an aggregate value of £250 or less per annum, no tax is payable on those benefits in kind and there is no obligation even to declare or disclose them. In other words, employers do not have to be concerned about Christmas parties and birthday parties and things of that sort on a micro basis so long as … In other words, the first £250 of benefits in kind are in effect a tax free allowance of benefits in kind. The second is a scheme whereby the employer may opt to pay the tax on the benefit in kind rather than pass the tax liability onto the employee. The Bill inserts a scheme under which the employer or provider of the benefit in kind may himself opt to pay the tax instead of the employee. In such case, the employee will not be required to gross up his income to include the value of the benefit or of the tax thereon defrayed on his behalf by the employer. This is obviously the novelty, that the employer can pay a benefit. So, the employer pays tax on the benefit but the employee's own tax bill is not increased either by the value of the benefit or by the tax that he is [*inaudible*] and that the employer has paid on his behalf. That is not obviously uncapped. If the total value of the benefit in kind provided to an employee does not exceed £15,000 per year, the employer shall pay tax thereon at 20 per cent. In

respect of any excess over £15,000, tax will be payable by the employer at 29 per cent. So, there is no loss in tax above £15,000 because 29 per cent is the highest level of tax for an individual anyway. In respect of the third area in which there is some change, which is notable, is that wear and tear allowances will be allowed on private motor vehicles. In addition, once the value of the vehicle has been fully assessed, no further benefit in kind will be assessed for its use. In other words, once the value of a vehicle has been written down by the employer to zero, the further use of that vehicle will not be considered to be a taxable benefit in kind.

So to some of the other measures in the Act in addition to the ones that have already gone through in some detail that combat avoidance. In other words, the so-called anti-avoidance mechanisms. The previous Act was based on a rather antiquated principle and antiquated provisions which seem to have been based on the presumption that tax payers were content to pay what the law required and to comply with their obligations. I think, as I said before, as the tax paying populations become more sophisticated at organising their affairs in relation to their tax liabilities and so too the tax system has to keep up with these developments and protect itself, if you like, from increasingly cleverer and far reaching means of circumventing its requirements and these are generally called anti-avoidance provisions. Three main routes have been taken in this Bill in this respect. They are, firstly, a generic anti-avoidance clause. Secondly, specific anti-avoidance provisions and, thirdly, a scheme requiring, to which I have alluded earlier, notification of tax avoiding or tax saving arrangements. So, dealing first with the generic anti-avoidance clause, section 40 restates section 13 of the existing Act in a way, which strengthens the intent of the previous Act and allows the Minister to make regulations to give effect to that intent. In other words, a general regulatory making power to enable regulations to be passed quickly to close avoidance mechanisms that are discovered. The section also introduces and implements Schedule 4 which contains specific anti-avoidance provisions. Sections 42 and 43 give the tax payer a level of certainty by creating a method, by creating a procedure for obtaining clearance in advance and ensuring clarity when the Commissioner decides to use section 40 or Schedule 4 by obliging him to identify who he is assessing and why, when he invokes the anti- avoidance legislation. In other words, procedure whereby the tax payer can get clarity of ruling in advance and does not have to wait until he has done something to then find out whether he is going to be clobbered by the anti-avoidance provisions or not. The clearance in advance procedure enables the tax payer to approach the Commissioner before or after a transaction to seek the agreement of the Commissioner that he will not invoke the anti-avoidance provisions on the basis of the information provided. There are, obviously, provisions there to make sure that the facts remain the same as the facts that we used to procure the ruling and if the facts turn out not to be the same as disclosed to the Commissioner when the ruling is procured, then the ruling becomes ineffective. The EU Code of Conduct requires any advance ruling procedures to be transparent and available to other taxpayers who may be able to benefit from it in similar circumstances. In other words, this cannot be private deal making between the taxing authority and the tax payer, so if the taxing authority gives an advance ruling in favour of the tax payer and the Commissioner believes that that ruling may have application to other tax payers, then he is obliged to publish the effect of that ruling, either in the form of guidance or in the form of a notice in the Gazette, so that the general body of tax payer is aware of the effect of the advance ruling given to the particular tax payer that has asked for it. This is, indeed, a requirement of the EU Code which disapproves of non-transparent … and, indeed, the OECD which disapproves of non-transparent advance ruling procedures. In the context of specific anti-avoidance provisions, there are a series of areas dealt with. The first is thin capitalisation. The second is deemed dividend. Now, the hon Members may have noticed that the version of the legislation of the intended draft Bill first published with the consultation paper contained detailed specific deemed dividend provisions. Deemed divided provisions are provisions that prevent a company from hoarding profit in a company which

pays tax at 10 per cent, hoarding it, not distributing it to its shareholders where it might be taxed at a higher amount. These are called deemed dividend provisions. A lot of people have them but we have taken out the specific provisions and left in place only a regulation making power to make provisions to that end. The reason why we have done that is that, as we speak, the EU Code of Conduct group is considering its religious view of deemed dividend and deemed distribution provisions and we did not want to start with our own version of it and then found that it did not comply. As we have some time, we prefer to wait and see what guidance the EU Code of Conduct produces in that area to ensure that what we do is within the scope of that emerging European Union consensus on that subject. Thirdly, there are provisions, specific anti-avoidance provisions, dealing with transactions with connected persons. So paragraph 4 of the Schedule is aimed specifically at what are called transfer pricing abuses. Put simply, transfer pricing is the manipulation of profit by connected parties who are able to fix their pricing between each other or intervening parties, to minimise their tax burden by leaving or dropping off the profits in the transaction in a lower tax jurisdiction. Again, the EU Code of Conduct imports the OECD Transfer Pricing Treaty and its guidance on that by … and this Bill, in order to comply with it, does the same by making it clear that the anti-avoidance transfer pricing abuse provisions of this Act must be interpreted in a way which is compatible and consistent with the EU Code of Conduct and the OECD Transfer Pricing Treaty and guidance thereon. Fifthly, in respect of specific anti-avoidance provisions, the territorial base tax system maintained by this Act will make it possible for a tax payer to gain an unfair advantage by having one contract of employment for activities taking place in Gibraltar and another contract for activities outside of Gibraltar. If two or more such contracts are entered into by a taxpayer and the employers are connected persons, paragraph 6 acts to treat all the activities as taking place in Gibraltar and, indeed, dual contracts with the same employer are also caught by these provisions. The sixth specific anti-avoidance provision relates to the transfer of assets abroad. Previous to this Bill, there had always been the possibility of transferring assets abroad where they can be used to accumulate income outside the scope of the existing legislation. This is clearly in contradiction to the spirit of the existing Act and the intention of the legislature when it passed it and this is dealt with in paragraph 12 of Schedule 4 of this Bill which introduces the protection of imposing taxation on income arising to a foreign entity which results from a transfer of assets abroad by an ordinarily resident tax payer and which is or would be available to the ordinarily resident tax payer. The section also applies to capital sums arising from the transfer which can be matched with income which arises before or after to the foreign entity. The income is only taxable if it would have the taxable if it were received in Gibraltar. These sections are not invoked if it can be shown that the transfer was a bona fide commercial transaction and that tax avoidance was not one of the purposes for making the arrangements. Paragraphs 15 to 17 of the Schedule define the terms used in paragraphs 12 to 14 and make provision to ensure that no double charge to tax results from the operation of this legislation and then, thirdly, the third area of anti-avoidance, is the scheme that requires notification of arrangements.

The nature of the Gibraltar income tax legislation is such that it is not as extensive as comparable legislation in other jurisdictions. You need only compare the size of our Bill with the size, for example, of United Kingdom income tax and management Acts. I do not think there is in Gibraltar any appetite for the production of legislation as long, complicated and comprehensive as say the UK tax legislation. There would therefore be more loop holes in our legislation than will be found in more comprehensive and detailed statutory frameworks. If those loopholes are capable of generating a significant loss of revenue, the Government will wish to stop that loss, losses which would not be possible to arise in the first place in countries where they have wider and more detailed legislative frameworks, and will wish to create the necessary statutory provision to stop the loss at the earliest possible time. To facilitate this process, section 41 has been introduced to ensure that practitioners, for the purposes of the section known as promoters, are obliged to notify to the Commissioner

arrangements or proposals that they put or in respect of which they facilitate the putting to a tax payer for the reduction of the tax due from him. The section is drawn widely to ensure that it applies to any person who designs a plan for tax reduction, promotes it, recommends it or indeed in any way facilitates or broadcasts it. It goes beyond tax professionals to any person giving any sort of financial advice. The nature of transactions to which the section applies is also widely drawn to cover any proposals which will reduce tax, but the section enables the Minister to clarify its ambit and to amend that ambit as a result of the experience of operating the section. A promoter will have 30 days from the date he makes a proposal or becomes aware of a transaction forming part of a tax saving proposal, to notify the Commissioner of the details of the proposed arrangements. That is, if the promoter is aware that the arrangements have already been notified, he does not need to repeat the notification. If the promoter is outside Gibraltar, the duty of notification falls on the client. The Commissioner will issue a reference number to the promoter which will be quoted by the client on his tax return and demonstrate that he is aware that the process invoked by the section has been followed. The Commissioner and the Minister will then be in a position to make an early decision as to whether a scheme or arrangement is within the spirit of the Act and whether or not legislation is required to prevent it. A promoter who fails to observe the requirements of this section will be liable to penalties in the sum of £200 per day. Mr Speaker, notifications will only apply to post commencement of the Act schemes and the Commissioner of Income Tax will issue guidance notes as to the nature of arrangements that will be notifiable to avoid the need for promoters to have to be sending in notifications on anything and everything, however small, as was initially the experience of the United Kingdom when a similar regime was introduced there. The section goes hand in hand with the ability to obtain advance rulings under section 42, to which I have already referred to, in that it is just as much in the interests of a tax payer to ensure that a scheme or arrangement is not going to be challenged on the basis of an advanced ruling as it is in the interests of the Commissioner to be appraised of and close down aggressive schemes at the earliest opportunity.

Finally, Mr Speaker, to the so-called transition arrangements. In other words, how we get from the old regime to the new regime. Well, these are quite detailed and quite complex and requires really a detailed understanding to follow them on both the old regime and the new regime. The operational revisions to the original Act are considerable and the changeover to the new Act will be a complex process with both practitioners and indeed the Government itself and the Income Tax Office. The transitional provisions are aimed at making that process as painless as possible. Given that at 31st December 2010 the tax paying base will be a mixture of bases for taxation, employees on current year, former tax exempt companies and newly formed companies on a current year and nearly everyone else on a previous year, it was decided that the commencement of the new Act should be deemed as a cessation of liability for the purposes of the old Act except for those already on the current basis. The Commissioner is empowered to make his assessment for companies for 2010/2011, under the old Act, as an estimate of the tax due on the cessation at the old rate, and an estimate of the first payment on account due on the 21st February 2011, under the new Act, at 10 per cent. Following this first payment on account by assessment, the new system of payment on account, without assessment and self-assessment, will come into effect. The payment on account for companies in the transitional years are not free of complication and the Act contains a table showing when and on what basis payments on account will be due for companies. In the case of the self-employed, the 2010/2011 assessment will be made under the provisions of the old Act on a full years profit and will be due and payable on the 28th February 2011. The assessment will be treated as a payment on account to be set against the cessation assessed for the period to the 31st December 2010 and the commencement assessment for the period to the 30th June 2011. Following this first payment on account by assessment, the new system of payments on account without request for persons other than companies, will come into effect with a

payment on account due on the 31st December 2011. Mr Speaker, various appointments, delegations and such like made under the previous Act, the existing Act, will continue as will the processing of assessments made under the old Act. The information powers given in sections 6 to 9 of the Bill will be allowed to extend back into documentation created or information relevant to the period covered by the old Act where the Commissioner is satisfied that he has discovered a pattern of behaviour which was in place prior to the commencement of this Act and which would have resulted in the loss of tax under the old Act. Continuity of relief is ensured for loans taxed in accordance … and that is ensured in accordance with section 15. Recovery in liquidation of tax due under the old Act is secured by paragraph 11. Any amount of tax outstanding under the old Act is treated as being due and payable on the 1st January 2011 for the purposes of the surcharge provisions of this Act. The continuity of the law is obtained by paragraphs 13 to 20 and these, of course, are references to paragraph numbers in the Schedule that deals with transition which is Schedule 9.

Therefore, Mr Speaker, in conclusion the Government feel that the Bill provides for a tax regime for Gibraltar going forward which creates the necessary competitive tax regime for our economy to continue to flourish. It creates a conventional tax system more in accordance with, as I said at the outset, an onshore rather than a tax haven finance centre. It delivers and secures, as far as possible, for the Government the necessary revenue yields. It rebalances the tax system more fairly as between employees on PAYE and self-employed and companies who are not on such a system and it provides, as I have said also, the final piece of the jigsaw of our journey away from tax haven status to the new Gibraltar finance centre.

Finally, I would like to thank the many professionals in Gibraltar's finance centre who have assisted the Government with the concepts of this Bill. The draftsmen that have contributed from the private sector and, indeed, the Commissioner of Income Tax and his staff, for their invaluable input without which the production of this legislation achieving all of these goals would not have been possible. I commend the Bill to the House.

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

HON J J BOSSANO:

Very little, Mr Speaker. On the general principles of the Bill I think there are three general principles involved. One, is the move to the 10 per cent which we were committed to by our manifesto of 2007 and, therefore, there is no disagreement as to the need to move to 10 per cent because, in fact, the tax exempt companies that provide 2000 jobs would not have stayed in Gibraltar paying the higher rate of tax. Therefore, the loss would have been a loss to the Government or PAYE revenue and whatever indirect effects their presence here has. That move to a single uniform rate of 10 per cent, of course, is after the failure of the previous idea that the Government had of remaining tax exempt but making everybody tax exempt and moving away from taxing profits to having a poll tax on wages and a doubling of rates on property capped at a sum which would be equivalent to the profits if the profits had been taxed. That, as we all know, was shot down by the European Commission, which considered it unacceptable. Indeed, one of the things, as I remember and I may be wrong, was that, independent of that issue, they also questioned the differential between the rate for utilities and the rate for those that were not utilities on the basis that it still meant moving away from a uniform tax rate. So, I am surprised that it is possible to do it, as we have heard today from the hon Member opposite that this is apparently possible, and presumably also possible to extend it to other areas where there is a dominant position. As far as I can see, the argument that because there is a dominant position people are profiteering and therefore they should pay a higher rate of tax, is no consolation to the consumer that is having to pay for it all. What happens then is that the profiteering is shared as between the

Government and the monopoly, the monopoly retaining 90 per cent of the unjustified profits and the Government 10 per cent. I do not think that that cures the problem. One would have thought if there are people in dominant positions and the Government are satisfied that they are, they ought to do something about correcting their freedom to charge excessive prices rather than simply saying you pay more tax. But that, of course, is really an aside to the extent that it forms part of this Bill. Obviously, the Government recognise that if you move to 10 per cent then the disparity between the personal taxation and the company taxation has to be addressed and we ourselves had recognised that in the 2007 Election and, in fact, the … Presumably, the provision in not allowing people to accumulate money in their businesses which was originally there and is now simply a supervision that can be introduced if it is thought necessary, was a reflection of that difference in the tax margin that would be paid by somebody who was the owner of the business and who chooses how much he takes out of it. Of course, there are people who argue that it is important in these days where it is difficult to raise money from lending institutions, that they should be able to plough some of their profits back into their businesses if businesses are going to grow. So presumably, that is a consideration that may be this EU group that is looking at the Code of Conduct, with which I am not familiar, may be having second thoughts for that reason.

I think the other element, in terms of the general principles of the Bill, is that the Government have decided that in order to ensure Government revenues with a lower rate of tax, notwithstanding the fact that there are going to be very substantial new tax payers, there is a need to take a tougher line than has been the case in the last 14 years in making people pay the tax that is due. Therefore, the hon Member has said that the benign regime of the last 14 years is now going to end on the 1st January. I do not know whether the opposite of benign is malignant, but that is for others to decide, not for me. All I can say, Mr Speaker, is that I find it quite surprising that it has been so benign in the last 14 years given the number of times we have been told at Budget that the Government were introducing very tough rules to collect taxes and that, in fact, more resources were being provided, a special unit was being created. I remember, on those occasions, that I told the hon Member that it was not an easy thing to achieve because if it had been easy it would have been done by somebody else a very long time ago. It appears that it has not been happening but it is almost as if it had not been happening deliberately. It is very strange to be told in Parliament that the Government are going to be taking a very tough stand on making people pay their dues and then we learn that, in fact, it has not been happening because the rules have been applied benignly. Applying tax laws benignly, of course, is a dangerous habit because it may be more benign for some than for others. I would have thought that the discretion to apply the tax rules benignly was not in the old tax Act that we are repealing or in the one that we are introducing. If the people who were avoiding tax or evading tax when it was 30 per cent, then presumably, they are less likely to do so when it is 10 per cent. That is to say, if there is a cost in putting up complex structures to reduce tax liabilities, then that cost will be less attractive the lower the rate of tax. Usually the Government [*inaudible*] lower taxation means that more people are willing to pay the tax and less people seek ways of avoiding paying it if it is lower than if it is higher. So, it seems strange that a tougher stance is required to collect 10 per cent than was required to collect 30 per cent and that is the second, I think, point of principle that arises in this Bill. We would have thought that given that the tax is going to be lower than it has been in the past, then the only people that might be wanting to avoid it are those who are paying nothing. Maybe all this machinery is required to make sure they pay the 10 per cent but I cannot imagine that people who have been willing to pay before 22 or 28 or 30 per cent or whatever the rate was at any given time, would now suddenly be trying to avoid paying the 10 per cent. Of course, if we look at the last statement the hon Member made about the need to bring the self-employed on to a current year basis in order to remove the disparity between the PAYE people who get tax deducted at source and the PAYE who pay on a preceding year basis, well, the reality of it is that what needs to be done is not to make the

self-employed pay on a current year basis, it is to make the self-employed who do not pay, pay. The real problem the Government need to correct, Mr Speaker, is not that it is unfair to PAYE payers that there should be self-employed who pay on the previous year. The logic of the self-employed paying on the previous year is that they are in the nature of a business, which does not necessarily get paid on a regular payday every week like an employee does. An employee has to be paid every week. A self-employed person that provides services, presumably, may be owed much of the money which constitutes his earnings and on which he is, presumably, going to have to pay tax before he may have collected what they owe him. But, of course, when we have got something like six or seven million pounds, going back many years, uncollected, it seems that the priority of the Government to me should be to make sure that the people who have not been paying before, pay, and not to make tougher rules for everybody, both those who have been paying religiously and those who have not been paying. So, we do not see the justification for moving in this area and we have to wait and see if this is going to produce any results any more than all the previous attempts on the many previous occasions when the Government have come to the House, quite rightly in my view, explaining that the annual reports of the Principal Auditor every year points out to the need to do more to collect arrears and to make people pay.

As regards the position on tax avoidance and tax evasion, it is unusual to hear what the hon Member opposite has said because, in fact, the concept of tax avoidance, as I understand it, has been a purely Anglo-Saxon invention which, until Gordon Brown became Chancellor, had never been challenged. That is to say, successive Labour and Conservative Governments in the United Kingdom have always drawn a dividing line between avoidance which was legal, because it was using the loopholes, intended or otherwise, in the law, and the opportunities that the law provided for reducing ones liability to tax, and evasion which was actually lying about your earnings or exaggerating your costs so as to produce a fictitious liability. One was illegal and one was legal. It was, in fact, Gordon Brown in his first Budget speech who swept aside the distinction and declared war on both and for many people outside Gibraltar, tax avoidance was what people were doing by using Gibraltar as a jurisdiction to trade in the rest of the world. So, it seems strange that we are suddenly very concerned about tax avoidance in Gibraltar but it is quite obvious that if it happens it can only happen on a very large scale because, of course, if we are talking about the draconian taxes that are going to be imposed on people at the level of £200,000 of tax at 10 per cent which must mean they must be making £2 million profit … I do not think there are many of us in this room or in much of our population that fall into that category, I would imagine, unless there are lucky people with lucky contracts that are making that kind of money. But I do not know any of them. So again, we are talking about people who would come to Gibraltar to do business in Gibraltar attracted by the 10 per cent rate. It is difficult to think that those persons would actually want to …, having been given the opportunity of trading legally in Gibraltar and paying the taxes which we are allowed to charge lower than competitors because we are no longer a tax exempt jurisdiction, that that kind of person would come here, frankly, and want to do it. Certainly, I would be interested in putting questions periodically to see how many of these £2 million earners have been caught out by the new machinery of the Government.

The hon Member has given us a useful explanation which, of course, will enable us to decide on some of the changes in this legislation and our position is, of course, that we are voting against this and, therefore, we are not committed to any of the changes that have been brought in which we had no commitment to do. We had a commitment to reduce taxation in order to overcome the problem of the challenge of the EU to tax exempt status and, as far as I can recall, that has been the position since that challenge emerged. There may be areas here where the hon Member has taken advantage of the opportunity of looking at the tax to say, well look, there are things that are out of date and they need to be removed, and it may sound quaint to say that people can claim allowances in Gibraltar if they work here and live in the area of the Consul of

Algeciras or British Consulates or whatever, but I do not know how much thought has been given to saying that every frontier worker is now ordinarily resident in Gibraltar. Given that so many experts have looked at this, presumably that looked at all the angles that defining frontier workers as ordinarily resident in Gibraltar may have, but if I understood the hon Member correctly, he seemed to be saying that anybody that works here for 183 days in a year, has to declare his world income, not his Gibraltar income. If that is the case, it seems a strange thing to have to require people to do.

He also mentioned the disappearance of the royalties and I cannot understand why he wants to do that. He calls it passive income but I am puzzled by that. I do not know whether the Government was deriving any benefit already from people having a company in Gibraltar that received royalty income which would then be taxable in Gibraltar, but it seems odd to me that on the one hand it is left out in page 291, which describes the income from property which in the existing section 6(1)(e) of the existing tax Act includes royalty and this is where it used to be and the place from which it has been removed. Then having removed it as a source of revenue which is taxable, so that it no longer appears in the Act, we have in Part II tax applicable to royalty payments made between associated companies of different Member States. What do we need Part II for, if the royalties are not taxable in the first instance? In fact, it used to be in the Act when it was taxable. Having removed its liability to tax, why is it that we are legislating to say that in the case of Greece, Latvia, Poland and Portugal, eight years, and in the case of Spain, the Czech Republic or Lithuania, six years, we have to take into account the taxes that they pay in terms of the interest payments of the royalties that they pay to Gibraltar when, in fact, the royalties will not have to be declared in Gibraltar and will not be taxed in Gibraltar. I cannot understand why, as a matter of policy, if there is an opportunity that makes it attractive for people to have the owner of the royalty in Gibraltar, as opposed to having it somewhere else, we do not give people that opportunity. I do not understand why the Government want to do it but, as I have said, we are voting against the Bill, although there may be elements in it that the hon Member has explained which seems to make sense. There are other elements in it where we are not too clear whether they are doing the right thing but the principle, as a matter of principle, is that, as far as we are concerned, what they should be doing is introducing the 10 per cent rate period, and then reviewing the thing as it works.

HON CHIEF MINISTER:

I am toying with the idea of whether it is worth it. I will retain my loyalty to the legislative process. Well, Mr Speaker, the hon Members really have developed an extraordinary benchmark and criteria for deciding whether they vote in favour of legislation or not. We had this the other day with the legislation introduced by my learned Friend the Minister for Justice whereby somehow they see their role in this House as simply saying, we are going to vote against and now … they are going to vote against without actually explaining why, without actually setting out an alternative to what the legislation suggests, in their most simplistic and their most really inexplicable of circumstances. It is quite extraordinary that the hon Member says he is voting against it because we have not committed to do this. So, if there is something necessary for Gibraltar, as this is, the fact that they, not unsurprisingly, did not think of putting it in their own manifesto, that is the yardstick by which they then decide whether they vote in favour or against it. It really is a most abject derogation of the legislative making function of this Parliament in so far as the Members of the Opposition are part of it and here is, probably, in terms of Gibraltar's economic viability, one of the most important pieces of legislation ever to be brought to this Parliament and the hon Members can think of nothing better to say that they are not voting in favour of it because they were not committed to do the things that this Bill does. Well, I think the thousands of people who earn their living in large swathes of our economy will be aghast at the superficial and uncooperative nature of the hon Member's contribution to the legislative making process, providing them yet one more

reason why they should think very carefully about changing good for bad at the next elections.

Mr Speaker, if the hon Member thinks and the largest monument to the extent to which the hon Member has failed to grasped to any degree the significance of what this Bill achieves and the situation that Gibraltar faced, it is the idea that we should just have reduced the rate to 10 per cent and left the old Bill as it was. It really is extraordinary and I refuse to believe that everybody on that side of the House is as superficial in their understanding of this piece of legislation but it is nevertheless the position that the hon Member opposite has put on behalf of them all. Well, so be it.

Well, notwithstanding that, I will try and give the hon Member answers to his questions, most of which also reflect his ignorance of what has happened in the past in Gibraltar as it is indeed in the public domain already, his failure to understand what has been happening between Gibraltar and the European Union over all of these years despite the plethora of press releases put out over those years suggesting to the contrary.

First of all, Mr Speaker, the European Union did not shoot down the payroll tax. No, the Commission shot down the payroll tax and then the Government beat the Commission on that question in the European Court of Justice and Gibraltar is now free, if it wanted to, to proceed with the payroll model of taxation. So the hon Member is completely mistaken on that fact. Well, he may think, sort of, wholesale ignorant is amusing but I cannot imagine that anybody else does.

Mr Speaker, secondly, what he calls a poll tax on jobs, namely the payroll tax, was not devised by the Government, free as we are now following our splendid victory against the Commission to pursue it, was not designed by a Government that wanted to destroy jobs but rather by a Government that was faced with, I was going to say unanimous, but in fairness to him there was one [*inaudible*] player in the financial services industry who from day one thought that we should have moved directly to the low system of tax that we have now. Everybody else advised the Government against going to a system of low tax because they thought that the Finance Centre was then not ready to abandon the zero tax product which is implicit in a 10 per cent tax rate. The Government then developed an alternative to 10 per cent, to low tax, which would deliver zero profits tax and deliver the revenue to the Government through a payroll tax itself. It was only when the Finance Centre, several years later, adopted the views of this one person, who had been of that view from the outset, and said, now the years that have passed and the international developments that have taken place, we believe it is now time for the Finance Centre to move to low tax. In other words, reversed their advice to the Government, that the Government said, fine, well then we will not pursue the payroll tax which we have subsequently won the right to continue with. The hon Member has not asked whether, having won the case, why are you not doing it? Well, the reason why we are not doing it, even though we have won the case and we are free to do it, is because in the meantime the Finance Centre changed its advice to the Government and adopted the preference for the low system of tax which had been the Government's preference from the beginning and the preference of this solitary lone voice in the Finance Centre and is now the consensus voice in the Finance Centre as a whole. The hon Member is also wrong, I am looking through my notes to see if the hon Member has said anything at all that is right and I am having great difficulty, in saying that the European Commission shot down the tax differential on utilities. In fact, when the European Commission made the decision, against which we litigated and won, the original decision to allege that our payroll tax system was in breach of materially selective under the state aid regime, one of the few, I think there was only one other, but one of the two or three elements of the tax scheme that they did not challenge, was precisely this differential on utilities. I think I have explained this recently to the House or perhaps not, where I have said that the issue … European state aid rules prevent you from benefiting people, not from penalising people. They prevent the state from using state resources to aid regions, regional selectivity or sectors of the economy as opposed to others,

material selectivity, but that is aid. In other words, states must not use state resources, in the case of Gibraltar I suppose it would be, to make the South District better off than the North District, for example, the South District having a more favourable tax or company business tax regime than the North. In the case of England, I suppose it would be Kent against Lancashire. Nor can a Member State say, well, I will have a different tax regime for tourism than for car manufacturing because that is preferring one sector over another and that is material selectivity. But in all cases, the state resource has got to be used and the state resource is not just, and this was the novelty in this channel. Originally, state aid rules had only been applied to suitcases full of money, in other words, the Government paying money to subsidise the coal industry, or a car plant, or a shipyard, or something like that. This is the use of state resources, not through the payment out of cash subsidies but through the forgiveness forum of tax, in other words, of the state failure to collect and this was the novelty that for the first time the European Commission tried to use the state aid rules to define, as a state resource, a general taxation system, but in any case the state resource has got to be a benefit and not a penalty. Now, that is not to say that what looks like a penalty cannot actually be shot down, to use the hon Member's colourful phrase, as a benefit. In other words, a penalty, what looks like a penalty of a sector, is actually impunable as a state aid, if what looks like a penalty for a sector, is given, is imposed, on a part of the economy which is so large a part of the whole economy, that that really constitutes the general system of tax, and the lower system, which you pretend is the general system of tax, is actually the exception to it. So for example, if you were to define the category of penalised companies in a way that encompass 50/60 per cent of your economy, which would be deemed to be the general system of tax. What you are describing or pretending as the general system of tax that only actually applies to a minority of the economy, in fact, would be deemed to be the exception to the general system and in those circumstances, what looks like a penalty could be challenged as actually an exception from the general system because the situation is not actually what it looks like on the wording of the [*inaudible*]. Mr Speaker, we are nowhere near that scenario with this definition which necessarily encompasses a minute, well not a minute, but a part of our economy which it cannot, in any circumstances, be thought to constitute a large enough part, so that the tax regime applicable to it constitutes the general scheme and the rest, the more favourable exception to it. So, the differentials for utilities have not been shot down either contrary to the second shooting down which the hon Member alleged and which did not take place.

The hon Member then, admittedly prefixing his remarks by the [*inaudible*], pity he did not prefix all of his remarks with this caveat, prefixing his remarks by the fact that he did not know very much about it, when he was speaking about deemed dividends he said that, of course, perhaps the EU Code of Conduct is contemplating the fact that in the present credit crunch companies cannot raise money very easily in the market and therefore should be allowed to plough back. Well, I can assure him that the Code of Conduct group is not doing anything quite that sensible but in any event what the hon Member suggests is indeed the case. In other words, the rule as it was written in the first draft, what the hon Member may not have read, was not that you could not accumulate, it is that you could not accumulate unless you could demonstrate to the Commissioner that you needed the money for investment in your business. In other words, that you could not hoard, were the words that I said, but even as previously written and now taken out, the regime allowed companies to retain as much of their accumulated earnings as they needed to invest and grow their business. What they could not do is just leave it in a cash box and neither invest it nor distribute it.

Well, I make no apology whatsoever for a tough regime of compliance and I have to say that I find the hon Members' arguments as superficial and unpersuasive on this subject as they have been on all other aspects of this matter. Mr Speaker, I suppose I could just deal with the hon Member's argument with one simple proposition. If his concern is that you do not need tough rules to hurt those who pay religiously, well first of all,

rules, tough, less tough or lenient, simply do not bite on people that comply. These rules, tough, too tough, much too tough, whatever they might be, only apply and only bite and only affect people who do not comply and, therefore, I just cannot comprehend why anybody in this Parliament or indeed any leader of any business organisation has an interest in speaking out for those who defraud the tax system at the expense of those who pay. I really do not comprehend the logic of such a position. Still less do I comprehend the logic of a so called socialist party and an ex leader of a trade union that appears to resent, when the Government say, look ordinary workers on PAYE do not get the opportunity to scam on their taxes and we think that those who are not ordinary workers, companies and self-employed people, should not have an opportunity that ordinary workers do not have, and we have the spectacle in this House of the so called Gibraltar Socialist Labour Party, actually arguing in favour of the tax defaulters against the working class of Gibraltar whose taxes could be lowered further if only the fraudsters did not exist. No, Mr Speaker. The hon Member may want to sit there with his characteristically haunched shoulder giggle, but the reality of it is that that is the argument that he has put. The argument that he has put is that these rules are unnecessary. That we do not need to get tougher with defaulters, because after all, poor defaulters. Well, there are no such things as poor defaulters and he further distorts the position by suggesting that defaulters have been let off the hook by some benign administration of tax. Look, when this Government identify the need, in the context of a lowering of tax and after 14 years of tax reductions, that the next source of available tax reductions is going to increasingly be collecting from defaulters, which is not because the tax administration has been benign. It is because there have been insufficient penalties, because there has been insufficient deterrence in the law and this Government addresses this by strengthening the powers in the law available to our administrators and not as they did by subcontracting the administration of tax enforcement to a private company accountable to nobody but himself. So presumably, when he did that, back in the days where he thought he would be allowed to get away with whatever he wanted to do, when he did that, presumably he thought, as we do now, that the tax administration needed to be toughened. Indeed, as I recall, somebody, sitting not too far away from me right this minute, was brought to Gibraltar in order to help him toughen up the approach to tax administration. So clearly, he had the same instinct, except that we do it properly through tax laws and he does it by all manner of privatised arrangements, which is outside the scrutiny, and accountability of Parliament and the electorate at large. So obviously, the very same people who complain that … I am always fascinated by this accusation that, sort of, anti-evasion and anti-fraud measures are "too draconian". I cannot think of a starker contradiction in terms. Let us analyse it. If a measure designed to deter fraud of the general taxpayer is too draconian, what it means is, it must mean, that there is a measure of fraud that ought to be permitted, in other words, that you must not be too tough in preventing fraud. In other words, that there are some measures, even if you have got all manner of discretions to protect the innocent mistake maker. So, when you finally identify the pre-meditated tax evader and tax defrauder, there are those out there who think that they are too draconian and they are the same people who then complain to the Government that there is an unlevel playing field between businesses that pay their taxes and therefore have a higher cost base, who have to compete for Government contracts with the companies that do not, and therefore can afford to quote lower prices for contracts because they do not have the same high … So, first of all they make that complaint and then when the Government say you are absolutely right, we are now going to do something about this, we are going to get very tough. No, no, no, no, no, do not get too tough, for goodness sake do not get too tough. Well look, which is it? I do not think you can get too tough and, frankly, I do not know what interest of any law abiding member of any business federation in Gibraltar is being served by discouraging the Government from throwing the book, the lawful book, properly administrated through legislation, against companies in Gibraltar that do not comply with their tax obligations because the principal sufferer is the tax payer but not far behind the tax payer are the other members of that same organisation that are

competing unfairly with the tax defrauders that such statements seek to protect. So, the Government make no apology whatsoever and is glad that there is clear blue water between the Government and the Opposition on this matter as there is on so many important matters of Gibraltar. The hon Member thinks that there should be quarter for tax evaders and wants to, sort of, muddy the waters by suggesting that these are draconian measures, unnecessary measures, because they bite compliers which obviously they do not bite. All that is a smokescreen for not saying what he really means, which is, that he thinks that we should not be so harsh on people that defraud because there is no harshness here on people that comply. This can only apply to people that defraud. So we now know and so does Gibraltar that the hon Members do not support measures that make defaulters pay so that the Government can use that revenue to continue to lower the taxes of hard working people in Gibraltar who do not get the opportunity to defraud on their taxes.

Well, of course Mr Speaker, the hon Member must know that collection of arrears is not an alternative to any of this because, necessarily, defrauders and evaders are not reflected in the arrears figures. If you have been under declaring your income or not declaring your income at all, how does that feature in the arrears figures, unless the Commissioner raises an assessment? The whole idea of this is to make everybody come out of the woodwork and comply spontaneously with their tax obligations and that therefore more tax payers will come into the net in respect of higher levels of taxable income in turn yielding a higher amount of money for the tax payer. I have given the hon Member the detailed reasons why we cannot agree with anything that he has just said. We deeply lament the superficial treatment that this complex and important piece of legislation, as all complex and detailed pieces of legislation, however important they may be to Gibraltar, receives from the hon Members opposite. It is as if they just could not be bothered to do the work required to make a sensible contribution to the legislative process. That is absolutely a matter of judgement for them but certainly we reserve the right to point out that that is what they are doing and finally, as if just to prove what I said, that practically nothing of what the hon Member said was right and it practically all showed a complete lack of understanding of the subject matter about which he has risen to speak, the Schedule that he has quoted from, the one that mentioned Latvia and Estonia and all of this, is not there as a matter of domestic tax legislation, it is there because it is the implementation of the European Union Interest and Royalties Directive. It is there because it has to be there. It is there because it has to be there whatever the domestic policy might be on the taxation of royalties or not. These are mandatory provisions that have to be there however unnecessary they might look. I am sure he remembers using the examples of being made to implement Directives about railways, when there were no railways in Gibraltar. Well, this is not dissimilar to that.

So, Mr Speaker, I am honestly sorry that the hon Members cannot support this piece of legislation which, by the way, following the consultation process and the changes that have been made to the Bill as a result of it, now enjoy the support of every sector of the economy, including the federation that I have made allusion to, without mentioning by name, who have supported the principles of the legislation but not the draconian measures dealing with defaulters. So, the hon Members stand, as in so many other issues of life in Gibraltar, in complete, splendid isolation on this matter, both as to importance, as to its effectiveness and as to the extent to which it is both necessary and desirable in the promotion of the interests of Gibraltar. But anyway, the hon Members have indicated that they are intending to vote against it for no more reason that they were not committed to doing this.

Question put. The House voted.

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

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

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

The Bill was read a second time.

HON CHIEF MINISTER:

Mr Speaker, I am not sure whether the hon Members' interest, position in the matter is going to be extended into the Committee Stage or not. As I indicated the other day, expecting as I then was a more thorough debate on this Bill, I had thought that it would be inappropriate to proceed with the Committee Stage too rapidly, but if the hon Members will indicate to me that they have no objection to doing so, we can continue. If on the other hand, they would prefer not to, we will not. I leave that call entirely to them.

HON J J BOSSANO:

I think that [*inaudible*] the hon Member can move all his amendments together and we will simply let him pass them.

HON CHIEF MINISTER:

Yes Mr Speaker, but you see that statement shows a further lack of interest in the legislative function of this House. The Committee Stage is not just for the passing of amendments. No. The Committee Stage is for the reviewing of the clauses of the Bill, clause by clause. This is the hon Members opportunity to scrutinise the provisions of this Bill on a line-by-line basis. So this is not just about passing the amendments, but Mr Speaker, the Government's position is clear. We are willing to have in this House on this Bill that degree of debate which the hon Members want to have. Their position, which I have been critical of but nevertheless…, is one that is for them to decide and to have. If they indicate that they do not mind the Committee Stage proceeding now, we will proceed with it now. If on the other hand, they would prefer to come back another day, we can come back another day. Neither decision now would be a comment on them because I have already said everything that I…

HON J J BOSSANO:

Mr Speaker, since we are voting against the Bill, I think it will be a contradiction to go clause by clause to debate something or argue something given that we are voting against it. As far as we are concerned, all that was required at this stage was to bring the new rate of tax. The hon Member has a different view. He is entitled to his view and we are entitled to ours. I have no reason to insult him because I disagree with 90 per cent of what he said. He is free to proceed as he wants because we are voting against.

HON CHIEF MINISTER:

Well, Mr Speaker, fine. Look, that attitude necessarily suits the majority of the Parliament but it does not accord with the view expressed by the Hon Mr Picardo, his putative replacement, who not so long ago said, to his great credit … I have got to be careful that I am not seen to be switching horses, who said that the fact that the Opposition were voting against a Bill did not relieve it from its obligation to try and ensure that the Bill, that

would pass with a Government majority, was nevertheless as good quality and as improved as possible. Mr Speaker, it has never been, even the Hon Leader of the Opposition's position that because he is going to vote against a Bill, he takes no interest in it, as if we might as well be sitting in the bar downstairs, for all he cares. Mr Speaker, the legislative process cannot be reduced to whether you agree with something or not, but look he is too long in the tooth for me now to tell him … I have always said that an old dog does not learn new tricks and the more he speaks the more he demonstrates that this is an unreconstructed Leader of the Opposition.

HON F R PICARDO:

Mr Speaker, I am grateful for the hon Gentleman's words. Can I just say that, although I do not recall exactly what I said, I think when I said it he did deride me for it because he said that given that I was voting against the legislation, what was I doing improving it, but no doubt we will have a chance of looking into Hansard to see exactly what it is that we said to each other at that time.

MR SPEAKER:

The position of the Chairman of the Committee is that he must give every Member of this House the opportunity to consider every clause of every Bill, clause by clause. So I cannot allow a wholesale passing of all the amendments. We will have to go through it clause by clause, with or without the participation of hon Members. So, it is entirely … I am in the hands of the Leader of the House if he wishes to proceed to Committee Stage today or another day.

HON CHIEF MINISTER:

Well, Mr Speaker, unless any hon Member objects. 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 Income Tax Bill, clause by clause and in great detail.

THE INCOME TAX BILL

Clause 1

HON CHIEF MINISTER:

Well, Mr Chairman, can we take the amendments as notified and … unless objected to, read, as we go clause by clause.

The Hon the Chief Minister moved the following amendment:

In clause 1, after the words "Income Tax Act", insert the figure "2010".

Clause 1, as amended, stood part of the Bill.

Clause 2

The Hon the Chief Minister moved the following amendment:

At the end of clause 2.(3)(b), insert "(4)" before the words "Subject to such conditions".

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

Clauses 3 and 4 – stood part of the Bill.

MR CHAIRMAN:

There is notice of an amendment to clause 5.

HON CHIEF MINISTER:

… and indeed to clause 4 because some of these amendments are generic to the Bill as a whole. So, for example, amendment No. 3 is throughout the Bill, references to "member state" should read "Member State". So perhaps, Mr Chairman, you should wish to take as read any amendments that apply to the whole Bill and you can just refer to the ones that refer to the clause.

MR CHAIRMAN:

Yes, in that case. In the event, I am sure I will not be aware of specific references to "Member State" in clauses where there is no specific reference to a proposed amendment in the letter from the Hon the Chief Minister, in so far as there is any reference to "Member State" and even though I do not mention specifically, it will be taken as read.

HON G H LICUDI:

Mr Chairman, just on clause … Sorry, were we on clause 5 or 5A?

MR CHAIRMAN:

We are on 5 at the moment.

Clause 5

The Hon the Chief Minister moved the following amendment:

In Clause 5(8), at the end of the definition of "information", delete the full stop and replace with a semicolon.

Clause 5, as amended, stood part of the Bill.

Clause 5A

HON G H LICUDI:

Mr Chairman, just on a drafting issue. We have clauses 5A and 5B and it is unusual in a new piece of legislation to have clauses numbered in this way. Usually, these numbers creep in as amendments are made over the years. Is there a particular reason for this?

HON CHIEF MINISTER:

The hon Member is absolutely right as to the remark about unusualness. There was a need to add clause 5A very late on in the process and in order to avoid what would have been a very complicated process of cross checking all cross references caught up, this was exceptionally used. But he is absolutely right. The device is normally relied on when you insert a new section into an existing Bill and is unprecedented as far as I am aware in a new Bill, but it was for that reason.

HON G H LICUDI:

Mr Chairman, just on one other point. It applies to this clause as it does to every other in the Bill. Each clause is actually headed. Before the heading in the clause there is, for example, in this one Section 5A, is it intended that those should remain as part of the Act or not?

HON CHIEF MINISTER:

Well Mr Chairman, this point was raised also by the Government's internal draftsman that this is the UK practice and as the draftsman here has a fond affection for the legislative system in the UK, we took the view it does not do any harm. It just helps. It actually is useful in that when you are looking for a section number it takes your eye more directly to the part of the page but he is right also on that point, in that I am not aware that this drafting style has been used before, but it is used elsewhere and it does no harm and arguably it is an aid to use of the Bill. So we decided to leave it.

The Hon the Chief Minister moved the following amendments:

In clause 5A.(1), after the words "Subject to" insert the word "subsection".

In clause 5A.(2), insert the word "Subsection" before the words "(1) applies only where the request".

In clause 5A.(3), after the words "referred to in" insert the word "subsection".

Clause 5A.(3), after the words "referred to in" insert the word "subsection".

Clause 5A, as amended, stood part of the Bill.

Clause 5B

The Hon the Chief Minister moved the following amendment:

In clause 5B.(2), after the word "Where" insert the word "subsection".

Clause 5B, as amended, stood part of the Bill.

Clause 6 – stood part of the Bill.

Clause 7

The Hon the Chief Minister moved the following amendments:

In clause 7.(3), delete the words "subsection (5)" and replace with the words "subsections (5) and (6)".

In clause 7.(5), delete the word "subsection" and replace with the word "section".

Clause 7, as amended, stood part of the Bill.

Clause 8

The Hon the Chief Minister moved the following amendments:

In clause 8.(4)(a), after the words "exceeding six months" insert the words "and to a fine or either".

In clause 8.(4)(b), delete the words "and to a fine or to a fine or to both" and replace with the words "and to a fine or either".

In subsection 8.(4)(c), after the words "custodial sentence" insert the words "or fine".

Clause 8, as amended, stood part of the Bill.

Clause 9

The Hon the Chief Minister moved the following amendments:

In clause 9.(1)(b), delete the words “this Section” and replace with the words “this section”.

Delete the word “and” which appears in between clauses 9.(3)(b)(ii) and 9.(3)(c) .

In clause 9.3(b)(ii), after the words “the suspected offences;” insert the word “and”.

In clause 9.(6)(c)(ii), delete the semicolon appearing after the words “such proceedings” and replace with a comma.

Clause 9, as amended, stood part of the Bill.

Clause 10

The Hon the Chief Minister moved the following amendment:

In clause 10.(4)(c), delete the word “In” and replace with the word “in”.

Clause 10, as amended, stood part of the Bill.

Clause 11 – stood part of the Bill.

Clause 12

The Hon the Chief Minister moved the following amendments:

In clause 12.(2)(b), delete the word “For” and replace with the word “for”.

In clause 12.(3)(b), delete the words “The income” and replace with the words “the income”.

In clause 12.(3)(c), delete the words “A beneficiary” and replace with the words “a beneficiary”.

In clause 12.(4)(a), delete the word “and” appearing after the words “under this Act;”.

In clause 12.(4)(b), delete the full stop and replace with a semicolon.

Clause 12, as amended, stood part of the Bill.

Clause 13

The Hon the Chief Minister moved the following amendments:

In clause 13.(1) insert a full stop after the words “in accordance with section 11”.

In clause 13.(4) delete the word “in” after the words “has suffered tax”.

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

Clauses 14 to 18 – stood part of the Bill.

Clause 19

The Hon the Chief Minister moved the following amendment:

In clause 19.(a), delete the words “subsection (2)” and replace with “(b)”.

Clause 19, as amended, stood part of the Bill.

Clause 20

The Hon the Chief Minister moved the following amendment:

In clause 20.(1), delete the colon after the words “accounting periods” and replace with a full stop.

Clause 20, as amended, stood part of the Bill.

Clauses 21 to 27 – stood part of the Bill.

Clause 28

The Hon the Chief Minister moved the following amendments:

In clause 28.(3)(a), delete the words “(a) at least one of whose trustees is a trustee licensed under the Financial Services (Investment and Fiduciary Services) Act 1989;” and replace with the following:

> “(a) at least one of whose trustees is a professional trustee being either-
>
> (i) a trustee licensed under the Financial Services (Investment and Fiduciary Services) Act 1989; or
>
> (ii) a person who under the Financial Services (Investment and Fiduciary Services) Act 1989 is exempted from the requirement to obtain a licence to act as a trustee;”

In clause 28.(7), after the words “in accordance with” insert the word “subsection”.

Clause 28, as amended, stood part of the Bill.

Clause 29 – stood part of the Bill.

Clause 30

The Hon the Chief Minister moved the following amendments:

In clause 30.(1)(b), delete the full stop at the end of the subclause and replace with a semicolon.

In clause 30.(1)(c), delete the words “In the case” and replace with the words “in the case”.

In clause 30.(1)(d), delete the word “and” and replace with a semicolon.

In clause 30.(1)(e), delete the full stop at the end of the subclause and replace with a semicolon.

In clause 30.(1)(f), delete the full stop at the end of the subclause and replace with a semicolon.

Clause 30, as amended, stood part of the Bill.

Clause 31

The Hon the Chief Minister moved the following amendment:

In clause 31.(2)(a), after the words “make an assessment accordingly” insert a semicolon.

Clause 31, as amended, stood part of the Bill.

Clause 32

The Hon the Chief Minister moved the following amendment:

In clause 32.(2), delete the words “subsection 2(b)” and replace with the words “section 31.(2)(b)” and for the reference to “subsection 31.(3)(c)” replace with “section 31.(3)(c)”.

Clause 32, as amended, stood part of the Bill.

Clause 33

The Hon the Chief Minister moved the following amendment:

In clause 33.(1)(b), delete “30.(f)” and replace with “30.(1)(f)”.

Clause 33, as amended, stood part of the Bill.

Clauses 34 to 37 – stood part of the Bill.

Clause 38

The Hon the Chief Minister moved the following amendments:

In clause 38.(1), delete the comma appearing after the words “Subject to subsection (2)”.

In clause 38.(1)(b), delete the words “or social insurance” appearing after the words “payment of tax” and insert the words “or social insurance” after the words “Income Tax (Pay As You Earn) Regulations 1989”.

Clause 38, as amended, stood part of the Bill.

Clause 39

The Hon the Chief Minister moved the following amendments:

In clause 39.(1)(a), delete the full stop and replace with a semicolon.

In clause 39.(8)(a), delete the full stop and replace with a semicolon.

Clause 39, as amended, stood part of the Bill.

Clause 40 – stood part of the Bill.

Clause 41

The Hon the Chief Minister moved the following amendments:

In clause 41.(2)(d), delete the word “for” and replace with the word “For”.

In clause 41.(5), insert a hyphen after the word “promoter” in the first line.

In clause 41.(10), insert a hyphen after the word “Commissioner” where it first appears.

In clause 41.(11), insert a hyphen after the word “Regulations” where it first appears.

In clause 41.(12), in the definition of “prescribed”, insert a full stop after the word “Minister”.

Clause 41, as amended, stood part of the Bill.

Clauses 42 to 49 – stood part of the Bill.

Clause 50

The Hon the Chief Minister moved the following amendment:

In clause 50.(4), delete the words “subsection (4)” and replace with the words “subsection (5)”.

Clause 50, as amended, stood part of the Bill.

Clauses 51 and 52 – stood part of the Bill.

Clause 53

The Hon the Chief Minister moved the following amendment:

In clause 53.(2)(b), after the words “Electronic Commerce Act” insert “2001”.

Clause 53, as amended, stood part of the Bill.

Clauses 54 to 57 – stood part of the Bill.

Clause 58

The Hon the Chief Minister moved the following amendment:

In clause 58.(i), for “(aa)” and “(bb)” substitute “(i)” and “(ii)” respectively.

Clause 58, as amended, stood part of the Bill.

Clause 59

The Hon the Chief Minister moved the following amendments:

In clause 59.(1)(a), delete the word “and” after the words “persons or companies;”.

In clause 59.(1)(c), insert the word “and” after the words “subject to tax;”.

Clause 59, as amended, stood part of the Bill.

Clauses 60 to 64 – stood part of the Bill.

Clause 65

The Hon the Chief Minister moved the following amendments:

Delete the dash appearing after “65.(1)(a)”.

In clause 65.(3)(b), insert a comma after the word “falls”.

In clause 65.(4)(b), delete the full stop after the words “received by him” and replace with a semicolon.

In clause 65.(4)(c), delete the full stop after the words “guilty of an offence” and replace with a semicolon.

In clause 65.(4)(d)(iii)(bb), delete the second full stop.

Clause 65, as amended, stood part of the Bill.

Clause 66

The Hon the Chief Minister moved the following amendment:

In clause 66.(4), delete the words “Tables A, B and C of” and replace with the words “accordance with”.

Clause 66, as amended, stood part of the Bill.

Clause 66A

The Hon the Chief Minister moved the following amendment:

Delete “66.A.” and replace with “66A.”

Clause 66A, as amended, stood part of the Bill.

Clause 67

The Hon the Chief Minister moved the following amendments:

In clause 67.(7)(a), delete “subsection(6)” and replace with “subsection (6)”.

In clause 67.(7)(a)(iv), delete the first reference to the word “In” and replace with the word “in”.

In page 282 of the Bill, subclause “(4)” is re-numbered “(8)”.

Clause 67, as amended, stood part of the Bill.

Clauses 68 to 72 – stood part of the Bill.

Clause 73

The Hon the Chief Minister moved the following amendment:

In clause 73, the second subclause "(2)" is renumbered "(3)".

Clause 73, as amended, stood part of the Bill.

Clause 74

The Hon the Chief Minister moved the following amendments:

The definition of "Accrued in and derived from" is amended as follows:

(i) in paragraph (a), after the words "the activities" insert the words "or the preponderance of activities";

(ii) in paragraph (b), insert the words "for the purpose of (a)," before the words "the preponderance";

(iii) in paragraph (b)(ii), delete the comma after the word "Gibraltar" in the last line and replace with a semicolon.

Clause 74, as amended, stood part of the Bill.

Clause 75 and 76 – stood part of the Bill.

Schedule 1

The Hon the Chief Minister moved the following amendments:

Schedule 1 is amended as follows:

(i) delete "TABLE B" and replace with "Table B";

(ii) in Table B, paragraph (1), delete "Schedule 8" and replace with "Schedule 7";

(iii) in Table B, paragraph (2)(a), delete "any" and replace with "Any";

(iv) in Table B, paragraph (2)(b), delete "for the purpose" and replace with "For the purpose";

(v) in Table C, "Class 2 "Funds income"" is deleted and replaced with:

"Class 2

"Funds income"

(a) There shall be no charge to tax under this Act on the receipt of income from a fund marketed to the general public; and

(b) In the case of a fund which is not marketed to the general public, including shares in or securities of an open-ended investment company, any income from the fund shall be chargeable to tax in accordance with the provisions of this Act which apply to the entities which form the arrangements under which the fund is structured."

Schedule 1, as amended, stood part of the Bill.

Schedule 2

The Hon the Chief Minister moved the following amendments;

Schedule 2 is amended as follows:

(i) in paragraph 4, delete the figure "(2)" and subparagraphs "(3)", "(4)" and "(5)" are re-numbered "(2)", "(3)" and "(4)" respectively;

(ii) in paragraph 9, delete the figure "(1)";

(iii) in paragraph 12, subparagraphs "(3)", "(4)", "(5)" and "(6)" are re-numbered "(2)", "(3)", "(4)" and "(5)" respectively;

(iv) in paragraph 14.(3)(b), delete the words "those Schedules" and replace with the words "that Schedule".

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

Schedule 3

The Hon the Chief Minister moved the following amendments:

Schedule 3 is amended as follows:

(i) in paragraphs 3.(a) and (b), delete the words "subparagraph 2(g)" and replace with the words "subparagraph 2(1)(g)";

(ii) in paragraph 6, in the definition of "computer equipment", delete the comma appearing after the word "computer" on the second occasion it is mentioned and replace with a semicolon;

(iii) in paragraph 10.(b), insert a comma after the word "period";

(iv) paragraph 13.(2)(a)(ii) is deleted and replaced with-

"(ii) if the period is a period of less than a year or the company has been chargeable to tax for part only of the period, a proportionately reduced percentage of the excess shall be allowed;"

(v) after paragraph 14, insert the words "PART III" before the heading "ADDITIONAL DEFINITION OF INCOME – INTEREST AS A TRADING RECEIPT"

Schedule 3, as amended, stood part of the Bill.

Schedule 4

The Hon the Chief Minister moved the following amendments:

Schedule 4 is amended as follows:

(i) in paragraph 5.(b)(iii), insert a comma after the word "Act";

(ii) after the heading "PART III", delete the word "Definitions" and replace with the word "DEFINITIONS";

(iii) in paragraph 9.(9), delete the words "Settlement" and "Settlor" and replace with the words "settlement" and "settlor" respectively.

Schedule 4, as amended, stood part of the Bill.

Schedule 5

The Hon the Chief Minister moved the following amendment:

Paragraph "17" is re-numbered "16".

Schedule 5, as amended, stood part of the Bill.

Schedule 6

The Hon the Chief Minister moved the following amendments:

Schedule 6 is amended as follows:

(i) delete paragraph 3.(7), and replace with the words "*Not used*.";

(ii) in paragraph 3.(8), delete the words "telecommunications networks" and replace with the words "electronic communications networks";

(iii) in paragraph 4.(1), delete the words "(as this term is defined in section 2 of the Telecommunications Act 2000)";

(iv) in paragraph 18.(1), delete the words "part I" and replace with the words "Part I";

(v) delete all references to the "Telecommunications Act 2000" and replace with the "Communications Act 2006".

Schedule 6, as amended, stood part of the Bill.

Schedule 7

The Hon the Chief Minister moved the following amendments:

Schedule 7 is amended as follows:

(i) in paragraph 1.(2)(a), insert a comma after the word "fee";

(ii) the heading to paragraph 5 should appear in bold font;

(iii) in the heading "Non-cash vouchers" in page 367 of the Bill, delete the colon;

(iv) in paragraph 8.(15), delete the words "subparagraph 4.(10)" and replace with the words "paragraph 7.(10)";

(v) in paragraph 11.(1), delete the words "employment under this paragraph, or" and replace with the words "employment under this paragraph.";

(vi) in paragraph 13.(7), insert the word "paragraph" before the figure "54";

(vii) in paragraph 15.(2), delete the first "the" and replace with "The";

(viii) in paragraph 24.(2), delete the full stop after the first reference to "earnings" and delete the word "Part" and replace with the word "Schedule";

(ix) in paragraph 35.(1)(c), delete the word "a" between the words "employment-related" and "loan";

(x) at the end of paragraph 49, the sentence "For the purpose it does not matter whether or not the undertaking is legally enforceable or is qualified." should form part of subparagraph (6);

(xi) in paragraph 54.(2), delete the word "Conditions" and replace with the word "Condition";

(xii) in paragraph 67.(1), delete the comma at the end of the subparagraph and replace with a full stop;

(xiii) in paragraph 68.(1), delete the word "employment." and replace with the word "employment, where-";

(xiv) in paragraph 74.(1), insert a full stop after the second reference to "employer".

Schedule 7, as amended, stood part of the Bill.

Schedule 8 – stood part of the Bill.

Schedule 9

The Hon the Chief Minister moved the following amendments:

Schedule 9 is amended as follows-

(i) in paragraph 1.(1)(a), delete the words "Income Tax Act 1952" and replace with the words "Previous Act";

(ii) in paragraph 2.(2), delete the words "previous Act" and replace with the words "Previous Act";

(iii) in paragraph 6.(1):

(a) insert a hyphen after the words "For the purposes of";

(b) for the second reference to "Schedule 2, Paragraph" substitute "Schedule 2, Paragraph 2(1)";

(c) insert a hyphen after the words "authorisation or similar act under";

(iv) in paragraph 6.(3), insert a hyphen after the words "For the purposes of"

(v) paragraph 8 Trusts-Date of Settlement is deleted and replaced with the words "*Not used*.";

(vi) in paragraph 10 – The Table, in the footnote to the table delete the full stop after the word "dates" and insert the following after the word "dates":

"and for the purposes of computing the payment on account due in accordance with this table a company previously exempt from tax under the Companies (Taxation and Concessions) Act shall be deemed to have paid tax on its profits at the rate and amount which would have been due under the Income Tax Act for the relevant period(s) if the company had been liable for tax under the latter Act.";

(vii) At the top of page 425 of the Bill, delete the words "All references to computing

payments on account are to be estimated based on the profits for a 12 month period ending on the respective accounting dates.";

(viii) in paragraph 20, delete "16and" and replace with "16 and".

Schedule 9, as amended, stood part of the Bill.

The Long Title – stood part of the Bill.

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that the Income Tax Bill has been, I hesitate to use the word considered, but that is what I am required to say, in Committee and apparently agreed to with amendments and I now move that it be read a third time.

Question put.

The House voted.

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

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

The Bill was read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I have the honour to move that the House do now adjourn to Monday 8th November 2010, at 2.30 p.m.

Question put. Agreed to.

The adjournment of the House was taken at 5.20 p.m. on Wednesday 20th October 2010.

MONDAY 8TH NOVEMBER 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 F J Vinet – Minister for Housing and Communications
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 F R Picardo
The Hon Dr J J Garcia
The Hon G H Licudi
The Hon N F Costa
The Hon S E Linares

ABSENT:

The Hon Lt-Col E M Britto OBE, ED – Minister for the Environment and Tourism
The Hon J J Netto – Minister for Family, Youth and Community Affairs
The Hon D A Feetham – Minister for Justice

The Hon J J Bossano – Leader of the Opposition
The Hon C A Bruzon

IN ATTENDANCE:

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

SUSPENSION OF STANDING ORDERS

HON J J HOLLIDAY:

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

Question put. Agreed to.

DOCUMENTS LAID

HON J J HOLLIDAY:

I have the honour to lay on the Table the Civil Aviation Annual Report 2009/2010.

Ordered to lie.

BILLS

FIRST AND SECOND READINGS

THE CRIME (MONEY LAUNDERING AND PROCEEDS) (AMENDMENT) ACT 2010

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to amend the Crime (Money Laundering and Proceeds) Act 2007, 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 be aware that the obligation to report suspicious transactions under the Crime (Money Laundering and Proceeds) Act 2007 applies to those persons that undertake a relevant financial business.

Section 8(1) of the Act defines relevant financial business to include the following types of entities: banks, Gibraltar Savings Bank, investment business, insurance firms, auditors, external accountants, tax advisers, real estate agents, notaries and other independent legal professions, controlled activities, that is, company formation and trust service providers, dealers in high value goods, casinos, currency exchange offices and bureaux de change and money transmission and remittance offices.

This Bill now before the House amends section 8(1) by inserting a new item to that list and therefore in the definition of relevant financial business, by inserting a new paragraph (p) so that any recognised or authorised scheme or any authorised restricted activity under the Financial Services (Collective Investment Schemes) Act 2005 will now fall under the definition of relevant financial business. In short, simply to clarify that recognised or authorised schemes, collective investment schemes, retail funds et cetera are captured by the definition of relevant financial business and, therefore, the money laundering provisions of the Crime (Money Laundering and Proceeds) Act 2007 apply. This is in part a clarification arguably …, some might argue that it is caught by the phrase investment business. The problem does not stem from any ambiguity in the definition of investment business. It stems from the fact that under the 1989 Act, these activities were caught, in other words, funds activities were caught and included by reference to that 1989 Act, were caught in the definition of relevant business. When that 1989 Act was replaced by the Financial Services (Collective Investment Schemes) Act 2005, the result was, inadvertently, that it fell out of the list by specific reference as it had previously been captured by reference to the 1989 Act. So this section, this amendment, simply clarifies and reconfirms the fact that funds [*inaudible*] is a relevant financial business for the purposes of our money laundering legislation in Gibraltar and, therefore, for the reporting of suspicious transactions requirements in that Act. I commend the Bill to the House.

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

HON F R PICARDO:

Mr Speaker, only to tell the Members opposite that we regard this, much as it has been presented, as a tidying up exercise, a housekeeping exercise, in respect of this piece of legislation and that, therefore, this will enjoy the support of both sides of the House.

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 SUPPLEMENTARY APPROPRIATION (2009/2010) ACT 2010

HON CHIEF MINISTER:

I have the honour to move that a Bill for an Act to appropriate further sums of money to the service of the year ending on the 31st March 2010, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, hon Members will recognise this as the annual Supplementary Appropriation Bill that is required to provide appropriation cover retrospectively for that part of the now confirmed outturn following the closure of the books, so to speak, for last year which could not be covered by the £8.5 million supplementary funding provision that was provided. Hon Members will recall from Budget Bills and Appropriation Bills that one of the items that we approve each year is something called Supplementary Provision. For the year ended March 2010, we actually approved in the House £8.5 million and the first, therefore, £8.5 million by which expenditure not specifically provided for during that year exceeds the voted amount, is drawn from that £8.5 million. After the end of the financial year when the Treasury reconciles all the items, if there is more than the £8.5 million, or whatever the figure is provided, then it has to be specifically legislated for in this House by a Bill of this sort which is a Supplementary Appropriation Bill and it relates to the financial year ended on 31st March 2010. So, in respect of the £8.5 million supplementary funding provision, the hon Members will already have seen, tabled at the last meeting of Parliament on the 15th October, the details of how that £8.5 million were actually applied.

The £2.8 million supplementary funding provision to which this Bill relates are for the purposes which are explained in the Bill itself. £1 million of the £2.8 million recurrent is required towards meeting the increase in the contribution to the Gibraltar Health Authority. In other words, the Gibraltar Health Authority spends what it spends. Some of its services are demand led. At the end of the year, the Government balance the GHA's books by the contribution from the Consolidated Fund. We provided a figure for contribution from the Consolidated Fund in the Estimates just over 18 months ago and, in fact, that estimate turned out to be a £1 million short. So, £1 million more for the GHA and £1.8 million is in respect of a contribution to the Social Assistance Fund and that relates mainly to the funding by that fund of the financial needs of Community Care. So £2.8 million, which is accounted for in what the hon Members see at Budget time, above the line. In other words, recurrent annual expenditure and then there is £772,000 of supplementary funding required for the Consolidated Fund for what the hon Members normally see below the line. That is, exceptional, non-recurrent annual expenditure and £406,000 out of those £772,000, is in respect of further expenditure incurred during the year. That is the year which ended in March this year, to meet the expenses of the Tribunal appointed under section 64 of the Constitution to enquire into certain aspects relating to the then Chief Justice where only a token provision was included in the Estimates and the other £366,000, out of the £772,000, is to meet unbudgeted expenditure in connection with the Swine Flu pandemic, Mr Speaker, in all, £2.8 million recurrent, £772,000 exceptional. I commend the Bill to the House.

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

HON DR J J GARCIA:

Only to say that the Opposition will be supporting 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 today, if all hon Members agree.

Question put. Agreed to.

THE IMMIGRATION, ASYLUM AND REFUGEE (AMENDMENT) (No. 2) 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, section 18 of the Immigration, Asylum and Refugee Act sets out in subsections 1(a) to (f) the types of residence permits by duration, that is, weekly, fortnightly, monthly, six monthly, up to five yearly, which the Principal Immigration Officer may issue to non-Gibraltarians.

Under subsection 1(f) the Principal Immigration Officer may issue a permit of residence entitling the holder to remain in Gibraltar for a period exceeding six months but not exceeding five years. Under subsection (3) of the Act, the Principal Immigration Officer's right to issue a permit exceeding six months, that is to say, in the (f) category, six months up to five years, is only available to him if he is satisfied that the applicant or the parent of an applicant, where the applicant is under 18, or the spouse of the applicant, holds a valid certificate of employment issued under section 27 of the Employment Act and is employed in Gibraltar. In short, the power the Principal Immigration Officer has under the existing legislation, to issue residence permits in the six months to five years duration category, is limited to the context of employment and employment permit or to the spouse or to the child of such a person, but not otherwise than in the context of employment. The Bill amends that provision. Amends that limitation to enable the Government to make rules for the granting of residence permits under section 1(f) irrespective of whether a person holds a work permit, and, therefore, opens the way for the granting of long-term residence permits to any category of person that the Government may wish to include in regulations. For example, if the Government wanted to, as indeed it does, to allow Moroccan pensioners, who are by definition not workers, and do not have a contract of employment, for them to have a residence permit greater than of five years duration, or rather, greater than six months duration up to the maximum of five years, that is presently not possible under the legislation because such people are not in employment. The present powers to grant between six months and five years under little (f) of the Act is limited to people who are in employment, or their spouse, or child. So, the effect of this is not to change that but to enable the Government to pass regulations which will be an alternative to the employment criteria. So, the section would read, as it reads now, or, and that is what we will be adding new, the or bit,

in accordance with rules which may be made by the Government for this purpose. That is the nature of the amendment and I commend the Bill to the House, and repeat to the House, that the purpose of the amendment and the effect of the amendment is to give the Government the power by regulation to extend, beyond people who are in employment, the right for the Principal Immigration Officer, in his discretion, to grant them residence permits of greater than six months. In case they are interested, the principal reasons why this is thought to be desirable is that with a six month resident permit it is almost impossible to get a Schengen entry visa to visit, for example, Spain. So, that is really the underlying purpose of this amendment. I commend the Bill to the House.

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

HON DR J J GARCIA:

This is a short Bill and the objectives of the Government are self-explanatory, so we will be supporting 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 Members agree.
Question put. Agreed to.

THE CHILDREN (AMENDMENT) ACT 2010

HON CHIEF MINISTER:

In rising to move the Second Reading of this Bill, which stands in the Order Paper in the name of the Minister for Justice, I would like to take this first Parliamentary opportunity, first of all, to wish the Hon Daniel Feetham a speedy and complete recovery and, secondly, to condemn in the most robust of terms, the unacceptable and unprovoked physical violence to which he has been subjected in Gibraltar.

I have the honour to move, on the Minister for Justice's behalf, that a Bill for an Act to amend the Children Act 2009 for the purpose of giving effect in Gibraltar to the Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at the Hague on the 19th day of October, 1996, and for making other consequential amendments; and for connected purposes, be read a first time.

Question put. Agreed to.

SECOND READING

HON CHIEF MINISTER:

I have the honour to move that the Bill be now read a second time. Mr Speaker, the Bill amends the recently adopted Children Act 2009 to give effect in Gibraltar to the Convention. I am going to read out the long title but it is commonly known as the Hague Convention on Children. The Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at The Hague on the 19th day of October 1996. Mr Speaker, the Hague Convention deals with parental responsibility and measures for the protection of children at international level and lays down a uniform set of

rules, (a) as to which countries competent authorities are to take the necessary measures of protection, (b) to determine which countries law are to apply, (c) to provide for the recognition and enforcement of measures taken in one contracting state by all other contracting states, and (d) to provide for basic framework for the exchange of information and for the necessary degree of collaboration between administrative authorities in the contracting states. The 1996 Hague Convention covers orders concerning parental responsibility and contact to public measures of protection or care and matters of representation all the way through to the protection of children's property. So, a wide range of issues relating to children. It covers also parental disputes over custody of and contact with children. It reinforces the 1980 Child Abduction Convention. It has provisions in relation to unaccompanied children and also in relation to cross-frontier placements of children. Clause 1 of the Bill is its title and commencement, as usual. Clauses 2 to 5 and 7 to 11 provide for consequential amendments to the Children Act 2009 with a view to giving the family judge jurisdiction to deal with all matters relating to children and for connected persons arising under the Convention. Clause 12 provides for a Schedule in which the whole of the 1996 Hague Convention has been reproduced for ease of reference. Clause 6 introduces a new Part VIIIA providing for implementation provisions in relation to the Hague Convention. Therefore, new sections 93A to 93P of that Part make detailed provisions as to the mechanism for the application of a Convention. Mr Speaker, by implementing the Convention in Gibraltar, this Bill will help prevent international child abduction and provide a secure legal framework for cross-border contact between children and their parents when families separate. We will establish a framework for the coordination of legal systems and for international judicial and administrative cooperation and, as I said earlier, we will further the objectives of the 1980 Hague Convention on Child Abduction.

Mr Speaker, I have given notice of two amendments, well three, one is …, two substantive amendments. One requires the Bill to be amended in two separate parts. The first amendment is to add in section 99 of the Principal Act by inserting the following subsection after subsection (10), and then, subsection (11), which is the new one to be added, would read, "The persons referred to in subsection (9) are, (a) the Gibraltar Health Authority, (b) the Department of Education, or (c) any other person authorised by the Government for the purposes of this section". Now, the need for this is that in the Principal Act, section 99, there is a reference in the existing subsection (9) to persons referred to below in subsection … and there is no subsection below in which the persons are referred. I am just trying to get my note of that, if hon Members will bear with me. Yes. The existing Children Act. So, this is an explanation for the amendment. This is, if you like, an additional amendment to the Act. Section 99 subsection (9) of the Act, as unamended, as it currently stands in our law, the Children Act, reads, "where the Agency is conducting enquiries under this section, it shall be the duty of any person mentioned in subsection (11) to assist it with those enquiries", et cetera, et cetera, but then there is no subsection (11) in the Act as foreseen in subsection (9). So, the amendment that I am just alluding to, which is an amendment of which I give notice now, simply adds a new subsection (11) as envisaged by the existing subsection (9) but the Act was deficient in its original drafting. When we brought it to this House, none of us on either side of the House noticed that subsection (9) had a reference in it to a list of persons in subsection (11), and indeed there was no subsection (11). So, that was really just an omission from the original Bill for the original Act.

Mr Speaker, and the other amendment of which I have given notice is the one that comes in two parts and that is in the definition of another Contracting State in the Bill, which is a definition in what will be new section 93A, so it is on page 440 of the Bill, to redefine another Contracting State. The Bill presently says, "means a Contracting State that does not include Gibraltar". Now, that is an old formula of words that used to be used in legislation in Gibraltar when it was not being applied as between Gibraltar and the United Kingdom. That phrase which used to be used also for Directives, in fact, has fallen into disuse because it implies, which would be wrong, that if there is a

Contracting State that does not include Gibraltar, then there must be a Contracting State that does include Gibraltar, and of course, the Contracting State to which it is alluding is the United Kingdom, but the United Kingdom does not include Gibraltar. In other words, Gibraltar is not part of the union of the United Kingdom. So, there is an alternative formula of words which is used whenever we mean a Contracting State but not the United Kingdom, and it is this one. This is the phrase that the hon Members will have seen more recently in Directives and things. So, both formulae of words actually mean the same that another Contracting State does not include the United Kingdom, because the United Kingdom is not another Contracting State. So, the phrase "means a Contracting State that does not include Gibraltar", well the Contracting State that does not include Gibraltar is the United Kingdom, if it were true to say, of Gibraltar, that it is capable of being included as part of the United Kingdom. The more accurate and, therefore, preferred way, which the hon Members will have seen more recently, is this "other than the United Kingdom", which leaves the substantive question, with both formulas, not just in the amendment. With both formulas, it leaves the substantive question of, well, why the [*inaudible*] applying as between the United Kingdom and Gibraltar. That indeed raises a wide ranging question which I have recently raised at meetings in Whitehall. The view of the Gibraltar Government is that, as a matter of principle, whenever there are international treaties and, indeed for that matter, EU or EEA measures, which are of a cross-border nature, that a devise should be agreed between Gibraltar and the United Kingdom so that they apply as between Gibraltar and the UK. Otherwise, we have the rather peculiar situation in which things apply as between Gibraltar and France, Germany, Denmark, et cetera, but not as between the United Kingdom and Gibraltar, which the Gibraltar Government believe is a most peculiar and undesirable, and undesired by us, conclusion, but of course, this is something that has got to be agreed reciprocally. What we cannot have is a situation where we legislate all the time to include the United Kingdom, but the United Kingdom, because it does not have to, because we are not another Member State, does not, when it legislates the implementation of an EU measure, legislate in the United Kingdom legislation in a way that applies it to Gibraltar as well. So, using this as an example, we have been trying to obtain from the United Kingdom confirmation that the United Kingdom's own legislation transposing this Directive would allow it to be applied as between Gibraltar and the United Kingdom. Our own research indicates that it does not, but the United Kingdom have not yet confirmed that in writing, despite having been asked some time ago. So, what I propose to do is that, in case we can persuade the United Kingdom to come to share our view, which is that that is not an undesirable state of affairs. In other words, just using this as an example, how can it be desirable that Gibraltar has to recognise French court rulings in respect of children, but not the rulings of the United Kingdom courts, or vice versa. How can it be desirable or even sensible, that the United Kingdom courts, in the protection of children, have to recognise Greek or French court rulings, but not the rulings of the courts of Gibraltar. It just leaves, in my opinion, whatever might be the legalistic justification for it, because it is not another … When you have an international convention that is as cross border as between Contracting States, well because Gibraltar is not a contracting state, it is technically correct for the United Kingdom to say, ah, it is not mandatory under the Treaty for this to apply as between Gibraltar and the UK. In a sense, the old 1st of July law issue, but we believe that that is wholly undesirable. It results in a situation whereby the regime between Gibraltar and the UK, in both directions, is of a lesser quality than the relationship between Gibraltar and a whole series of foreign countries, and, indeed, between the UK and a whole series of foreign countries, than it is between Gibraltar and the UK. We think that that is undesirable. This issue raises its head, not just here, but in many financial services Directives, many cooperation Directives, in a whole range of issues. So, we are now tackling the matter holistically with the UK and saying, let us have a deal that when there are cross-border things we do not allow this to be the result, but the result is that, by agreement, we both legislate to extend it to each other, even though there is no theoretical mandatory requirement, sorry that it is a bit too apologist to do so.

The way I propose to prepare for the possibility of success there is by the next amendment, consequential on that first one, which is at the very end of the Bill. There is an amendment to section 158 already in the Bill, if the hon Members look at page 450. They will see that there is already a proposed amendment to the regulation making power to allow the Government, by regulation, to comply with EU obligations in this area. What we are now proposing by way of an additional amendment to the Act, is a provision that would read, "The Government may by Regulations extend the provisions of all or parts of this Part, with or without modifications, to the United Kingdom" and it would be our whole hearted hope that we will be able to persuade the United Kingdom to take the same view and to reciprocate. What I hope the House will share with the Government also is the view that it would not be right, or justifiable, or defensible, or indeed in the interests of Gibraltar, for us to do that unilaterally. In other words, for us to systematically transpose cross border international obligations, to be applicable as between Gibraltar and the UK in that direction, without the UK reciprocating, by putting its own legislation, similarly, in a position when they can reciprocate with Gibraltar. In other words, it is important to signal both things. One, that we think that that should be the result, that the UK and Gibraltar should treat each other, as if, if you want, they were separate states, but secondly, that it should work both ways and that Gibraltar cannot be expected to treat the UK in that way, if the UK will not reciprocate. In other words, in the context of this example, that it is not right that Gibraltar recognises UK court rulings and court orders without the UK also recognising Gibraltar court rulings and court orders in the area. I commend the Bill, with these two amendments, to the House.

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

HON DR J J GARCIA:

Mr Speaker, before my hon Colleague continues with the Bill, I would like, on behalf of the Opposition, to associate ourselves with the remarks made by the hon Member, regarding the incident involving the Minister for Justice, Daniel Feetham. Our thoughts are with his family and friends at this difficult time and we too wish him a full and speedy recovery.

HON G H LICUDI:

Mr Speaker, this Bill introduces, as we have had on other occasions, international obligations in relation to Gibraltar. We will be supporting the Bill as drafted, together with the amendments, which are proposed in the letter, for which the Chief Minister has given notice. We also consider, like the Government, that it is most undesirable that we should have a regime which applies as between states within Europe and Gibraltar, and does not apply as between us and the United Kingdom. We would venture to suggest that there appears to be no reason, in principle, why that should be the case. In fact, there are other circumstances, other pieces of legislation, where that already applies. I am thinking, for example, in the case of reciprocal enforcement and recognition of judgements under the Civil Jurisdiction and Judgements Act in Gibraltar, where specifically the United Kingdom, in fact, not the United Kingdom, but the courts of England, Wales and Scotland are treated as separate jurisdictions. Almost a separate Member State and, specifically, a provision is made so that they are treated as separate Member States from Gibraltar. So, it is certainly desirable that that should be the case. It is wholly undesirable, we agree with the Government on this as well, that we should have a regime that applies throughout Europe, but not as between Gibraltar and the United Kingdom. We also consider that it is desirable that there is a need for reciprocity. That we should not unilaterally impose, although there may be circumstances in which we may consider, on the odd occasion, that it may be useful or desirable to recognise something that

happens in the United Kingdom, but as a general rule and certainly for the purpose of this Bill, it is not desirable that we should have to apply a recognition of rulings from the United Kingdom without there being an element of reciprocity. Therefore, we would urge the Government to continue the efforts, that the Chief Minister has indicated it is making, to find that sort of device which will allow that to happen. We are interested in learning a little bit more as to whether there are, in fact, any obstacles, and whether those obstacles might be political or practical arrangements. What the nature of the problem, if there is a problem, as regards … or is it simply that the officials at the other end have not got round to dealing with the Government's approach on this matter. We would really like to understand whether there is a hurdle, a real hurdle, that has to be overcome, or is it just a question of time and discussions as between United Kingdom and Gibraltar.

On a more minor issue, in terms of the wording, simply to ask the Government whether it is satisfied as to extent of the wording in the last amendment to clause 11, which, in fact, does what the Chief Minister has explained, which is introduce a provision whereby the Government by regulations could then bring in the United Kingdom as a reciprocal arrangement ensues. Where it says, "The Government may by Regulations extend the provisions of all or parts of this Part, with or without modifications, to the United Kingdom". That almost gives the impression that the Government may, by regulation, extend these provisions to the United Kingdom. In other words, they apply in the United Kingdom. You legislate for the United Kingdom by regulation in Gibraltar. In fact, often, when we have treaties that the United Kingdom is a signatory to, it is often said that that Treaty is extended to Gibraltar by the United Kingdom. Therefore, what the United Kingdom is doing is making part of Gibraltar law the international obligations that they are themselves obliged to carry out, and therefore, it is just a question of wording, whether the Government are satisfied that that actually does ... What I understand is proposed is that the United Kingdom should be included in the definition of the Contracting State.

HON CHIEF MINISTER:

[*Inaudible*]

HON G H LICUDI:

No. As if it was a Contracting State. That is certainly what is intended, but I just wonder whether extending these provisions to the United Kingdom simply means that we are, in fact, purporting to legislate for the United Kingdom.

HON CHIEF MINISTER:

Well, Mr Speaker that is an interesting concept where Gibraltar is legislating for the United Kingdom. I do not mind sharing with the hon Members what I know in answer to the hon Members. First of all, let me assure them that I have every intention of continuing this. I have already raised the matter at ministerial level and I think Ministers appear to be interested in engaging the Gibraltar Government on this question, which has very wide application. As you can imagine, an international convention could be about anything and it does not just apply to international conventions. EU Directives, EEA Agreements. You are talking about a lot of things, and he is quite right, there are already many examples of measures in which the United Kingdom and in Gibraltar do reciprocate and apply to each other, but the problem is that it is an *a la carte* basis. You know, which basically means that the United Kingdom decides, on a case by case basis, whether it wants to reciprocate with Gibraltar, and if it does, it says yes, and if it does not, it says no, and we think that that is wholly undesirable. It has got to be for everything or for nothing. It cannot just be the ones that it suits the UK, but not the ones where it suits Gibraltar, for the application as between Gibraltar and the UK. So, what we want is a mechanism. What we are proposing, I am going to propose to the UK in detail, we have already discussed it in its conceptual principle, is a formula whereby this happens

systematically on every case. What does this mean? It does not require any change to the international agreement. It does not require any change to the language of the Directive. It simply means that we agree with each other that when we are drafting our domestic legislation to give effect to the Treaty, we draft it beyond the requirements of that Treaty, or measure itself, in language which results in it being applicable as between Gibraltar and the UK, in both directions. What are the obstacles? What are the problems, he asks? Well, I do not know whether there is any policy difficulty here for the UK. In other words, I hope not, and the Minister's first reactions suggested that this was not the case, but they were not really sighted on it, and that is whether the UK may wish to retain the case-by-case, *a la carte,* approach. That could be the only policy issue. Other than that, I think it is a departmental legal advice issue, because we tend to think of the British Government as being the Foreign Office. The British Government is a whole series of Departments of State who probably do not talk to the Foreign Office for years, and when they have a piece of legislation that belongs to them, transport, Transport Department, they do not think Gibraltar, they get their lawyers to draft whatever legislation is necessary to give effect to a particular international obligation. If the international obligation is articulated in terms that would not require it to apply to anybody other than the other Contracting States, then that is what they do. Then we say, hang on, what about Gibraltar, and so the policy makers in the department go to their lawyers and say, ah well, that is a policy matter, it is not a legal requirement for us to apply it to Gibraltar. Some departments, on the other hand, take a different view, and as a matter of pragmatism, do that of their own motion, and of their own volition. So, what we are saying to the UK is, look, this can no longer be *a la carte*, on a case by case basis and there should not be a different practice depending on the legal advice that a department gets or does not get. We should have a political agreement to deal with it in this way, on a systematic basis, without having to discuss it on a case-by-case basis. In other words, let us have consistency …

HON G H LICUDI:

Will the hon Member give way?

HON CHIEF MINISTER:

Yes, of course.

HON G H LICUDI:

Can I ask the hon Member just to explain? Is this a matter that has arisen recently, or is it something that has arisen in relation to other international obligations in the past? It cannot be the first time that we have this sort of issue. So, is it the case that we have always accepted this *a la carte* basis or is there something new provoking this discussion now?

HON CHIEF MINISTER:

No, Mr Speaker, this has always been the position. It has always been the position as between Gibraltar and the UK. There is nothing new. The problem is that the UK takes much longer, even when they agree to reciprocity on a case-by-case *a la carte* basis, it takes them forever to actually deliver it. Take, for example, the new Directive on Collective Investment Schemes. It is the one passport that we have not yet got with the UK. We have got it with the rest of the Europe. We have not yet got it with the UK because it does not arise under the Directive. It is not a legal obligation under the Directive. The UK have agreed to do it as they have done with the other passports, banking, insurance and insurance intermediation, but drafting legislative time and Parliamentary time means that two years later, they still have not done it, and this is one of the results of the *a la carte* approach. That even when they agree to do it, the process of delivering it to Gibraltar can take as long as anybody wants and it always gets pushed down. So, it is not

a new problem. It has always existed. We are grappling with three or four financial services related ones now and we believe that our experience with this financial services one demonstrates that there is now a need to deal with it more holistically, more generically, rather than continue to deal with it, as Gibraltar has always dealt with it in the past, on a case by case basis and trying to persuade the UK on the merits of applying it to each other, et cetera, et cetera. So, the change of approach comes from us, that is new, but the problem and Gibraltar's suffering of the consequences, has existed for as long as these things have been around. Mr Speaker, in regard to his final point, I do not know whether, perhaps during the Committee Stage, we can agree a formula of words that he thinks does not have that semantic meaning. If it is capable of being read in the way that he has interpreted, obviously, it is not what is intended and even if it meant that, it would be completely ineffectual in law, but if we can avoid sounding as if that is what we are trying to do, I am very happy to … Yes.

HON F R PICARDO:

Mr Speaker, if I can just direct the hon Gentleman, in that respect, to the provisions of the amended section 93P(1) (a) and (b), which appear in page 450, which relate to almost exactly the same issue. I think …, in that section relating to a particular part of the Act rather than the Act as a whole, I think the language that we actually have become used to, as my learned and Hon Friend Mr Licudi has pointed out, is not this language, but the language which appears at (c), which is, "extending, subject to subsection (2)", whatever that may be, "the provisions of this Part as between the United Kingdom and Gibraltar". I think that is …

HON CHIEF MINISTER:

"As between" … So, instead of the word "to", just add, put the word, "as between".

HON F R PICARDO:

That is right. Now, I do not think we can rely just on 93P (1) because that relates just to a particular part, and I think what the Government need, and the reason for the amendment that the hon Gentleman has explained, very helpfully, is to [*inaudible*] the whole of the Act in that way. So, I think there needs to be this new section, but I think it needs to be phrased …

HON CHIEF MINISTER:

Well, what I propose then is that, at the Committee Stage, we will amend the existing amendment as it is, but instead of the word, "to", we will put the words, "as between". So, it will read as it now reads, but after the word "modifications", it would read, "as between Gibraltar and the United Kingdom", rather than, "to the United Kingdom".

HON F R PICARDO:

I think I should just, [*inaudible*] more precise, "as between the United Kingdom and Gibraltar", which I think will follow the formula we have seen in all the legislation up to date.

HON CHIEF MINISTER:

Alright. Well, I will move that amendment. I am grateful to the hon Members.

Question put. Agreed to.

The Bill was read a second time.

HON CHIEF MINISTER:

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

Question put. Agreed to.

COMMITTEE STAGE

HON CHIEF MINISTER:

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

1. The Crime (Money Laundering and Proceeds) (Amendment) Bill 2010;

2. The Supplementary Appropriation (2009/2010) Bill 2010;

3. The Immigration, Asylum and Refugee (Amendment) (No. 2) Bill 2010;

4. The Children (Amendment) Bill 2010.

THE CRIME (MONEY LAUNDERING AND PROCEEDS) (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 SUPPLEMENTARY APPROPRIATION (2009/2010) BILL 2010

Clauses 1 to 3 – 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 IMMIGRATION, ASYLUM AND REFUGEE (AMENDMENT) (No. 2) 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 CHILDREN (AMENDMENT) BILL 2010

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

Clause 6

The Hon the Chief Minister moved the following amendments:

In clause 6 which inserts new section 93A. to the Principal Act, in the definition of “another contracting state”, delete the words “that does not include Gibraltar” and substituting them with the words “other than the United Kingdom”.

In clause 6 which inserts new section 93P.(1), delete the figure “93P.(1)” and replace with the figure “93P.”.

In clause 6 which inserts new section 93P.(1)(c), delete the words “, subject to subsection (2),”.

HON F R PICARDO:

Mr Chairman, I have a proposal to look at section 93K. I do not know whether that is before the next one.

MR CHAIRMAN:

That is before, I think. All under clause 6.

HON F R PICARDO:

It is all in clause 6.

MR CHAIRMAN:

Yes, that is right.

HON CHIEF MINISTER:

Yes, it is all clause 6. We can take them all together.

MR CHAIRMAN:

I think so, yes.

HON CHIEF MINISTER:

Then, Mr Chairman, to amend a proposed new section, to amend section 99 as proposed in my letter by adding, after subsection (10) to that section, a new subsection (11) which would be, as I have given notice of in writing, by adding the three parts, that is (a) the Gibraltar Health Authority, and (b) the Department of Education or (c) any other person authorised by the Government for the purposes of this section.

MR CHAIRMAN:

I suppose for the purpose of the Committee Stage, that should be dealt with as the introduction of new clause 6A just after we finish with clause 6. Is that correct?

HON CHIEF MINISTER:

It all arises under clause 6 of the Bill.

MR CHAIRMAN:

I think the Hon Fabian Picardo said something about section 93K.

HON F R PICARDO:

I have just a concern in relation to section 93K, Mr Chairman, and that is that in section 93K(1) the Central Authority is designated, by this primary legislation, to be "the Minister for Justice, or such other person or entity as the Chief Minister may, from time to time, designate by notice in the Gazette", which is the standard wording. Nonetheless, in subsection (2), we are then saying, by primary legislation, that "Communications relating to the Convention from a person outside Gibraltar shall be addressed to the Minister for Justice as the Central Authority in Gibraltar". Now, given what is envisaged in section 93K(1), it may be that the Minister for Justice is not the Central Authority at any particular time although it is probably unlikely that that is going to arise. I think, therefore, subsection (2) should be amended so that there is no reference to the Minister for Justice there and that it should read, "shall be addressed to the Central

Authority", for example, "Children Act in Gibraltar" or some such wording that the Government are happy with, so that we do not have communications about this sensitive area flying around Ministries which may no longer be the Central Authority.

HON CHIEF MINISTER:

Yes, Mr Chairman, I think the hon Member's point is entirely justified and correct but whether his proposed way of dealing with it is the most apposite, is for discussion. It all arises, or rather, we need to bear in mind that Central Authority is a defined term and that it refers back to the person designated under section 93K. So, by simply referring to Central Authority…

HON F R PICARDO:

I suggested Central Authority …

HON CHIEF MINISTER:

Section 93K, yes. Yes, "Communications relating to the Convention from a person outside … shall be addressed to the Central Authority". That would be enough.

HON F R PICARDO:

But my only concern in simply saying "Central Authority", Mr Chairman, is that we have a lot of Central Authorities, [*inaudible*] a lot of legislation which sets up…

HON CHIEF MINISTER:

But this one is a defined term on page 441 of the Bill.

HON F R PICARDO:

I understand that and there is absolutely no difficulty with it being the Central Authority for the purposes of the Bill. My concern is, in practical terms, when something is received as an envelope addressed to the Central Authority, how do they know where to take it? Does the Post Office open it and say it is a Children Act matter or we open it and say it is a financial services matter? That is why I thought Central Authority Children Act, for example.

HON CHIEF MINISTER:

Oh, I see.

HON F R PICARDO:

It could also say, Central Authority – Children Act.

HON CHIEF MINISTER:

Yes. It tends not to happen in that way of course. There is usually prior oral communication between Authorities and they know, and most things come through the diplomatic bag and arrive at, somewhere or other, and then it gets distributed internally within the Government. Of course, the point that he makes, to the extent that it has merit, has the same merit in every case, where there is just a Central Authority appointed. Mr Chairman, I think I would prefer to deal with that part of his point which definitely has substance. In other words, in subsection (1) we are entertaining the possibility of changing who the Central Authority is, yet in subsection (2) people have to address incoming requests to somebody who may no longer be … I think that is a very important observation and I would like to accommodate that just by deleting the words "to the Minister for Justice". It is to whoever is the Central Authority under section

93K because that is how the Central Authority is defined, and leave the other one a little bit to chance. If the hon Member can live for the time being with the comfort that in practice nothing arrives of this sort not pre-spoken about. I am obliged to the hon Member for that.

MR CHAIRMAN:

So clause 6, amended as to the new sections 93A, 93P and a new section 93K, stands part of the Bill, and then we have the introduction of the new clause 6A. Any comment before I declare it as part of the Bill.

New clause 6A, stands part of the Bill.

Clauses 7 to 10 – were agreed to and stood part of the Bill.

Clause 11

HON CHIEF MINISTER:

Yes, Mr Chairman, there I would like to modify the amendment that I am proposing, to read as it does up to the word "modifications", and to delete the words "to the United Kingdom" and replace with the words "as between the United Kingdom and Gibraltar". So the amendment to the proposed subsection (13) will read:

> "(13) The Government may by Regulations extend the provisions of all or parts of this Part, with or without modifications, as between the United Kingdom and Gibraltar.".

HON F R PICARDO:

Just on that observation, I think that works as we discussed. I am just wondering and I do not have the whole Bill in front of me, but the hon Gentleman may want to check this, that we are not doing it twice in respect of the same part. In other words, sections 93P(1) and 158 do relate to different parts of the Children Act , otherwise we would be doing it twice. It is just an observation because I see that this is also in relation to parts of this Part. I assume that there aren't different parts, so be it. In respect of subsection (12), Mr Chairman, there is a reference there in the last sentence, to "European Union obligations in relation to the children". Now, I think that is actually, "children". I do not think it is, "the children".

HON CHIEF MINISTER:

Can the hon Member … [*inaudible*].

HON F R PICARDO:

Yes. Mr Chairman, as I told the hon Gentleman, the wording which I alluded to and which he is now accepted for this reference comes from section 93P(1). Section 93P(1) gives the Government regulation making power, it is at page 449, for carrying out the general purposes of this Part giving effect to Gibraltar's obligations under International and European law in relation to the subject matter of this Part or extending, subject to subsection (2), the provisions of this Part as between the United Kingdom and Gibraltar. That, Mr Chairman, I think relates to this Part VIIIA which is the one that we are introducing by clause 6. The amendment the hon Gentleman has moved relates to section 158 and because I do not have the Children Act in front of me, what I am saying to him is, this is also …

HON CHIEF MINISTER:

That is in this Part [*inaudible*]. In other words, if sections 93 and 158 were in the same Part, we would be duplicating the provision.

THE HON F R PICARDO:

That is right. I am sure it is not the case but as we do not have the Act here, it may be just something for the draftsman to check before they publish, so that we do not have two regulation making powers in the same Part, in respect of that Part.

HON CHIEF MINISTER:

Mr Chairman, I am almost certain that [*inaudible*] but I dare not say it. Can we agree that if it is in the same Part then it is an unintended duplication and the draftsman can drop this one?

HON F R PICARDO:

I think that is absolutely right. Then the next point, Mr Chairman, is a different point. It is in relation to subsection (12), if I can just draw the hon Gentleman's attention to that, on page 451, which is part of this clause 11 amendment, to drop the reference "to the children", because I think it should be a reference "to children".

HON CHIEF MINISTER:

Yes. I think that is right but that is a new amendment to the Bill.

HON F R PICARDO:

Yes.

HON CHIEF MINISTER:

Or rather it is a new amendment to the Act. No, no. It is in the Bill. It is in the Bill. It is an amendment to the Act that is provided for in the Bill as published. Yes. So I think that is true. The word, "the" is not just superfluous, but indeed wrong in front of the word "children".

HON G H LICUDI:

Mr Chairman, in relation to the same provision, let us just be absolutely clear that the words at the end "in relation to children" apply, not just to the latter part of that provision, which says "to fulfil any other International or European Union obligations", but also to the first part which says, "to give effect to any international measures in respect of Gibraltar", because it could be read as two self-standing provisions. One, that "The Government may by Regulations make provision to give effect to any international measures in respect of Gibraltar", which would be very, very wide powers.

HON CHIEF MINISTER:

Again, I think the hon Member is far too strict in his [*inaudible*] but the way to avoid it, no, I do not say that it is not worth correcting it if it is possible, but I think it is unnecessary, but I mean that does not mean it is not worth correcting. That could read, yes, after the word "measures".

HON F R PICARDO:

Provisions …

HON CHIEF MINISTER:

Yes. "to make any provisions to give effect to any international measures in relation to children", or, "to make provision", "The Government may by Regulation make provisions in …"

HON F R PICARDO:

"In relation to children".

HON CHIEF MINISTER:

No, what has got to relate to children is not the provisions, but the measures.

HON F R PICARDO:

But the measures.

HON CHIEF MINISTER:

"To any international measures in relation to children in respect of Gibraltar or to fulfil any other International …" No. Yes.

HON F R PICARDO:

If you do that, Mr Chairman, you have then got to put in, "in relation to children" twice.

HON CHIEF MINISTER:

Yes.

HON G H LICUDI:

The purpose is that "in relation to children" should apply to the two limbs of the provision.

HON CHIEF MINISTER:

Well, I think that it can be dealt with this way. "The Government may by Regulations make provisions to give effect" … "may give" … "The Government may by Regulations make provisions to give effect in relation to children of any international measures in respect of Gibraltar or to fulfil" … "both in respect of any international measures in respect of Gibraltar or to fulfil any other International EU obligations." So, in other words, the …

HON F R PICARDO:

After "effect".

HON CHIEF MINISTER:

Yes. "The Government may by Regulations make provision to give effect in relation to children both to any international measure in respect of Gibraltar or to fulfil any International or EU obligation". That sounds less ambiguous. Does the hon Clerk have that?

MR CHAIRMAN:

I do have it. I was just wondering where would the "in relation to children" go, after the word "effect"?

HON CHIEF MINISTER:

Yes.

MR CHAIRMAN:

Because I am just looking, grammatically, there may be a problem there. We are talking of "to give effect to" that is the verb, right. Then we talk of, "in relation to Gibraltar".

HON CHIEF MINISTER:

It would read "The Government may by Regulations make provisions to give effect in relation to children to any International, both …" I would put the word "both" there. "both to any international measure" which deals with the Hon Mr Licudi's point.

MR CHAIRMAN:

But that is where …

HON G H LICUDI:

The measures must relate to children.

MR CHAIRMAN:

But that is where I see the problem. If you put it after "to give effect in relation to children", if we just stop over there.

HON CHIEF MINISTER:

[*inaudible*] to children to something.

MR CHAIRMAN:

Yes, but then, with respect, after it occurs, there is no verb in the first part, right, "to any international measures in respect of Gibraltar". There is no verb there. But in the second part there is a verb, so it could be a different…, then "to fulfil" that is a different concept. That is where we may have a problem.

HON F R PICARDO:

The way we may resolve it, Mr Chairman, is simply by adding a comma before "in relation to children" and a comma after "children", so that you have got a comma before "in relation" and then after "children". So, it is clearly a parenthesis and, therefore, I think the problem would be resolved.

HON CHIEF MINISTER:

Well, Mr Chairman, I do not think that any amendment is necessary but certainly I accept that the Hon Mr Picardo's amendment works as well and if that is an easier sentence construction, then that is fine too. So "The Government may by Regulations make provisions to give effect to any international measures in respect of Gibraltar or to fulfil any other International or European obligations, in relation to children."

HON F R PICARDO:

No. That was not what I was proposing.

HON CHIEF MINISTER:

Oh!

HON F R PICARDO:

What I am proposing is this. In other words, what the hon Gentleman has suggested, "The Government may by Regulations make provisions to give effect, in relation to children, both to any international measure" and then carry on.

HON CHIEF MINISTER:

Well, that is what I thought I had proposed. Sorry.

HON F R PICARDO:

Oh sorry. But you did not propose the commas and I think …

HON CHIEF MINISTER:

Oh. Yes, it needs a comma to make sense.

HON F R PICARDO:

Exactly, and then you have got the parenthesis and then the issue of the verb has gone.

HON CHIEF MINISTER:

Yes.

HON G H LICUDI:

I do not think that takes care of the …

MR CHAIRMAN:

It does not take care of the extra verb in the second part "to fulfil". You are talking of "the International obligation" arising "to fulfil". My problem was …the wording …

HON CHIEF MINISTER:

Yes, what the Hon Mr Chairman is saying in a helpful desire to contribute to the quality of legislation …

MR CHAIRMAN:

I may have to practice this in a Court of Law one day.

HON CHIEF MINISTER:

There are two different parts in this. There is, giving effect to international measures in respect of Gibraltar and then, as a quite separate exercise, there is, fulfilling any other International obligation. They are actually two different things. So, by saying "give effect in relation to children" you are only dealing with the giving effect to it, you are not dealing with the fulfilling any other International obligations bit. Have I correctly understood it?

MR CHAIRMAN:

Yes. That is exactly what I am trying to say.

HON G H LICUDI:

It is the answer then to say, "to give effect or to fulfil, in relation to children, any international measures …"

HON CHIEF MINISTER:

It could be dealt with in that way. "The Government may by Regulations make provisions to give effect". No. "…to fulfil". Put "fulfil" first. "The Government may by Regulations make provisions to fulfil or give effect, in relation to children, any international measures in respect of Gibraltar or any other International or EU obligations".

HON F R PICARDO:

Mr Chairman, I think that works but I am going to controversially suggest that we do something slightly different, which I think will be easier for everyone, and it is this. To simply say exactly what the clause said when it was introduced but to split it up. "The Government may by Regulations make provisions: (a) to give effect to any international measures in respect of Gibraltar; or (b) fulfil any other International European obligations," and then carry on at the bottom as not part of (b), "in relation to children". I think that ...

HON CHIEF MINISTER:

That works perfectly well too.

HON N F COSTA:

A lot better.

HON F R PICARDO:

And that is easier for …

HON CHIEF MINISTER:

Have you got that?

MR CHAIRMAN:

Yes.

HON CHIEF MINISTER:

Do you have it now?

MR CHAIRMAN:

I do and I am happy with it.

HON CHIEF MINISTER:

As an alternative, the "in relation to Children" actually can go before the (a) and the (b).

HON F R PICARDO:

As well. Yes.

HON CHIEF MINISTER:

If it was thought better. "To give effect in relation to children to (a) or (b)". I mean we are just talking layout.

HON G H LICUDI:

Mr Chairman has not heard the last.

MR CHAIRMAN:

No. Sorry.

HON CHIEF MINISTER:

No, the last proposal is exactly as the Hon Mr Picardo has proposed, except rather than have the "in relation to children" sort of by itself, back at the margin so to speak, after (b), to put it in the *chapeau*. In other words, "The Government may by Regulations make provisions in relation to children: (a) to give effect to …"

MR CHAIRMAN:

Yes. Thank you. I will get that. I shall explain to the Clerk when we have finished, alright. I am sure he has got it anyway. Okay, in that case can we say …

Clause 11, as amended, and very constructively, I might say, re-amended and finally agreed upon, stands part of the Bill.

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

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

THIRD READING

HON CHIEF MINISTER:

I have the honour to report that:

1. The Crime (Money Laundering and Proceeds) (Amendment) Bill 2010;

2. The Supplementary Appropriation (2009/2010) Bill 2010;

3. The Immigration, Asylum and Refugee (Amendment) (No. 2) Bill 2010;

4. The Children (Amendment) Bill 2010,

have been considered in Committee and agreed to, in the case of the last mentioned Bill with amendments, and I now move that they be read a third time and passed.

Question put.

The Crime (Money Laundering and Proceeds) (Amendment) Bill 2010;

The Supplementary Appropriation (2009/2010) Bill 2010;

The Immigration, Asylum and Refugee (Amendment) (No. 2) Bill 2010;

The Children (Amendment) Bill 2010,

were agreed to and read a third time and passed.

ADJOURNMENT

HON CHIEF MINISTER:

I now 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 3.50 p.m. on Monday 8th November 2010.